



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2010

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2010-12929

Dear Mr. Smith:

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# 395062.

The Health and Human Services Commission (the "commission") received a request for information pertaining to RFP 529-09-0062.¹ You claim the requested information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). 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

¹You inform us the requestor made an "inquiry" that "the Commission, in an abundance of caution, is treating as an open record request."

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

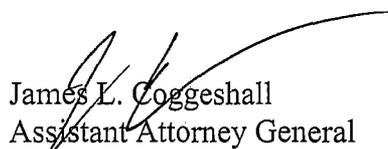
situation. See Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. See Open Records Decision No. 541 (1990).

We understand the commission has awarded the contract "tentatively"; however, you state "[t]he commission is still negotiating the contract about which [the requestor] inquires." You assert "if negotiations with the successful vendor break down, the [c]ommission may have to enter into competitive negotiations with another competitor" and that "[r]eleasing the details of the successful proposal would therefore jeopardize the [c]ommission's bargaining position if it were to enter into other contract negotiations." Based on your representations, we conclude the commission may withhold the submitted information under section 552.104 of the Government Code.³

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tp

Ref: ID# 395062

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we do not address your other arguments to withhold this information.