



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2015

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

OR2015-04235

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# 555261.

Workforce Solutions Capital Area ("Workforce"), which you represent, received a request for the winning proposal from a named individual. Workforce claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, Workforce states release of the submitted information may implicate the proprietary interests of the named individual. Accordingly, Workforce states, and provides documentation showing, it notified the named individual of the request for information and of her right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *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 the Act in certain circumstances). We have received comments from the named individual. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public 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 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) (discussing statutory predecessor). 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 executed. *See* Open Records Decision No. 541 (1990).

However, in Open Records Decision No. 541, this office stated 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 (1982) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

In this instance, Workforce acknowledges the submitted bid proposal relates a closed bid in which a contractor has been chosen. However, Workforce states it will conduct a re-bid process for these same services on a recurring basis and it will use and apply the same criteria as the instant bid to evaluate and award future contracts. Workforce asserts disclosure of the submitted proposal would have a detrimental effect on its ability to evaluate and negotiate future bid proposals, future bid awards, and future contracts for the services in question. Based on these representations, we find Workforce has demonstrated public release of the submitted information would cause specific harm to its interests in a particular competitive situation. Therefore, Workforce may withhold the submitted information under section 552.104 of the Government Code.¹

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

¹As our ruling is dispositive, we need not address the named individual's argument against disclosure.

Ref: ID# 555261

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Christine H. Nguyen, CPA
Financial Monitoring Services
4771 Sweetwater Boulevard., #195
Sugar Land, Texas 77479
(w/o enclosures)