



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 26, 2009

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2009-12086

Dear Ms. Alexander:

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# 353626.

The Texas Department of Transportation (the "department") received a request for copies of responses to the Bidder's Questionnaire filed by a named individual, Quality Innovations, Inc. ("Quality"), or Q.I., L.L.C. You state you only have information responsive to the portion of the request that seeks responses filed by Quality.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Further, you indicate that release of the submitted information may implicate the proprietary interests of Quality. Accordingly, you state that you notified Quality of the request and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have received comments from Quality. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Section 552.104 of the Government Code exempts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. 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). Section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded and is in effect. See Open Records Decision Nos. 306 (1982), 184 (1978). You inform us that "[t]o maximize efficiency and save time and money, [the department] has instituted a 'prequalification' procedure that requires contractors to submit certain financial information in advance of any bid." See 43 T.A.C. § 9.12(b)(1) (listing requirements for prequalification). You assert that the release of the submitted prequalification information "would adversely affect [the department's] ability to compete for contractors with entities that do not have to release private financial information" and would, in effect, reduce competition on competitive bids. Based on your representations, we find you have demonstrated that public release of the information at issue would cause specific harm to the department's interests in particular competitive bidding situations. Therefore, the department may withhold the submitted prequalification information from required public disclosure under section 552.104. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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](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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 353626

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

c: Michele Morgan  
President  
Quality Innovations, Inc.  
2426 Carriage Ridge Lane  
Conroe, Texas 77384  
(w/o enclosures)