



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2014

Ms. Julie P. Doshier
Counsel for City of Highland Village
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

OR2014-17920

Dear Ms. Doshier:

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# 538502 (Reference No. 67300).

The City of Highland Village (the "city"), which you represent, received a request for specified proposals submitted in response to the city's request for proposals number 2014-002. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the interests of Aclara Technologies, L.L.C.; HydroPro Solutions ("HydroPro"); Atlas Utility Supply Company ("Atlas"); Badger Meter, Inc. ("Badger"); Corix Water Products ("Corix"); and Zenner USA ("Zenner"). Accordingly, you notified these third parties of the request for information and of their right to submit arguments stating why their 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); 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 Aclara, Atlas, and Zenner. We have considered the submitted arguments and reviewed the submitted information.

The city and Atlas both raise section 552.104 of the Government Code. However, section 552.104 only protects the interests of a governmental body and does not protect the interests of third parties; therefore, we will not consider Atlas' claims under section 552.104. *See* Open Records Decision No. 592 at 8 (1991). 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* ORD 592. 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).

You inform us the submitted information pertains to a pending competitive bidding process. You state the contract arising from the competitive bidding has not been executed. Additionally, you assert release of the information at issue could provide each competitor with an advantage and negatively impact contract negotiations. Based on 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.¹ *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in advantage to certain bidders at the 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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/akg

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

Ref: ID# 538502

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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