



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2012

Ms. Mary Salluce
Open Government Attorney
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2012-16900

Dear Ms. Salluce:

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# 471529.

The Texas Department of Family and Protective Services (the "department") received a request for a specified response related to RFP 530-13-0007 for Region 8. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. 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). 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 pertaining to a completed bidding process for which a contract has been executed. *See* Open Records Decision No. 541 (1990). However, this office has determined in some circumstances section 552.104 may apply to information pertaining to an executed

contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5.

Although you state the department has received all bids in response to RFP 530-13-0007 and tentatively chose a winning bidder for Region 8, you further state the bidding process has not yet been completed because the contract with the winning bidder is still being negotiated and has not been executed. You assert in the event negotiations are unsuccessful, the department may initiate negotiations with the next successful respondent or respondents. Based on your representations, we conclude the department may withhold the requested 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 in progress 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, 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/eb

Ref: ID# 471529

Enc. Submitted documents

c: Requestor
(w/o enclosures)