



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2011

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2011-18174

Dear Ms. Alexander:

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# 438676.

The Texas Department of Transportation (the "department") received a request for information pertaining to price evaluation sheets used by the department, and the process and details of the scenarios the department performed during its price evaluation, regarding a request for proposals for a toll operations and customer service center operator. You claim that the requested 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 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 governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987).

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 state the submitted information pertains to a specific competitive procurement for which the contract has not been awarded. You inform this office that the submitted information “represents details of the qualifications and plans for a competitor on” the specified contract. You state that the release of the submitted information would give competitors advance knowledge of internal agency information and undermine the proposal and negotiation process, ultimately resulting in less competition. Based on your representations and our review of the submitted information, we find you have demonstrated that release of the information at issue would cause specific harm to the department’s interests in a particular competitive bidding situation. Therefore, the department may withhold the submitted information under section 552.104 of the Government Code. However, we note that the department may no longer withhold this information under this exception to disclosure once a contract has been executed and is in effect. *See* Open Records Decision No. 541 at 5 (1990).

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,



Damien Shores
Assistant Attorney General
Open Records Division

DS/sdk

Ref: ID# 438676

Enc. Submitted documents

c: Requestor
(w/o enclosures)