



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 13, 1995

Ms. Barabara E. Roberts  
City Attorney  
City of Galveston  
Legal Department  
P.O. Box 779  
Galveston, Texas 77553-0779

OR95-1410

Dear Ms. Roberts:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 36843.

The City of Galveston (the "city") received a request for "copies of all bids submitted to the City of Galveston for providing collection services to the Galveston Municipal Court." You contend that because the city has not yet awarded a contract for providing these collection services, for which the city solicited "Requests for Proposals," the requested information is protected from required public disclosure under sections 552.101 and section 552.104.<sup>1</sup>

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 (1991) at 2. 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 541 (1990) at 4.

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<sup>1</sup>You raise section 552.101 in conjunction with section 252.049 of the Local Government Code. While section 252.049 may make information in bids and proposals confidential during negotiations, we resolve this matter under section 552.104 and do not address the applicability of section 252.049.

You state that the city has not yet awarded the contract and that the city may continue to negotiate with the respondents. In Open Records Decision No. 170 (1977), this office stated that

[s]o long as negotiations are in progress regarding interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to its proposed contract, we believe that the bidding process is still competitive. Release of the bids while the bidding is still competitive would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract being let.

Open Records Decision No. 170 (1977) at 2.

Under the circumstances presented to us, we conclude that you may withhold the requested information from required public disclosure under section 552.104.<sup>2</sup>

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/ch

Ref: ID# 36843

Enclosures: Submitted documents

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<sup>2</sup>Once the competitive bidding process is completed and a contract has been awarded, you may not continue to withhold this information under section 552.104. See Open Records Decision No. 541 (1990) at 5.

cc: Mr. Gregory Pitchford  
Vice-President  
American Municipal Services Corporation  
3740 N. Josey Lane, Suite 225  
Carrollton, Texas 75007  
(w/o enclosures)