



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2011

Mr. Stephen S. Vollbrecht
General Counsel
State Office of Risk Management
P.O. Box 13777
Austin, Texas 78711

OR2011-05428

Dear Mr. Vollbrecht:

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# 414988.

The State Office of Risk Management ("SORM") received requests from two requestors for the bids submitted in response to request for proposals ("RFP") #479-1-0006 for a statewide property insurance program, as well as the scorecards for those bids. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also explain that this information may contain third parties' proprietary information subject to exception under the Act. Accordingly, you have notified the following third parties of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released: Arthur J. Gallagher Risk Management Services, Inc. ("Gallagher"); H. P. Guillory, CLU & Associates ("Guillory"); Willis of Texas, Inc.; and Wells Fargo Insurance Services USA, Inc. ("Wells Fargo"). See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by Gallagher, Guillory, and Wells Fargo.

Initially, we note that although you have submitted a copy of RFP #479-1-0006 as responsive, neither request seeks that document. Accordingly, the submitted RFP is not responsive to the requests for information. This ruling does not address the public

availability of this non-responsive information, and SORM is not required to release such information in response to the request.

SORM raises section 552.104 of the Government Code for the responsive information. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." 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* ORD 592. 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 except information from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated that the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates that public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (1982) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

In this instance, RFP #479-1-0006 is closed, and a contract has been executed for a statewide property insurance program; thus, the responsive information does not pertain to a currently competitive bidding situation. You state the contract at issue is a one-year contract that is renewable annually for an additional four years before another RFP process is required. You also represent this is a recurring procurement, explaining that SORM continuously monitors the efficiency and cost-effectiveness of the current contract as part of SORM's statewide property insurance program. You state SORM has reserved the right to terminate the awarded contract prior to its expiration and reissue the related RFP. You argue that release of the submitted bids and scorecards could significantly jeopardize SORM's future bargaining position in the recurring solicitation process by assisting bidders in determining the lowest level of service that might suffice to be awarded the contract. You argue that releasing this information would give all future bidders an advantage and cause harm to SORM in its bidding process. Based on your representations and our review of the information at issue, we agree that SORM may withhold the responsive information under section 552.104 of the Government Code.¹

¹As this ruling is dispositive, we need not address the remaining submitted arguments against disclosure.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 414988

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Arthur J. Gallagher Risk Management Services, Inc.
James A. Hunter
14241 Dallas Parkway, Suite 300
Dallas, Texas 75254
(w/o enclosures)

Wells Fargo Insurance Services USA, Inc.
Robert S. Bookhammer, III
5856 Sherry Lane, Suite 2000
Dallas, Texas 75225
(w/o enclosures)