



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 13, 2013

Ms. Sharon Alexander  
Assistant General Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Building  
125 East 11th Street  
Austin, Texas 78701-2483

OR2013-15965

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# 499235.

The Texas Department of Transportation (the "department") received a request for the scoring matrix for the firms who submitted proposals in response to request for proposal 57-3RFPG001. You claim 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. 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) (discussing statutory predecessor). 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 from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated the predecessor to

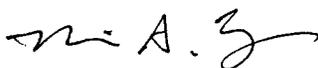
section 552.104 may protect information after bidding is complete if the governmental body demonstrates public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

In this instance, you inform us the submitted scoring matrix relates to a specific competitive procurement, and the contracts arising from that process have been executed. Thus, this information does not pertain to a currently competitive bidding situation. However, you state the department plans on re-using the scoring criteria from the submitted scoring matrix for other contracts of this type in the future. You explain the department solicits bids for environmental consulting and investigation services and hazardous waste environmental assessments on a regular basis. Thus, you argue release of the submitted scoring matrix would result in each potential competitor having advance knowledge of the scoring criteria and previous scores of its competitors, which could undermine the contract negotiation process and result in less competition, to the detriment of the public. Based on your representations and our review, we agree the department may withhold the submitted information under section 552.104 of the Government Code.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/ac

Ref: ID# 499235

Enc. Submitted documents

c: Requestor  
(w/o enclosures)