



February 5, 2001

Ms. Ruth H. Soucy
Deputy General Counsel
Open Government Section
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2001-0450

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143907.

The Comptroller of Public Accounts (the "comptroller") received a request for information regarding companies receiving awards on the comptroller's Request for Proposal No. 107b, the Treasury Investment Management Services Contract. Specifically, the requestor seeks the list of companies receiving awards as well as "details" or "dollar amounts" regarding each award. You claim that the requested 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.¹

We begin by noting that the submitted information includes several signed public contracts which are subject to required public disclosure under section 552.022(a) of the Government Code. Section 552.022(a) provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

¹The information at issue consists of: 1) a list of signed contracts; 2) the signed contracts themselves; 3) a list of contracts under negotiation; and 4) the actual proposed contracts.

Gov't Code § 552.022(a)(3). Thus, pursuant to section 552.022(a)(3), information contained in a contract that involves the receipt or expenditure of public funds may not be withheld from public disclosure, unless that information is "expressly confidential under other law." Section 552.104 of the Government Code is a discretionary exception to disclosure that protects the interests of, and may be waived by, the governmental body. As such, section 552.104 is not "other law," under section 552.022(a), that makes any of the information enumerated by section 552.022(a) expressly confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discussing discretionary exceptions generally), 592 at 8 (1991) (addressing statutory predecessor to section 552.104). Consequently, the comptroller must release the signed contracts under section 552.022(a)(3).

As for the remainder of the submitted information, we address your argument regarding section 552.104. 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).

You explain that even though the specified request for bid has resulted in several signed contracts, negotiations regarding several potential contracts are still pending. You claim that the list of the signed contracts, the list of the proposed contracts, and the proposed contracts themselves are excepted under section 552.104 due to the ongoing negotiations. We find that the list of the proposed contracts and the proposed contracts themselves are excepted under section 552.104 because release of this information would harm the comptroller's interests in the ongoing negotiations. However, you have not adequately explained how the list of signed contracts would harm the comptroller's competitive interests here, especially in light of the fact that the signed contracts themselves must be released under section 552.022(a)(3) as explained above. Therefore, while the comptroller may withhold the list of the proposed contracts along with the actual proposed contracts under section 552.104, it may not withhold the list of signed contracts under section 552.104. As you have raised no other exception in regard to the list of signed contracts, the comptroller must release the list of signed contracts to the requestor.

In conclusion, the comptroller may withhold the list of proposed contracts and the proposed contracts themselves under section 552.104. However, under section 552.022(a)(3), the comptroller must release the signed contracts. Finally, the comptroller must release the list of signed contracts.

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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/er

Ref: ID# 143907

Encl: Submitted documents

cc: Mr. Eric Mitchell
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(w/o enclosures)