



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2015

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

OR2015-13512

Dear Ms. Evans:

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# 570222 (GC No. 22269).

The City of Houston (the "city") received a request for six categories of information pertaining to RFP No. T25102, including: (1) contact information for the winning bidder; (2) the contract award date; (3) the contract award period; (4) the contract award amount; (5) a copy of the winning proposal; and (6) the list of additional organizations that responded to the RFP. You state the city does not have information responsive to categories one through five because a contract has not yet been awarded with respect to the specified RFP.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). Likewise, a governmental body is not required to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that receives the request. *See Gov't Code* § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989).

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, No. 12-1007, slip op. at 17 (Tex. June 19, 2015). You represent the submitted information pertains to a competitive bidding situation. In addition, you state the contract relating to the specified RFP has not been awarded, and the release of the submitted information before the selection of a vendor would disadvantage the city in negotiating the most favorable terms in the final agreement. After review of the information at issue and consideration of the arguments, we find the city has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the submitted information under section 552.104(a) 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 570222

Enc. Submitted documents

c: Requestor
(w/o enclosures)