



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 17, 1991

Honorable Burton F. Raiford
Interim Commissioner
Texas Department
of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR91-296

Dear Mr. Lindsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11479.

You inquire whether the Texas Department of Human Services (the department) is required to release pursuant to two open records requests a copy of a proposal submitted to the department as part of a Request For Proposals. You contend that the Price Waterhouse "Proposal to Conduct a Provider Management Information System Requirements Analysis" comes under the protection of sections 3(a)(4) and 3(a)(10) of the Open Records Act.

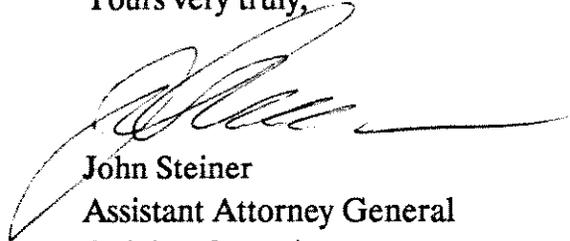
Section 3(a)(4) of the Open Records Act protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Section 3(a)(4) is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). Governmental bodies may withhold this type of information while the governmental officials are in the process of interpreting the proposals and the competitors are free to furnish additional information. *Cf.* Open Records Decision No. 170 (1977). Section 3(a)(4) does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect. Open Records Decision Nos. 306 (1982); 184 (1978).

Although members of your staff have made clear that the Price Waterhouse proposal was the winning proposal, no contract has yet been executed because of pending budgetary considerations. Consequently, the final contract, if any, with Price Waterhouse may be subject to further negotiations. If the negotiators were

unsuccessful in reaching an agreement as to the final terms of the contract, the department may be forced to award the contract to another competitor. Release of the Price Waterhouse proposal at a time when other competitors' proposals may still be considered for the award of the contract could result in an advantage to those other competitors for the contract and damage the department's position in subsequent contract negotiations. Consequently, you may withhold the requested proposal in its entirety at this time pursuant to section 3(a)(4).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-296.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/RWP/lb

Ref.: ID# 11479
ID# 12343

Enclosure: Price Waterhouse proposal

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