



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

July 19, 1990

Honorable Bob Bullock
Comptroller of Public Accounts
LBJ State Office Building
Austin, Texas 78774

OR90-303

Dear Mr. Bullock:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 6869.

The Comptroller of Public Accounts received a request for information obtained in response to a solicitation for information from potential vendors of computer mainframe hardware and software systems. This type of "request for information" (RFI) is the first step in the process of formally requesting bids for computer mainframe hardware and software systems. It is not a bid document, and no purchase order will be written from it. RFI at 12. However, bid specifications may be written from the information received in response to it. Id. The requestor, who is one of the vendors that submitted information to the Comptroller, seeks "such items as vendor proposals, staff evaluations, and correspondence." As of the time of your request for a decision, no contract had yet been awarded for the computer systems. You seek to withhold the requested information from required public disclosure under sections 3(a)(4) and 3(a)(10) of the Open Records Act.

Section 3(a)(4) of the Open Records Act protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." The primary purpose of section 3(a)(4) is to protect the government's purchasing interests by preventing a competitor or bidder from gaining an unfair advantage over other competitors or bidders. Section 3(a)(4) is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. See, e.g., Open Records Decision No. 463 (1987). However, in Attorney General Opinion MW-591 (1982), information received by the

General Land Office before the bidding began, specifically, the identities of persons nominating tracts of land to be leased, was excepted from disclosure by section 3(a)(4). Since these persons were likely to be bidders, information revealing their identities was excepted from disclosure. See Open Records Decision No. 170 (1977). In the present case, the companies that responded to the RFI are likely to bid on the contract. Moreover, the bid specification may be developed from the response, thus giving a competitive advantage to a prospective bidder who had access to such responses.

Release of this information before the bidding is completed could result in an advantage to the other competitors for the contract or damage the comptroller's ability to obtain truly competitive bids. You may therefore withhold the requested information under section 3(a)(4) until the contract is awarded. Open Records Decision No.s 306 (1982); 184 (1978). See also Open Records Decision No. 201 (1978) (no contract awarded). Although this does not preclude the applicability of other sections of the Open Records Act, section 3(a)(4) would no longer apply after a contract is awarded.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-303.

Yours very truly,

David A. Newton by LG

David A. Newton
Assistant Attorney General
Opinion Committee

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Ref.: ID# 6869, 6870

Enclosure: Documents Submitted

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