



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2009

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2009-16137

Dear Ms. Quinn:

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# 361467.

The City of Cedar Park (the "city") received three requests for the winning bid proposal and bid tabulation for a specified request for proposal. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. In addition, you state that release of the submitted information may implicate the proprietary interests of At Your Service Janitorial and Lawn Care ("At Your Service"). Accordingly, you have notified At Your Service 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 received arguments from At Your Service. We have considered the submitted arguments 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. 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 and proposal concern a past quotation for custodial services; thus, this information does not pertain to a currently competitive bidding situation. However, you state that the city recently submitted another request for proposal for custodial services and that it is still pending. Further, you claim that the previous request for proposal is similar to the current one and that if the submitted information is released, it will give competitors an unfair advantage in the current bidding process and harm the city's competitive position in the current bidding process. Based on your representations and our review of the information at issue, we agree that the city may withhold the submitted information under section 552.104 of the Government Code.¹

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,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/eeg

¹As our ruling is dispositive, we need not address the remaining argument against disclosure.

Ref: ID#361467

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Durwood E. Moore, Sr.
At Your Service Janitorial & Lawn Care
1402 Meghan Drive
Cedar Park, Texas 78613
(w/o enclosures)