



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 6, 2011

Ms. Halfreda Anderson-Nelson
Senior Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2011-04767

Dear Ms. Halfreda Anderson-Nelson:

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# 413712 (DART ORR 7947, 7971).

The Dallas Area Rapid Transit ("DART") received two requests from the same requestor for information pertaining to a specified RFP. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.107, and 552.131(b) of the Government Code.¹ You also state the request may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you notified North American Bus Industries, Inc. ("NABI") of DART's receipt of the request for information and of the company's right to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 NABI. We have considered the submitted arguments and reviewed the submitted information.

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

¹Although you also raise Texas Rule of Evidence for a portion of the submitted information, we note that, in this instance, the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107. *See* Open Records Decision No. 676 (2002).

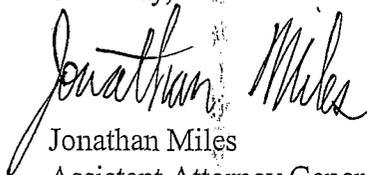
in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). However, section 552.104 does not except from disclosure information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You inform us the submitted information pertains to an active solicitation for a bus procurement that has not yet been awarded by DART. You state release of the submitted information would give an advantage to potential bidders because release would reveal DART's techniques for reviewing the proposal and reveal DART's legal staff's review of the proposal. Having considered your arguments, we find you have demonstrated that release of the submitted information would harm DART's interests in a particular competitive situation. *See* ORD 592. Therefore, we conclude DART may withhold the submitted information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure of this 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 413712

Enc. Submitted documents

c: Requestor
(w/o enclosures)