



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 5, 1997

Mr. Terry Trimble
Interim Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR97-1997

Dear Mr. Trimble:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 108287.

The Texas Department of Human Services (the "department") received a request for a copy of all proposals submitted in response to the department's Request for Information (RFI) pertaining to the "Y2K Project (Millennium Project)." You indicate that the department is in the process of drafting the Request for Information (RFO) based upon the proposals submitted in response to the RFI and consequently assert that the information requested is excepted through section 552.104 of the Government Code.

Section 552.104 excepts information that, if released, would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 (1991) at 2, 463 (1987), 453 (1986) at 3. You indicate to this office that the department published, through the Texas Register, a Request for Information (RFI), in order to gather information which eventually will result in a draft of the Request for Offers (RFO). The RFO will elicit bids from potential vendors responding to this project. The bidding process for the project is not yet complete.¹ Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a

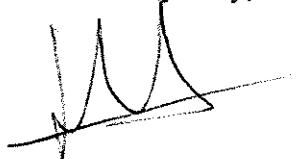
¹As we address the issues under 552.104, we need not address the other exception you raise at this time.

general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 (1990) at 4. Section 552.104 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). However, other types of information may be withheld pursuant to section 552.104 during the competitive bidding process. *Cf.* Open Records Decision No. 170 (1977). For example, in Attorney General Opinion MW-591 (1982), this office determined that the General Land Office may withhold "the identities of those who nominate tracts to be leased by the School Land Board at mineral lease sales."

You state that the competitive bidding process has not yet been completed as the department is in the process of drafting the RFO scheduled for release in July, 1997. Once the RFO is released, any vendor can submit an offer for the department to consider. Consequently you assert that releasing the RFI responses would give the requestor knowledge of the other vendors' approaches and possible proposals for the project prior to release of the RFO. You assert the release of the information would compromise the RFO process and hinder the department in obtaining the most favorable offers. Therefore, we conclude that the department may withhold the information pursuant to section 552.104. We note that once the competitive bidding process is completed and a contract has been awarded, you may not continue to withhold this information under section 552.104. Open Records Decision No. 541 (1990) at 5.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', written over a horizontal line.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref.: ID# 108287

Enclosures: Submitted documents