ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2013

Mr. Orlando "Jay" Juarez, Jr.
Counsel for Workforce Solutions of South Texas
J. Cruz & Associates, LLC
216 West Village Blvd, Ste. 202
Laredo, Texas 78041

OR2013-16575

Dear Mr. Juarez:

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# 500208.

The Texas Workforce Solutions of South Texas ("Workforce Solutions"), which you represent, received two requests from different requestors for information pertaining to specified requests for proposals. The first requestor seeks the winning proposal for the WIA Youth Services Program, the winning proposal for the Operations and Management of the Workforce Center System, and the evaluations and score sheets for both requests for proposals. The second requestor seeks all submitted proposals for the WIA Youth Services Program, all submitted proposals for the Operations and Management of the Workforce Center System, and all information pertaining to the selection of the proposals, including score sheets, evaluations, and evaluator notes. You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.153 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Arbor E&T, LLC dba ResCare Workforce Services ("ResCare"), C2 Global Professional Services, LLC ("C2"), and Dynamic Workforce Solutions-TX, LLC. Accordingly, you notified these third parties of the requests and of their right to submit arguments to this office as to why their requested information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the

circumstances). We have received comments from ResCare and C2. We have considered the submitted arguments and reviewed the submitted information.

Initially, Workforce Solutions contends the submitted winning proposals are not responsive to the portion of the first request for information seeking the winning proposals, because although the proposals at issue were selected during the bidding process, no contract has been executed. A governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the portion of the request at issue seeks the winning proposals. Although no contract has been executed as a result of these selections, the proposals at issue were the winners of the bid selection processes at issue. Accordingly, we find the proposals submitted in response to this portion of the first request are responsive. Therefore, we will address the submitted arguments against disclosure of the submitted 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 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 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, 514 (1988), 306 (1982), 184 (1978), 75 (1975).

You state the submitted proposals were submitted to Workforce Solutions in response to the two specified requests for proposals. You further state that although winning proposals were selected, the contracts arising from that process have not yet been executed. You explain the winning bidders and Workforce Solutions are clarifying the terms of the final contracts and continuing negotiations. You claim releasing the submitted proposals will harm Workforce Solutions's negotiating position and would give an advantage to the other competitors and bidders if negotiations fail, and Workforce Solutions must select an alternate vendor or issue a new requests for proposals. Based on your representations and our review, we find Workforce Solutions has demonstrated the applicability of section 552.104 to the submitted proposals. Accordingly, we conclude Workforce Solutions may withhold the submitted proposals under section 552.104 of the Government Code until such time as contracts have been executed.[1] *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).

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[1]As our ruling for this information is dispositive, we need not address the remaining arguments against its disclosure.

Workforce Solutions claims the submitted evaluations are excepted from disclosure under section 552.153 of the Government Code, which protects proprietary records and trade secrets involved in certain partnerships under chapter 2267 of the Government Code and provides in part:

> (a) In this section, "affected jurisdiction," "comprehensive agreement," "contracting person," "interim agreement," "qualifying project," and "responsible governmental entity" have the meanings assigned those terms by [s]ection 2267.001.
>
> (b) Information in the custody of a responsible government entity that relates to a proposal for a qualifying project authorized under [c]hapter 2267 is excepted from the requirements of [the Act] if:
>
> > (1) the information consists of memoranda, staff evaluations, or other records prepared by the responsible governmental entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under [c]hapter 2267 for which:
> >
> > > (A) disclosure to the public before or after the execution of an interim or comprehensive agreement would adversely affect the financial interest or bargaining position of the responsible governmental entity; and
> > >
> > > (B) the basis for the determination under Paragraph (A) is documented in writing by the responsible governmental entity; or
> >
> > (2) the records are provided by a proposer to a responsible governmental entity or affected jurisdiction under [c]hapter 2267 and contain:
> >
> > > (A) trade secrets of the proposer;
> > >
> > > (B) financial records of the proposer, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means; or
> > >
> > > (C) work product related to a competitive bid or proposal submitted by the proposer that, if made public before the execution of an interim or comprehensive agreement, would provide a competing proposer an unjust advantage or adversely affect the financial interest or bargaining position of the responsible governmental entity or the proposer.

. . .

(d) In this section, "proposer" has the meaning assigned by [s]ection 2267.001.

Gov't Code § 552.153(a); Act of May 27, 2013, 83rd Leg., R.S., S.B. 211, § 4 (to be codified as an amendment to Gov't Code § 552.153(b) and to be codified at Gov't Code § 552.153(d)). Section 2267.001(10) of the Government Code provides "qualifying project" means:

> (A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project's purpose; or
>
> (B) any improvements necessary or desirable to real property owned by a governmental entity.

Act of May 27, 2013, 83rd Leg., R.S., S.B. 211, § 23 (to be codified as an amendment to Gov't Code § 2267.001(10)). Further, section 2267.001(11) provides that "responsible governmental entity" means "a governmental entity that has the power to develop or operate an applicable qualifying project." Gov't Code § 2267.001(11). Neither Workforce Solutions nor any third party has explained, nor can we discern, how Workforce Solutions constitutes a responsible governmental entity, as defined by section 2267.001(11), and the information relates to a proposal for a qualifying project authorized under chapter 2267 of the Government Code. Accordingly, we find Workforce Solutions may not withhold any portion of the submitted information under section 552.153 of the Government Code. Further, we have not received any arguments from the third parties establishing that they otherwise have a proprietary interest in the submitted evaluations at issue. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999), 552 at 5 (1990), 542 at 3. Accordingly, we find Workforce Solutions may not withhold any portion of the remaining information under section 552.153 of the Government Code.

In summary, Workforce Solutions may withhold the submitted proposals under section 552.104 of the Government Code. Workforce Solutions must release the remaining information.

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, 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,

Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 500208

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

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