



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 9, 2009

Mr. Frank J. Garza  
Law Offices of Davidson & Troilo, PC  
7550 West IH-10, Suite 800  
San Antonio, Texas 78229-5815

OR2009-14325

Dear Mr. Garza:

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# 358055.

The Port Authority of San Antonio (the "authority"), which you represent, received a request for the bid tabulation for the last solid waste quotations submitted for the services at the authority. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. In addition, you state that release of the submitted information may implicate the proprietary interests of Waste Management and Texas Disposal. Accordingly, you have notified each company of the request and of its opportunity to submit arguments to this office as to why its information should be excepted from public disclosure. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered your arguments and reviewed the submitted information.

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from Waste Management or Texas Disposal. Thus, because neither company has demonstrated that any of the submitted information is proprietary for the purposes of the Act, the authority may not withhold any of the submitted information on that basis. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

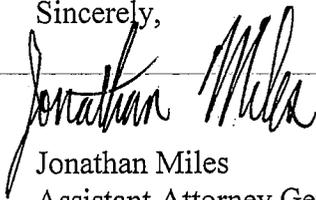
Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the purchasing interests of a governmental body in

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). 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 awarded. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated that the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates that 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 (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis). In this instance, you inform us that the submitted bid tabulation concerns past quotations for solid waste services; thus, this information does not pertain to a currently competitive bidding situation. However, you claim that the contract to which the bid tabulation relates is “up for competition early next year” and that if the submitted pricing information “is released to one of [Waste Management’s or Texas Disposal’s] competitors, it will give the competitor an unfair advantage” in the upcoming proposal. Based on your representations and our review of the information at issue, we agree that the authority may withhold the submitted information under section 552.104 of the Government Code.

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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 358055

Enc. Submitted documents

c: Requestor  
(w/o enclosures)