



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2014

Ms. Sol M. Cortez
Assistant City Attorney
Office of the City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2014-03918

Dear Ms. Cortez:

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# 516171.

The City of El Paso (the "city") received a request for all proposals submitted in response to a specified request for proposals, other than that submitted by requestor's company. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. You also state the release of the submitted information may implicate the proprietary interests of a third party. Accordingly, you inform us, and provide documentation showing, you notified Multi-Financial Services Company, Inc. ("Multi-Financial") of the request and of the company's 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 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 Act in certain circumstances). We have received comments from Multi-Financial. We have considered the submitted arguments 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 § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a

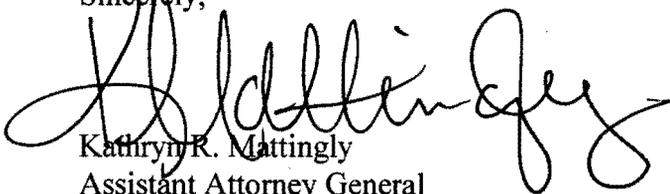
governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive 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 the submitted information relates to the request for proposals for the city's Housing Loan Program for Community and Human Development. You state the bidding process related to this contract has not been completed. You indicate the release of the information at issue would give an advantage to one of the bidders. Based on your representations and our review, we agree the city may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.¹ *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is underway would necessarily result in 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.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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

¹As our ruling is dispositive, we need not consider the remaining arguments against disclosure.

Ref: ID# 516171

Enc. Submitted documents

c: Requestor
(w/o enclosures)

J. Terry Ryan
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P.O. Box 13241
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(w/o enclosures)