



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2012

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

OR2012-19537

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# 474059.

The Texas Department of Transportation (the "department") received a request for the proposals submitted by TransCore and ACS State and Local Solutions, Inc. ("ACS") in response to a specified request for proposals.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 TransCore and ACS. Accordingly, you state, and provide documentation showing, you notified TransCore and ACS of the request for information and of the right of each 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 ACS. We have reviewed the submitted information and the submitted arguments.

¹ACS informs us it is now known as XSLs State & Local Solutions, Inc.

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 a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). This office has long held that section 552.104 does not except information relating to competitive bidding situations once a contract has been executed. *See, e.g.*, Open Records Decision Nos. 541 (1990), 514 (1988), 306 (1982), 184 (1978), 75 (1975).

You state the submitted information was submitted in connection with a specific competitive procurement. You inform us although the department entered an agreement with a third party pertaining to that procurement, the contract was subsequently terminated. You state the department has revised the original request for proposals and intends to reissue a request for proposals with essentially the same purpose. You state the department anticipates the same vendors who participated in the previous procurement will re-submit much of the same technical materials in response to the reissued request for proposals. Thus, you claim release of the information at issue would undermine the pending competitive procurement and the contract negotiation process and would result in less competition, to the detriment of the public, because each potential competitor would have advance knowledge of the capabilities and plans of its competitors. Based on your representations and our review, we conclude you have demonstrated the applicability of section 552.104 to the submitted information. Accordingly, the department may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.² *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 expense of others and could be detrimental to public interest in 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

²As our ruling is dispositive, we need not address the remaining submitted arguments against disclosure of the submitted information.

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# 474059

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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