



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2013

Ms. Molly Shortall
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2013-21127

Dear Ms. Shortall:

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# 507701.

The City of Arlington (the "city") received a request for any and all documents regarding the city's request for proposals number 13-0160. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state its release may implicate the proprietary interests of third parties. You state you notified the third parties of the request and of their right to submit arguments to this office as to why their information should not be released.¹ 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 in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

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

¹The third parties notified pursuant to section 552.305 are: EnvisionWare, Inc.; Tech Logic Corporation; and 3M Library Systems.

§ 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of 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 state that the submitted information is related to a competitive bidding process that is still ongoing. You assert that release of the information at issue prior to the execution of a contract would be detrimental to the city's negotiating position and interest in obtaining the best offer. Based upon your representations, 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 underway 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).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/tch

Ref: ID# 507701

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Michael J. Monk
EnvisionWare, Inc.
2855 Premier Parkway, Suite A
Duluth, Georgia 30097-5201
(w/o enclosures)

Mr. Shawn Brumley
3M Library Systems
3M Center, Building 225-4N-14
St. Paul, Minnesota 55144
(w/o enclosures)

Mr. Tim Lawson
Tech Logic Corporation
1818 Buerkle Road
White Bear Lake, Minnesota 55110
(w/o enclosures)