



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2009

Mr. Reg Hargrove
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2009-16358

Dear Mr. Hargrove:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 361630 (PIR No. 09-25979).

The Office of the Attorney General (the "OAG") received a request for responses submitted by Ciber, Inc. and C&T Information Technology Consulting, Inc. ("C&T") to Statement of Work #5 under the Project Services Project: Medical Support Data Edits. The OAG states it will release some of the information but argues some of the remaining information is excepted from disclosure under section 552.104 of the Government Code. In addition, the OAG states some information may implicate the proprietary interests of Ciber and C&T and thus has notified Ciber and C&T of the request for information. Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). We have considered the OAG's claimed exception and have reviewed the submitted information.

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. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104

requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Section 552.104 generally does not except information relating to competitive bidding after a contract has been awarded and executed. *See* Open Records Decision No. 541 (1990). However, this office has determined that in some circumstances, section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id* at 5.

The OAG explains it solicited the procurement of technological services after its Child Support Division (“CSD”) received an exemption from the Texas Department of Information Resources (“DIR”) to procure such services through August 31, 2011. Furthermore, the OAG explains:

six vendors were pre-qualified and awarded a “zero dollar purchase order.” Each vendor submitted pricing schedules with a “not to exceed price” for future CSD technology services projects. The procurement for those projects is an on-going competition among the six awardees. The CSD will issue statements of work, and the awardees will compete by submitting solutions and prices at or below their respective “not to exceed” pricing schedules. . . . Once a project under the PSP purchase order is awarded to one or more of the six awardees, a purchase order change notice . . . will be issued. [Footnote omitted.]

The OAG asserts release of the pricing information “will enable the . . . competing awardees to adjust future bids based upon the pricing models and ‘not to exceed’ schedules of their respective competitors” and jeopardize the OAG’s future ability to obtain the best offer for renewal of the same contracts. Based on these representations, we conclude the OAG has shown actual or specific harm in a particular competitive situation if the information were to be released. Thus, the OAG may withhold the information it marked under section 552.104.

As for the remainder of the information, Ciber and C&T did not submit arguments in response to the section 552.305 notices. Therefore, we have no basis to conclude Ciber’s and C&T’s information are proprietary. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Thus, the OAG may not withhold the rest of the information based on any proprietary interest Ciber and C&T may have.

In summary, the OAG may withhold the information it marked under section 552.104. The OAG must release the remainder.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 361630

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Ms. Mary Anne Clement
Senior Solutions Consultant
Ciber, Inc.
4515 Seton Center Parkway, Suite 100
Austin, Texas 78759
(w/o enclosures)

Ms. Shannon Grice
President
C&T Information Technology Consulting, Inc.
Plaza 1, Suite 500
9442 Capital of Texas Highway North
Austin, Texas 78759
(w/o enclosures)