



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 24, 2013

Mr. Timothy E. Bray  
Deputy General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2013-18532

Dear Mr. Bray:

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# 503510.

The Texas Department of State Health Services (the "department") received seven requests for information related to two requests for proposals, RFP 539.1 and RFP 540.1.<sup>1</sup> You claim the requested 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.

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release that information in response to this request.

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. The purpose of section 552.104 is to protect a governmental body's interests in competitive

---

<sup>1</sup>You state the department sought and received clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

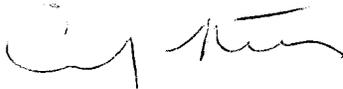
bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). 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 bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state final awards for these procurements have not been awarded. You inform us that releasing the information at issue “would [impair] the integrity of [the] competitive bid process.” Based on these representations and our review, we conclude the department has demonstrated release of the information at issue could harm its interests with respect to this project. Therefore, the department may withhold the responsive 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 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.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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 503510

Enc. Submitted documents

c: 6 Requestors  
(w/o enclosures)