



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1998

Ms. Joanne Wright
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 E. 11th Street
Austin, Texas 78701-2483

OR98-1799

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 117574.

The Texas Department of Transportation (the "department") received a request for

all bids made regarding the approximately 4.741 acres of land located on the west side of U.S. Highway 80 in Terrell, Kaufman County, Texas on or before May 15, 1998, and all attachments therewith.

The requestor, a bidder for the tract of land at issue, further requests "all correspondence from any of the bidders, . . . , regarding any of these bids." In response to the request, you submit to this office for review the information at issue. You claim that 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.

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 (1991) at 2. Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation. Open Records Decision No. 541 (1990) at 4.

You state that the department "is offering a tract of land for sale [w]e have accepted bids and have offered the property to the high bidder, but . . . no contract has been signed for the sale of the property." You also state that "[i]f the high bidder opts not to purchase the property, [the department] will go out for bids again rather offer the property to the next bidder." Based on your representations, we conclude that you may withhold, at this time, the requested information from required public disclosure under section 552.104. However, once the bidding process is completed and the terms of an agreement have been finalized, you may not rely on section 552.104 to withhold this information. Open Records Decision No. 541 (1990) at 5.

We also note that, once the bidding process is completed and section 552.104 is no longer applicable, should there be a subsequent request for this same information, we advise the department to seek a ruling from this office since the submitted information may implicate the property and privacy rights of a third party. *See* Gov't Code §§ 552.110, 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released).

As we resolve your request under section 552.104, we need not specifically address your other claimed exceptions at this time. 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

Ref: ID# 117574

Enclosures: Submitted documents

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