



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2012

Ms. Ashley Allen
Staff Attorney
Legal Services Division
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711

OR2012-18635

Dear Ms. Allen:

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# 471843.

The Texas General Land Office (the "GLO") received a request for information related to Request for Qualifications Number 20674-SG, including all documents submitted by bidders, all communications concerning the project, and all information regarding the analysis and scoring of the bids.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Shaw Environmental & Infrastructure, Inc. ("Shaw"). Accordingly, you state, and provide documentation showing, you notified Shaw of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Shaw. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-15037 (2012). In that ruling, we determined the GLO may withhold the information at issue under section 552.104 of the Government Code until such time as the GLO has executed a contract.

¹You state the GLO received clarification or narrowing of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

You inform us the GLO has not yet executed a contract in the matter at issue. Thus, as we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based, we find the GLO may rely on Open Records Letter No. 2012-15037 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will consider the submitted arguments against disclosure of the remainder of the submitted information.

Both the GLO and Shaw argue the remaining information is excepted from disclosure pursuant to section 552.104 of the Government Code. We note section 552.104 protects the interests of governmental bodies, not third parties. *See* Open Records Decision No. 592 at 8 (1991) (purpose of section 552.104 is to protect governmental body's interest in competitive bidding situation). Accordingly, we will not consider Shaw's claim under this section. However, we will consider the GLO's claim under section 552.104 of the Government Code for the remaining information.

Section 552.104 of the Government Code 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 pertaining to a completed bidding process for which a contract has been executed. *See* Open Records Decision No. 541 (1990).

The GLO states the information at issue relates to bid proposals submitted for a project for which a work order has not yet been executed. The GLO states it is still in the negotiation process for the project at issue. The GLO asserts if the initial award does not become an executed contract, the GLO may have to re-issue the solicitation. In that event, the GLO argues, release of the information at issue would harm the GLO's competitive interests because it would "necessarily result in advantage to certain bidders at the expense of others and could be detrimental to the public interest." Based on these representations and our review, we determine the GLO has demonstrated release of the remaining information would harm its interests in a competitive bidding situation. Accordingly, the GLO may withhold the remaining information under section 552.104 of the Government Code, until such time as the contract has been executed.² *See* Open Records Decision No. 170 at 2 (1977) (release

²As our ruling is dispositive, we need not address Shaw's arguments against disclosure of the information at issue.

of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).

In summary, the GLO may rely on Open Records Letter No. 2012-15037 as a previous determination and withhold the identical information in accordance with that ruling. The GLO may withhold the remaining information under section 552.104 of the Government Code, until such time as the contract has been executed.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 471843

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)