



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 8, 2011

Mr. Don Cheatham
General Counsel
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-08140

Dear Mr. Cheatham:

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# 420053 (GC No. 18417).

The City of Houston (the "city") received a request for the bid tabulation for the three lowest bidders pertaining to a specified project.¹ You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You also state that release of the requested information may implicate the proprietary interests of Resicom, Inc.; Reytec Construction Resources, Inc.; and SER Construction Partners, L.L.C. Accordingly, you provide documentation showing that you have notified the third parties of the request and their right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (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 considered your claimed exception and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to a competitor or bidder." Gov't

¹You state the city received clarification from the requestor regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

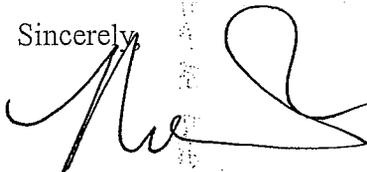
Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991) (discussing statutory predecessor). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except information from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state that the submitted information relates to an ongoing competitive bidding process for a construction contract with the city. You state a finalist has been selected, but the contract has not yet been approved by the city council. You assert that release of the submitted information would negatively impact negotiations between the city and the selected bidder because the bidder would be less willing to negotiate in a manner that is favorable to the city. You further assert that in the event a contract is not awarded, the release of the information at issue would negatively impact the prices future bidders offer. Based on your representations and our review, we conclude that the city has demonstrated that release of the submitted information would harm its interests in a competitive situation. Accordingly, the city may withhold the submitted information under section 552.104 of the Government Code.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

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Enc. Submitted documents

cc: Requestor
(w/o enclosures)