



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2013

Ms. Sara Abbott McEown
Counsel for the Fort Worth Transportation Authority
Jackson Walker LLP
901 Main Street, Suite 6000
Dallas, Texas 75202

OR2013-15384

Dear Ms. McEown:

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# 498231.

The Fort Worth Transportation Authority (the "authority"), which you represent, received two requests from the same requestor for information pertaining to the Northeast Transportation Services ("NETS") contract. The first request seeks the fee proposals made by the contract holders of prior NETS contracts. The second request seeks the previous bid results for the NETS contract. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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(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) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). However, this office has determined 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 (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).

The information at issue consists of a fee proposal related to a contract executed by the authority. However, you inform us the responsive information relates to a current request for proposals (“RFP”) for the same services covered by the information at issue. You state the bidding process for this RFP was not closed at the time the authority received the requests, and a winning bidder has not yet been selected. You argue because a new contract is not yet in place, release of the responsive information prior to the award of a new contract would disadvantage the authority in obtaining a fair contract. Furthermore, you state the authority will disclose the requested information once the new contract is awarded. Based on your representations and our review, we find you have demonstrated the public release of the submitted information would cause specific harm to the authority’s interests in a particular competitive bidding situation. Thus, we conclude the submitted information may be withheld under section 552.104 of the Government Code until such time a new contract has been executed.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 498231

Enc. Submitted documents

c: Requestor
(w/o enclosures)