

MEMORANDUM OF LAW

DATE: December 17, 1985

TO: John Lockwood, Assistant City Manager

FROM: City Attorney

SUBJECT: Public Disclosure of City Records

By memorandum dated November 1, 1985, you indicated that there has been an increasing number of requests from the public for information contained in the documents provided by contractors demonstrating their "good faith" compliance with the City of San Diego's Minority and Women Business Enterprise Program (MBE/WBE). You indicated that the City Manager currently evaluates information submitted by the low bidder to ensure compliance with the program and that this information is not considered part of the bidding document. This information is used only as an internal evaluation tool. You asked whether the "good faith effort" information used in the internal evaluation process is covered by the disclosure requirements of the Public

Records Act; and if so, what steps may the City take to maintain the confidentiality of the information provided.

Under the MBE/WBE Program, the City Manager decides whether or not an apparent low bidder has made a "good faith" effort to utilize available MBE/WBE and reports this determination to the City Council prior to the awarding of the bid. If the evaluation is favorable, the low bidder is normally awarded the contract. If it is found that the apparent low bidder has not made a "good faith" effort as described in the program the City Council may either award the contract to the low bidder or reject all bids.

In Opinion 83-8, dated August 18, 1983 which is attached to this memorandum, this office analyzed similar questions concerning the disclosure of information contained in the Paramedic System proposals. That opinion expresses the current state of the law concerning the disclosure of the type of information you have described.

In summary, we believe that the "good faith effort" documentation provided for internal evaluation purposes prior to the awarding of a bid is not a public record until the evaluation process is completed and the City Manager makes a recommendation to the City Council. At that point it becomes subject to disclosure pursuant to section 6254(h) of the California Public

Records Act.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

JMK:smm:151:911:(x043.2)

Attachment

ML-85-90