



February 17, 2015

Ms. Halfreda Anderson-Nelson  
Public Information Officer  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR2015-03129

Dear Ms. Anderson-Nelson:

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# 553740 (DART ORR 11245).

Dallas Area Rapid Transit ("DART") received a request for the winning awards for the vendors that were awarded contracts for P-2006526, General IT Services. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified 22<sup>nd</sup> Century Technologies, Inc. ("22<sup>nd</sup> Century") and CompuCom Systems, Inc. ("CompuCom") of the request for information and of their right to submit arguments to this office as to why the information at issue 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 received comments from CompuCom. 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

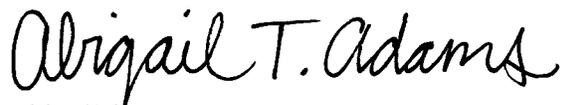
Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated that the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates that public disclosure of the information will allow competitors to undercut future bids, 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 (1982) (suggesting such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

DART raises section 552.104 of the Government Code for the submitted information. You state the submitted information consists of proposals from CompuCom and 22<sup>nd</sup> Century for DART solicitation P-2006526, General IT Services. You further state awards were made to CompuCom and 22<sup>nd</sup> Century based on these proposals. However, you state this contract has a term of two years and DART will routinely solicit for this contract every two years. You explain release of the submitted information would allow a competitor to undercut future bids and create an unfair advantage for a future solicitation for the same services. Based on your representations and our review of the information at issue, we agree DART may withhold the submitted information under section 552.104 of the Government Code.<sup>1</sup>

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,



Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/akg

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 553740

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Randall Wooley  
Associate General Counsel  
CompuCom Systems  
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Dallas, Texas 75230  
(w/o enclosures)

Ms. Eva Gaddis-McKnight  
22<sup>nd</sup> Century Technologies, Inc.  
1021 Main Street, Suite 1150  
Houston, Texas 77002  
(w/o enclosures)