



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 18, 2014

Ms. Ruth H. Soucy  
Deputy General Counsel for Open Records  
Texas Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2014-04527

Dear Ms. Soucy:

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# 517046 (Comptroller ID# 9785824681).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for a copy of a specified request for offers ("RFO"), all vendor responses to the RFO, the completed evaluation or scoring sheets for the submitted vendor proposals, and information as to why the previous solicitation was canceled. You state you have released some of the information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of certain third parties, namely WingSwept Communications, Incorporated and Nespon IT Services. Accordingly, you state and provide documentation showing, you have notified these third parties of the request for information and of their rights to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* 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 the circumstances). We have received comments from WingSwept

Communications, Incorporated. We have considered the submitted arguments 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. 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 in competitive situation, and not interests of private parties submitting information to government). 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).

You state the comptroller issued an RFO on September 5, 2013, which was canceled without an award being made. You state the comptroller subsequently issued a substantially similar RFO on November 12, 2013, which solicits offers for the same software and related services as outlined in the first RFO and implicates the same competitive interests. We understand a contract for this bid has not yet been awarded, and you further state release of the requested information would allow bidders for this currently open RFO to tailor their responses to their potential competitors. Thus, you state, releasing the requested information at this time would allow potential bidders to undercut bids and gain a competitive advantage. Based on your representations and our review, we conclude the comptroller has demonstrated release of the submitted information could harm its competitive interests with respect to this project. Therefore, the comptroller may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.<sup>1</sup> *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).

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining submitted arguments.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/tch

Ref: ID# 517046

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. JC Strickland, Jr.  
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(w/o enclosures)

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