



February 4, 2015

Ms. Danielle R. Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2015-02212

Dear Ms. Folsom:

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# 552647 (Houston GC No. 21910).

The City of Houston (the "city") received a request for "copies of the winning bids for the previous contract 5 years ago" pertaining to the "massage chair vending and banned mail airport items contract at IAH and HOU." You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state the release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified First Class Seats Airports Services, LLC and Smart Carte, Inc. of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *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 the exception you claim and reviewed the submitted information.

The city raises section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from

disclosure after bidding is completed and a contract has been executed. 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).

In this instance, you acknowledge the submitted information relates to a closed bid. However, you state the products at issue are rebid on a recurring basis. You assert release of the submitted information would present a clear threat of harm to the city's ability to obtain the lowest price possible in the current or any future related bidding process. Based on your representations, we find you have demonstrated release of the submitted information would harm the city's interests in a particular competitive situation. Therefore, the city 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.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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 552647

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Marsha J. Eberhardt
First Class Seats Airports Services, LLC
566 State Street
Racine, Wisconsin 53402
(w/o enclosures)

Mr. Michael J. Multer
Smarte Carte, Inc.
4455 White Bear Parkway
Saint Paul, Minnesota 55110
(w/o enclosures)