



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2010

Mr. Robert Schell
Assistant Director of General Counsel
North Texas Tollway Authority
P.O. Box 260729
Plano, Texas 75026

OR2010-16174

Dear Mr. Schell:

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# 398059.

The North Texas Tollway Authority (the "authority") received a request for scoring results for different categories of the proposals submitted to the authority in response to a specified request for qualifications. You claim that the submitted information is excepted from disclosure under section 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 awarded. Open Records Decision Nos. 306 (1982), 184 (1978).

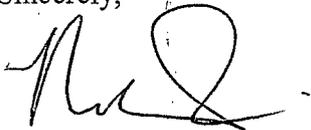
You inform us that the submitted information relates to a request for qualifications issued by the authority. You state that the authority sought, through a competitive process, proposals from firms interested in entering into a specified contract. You explain the authority has elected three tentative short-listed firms for the contract to the highest-ranking firm, and that the authority staff will later recommend a finalist to its board of directors for

final approval. You state that the authority has not yet begun the process of negotiating a contract and has not yet made a final award or executed a contract. You assert that “[s]hould the [authority] fail to reach an agreement with the tentatively anticipated recommended firm, the [authority] could elect to terminate discussions [with this firm] and instead negotiate an agreement with the next-highest ranking proposer(s) . . . or, alternatively, secure additional proposals[.]” Based on your representations and our review of the submitted information, we find that the authority has demonstrated that the release of this information would harm its interests in a particular competitive situation. We therefore conclude that the authority may withhold the information it has submitted at this time pursuant to section 552.104 of the Government Code.¹ However, we note that the authority may no longer withhold the submitted information under this exception to disclosure once the contracts have been executed and are in effect. *See* ORD 541 at 5.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 398059

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.