



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2009

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2009-06077

Dear Mr. Smith:

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# 342217.

The Texas Health and Human Services Commission (the "commission") received two requests for specified planning documents pertaining to an anticipated Request for Proposals ("RFP") concerning a specified project. You state the commission has provided some of the requested information to the requestors. You claim that portions of the submitted information are excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

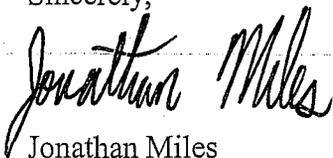
Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This exception protects a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). 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). Section 552.104 does not protect information relating to competitive bidding once a contract has been awarded and is in effect. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You state that the submitted information is related to an anticipated competitive bidding process that has yet to result in the selection of a winning bidder. You explain that the submitted information "contains detailed estimated budget information for this project, the release of which would significantly assist vendors [sic] in preparing their respective pricing proposals when responding to the RFP." You argue that release of the information you have marked at this time would adversely affect the competitive process by enabling the vendors to meet or only slightly undercut the estimates in the commission's estimated budget. Based on your representations and our review of the submitted information, we agree that the commission may withhold the information you have marked under section 552.104 of the Government Code until such time as a contract has been executed. The remaining information must be released.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 342217

Enc. Submitted documents

c: Requestor
(w/o enclosures)