



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2009

Ms. Sylvia F. Hardman
Texas Department of Assistive and Rehabilitative Services
4800 North Lamar Boulevard, Suite 300
Austin, Texas 78756

OR2009-03465

Dear Ms. Hardman:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 338726 (PIA Request No. 2009 01/09-1)

The Texas Department of Assistive and Rehabilitative Services (the "department") received a request for all responses to a specified Request for Information ("RFI"). You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also explain that the submitted information may contain third parties's proprietary information subject to exception under the Act. Accordingly, you have notified Aon eSolutions ("Aon"), IBM Global Business Services ("IBM"), and Versa Management Systems ("Versa") of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information. We have also considered comments received from Aon and Versa pursuant to section 552.305(d) of the Government Code.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 104(a). The purpose of this exception is to protect a governmental body's interests in

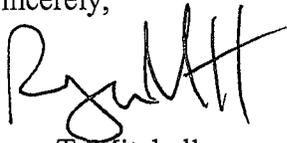
competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Furthermore, section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You inform this office that the department uses responses to RFI's "as a research and information gathering tool for preparation of a solicitation." You contend that release of the information at issue would thus give the requestor "an unfair advantage in the bidding process" and "would constitute a threat to the competitive nature of the ongoing solicitation process and the anticipated request for proposal (RFP)." Based on your representations and our review of the information at issue, we conclude that the department may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).¹

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/jb

¹As this ruling is dispositive, we need not address the arguments against disclosure submitted by Aon and Versa.

Ref: ID# 338726

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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