



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2014

Mr. Robert Schell
Assistant Director General Counsel
North Texas Tollway Authority
5900 West Plano Parkway, Suite 100
Plano, Texas 75093

OR2014-14162

Dear Mr. Schell:

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# 532729 (NTTA# 2014-00847).

The North Texas Tollway Authority (the "authority") received a request for the bid tabulations, technical proposals, evaluations, and technical scores for Contract No. 03651-CTP-00-CN-MA. You state the authority has released some of the responsive information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state the request might implicate the proprietary interests of third parties. We understand you notified DBi Services, L.L.C. and Infrastructure Corporation of America of the request and of their right to submit arguments to this office explaining why their 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 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request for information. The requestor only seeks bid tabulations, technical proposals, evaluations, and technical scores. Accordingly, only those types of information are responsive to this request. The ruling does not address the public availability of the non-responsive information, and that information need not be released.

Section 552.104 of the Government Code excepts from required public disclosure "information which, 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).

You state the authority issued a request for proposals ("RFP") in order to solicit proposals for total routine maintenance of the Chisholm Trail Parkway. You explain three companies, including the requestor's company, submitted proposals in response to the RFP, and the authority has tentatively selected one of them as a winning bidder. However, you explain the negotiation process is underway, and the authority has not executed a contract. Thus, you argue release of the responsive information could harm the authority's negotiating position. Based on these representations and our review, we agree the authority may withhold the responsive information under section 552.104 of the Government Code until such time as a contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is underway would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the 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, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 532729

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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