



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2011

Mr. Clark T. Askins
Assistant City Attorney
City of LaPorte
Askins & Askins, P.C.
P.O. Box 1218
LaPorte, Texas 77572-1218

OR2011-12327

Dear Mr. Askins:

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# 427945.

The City of LaPorte (the "city"), which you represent, received a request for the winning bid for the city's medical insurance RFP - 10505. You do not raise any exceptions against disclosure of the submitted information, but you explain that the submitted information may contain proprietary information subject to exception under the Act. Accordingly, you inform us, and provide documentation showing, you notified Aetna Life Insurance Company ("Aetna") of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received and considered Aetna's arguments and reviewed the submitted information.

Aetna argues that portions of its information, including its references, benefit, financial, and discount and guarantee information, are excepted from disclosure under section 552.110(b). Section 552.110(b) of the Government Code protects the proprietary interests of private parties with respect to "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b).

Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Upon review, we find Aetna has demonstrated release of its references, which we have marked, would cause the company substantial competitive injury. Therefore, the city must withhold the information we have marked under section 552.110(b) of the Government Code. However, we find Aetna has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of Aetna's remaining information would cause the company substantial competitive harm. Further, we note that Aetna was the winning bidder in this instance. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). We therefore conclude that the city may not withhold any of the remaining information under section 552.110(b) of the Government Code. As no further exceptions are raised, the remaining information must be released.

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

Ref: ID# 427945

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Mark R. Chulick
Regional Counsel
Aetna
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(w/o enclosures)