



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2014

Mr. Steven M. Kean  
Deputy City Attorney  
City of Tyler  
P.O. Box 2039  
Tyler, Texas 75710-2039

OR2014-10127

Dear Mr. Kean:

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# 524153 (City File No. LegalDesk #BXF-945222).

The City of Tyler (the "city") received a request for the city's contract with CNG Partners, Inc., to provide compressed natural gas ("CNG") services to the city. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of CNG Partners, Inc. Accordingly, you state you notified CNG Partners, Inc. of the request and of its right to submit arguments to this office as to why the submitted information should not be released. 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 to disclosure in certain circumstances). We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by an attorney for the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments stating why information should or should not be released).

You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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). Section 552.104 generally does not except information relating to competitive bidding after a contract has been awarded and executed. *See* Open Records Decision No. 541 (1990). However, this office has determined that 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.

You inform us the submitted contract relates to finalized purchases and an executed lease contract. You state the city will continue to solicit bids in the future for the same or similar products and services. You further state the city is currently engaged in the process of evaluating bid number 14-020 to place a CNG station at a specified location. You argue the release of the submitted information would put the city "in a weaker position during future negotiations . . . when [the] specific revolving and reoccurring contract" and purchase situations are at issue. The requestor's attorney contends bid number 14-020 is not a bid for similar products and services as the submitted contract.

Pursuant to section 552.303 of the Government Code, we asked the city to provide additional arguments explaining specifically what products and services bid number 14-020 entails and how that bid is for the same or similar services at issue in the submitted contract. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). In response, the city informed our office the submitted contract was for the lease of CNG equipment, with an option to purchase, at the city's Oakwood Complex and bid number 14-020 seeks to purchase CNG equipment to be installed at the same location in order to upgrade that location. Based on your representations and our review, we find the city has established the submitted contract is for the same or similar products and services as those the city is soliciting in bid number 14-020. Therefore, we conclude the city has demonstrated the applicability of section 552.104 of the Government Code to the submitted information, and the city may withhold the submitted information on that basis.<sup>1</sup>

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<sup>1</sup>Section 552.104(b) of the Government Code provides that "[t]he requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section." Gov't Code § 552.104(b). Thus, we do not address the requestor's attorney's argument that the submitted information is subject to section 552.022.

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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/tch

Ref: ID# 524153

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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