



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 12, 2015

Ms. Nneka Kanu
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2015-04780

Dear Ms. Kanu:

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# 556203 (GC No. 21991 and 22000).

The City of Houston (the "city") received two requests from different requestors for information pertaining to Solicitation S17-T24541. You state the city does not have information responsive to a portion of the request.¹ You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. You state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Digital Ally, Inc.; DCS Mobile; Fleet Safety; HD Protech; L-3 Mobile; Motorola Solutions; NWN Corp; Safety Vision; Unicom Government, Inc.; Utility Digital; Visual Pro 360; and WatchGuard Video 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. *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 HD Protech; Unicom Government, Inc.; and WatchGuard Video. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

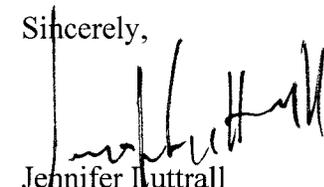
purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. *See id.* at 5.

You state the submitted information consists of information relating to the contract for an in-car video camera solution for the Houston Police Department. You state negotiations are still pending with the winning bidder and an agreement has not been signed or approved. You assert release of the submitted information would harm the city's interest in negotiating the contract. Based on your representations and our review, we conclude the city has demonstrated the applicability of section 552.104 to the submitted information. Accordingly, we conclude the city may withhold the submitted information under section 552.104 of the Government Code. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).²

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

²As our ruling is dispositive, we need not address the arguments submitted by HD Protech; Unicom Government, Inc.; and WatchGuard Video.

Ref: ID# 556203

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

HD Protech
6100 Corporate Drive, Suite 234
Houston, Texas 77036
(w/o enclosures)

Mr. Gary Zausmer
For WatchGuard Video
Winstead PC
401 Congress Avenue, Ste 2100
Austin, Texas 78701
(w/o enclosures)

Mr. Dan S. Boyd
For UNICOM Government, Inc.
Glast, Phillips & Murray
14801 Quorum Drive, Suite 500
Dallas, Texas 75254
(w/o enclosures)

Mr. Michael Burrige
L-3 Mobile
90 Fanny Road
Boonton, New Jersey 07005
(w/o enclosures)

Mr. Chris Matthieu
Motorola Solutions
7840 North Sam Houston
Parkway West
Houston, Texas 77064
(w/o enclosures)

Mr. Sam Hartsfield
Safety Vision
6100 West Sam Houston
Parkway North
Houston, Texas 77041
(w/o enclosures)

Mr. Heath Bideau
Digital Ally, Inc.
9705 Loiret Boulevard
Lenexa, Kansas 66219
(w/o enclosures)

Mr. Criss Cross
Utility Digital
1484 Brockett Road
Tucker, Georgia 30084
(w/o enclosures)

Mr. Steve Singleton
Fleet Safety
1100 Hemlock Street
North Little Rock, Arkansas 72114
(w/o enclosures)

Mr. Stephan Herold
Visual Pro 360
1747 South Holbrook Lane
Tempe, Arizona 85281
(w/o enclosures)

Mr. Shearrard Thomas
NWN Corp
4802 North Sam Houston Parkway West
#500
Houston, Texas 77086
(w/o enclosures)

Mr. Martin Murphy
PCS Mobile
1200 West Mississippi Avenue
Denver, Colorado 80223
(w/o enclosures)