



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 30, 2007

Ms. Beth Vidaurri  
Public Information Officer  
Corpus Christi Regional Transportation Authority  
5658 Bear Lane  
Corpus Christi, Texas 78405

OR2007-15813

Dear Ms. Vidaurri:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 296115.

The Corpus Christi Regional Transportation Authority (the "authority") received a request for the qualification statements submitted by two named companies in response to a specified RFQ. You state that a portion of the responsive information will be released. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. You also indicate that release of the requested information implicates the proprietary interest of third parties, AG/CM, Inc. ("AG/CM") and Naismith Engineering, Inc. ("Naismith"). Pursuant to section 552.305 of the Government Code, you were required to notify AG/CM and Naismith of their right to submit arguments to this office as to why the information should not be released. *See Gov't Code* § 552.305(d). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that you did not submit the requested information pertaining to Naismith. We assume that, to the extent this information existed when the authority received the request for information, you have released it to the requestor. If not, then you must do so at this time. *See id.* §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See Open Records Decision No. 592 at 8 (1991).*

Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). However, section 552.104 does not except from disclosure information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You state that the submitted information relates to a proposed contract for construction project manager services. You state that the authority is currently in negotiations with AG/CM, but has not yet executed a contract. You further assert that in the event the authority is not successful its negotiation with AG/CM, release of the submitted information would harm negotiations with the next ranked firm. Based on your representations, we conclude that the authority may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract under negotiation). Because our determination on this issue is dispositive, we need not address your remaining arguments against disclosure or arguments submitted by the third party.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/ma

Ref: ID# 296115

Enc. Submitted documents

c: Mr. Carlos A. Martinez, P.E.  
DL, Inc.  
555 North Carancahua, Suite 800  
Corpus Christi, Texas 78478  
(w/o enclosures)

Ms. P. Gail Anderson, P.E.  
Chief Executive Officer  
AG/CM, Inc.  
P.O. Box 2682  
Corpus Christi, Texas 78403  
(w/o enclosures)

Niasmith, Inc.  
c/o Ms. Beth Vidaurri  
Public Information Officer  
Corpus Christi Regional Transportation Authority  
5658 Bear Lane  
Corpus Christi, Texas 78405  
(w/o enclosures)