



February 20, 2015

Mr. Darin Darby
Counsel for Texas Workforce Solutions Capital Area
Escamilla & Poneck, LLP
700 North St. Mary's Street, Suite 850
San Antonio, Texas 78205

OR2015-03379

Dear Mr. Darby:

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# 554338.

Texas Workforce Solutions - Capital Area ("Workforce Solutions"), which you represent, received a request for the proposal submitted by the bidder who won a specified contract. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you inform us release of this information may implicate the proprietary interests of C2 Global Professional Services, L.L.C. ("C2 GPS"). Accordingly, you provide documentation showing you notified C2 GPS 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 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." *Id.* § 552.104. 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 information from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision

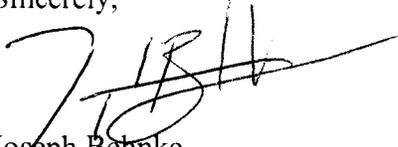
No. 541 (1990). However, in Open Records Decision No. 541, this office stated that the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates that public disclosure of the information will allow competitors to undercut future bids, and the 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 (1982) (suggesting such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

Workforce Solutions raises section 552.104 of the Government Code for the submitted information. You state the submitted information consists of a proposal submitted by C2 GPS in response to a request for proposals for management of a specified child care facility. You also inform us the request for proposals has closed and a contractor has been chosen. However, you state Workforce Solutions solicits bids for this service contract on a recurring basis. You explain release of the submitted information would harm the ability of Workforce Solutions to bid and negotiate competitive contracts, harm the negotiating interests of Workforce Solutions, compromise its procurement process with regard to the subject matter of this request for proposals, and “necessarily result in an advantage to a future bidder who accesses [the information at issue].” Based on your representations and our review of the information at issue, we agree Workforce Solutions may withhold the submitted information under section 552.104 of the Government Code.

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,

A handwritten signature in black ink, appearing to read "JBH", with a large, sweeping flourish extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 554338

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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c/o Darin Darby
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