



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 28, 2014

Mr. Steve Smeltzer  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2014-15172

Dear Mr. Smeltzer:

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# 534606.

The Texas Department of Criminal Justice (the "department") received a request for information relating to the department's recent procurement Electronic Document Management System RFO 696-IT-14-0011 A-005, including: (1) a list of respondents who submitted proposals; (2) a copy of the awarded vendor's proposal, including pricing information and all contracts; and (3) a copy of the evaluations and scoring tools used to determine the winning bid. 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(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* Open Records Decision No. 592 (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 in this instance the bidding process is still competitive because the selected vendor remains at liberty to furnish additional information relating to the proposed contract, which is yet to be finalized. You state if the department were to release the information, competitors, who might otherwise negotiate a lower price, would be motivated to raise their prices to close the gap with what they know the department is willing to pay another prospective vendor. Thus, competitors would have an advantage, and therefore the release of the information would harm the competitive interests of the department. Based on your representations and our review, we conclude the department has demonstrated release of the submitted information would harm its interests in a competitive situation. Accordingly, the department may withhold the submitted information pursuant to 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,



Lauren Dahlstein  
Assistant Attorney General  
Open Records Division

LMD/som

Ref: ID# 534606

Enc. Submitted documents

c: Requestor  
(w/o enclosures)