ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2012

Ms. Danielle R. Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-20379

Dear Ms. Folsom:

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# 474735 (City GC No. 20063).

The City of Houston (the "city") received a request for (1) the program for consolidation of the city's police department headquarters and (2) the program for consolidation of the city's fire department headquarters. You state you have no information responsive to the second portion of the request.[1] You claim the submitted information is excepted from disclosure under sections 552.104, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public 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) (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). However, in Open Records Decision No. 541, this office stated the predecessor to section 552.104 may protect information after bidding is complete if the governmental body

[1]We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

demonstrates public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (1983) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

You state the submitted information consists of detailed information about the city's needs and requirements for a proposed police department headquarters facility. You explain release of the submitted information "would give a competitive advantage to subsequent bidders in future solicitations for proposals regarding the next phase for creation of the proposed [police department] headquarters facility." You assert release of the information at issue would "present a clear threat of harm to the [c]ity's ability to obtain the lowest price and most favorable terms possible." Based on your representations, we find you have demonstrated public release of the submitted information would cause specific harm to the city's interests in a particular competitive situation. Therefore, the city may withhold the submitted information under section 552.104 of the Government Code.[2]

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,

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

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[2]As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 474735

Enc. Submitted documents

c: Requestor
(w/o enclosures)