



January 14, 2015

Mr. Douglas A. Poneck
Counsel for Texas Workforce Solutions Capital Area
Escamilla & Poneck, L.L.P.
700 North Street Mary's Street, Suite 850
San Antonio, Texas 78205

OR2015-00727

Dear Mr. Poneck:

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# 550197.

Texas Workforce Solutions - Capital Area ("Workforce Solutions"), which you represent, received a request for the winning bid pertaining to a specified request for proposals ("RFP"). You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, you inform us release of this information may implicate the proprietary interests of Mitel Technologies, Inc. ("Mitel"). Accordingly, you provide documentation showing you notified Mitel of the request and of its right to submit arguments to this office as to why its 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 in certain circumstances). We have received comments from Mitel. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code protects 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 interests of a governmental body 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). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation. 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 claim release of the submitted information would compromise Workforce Solutions's bargaining position with regard to the RFP at issue. You inform us that, although Workforce Solutions has selected a contractor, a final contract has not been executed. You state release of the submitted information prior to the execution of the final contract would harm Workforce Solutions's ability to negotiate a final contract and compromise the procurement process by allowing prospective contractors to base their proposals on the information at issue. Based on these representations and our review, we find you have demonstrated release of the submitted information would harm Workforce Solutions's interests in a competitive situation. Therefore, Workforce Solutions may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.¹ *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, 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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Ref: ID# 550197

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John L. Gardner
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(w/o enclosures)