



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2012

Mr. Stephen C. Jacobs
Locke Lord LLP
600 Travis Street, Suite 2800
Houston, Texas 77002

OR2012-10692

Dear Mr. Jacobs:

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# 458668.

The Houston First Corporation (the "corporation"), which you represent, received a request for eleven proposals made in response to a Request for Qualifications for a developer and design team to build a second convention center. You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. Pursuant to section 552.305 of the Government Code, it appears you have notified third parties of this request for information and of their right to submit arguments to this office explaining why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Mortenson Development, Inc., and Product Marketing International, Inc., and on behalf of the Discovery Central Development Team. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). 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 inform us the corporation is engaged in a competitive process in which it seeks a developer to complete a specified project. You explain the Request for Qualifications at issue is the first step in the competitive process. Further, you state if the approach and thoughts of each company is known by the others, the corporation's ability to negotiate for and obtain the best offer in the bidding process will be compromised. Based on your representations and our review, we determine the corporation has demonstrated release of the submitted information would harm its interests in a competitive situation. Accordingly, the corporation may withhold the requested information under section 552.104 of the Government Code.²

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,



Charles Galindo Jr.
Assistant Attorney General
Open Records Division

CG/bs

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 458668

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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