



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2011

Ms. Lisa Calem-Lindstrom
Public Information Coordinator
Texas Facilities Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR2011-02002

Dear Ms. Calem-Lindstrom:

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# 408571.

The Texas Facilities Commission (the "commission") received a request for information relating to request for proposal ("RFP") #303-1-10078, as well as "the written policy of bid bonds and the handling of them[,] including "reasons for bid bonds and who (position) requires them." You state the commission does not possess any information responsive to the portion of the request regarding bid bonds. We note the Act does not require a governmental body to release information that did not exist when it received a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). You indicate you have released some information to the requestor. You claim that the submitted information is 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 required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not

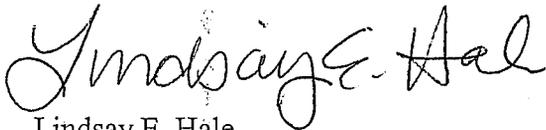
except bids from disclosure after bidding is completed and the contract has been executed. See Open Records Decision No. 541 (1990).

The information you have marked under section 552.104 consists of bid tabs and evaluation worksheets completed by the commission for RFP #303-1-10078. You state that the commission will ultimately award five separate awards under this request for proposal. You inform us one contract has been executed. You assert release of the information you have marked at this time would "directly impair the [c]ommission's ability to negotiate the contract terms" for the remaining four contracts. Furthermore, you claim release of the information at this time would harm the commission in the event the negotiations for the four remaining awards fail because it would affect possible negotiations with alternate contractors and harm the commission if it had to issue a new RFP. Based on your representations and our review, we conclude the commission has demonstrated how release of the information you have marked would harm its interests in a competitive situation. Accordingly, we determine the commission may withhold the information you have marked under section 552.104 of the Government Code until the final contract is executed.

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, toll free at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 408571

Enc. Submitted documents

c: Requestor
(w/o enclosures)