



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2011

Ms. Lori Fixley Winland  
Lock Lord Bissell & Liddell, L.L.P.  
100 Congress Avenue, Suite 300  
Austin, Texas 78701

OR2011-06569

Dear Ms. Winland:

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# 417237.

The Housing Authority of the City of Beaumont (the "authority"), which you represent, received a request for current executed lawn maintenance contracts for seven authority properties. You claim 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 which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body). 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. *Open Records Decision No. 541 at 4 (1990)*. Generally, section 552.104 does not except information from disclosure after bidding is completed and the contract has been awarded. *See Open Records Decision No. 541 (1990)*. However, in *Open Records Decision No. 541*, this office stated that the predecessor to section 552.104 may protect information after bidding is complete if the governmental body

demonstrates public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

In this instance, the submitted information consists of already-executed lawn maintenance contracts; thus, this information does not pertain to a currently competitive bidding situation. You state the authority is seeking bids for new lawn maintenance contracts through a competitive process. You further assert the release of the existing lawn maintenance contracts would provide potential contractors with information regarding the current contract prices and terms, placing the authority at a competitive disadvantage in future contract negotiations for these services. Based on your representations and our review of the information at issue, we find you have demonstrated release of the submitted information would harm the authority's interests in a particular ongoing competitive situation. *See* ORD 592. Therefore, we conclude the authority may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been 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](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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 417237

Enc. Submitted documents

c: Requestor  
(w/o enclosures)