



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2014

Mr. Jeffrey W. Giles
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2014-19758

Dear Mr. Giles:

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# 541746 (GC Nos. 21688 and 21748).

The City of Houston (the "city") received two requests from different requestors for the information submitted to the city by the respondents to the Request for Expression of Interest for Biosolids Processing Technologies and Management Practices. You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified the third parties at issue of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.¹ *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 comments from Arriba, Headworks, Qasar, Schwing, Synagro, and USG. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requests are for the information submitted to the city by the respondents to the Request for Expression of Interest for Biosolids Processing Technologies and Management Practices. Accordingly, the submitted information that was not submitted to

¹The third parties at issue are: AESI Holdings, LLC; ANDRITZ Separation, Inc.; Arriba Energy, LCC ("Arriba"); BCR Environmental Corporation; CDM Smith, Inc.; Geo Environmental Technologies, LLC; Headworks BIO, Inc. ("Headworks"); HR Green, Inc.; In-Pipe Technology Company, Inc.; Integral Power, LLC; Komline-Sanderson; Quasar Energy Group ("Quasar"); Schwing Bioset, Inc. ("Schwing"); Sprint Waste Services; Utility Service Group ("USG"); Synagro of Texas, CDR, Inc. ("Synagro"); and We Generation, Inc. d/b/a Cambi Services, Inc.

the city by the respondents is not responsive to the instant requests. The city need not release nonresponsive information in response to these requests, and this ruling will not address that information.

Section 552.104 of the Government Code excepts from required public 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 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 pertaining to a completed bidding process for which a contract has been executed. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates 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 (1983) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

You inform us the responsive information relates to an ongoing competitive bidding process for a contract with the City’s Public Works and Engineering Department for biosolids technologies and management practices. You inform us the project has not been awarded at this time. You assert release of the responsive information would negatively impact negotiations between the city and the bidders because “bidders could study the proposals responsive by their competitors and adjust their negotiation strategy with the [c]ity” and “in the event a contract is not awarded in relation to the current bidding process, the release of the responsive information would negatively impact the prices future bidders offer.” You argue release of the responsive information presents a clear threat of harm to the city’s ability to obtain the lowest price possible for the current and any future related bidding process. Based on your representations and our review, we conclude you have demonstrated release of the responsive information would cause specific harm to the city’s interests in a particular competitive bidding situation. Thus, we find the city may withhold the responsive information under section 552.104 of the Government Code until such time as a new contract has been executed.²

²As our ruling is dispositive, we need not address the arguments against disclosure submitted by Arriba, Headworks, Qasar, Schwing, Synagro, and USG.

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, 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#541746

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Mr. Alan Slepian
Synagro
435 Williams Court
Baltimore, Maryland 21220
(w/o enclosures)

Mr. Alan Johnson
Quasar Energy Group
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Cleveland, Ohio 44131
(w/o enclosures)

Mr. Renato Nuguid
Arriba Energy LLC
2909 Hillcroft Avenue, Suite 560
Houston, Texas 77057
(w/o enclosures)

Mr. Patrick Yoder
For Headworks BIO Inc.
Fletcher Yoder
Building 9, Suite 300
11450 Compaq Center Drive West
Houston, Texas 77070
(w/o enclosures)

Mr. Thomas Bintz
We Generation d/b/a Cambi Services
6007 Memorial Drive #203
Houston, Texas 77007
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Mr. Warren Fuller
Komline-Sanderson
12 Holland Avenue
Peapack, New Jersey 07977
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Mr. John Williams
In-Pipe Technology Company
725 North Central Avenue
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(w/o enclosures)

Mr. Frank Marino
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323 Alana Drive
New Lenox, Illinois 60451
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Arlington, Texas 76001
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Mr. Ted Borlack
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Mr. Jeff Couture
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Monrovia, California 91016
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Mr. Joe Swinbank
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Mr. Robert Ames
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The Woodlands, Texas 77380
(w/o enclosures)