



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 23, 2012

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-02795

Dear Ms. Evans:

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# 446239 (GC Nos. 19179, 19187, 19188).

The City of Houston (the "city") received three requests for bid information pertaining to a specified project. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. In addition, you state some of the submitted information may implicate the proprietary interests of third parties. Accordingly, you inform us you have notified Boyer, Inc.; Manhattan Construction - Houston, Inc.; Precision 2000/Catamount a Joint Venture; Reytec Construction Resources; SpawGlass Civil Construction, Inc.; Texas Sterling Construction Co.; and Webber, L.L.C. of the request and of their right to submit comments to this office as to why the submitted information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered the exception you claim and 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, 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) (statutory predecessor to section 552.104 designed to protect interests of governmental body). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state the submitted information pertains to the city's bidding process for a construction project. You state a contract has not yet been awarded, and the City Council has not yet approved the selection. You assert release of the submitted information at this stage in the bidding process would give bidders a competitive advantage and would harm the city's ability to obtain the lowest price and most favorable terms possible. Based on your representations and our review, we conclude the city has demonstrated release of the submitted information could harm the city's interests with respect to this project. Accordingly, we conclude the city 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 expense of others and could be detrimental to public interest in contract under negotiation).

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/ag

Ref: ID# 446239

Enc. Submitted documents

cc: 3 Requestors
(w/o enclosures)

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(w/o enclosures)

Mr. Leonard Rejcek
Manhattan Construction
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