



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2015

Ms. Brandi M. Youngkin
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2015-04304

Dear Ms. Youngkin:

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# 555751 (Plano File No. 14-053).

The City of Plano (the "city") received a request for finalist proposals submitted for request for proposals number 2013-146-B for a Next Generation 9-1-1 System, as well as any vendor scoring worksheets or bid evaluation forms used by the city to score the finalists. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state you notified 911 Datamaster, Inc. ("Datamaster"); Affiliated Communications ("Affiliated"); AT&T; Emergency Callworks, Inc. ("ECI"); Intrado Systems; and microDATA GIS, Inc. ("microDATA") 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 Datamaster, Affiliated, ECI, and microDATA. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the city has not submitted any vendor scoring worksheets or bid tabulation forms. To the extent the city maintained any information responsive to this portion of the request for information when it received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (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).

The city states the contract for this bid was not awarded, and the city intends to issue a new request for proposals for upgrading the city's 9-1-1 system and expects many of the same bidders to resubmit bids. The city states release of the submitted information would allow "bidders to use the information to the detriment of the [c]ity, negatively affecting pricing warranties, training, maintenance and service, response times, and equipment." Based on these representations and our review, we conclude the city has demonstrated release of the submitted information could harm its interests with respect to this project. Thus, the city may withhold the submitted information 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.

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

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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/dls

Ref: ID# 555751

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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