



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2010

Mr. Frank J. Garza
Law Offices of Davidson & Troilo, P.C.
For Port Authority of San Antonio
7550 West IH-10, Suite 800
San Antonio, Texas 78229

OR2010-14645

Dear Mr. Garza:

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# 394907.

The Port Authority of San Antonio (the "authority"), which you represent, received a request for eleven categories of information pertaining to the authority's current custodial services contract. You state you have released information responsive to categories 1, 2, 5, 6, 7, 8, 9, and 10 of the request. Additionally, you state there are no documents responsive to categories 4 or 11 of the request.¹ You claim a portion of the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded and is in effect. *See id.* at 5. However, this office has determined that under some circumstances, section 552.104 may

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *Id.*

In this instance, you argue the pricing information in the submitted documents is subject to section 552.104. We note, and you acknowledge, this information pertains to a contract the authority has already awarded. However, you state the authority is intending to solicit bids for the exact same services in the next six months. You also state that if the pricing information is released, it will give competitors an unfair advantage in the current bidding process. Based on your representations and our review, we find you have demonstrated that release of the pricing information in the submitted documents would harm the board's interests in a particular ongoing competitive situation. *See* ORD 592. Therefore, the authority may withhold this information, which we have marked, under section 552.104 of the Government Code. As you raise no further exceptions to disclosure, the authority must release the remaining information.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 394907

Enc. Submitted documents

c: Requestor
(w/o enclosures)