



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2008

Ms. Charlene Meadows
Executive Director
Deep East Texas Workforce Solutions
539 South Chestnut, Suite 300
Lufkin, Texas 75901

OR2008-07217

Dear Ms. Meadows:

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# 311179.

The Deep East Texas Workforce Development Board (the "board") received a request for five categories of information related to the board's current child care contract, the proposal and scoring documents leading to the contract, and any performance evaluations of or complaints against the current contractor. You claim that the submitted contract information is excepted from disclosure under section 552.104 of the Government Code. You also inform us that release of the contract information could implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, that you notified East Texas Support Services, Inc. ("ETSS") of the request and of its opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have received comments from ETSS. We have considered the submitted arguments and reviewed the submitted information.

You claim that the submitted contract information is excepted from disclosure under section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). However, in some situations section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

You indicate that the board recently issued a request for proposals for child care services for which a contract has not been awarded. You state that, although the current child care services contract and related materials you have submitted were used in selecting and evaluating the winning bid for a previous procurement, release of this information would place the board at a disadvantage in negotiating the upcoming child care services contract. You state that the child care services proposal, contract, scoring documents, and evaluation materials depicted in the submitted information "are germane to Past Performance, Capacity to Perform, Service Design, and Proposed Management Approach[,] all of which are evaluation criteria for proposals to be submitted under the current [request for proposals]." You contend that the release of this information would put the board at a disadvantage by giving the requestor, a potential bid competitor, an unfair advantage. Based on our review of your arguments and the submitted information, we find in this instance that the board has adequately demonstrated that the release of the submitted information would cause potential harm to its interests in the upcoming child care services procurement. Accordingly, we conclude that the board may withhold the submitted contract information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address ETSS's arguments against disclosure.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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 Office of the Attorney General 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 311179

Enc. Submitted documents

c: Mr. John Tyer
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