



March 3, 2000

Ms. Ruth H. Soucy
Manager, Open Records Division
Comptroller of Public Accounts
Post Office Box 13528
Austin, Texas 78711-3528

OR2000-0851

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Texas Government Code. Your request was assigned ID#133364.

The Comptroller of Public Accounts received a request for a copy of the successful bidder's proposal relating to the Comptroller's request for proposals for collection services. You contend that information responsive to the request is excepted from required public disclosure by sections 552.104 and 552.110 of the Government Code. We have considered your arguments and reviewed the information submitted.

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 at 2 (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. Open Records Decision 541 at 4 (1990). Section 552.104 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).

You state that the bidding "proposal is related to a contract that has not yet been finalized and signed," and that "competitors may still clarify, modify, or withdraw proposals." Therefore, we conclude that the Comptroller may withhold the information which you have

asserted is excepted from disclosure under section 552.104. Open Records Decision No. 170 at 2 (1977). Once the competitive bidding process is completed, you may not continue to withhold this information under section 552.104. Open Records Decision No. 541 at 5 (1990). Having concluded that section 552.104 is dispositive of this matter, we need not consider your alternative arguments.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/CHS/cwt

Ref: ID# 133364

Encl. Submitted documents

cc: Mr. Gaye L. Griffin
Manager, Sales/Administration
SARMA
1801 Broadway
San Antonio, Texas 78215
(w/o enclosures)