



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2009

Ms. Mary Ann Slavin
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2009-13924

Dear Ms. Slavin:

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# 357367.

The Texas Department of State Health Services (the "department") received a request for the statement of work ("SOW"), winning vendor's proposal, and contract for SOW# 537-DBITS-0001. You indicate the department has no information responsive to the request for a contract.¹ You claim the submitted SOW documents and bid proposal are excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." 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

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

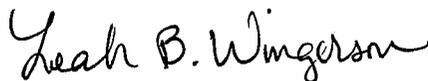
governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990).

You state the bidding process for SOW# 537-DBITS-0001 is not complete and a contract has not been awarded. You explain the department is currently negotiating with a certain bidder regarding the SOW project. You assert release of the requested SOW documents and bid proposal at this stage in the bidding process would harm the department's ability to negotiate a final agreement. Based on your representations, we conclude the department may withhold the submitted SOW documents and bid proposal under section 552.104 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 357367

Enc. Submitted documents

c: Requestor
(w/o enclosures)