



July 20, 1999

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

OR99-2029

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127680.

The Texas Department of Transportation (the "department") received a request for "all letters of interest submitted and the reviewers' evaluation forms for each letter of interest on three separate contracts." The information relates to proposals submitted by engineering firms on the contracts. You claim that the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.104 of the Government Code states:

Information is excepted from the requirements of Section 552.021 if it is 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). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. 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 at 2 (1991),

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

463 (1987), 453 at 3 (1986). A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 at 4 (1990), 520 at 4 (1989). A general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records Decision No. 463 at 2 (1987). As the exception was developed to protect a governmental body's interests, that body may waive section 552.104. *See* Open Records Decision No. 592 at 8 (1991).

In this instance, you explain that the department is in the process of negotiating contracts with selected engineering firms. For one of the contracts, a firm has been selected but a contract has not yet been signed. You explain that because the contracts have not been finalized, release of the information could give an advantage to another firm with which the department negotiates. We have previously held that so long as negotiations are in progress regarding the interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to the proposed contract, bidding should be deemed competitive, and therefore, information relevant thereto may be withheld under section 552.104 prior to the award of the contract. Attorney General Opinion MW-591 (1982); Open Records Decision No. 170 (1977); *see* Open Records Decision No. 541 (1990). Because you have demonstrated that release of the information would give advantage to a competitor or bidder, you may withhold the requested information under section 552.104 until the relevant contracts are executed.

Because section 552.104 of the Government Code is dispositive, we need not address your section 552.110 claim. 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.

Sincerely,



Sue M. Lee
Assistant Attorney General
Open Records Division

SML\nc

Ref: ID# 127680

Encl: Submitted documents

cc: Mr. Joseph T. Short, P.E.
Office Manager
Lee Engineering
17440 Dallas Parkway, Suite 204
Dallas, Texas 75267
(w/o enclosures)