



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2014

Mr. C. Robert Heath
Counsel for the City of McAllen
Bickerstaff Heath Delgado Acosta LLP
Building One, Suite 300
3711 South MoPac Expressway
Austin, Texas 78746

OR2014-10376

Dear Mr. Heath:

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# 527723 (McAllen PIR No. W014977-041514).

The City of McAllen (the "city"), which you represent, received a request for all records submitted in response to a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.104, 552.105, and 552.131 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Weingarten Realty Investors ("Weingarten"), Rioco/Mayfair, Leon Capital Group, Provident Realty Advisors, and Cadence Commercial Real Estate & Ricchi Development Group. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Weingarten. We have reviewed the submitted arguments and 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). 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 information pertaining to a completed bidding process for which a contract has been executed. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (1983) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

You state the information in Exhibit B consists of proposals submitted in response to the specified request for proposals. You state the nature of the request for proposals is an invitation to negotiate only, and that, as of the date of the request, the city has not selected a developer from the submitted proposals and is still in the negotiation stage. You state if the information at issue is released the developers who responded to the request for proposals “could study the proposals submitted by [their] competitors and adjust [their] negotiation strategy with the [c]ity accordingly.” You state release of Exhibit B would destroy the competitive advantage the city enjoys based on its knowledge of the content of all submitted proposals. Based on your representations and our review, we find you have demonstrated public release of the information in Exhibit B would cause specific harm to the city’s interests in a particular competitive bidding situation. Therefore, the city may withhold the information in Exhibit B under section 552.104 of the Government Code.¹

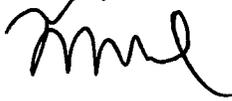
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

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

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 527723

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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