



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2011

Ms. Lori Fixley Winland
For North East Texas Regional Mobility Authority
Locke Lord Bissell & Liddell, L.L.P.
100 Congress Avenue, Suite 300
Austin, Texas 78701

OR2011-08049

Dear Ms. Winland:

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# 419968.

The North East Texas Regional Mobility Authority (the "authority"), which you represent, received a request for a specified request for proposals, all submitted proposals and related scoring evaluations, the awarded contract and amendments, and correspondence between the authority and the bidders. You state some information has been or will be released to the requestor. You state the authority has no information responsive to the request for the awarded contract.¹ You claim the submitted information is excepted from disclosure pursuant to sections 552.104 and 552.111 of the Government Code. In addition, you state the requested information may implicate the proprietary interests of third parties. Accordingly, you notified Federal Signal Technologies ("FST"), Raytheon Co., and Telvent of the request and of their right to submit arguments to this office explaining why the companies' information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ *dism'd*); Open Records Decision No. 452 at 3 (1986).

predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from FST and Telvent. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code, which protects from required public 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 the 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 except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). However, in some situations, section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *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).

You state the submitted information relates to a request for proposals for toll collection design, procurement, installation, testing, and maintenance services on Toll 49. You inform us three firms responded and Telvent was selected as the highest-ranked proposer. You state negotiations with Telvent remain ongoing and a contract has not yet been executed. You explain that, if the authority fails to reach an agreement with Telvent, the authority may terminate negotiations and seek an agreement with the next highest-ranked proposer, or issue a new request for proposals. You contend the release of the submitted information would place the authority at a competitive disadvantage in future negotiations and procurements. Based on your representations and our review, we conclude the authority may withhold the submitted information under section 552.104 of the Government Code, until such time as the contract has been executed. As our ruling is dispositive, we need not address the remaining 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 419968

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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