



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 17, 2012

Mr. Humberto F. Aguilera  
For Workforce Solutions–Capital Area  
Escamilla, Poneck & Cruz, L.L.P.  
P.O. Box 200  
San Antonio, Texas 78291-0200

OR2012-14759

Dear Mr. Aguilera

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# 465552.

Workforce Solutions–Capital Area (“Workforce”), which you represent, received two requests for information related to a request for proposals for a Workforce Center Operator, including the scoring sheets related to the proposals. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state the proprietary interests of certain third parties might be implicated. Accordingly, you notified C2 Global Professional Services, Inc.; Dynamic Workforce Solutions–Texas, L.L.C.; and Arbor E&T, L.L.C. d/b/a ResCare Workforce Services (“Arbor”) of the request and of their right to submit arguments to this office explaining why their 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 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 arguments from Arbor. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public 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* Open Records

Decision No. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). 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). Furthermore, section 552.104 does not apply when there is only a single individual or entity seeking a contract because there are no "competitors" for that contract. *See* Open Records Decision No. 331 (1982).

Although you state bidding has closed and a bidder has been chosen for the project at issue, you state a contract has not yet been executed. You state contract negotiations between Workforce and the chosen bidder are still in progress. You explain if the negotiations are unsuccessful, Workforce may begin contract negotiations with a different bidder. You state releasing the submitted information prior to the execution of a contract would harm Workforce's ability to negotiate a final contract. Based on your representations and our review, we agree Workforce may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is underway would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract under negotiation).

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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

**Ref: ID# 465552**

**Enc. Submitted documents**

**c: 2 Requestors  
(w/o enclosures)**

**Chakib Chehadi  
C2 Global Professional Services  
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Austin, Texas 78709  
(w/o enclosures)**

**Paul Dunn  
Dynamic Workforce Solutions  
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