



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 14, 1995

Mr. Mark A. Walker  
Attorney  
Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767-0220

OR95-761

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33444.

The Lower Colorado River Authority (the "authority") received a request for "all correspondence and offers submitted by IBM" in response to a request for quotation dated February 20, 1995, for a two-year lease of a mainframe computer. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.104 of the Government Code states:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

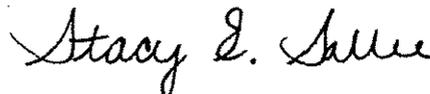
The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 (1991) at 2,

463 (1987), 453 (1986) at 3. A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 (1990) at 4, 520 (1989) at 4. A general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records Decision No. 463 (1987) at 2. As the exception was developed to protect a governmental body's interests, that body may waive section 552.104. See Open Records Decision No. 592 (1991) at 8.

It appears that International Business Machines ("IBM") submitted its bid to the authority in response to a February 20, 1995 request for quotation. You state that, as of May 5, 1995, the authority had not yet awarded the contract in this bid process. You also state that "bidders have the right to submit additional information, if requested, during the bid evaluation process." You further state that disclosure of the bids would give advantage to a competitor or bidder. Therefore, we conclude that, if the contract has not yet been awarded, the authority may withhold the requested information. See Open Records Decision No. 170 (1977). However, if the contract has been awarded, the authority may not withhold the requested bid under section 552.104 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Government Section

SES/KHG/rho

Ref.: ID# 33444

Enclosures: Submitted documents

cc: Mr. William J. Montgomery  
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(w/o enclosures)