Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1996

Mr. David A. Montoya
Attorney for City Public Service Board
of San Antonio
Mathews & Branscomb
106 S. St. Mary's Street
San Antonio, Texas 78205-3692

OR96-0125

Dear Mr. Montoya:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38068.

The City Public Service Board of San Antonio (the "board"), which you represent, received a public information request for "all bids received for the project commonly known as Fiber Optic Network, RFQ 51448." You contend the requested information may be withheld from the public pursuant to sections 552.104 and 552.110 of the Government Code.

You explain that when the board issued its "Request for Quotation" for a 300 mile fiber optic network it received only one timely response. It is that proposal, from AT&T Services Company, Inc., that is the subject of the current request. You inform this office that because the board received only one responsive bid, it has decided to revise the schedule for the original project and to solicit new bids a second time. With regard to the second RFQ, you state that the "[w]ork and materials requirements for the project will remain essentially the same."

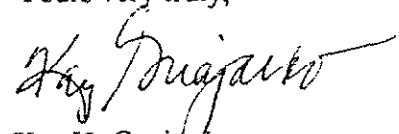
Given these facts, we agree that the board may withhold the AT&T proposal at this time pursuant to section 552.104. Section 552.104 of the Government Code protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). Governmental bodies may withhold this type of information while the governmental officials are in the process of interpreting the

proposals and the competitors are free to furnish additional information. *Cf.* Open Records Decision No. 170 (1977).[1]

Because you state that the board intends to request a second set of proposals for the project, we conclude that it may withhold the AT&T proposal at this time pursuant to section 552.104. Release of this information prior to the time that other competitors have had the opportunity to submit their proposals could result in an advantage to the other competitors for the contract or damage the board's ability to obtain truly competitive bids.[2]

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Records Division

KHG/RWP/ch

Ref.: ID# 38068

Enclosures: Submitted documents

Mr. Mark M. Ferguson
Gardner & Ferguson, Inc.
745 East Mulberry Avenue, Suite 100
San Antonio, Texas 78212-3166
(w/o enclosures)

---

[1]Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect, Open Records Decision Nos. 306 (1982), 184 (1978), or where no contract is awarded. Open Records Decision No. 201 (1978).

[2]Because we resolve your request under section 552.104, we need not address the applicability of section 552.110 at this time.