



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2010

Mr. James G. Nolan
Assistant General Counsel
Open Records Section
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2010-10150

Dear Mr. Nolan:

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# 386067 (CPA ID# 6312837104).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for several categories of information related to applications for solar panel grants using stimulus funds. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.104 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 a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, 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 No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

You explain the records at issue consist of portions of grant proposals submitted in response to the comptroller's Distributed Renewable Energy Technology Program. You state this is a competitive solicitation in which bidders compete for a fixed amount of federal stimulus funding. You further state that although "the deadline for submitting grant proposals has passed, final reviews and approval of the successful proposals, together with any contract negotiations and the final execution of the grant agreements[,] remains pending." You assert release of the requested information at this time would provide a competitive advantage because bidders may be required to submit additional information and could tailor their responses, depending on who their other competitors are in this bidding situation. Based on your representations and our review, we conclude the comptroller has demonstrated release of the submitted information would harm its interests in a competitive situation. Accordingly, the comptroller may withhold the submitted 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 386067

Enc. Submitted documents

c: Requestor
(w/o enclosures)