



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 16, 2010

Ms. Elizabeth E. Jones
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2010-03713

Dear Ms. Jones:

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# 375658.

The Texas Department of State Health Services (the "department") received a request for a list "of all organizations/individuals who submitted a letter of Intent (LOI) for the Substance Abuse Outreach, Screening, Assessment and Referral Services and Treatment Services RFP# SA-OSR/TRT-0371.1" as of a specified date. You claim that the requested information is exempted 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(a) 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 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 exempt 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 the project at issue is not complete and indicate a contract has not been awarded. You explain that the “[s]ubmittal of letters of intent by RFP respondents was a prerequisite to [the department’s] acceptance of their subsequent responses to the RFP.” You assert release of the requested information at this stage in the bidding process would cause harm to the department because an RFP respondent “could change its proposal based on its knowledge of its competitors or lack of competitors in the region.” Based on your representations, we conclude the department may withhold the requested information 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 375658

Enc. Submitted documents

c: Requestor
(w/o enclosures)