



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 20, 2014

Ms. Halfreda Anderson-Nelson  
Senior Assistant General Counsel  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR2014-08661

Dear Ms. Anderson-Nelson:

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# 523183 (DART ORR# 10602).

Dallas Area Rapid Transit ("DART") received a request for information pertaining to a specified contract with MV Transportation. You claim the requested information is excepted from disclosure under sections 552.104, 552.111, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

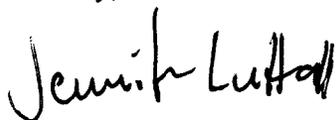
Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations where the governmental 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). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). This office has long held that section 552.104 does not except information relating to competitive bidding situations once a contract has been executed. *See, e.g.*, Open Records Decision Nos. 541, 514 (1988), 306 (1982), 184 (1978), 75 (1975).

You state the submitted information consists of a draft of negotiations of a contract modification of DART's Paratransit Services contract. You assert release of the submitted information "during this critical negotiation phase between DART and MV Transportation would harm DART's ability to effectively negotiate the modification of the current contract that has not been awarded." You also state if the negotiations between DART and MV Transportation do not lead to a modification of the contract, DART can begin a new competitive bid process and release of the submitted information could potentially allow future competitors to undercut future bids in the new competitive bid process. Based on your representations and our review, we conclude you have demonstrated the applicability of section 552.104 to the submitted information at issue. Accordingly, DART may withhold the submitted information under section 552.104 of the Government Code. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).

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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 523183

Enc. Submitted documents

c: Requestor  
(w/o enclosures)