



November 2, 1999

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR99-3085

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128527.

The Texas Department of Criminal Justice (the "department") received a request for certain documents generated in connection with an RFP for therapeutic community substance abuse treatment services. You claim that the requested information is excepted from disclosure under sections 552.101, 552.104, 552.110, and 552.111 of the Government Code. We have considered the exceptions you claim and have 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 at 2 (1991).

You state that "final contracts with the vendors selected by the Board have not been executed." Furthermore, you explain that "there is no guarantee that the selected vendors will be those who execute the final contracts; negotiations have been known to break down. Should [the department] move to alternate vendors, the follow-on proposers may improve their negotiation positions, and do so in ways disadvantageous to [the department], if they know the details of the previous and initially preferred proposals."

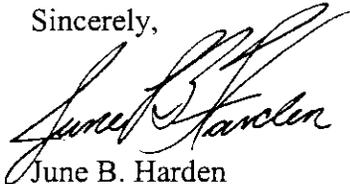
In Open Records Decision No. 170 (1977), this office stated that

[s]o long as negotiations are in progress regarding interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to its proposed contract, we believe that the bidding should be deemed competitive. Release of the bids while the bidding is still competitive would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract being let.

Open Records Decision No. 170 at 2 (1977). Assuming that the bidding process is “still competitive” under the standard enunciated above, you may withhold, at this time, the requested information from required public disclosure under section 552.104. However, once a contract has been executed *and* the competitive bidding process is completed, you may not continue to withhold this information under section 552.104. *See* Open Records Decision No. 541 (1990).

Because we are able to make a determination under section 552.104, we need not address your other claimed exceptions. 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.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref: ID# 128527

Encl. Submitted documents

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