



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 1, 2010

Ms. Susan Denmon Banowsky
Vinson & Elkins
2801 Via Fortuna Suite 100
Austin, Texas 78746-7568

OR2010-01508

Dear Ms. Banowsky:

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# 368773.

The Greater Harris County 9-1-1 Emergency Network ("GHC"), which you represent, received a request for pricing information submitted in response to a request for proposals ("RFP") for a next-generation microwave network. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You also believe that this request for information may implicate the interests of third parties.¹ You inform us that the third parties were notified of this request for information and of their right to submit arguments to this office as to why the requested information should not be released.² We received correspondence from Harris Stratex. We have considered all of the submitted arguments and reviewed the information you submitted.

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(a). The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing

¹You inform us that the parties concerned are Alcatel-Lucent ("Alcatel"), Goodman Networks, Harris Stratex Networks ("Harris-Stratex"), and Motorola.

²*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

Ref: ID# 368773

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Mr. Steve Williams
Alcatel-Lucent
32906 Wright Road
Magnola, Texas 77355
(w/o enclosures)

Mr. Ronald Berry
Goodman Networks
6400 International Parkway Suite 1000
Plano, Texas 75093
(w/o enclosures)

Mr. Skip Hulett
Goodman Networks
14701 North U.S. Highway 281 Suite 220
San Antonio, Texas 78232
(w/o enclosures)

Mr. Kelly G. Williams
Harris Stratex Networks, Inc.
637 Davis Drive
Morrisville, North Carolina 27560
(w/o enclosures)

Mr. Ben Zotyka
Motorola
7940 North Sam Houston Parkway West
Houston, Texas 77064
(w/o enclosures)

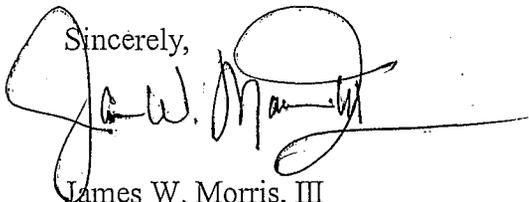
of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded and is in effect. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You explain that GHC requested proposals in March 2009 for the design, construction, and implementation of a digital microwave radio system. You inform us that in October 2009, GHC's board of managers authorized the selection of Alcatel as the vendor with which to begin contract negotiations. You state that GHC remained in negotiations with Alcatel, and had yet to approve a final agreement, as of the date of GHC's receipt of the instant request for information. You explain that if its negotiations with Alcatel are not successful, GHC will enter into negotiations with another vendor that responded to the RFP. You assert that should GHC's negotiations with Alcatel fail, release of the submitted information would result in an advantage to other prospective vendors and would hinder GHC's ability to receive the best possible offer. You contend that the information at issue should be withheld from disclosure until GHC completes its negotiations with a vendor and executes a final agreement. Based on your representations, we conclude that GHC may withhold the submitted information at this time under section 552.104 of the Government Code.³

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

³As we are able to make this determination, we do not address the arguments we received from Harris-Stratex.