



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2011

Ms. Karen Stead
Assistant City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710-2039

OR2011-11168

Dear Ms. Stead:

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# 425906 (LegalDesk #OCT-842797).

The City of Tyler (the "city") received a request for the bid information, contracts, and specifications regarding the city's purchase of two compressed natural gas refuse trucks and lease of a compressed natural gas station. You claim the submitted bid, contract, and specification information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of CNG Partners, Inc. and Bond Equipment Company, Inc. ("Bond"). Thus, pursuant to section 552.305 of the Government Code, you notified the companies of the request and of their right to submit arguments to this office as to why the submitted information should not be released. 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 to disclosure in certain circumstances). We have received comments from Bond. We have considered the submitted arguments and reviewed the submitted information.

You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code, which 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 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). 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). Section 552.104 generally does not except information relating to competitive bidding after a contract has been awarded and executed. *See* Open Records Decision No. 541 (1990). However, this office has determined that in some circumstances section 552.104 may 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. *See id.* at 5.

You inform us the submitted bid, contract, and specification information relates to finalized purchases and an executed lease contract; thus, the information does not pertain to currently competitive bidding situations. You state, however, the city will continue to solicit bids in the future for the same or similar products and services. You argue the release of the submitted information would put the city “in a weaker position during future negotiations . . . when [the] specific revolving and reoccurring contract” and purchase situations are at issue. Based on your representations, we conclude the city may withhold the submitted information under section 552.104 of the Government Code.¹

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

¹As our ruling is dispositive, we need not address the city’s remaining arguments or Bond’s arguments against disclosure.

Ref: ID# 425906

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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