



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 18, 1992

Mr. Joe Z. Ramirez  
Director, Materials Management  
Capital Metro  
2910 East Fifth Street  
Austin, Texas 78702

OR92-218

Dear Mr. Ramirez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15615.

You have received a request for information relating to negotiations between Capital Metro and companies that sell natural gas. Specifically, the requestor seeks:

1. A copy of the March 12 offer from Southern Union Co. or its subsidiary, and any subsequent offers, to provide compressed natural gas to Capital Metro.
2. Any other documents, including memorand[a], related to discussions and/or negotiations with Southern Union Co., its subsidiaries, or any other vendor to supply compressed natural gas to Capital Metro.

You claim that sections 3(a)(1), 3(a)(4), and 3(a)(10) of the Open Records Act except all of the requested information from required public disclosure and that section 3(a)(11) excepts some of the information.

Section 3(a)(4) excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect governmental interests in commercial transactions. Open Records Decision No. 593 (1991) at 2. Section 3(a)(4) applies primarily to

competition for governmental contracts and specifically protects the sealed bid process. Decisions under section 3(a)(4) generally involve specific commercial and contractual matters. Open Records Decision No. 463 (1987). It has been applied most often to competitive bidding situations prior to the award of a contract. *See, e.g.,* Open Records Decision Nos. 541 (1990) at 4-5; 331 (1982); 232 (1979) at 4; 75 (1975).

You have submitted to us for review information two natural gas suppliers submitted. You anticipate that this information will be part of their proposals in response to a request for proposals your agency expects to issue in the near future (Exhibit B). You also have submitted to us for review notes of a conversation between a Capital Metro employee and a Capital Metro attorney regarding one of the companies (Exhibit C) and a memorandum outside consultants prepared for Capital Metro regarding proposal evaluation criteria (Exhibit D). You contend that release of this information would harm your agency's purchasing interests in this competitive situation. We agree. Accordingly, section 3(a)(4) of the Open Records Act permits you to withhold the requested information from required public disclosure. As we resolve this matter under section 3(a)(4), we need not address the applicability of sections 3(a)(1), 3(a)(10), and 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-218.

Yours very truly,



Kym Oltrogge  
Assistant Attorney General  
Opinion Committee

KKO/GK/lmm

Ref.: ID# 15615

cc: Mr. Stuart Eskenazi  
Staff Writer  
Austin American-Statesman  
P. O. Box 670  
Austin, Texas 78767