



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2009

Mr. Jason Martinson
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2009-16412

Dear Mr. Martinson:

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# 361754.

The Lower Colorado River Authority (the "LCRA") received two requests for the bid tabulation for a specified request for proposal. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state the release of the submitted information may implicate the proprietary interests of Allied Fence Co.; Sundance Contracting; Hill Country Fence, Inc.; Sexton, Inc.; BPI Environmental Services, Inc.; A-Z Fence Co., LLC; Metalink Corporation; Paloma Blanca Enterprises, Inc; and Woolery Custom Fence Co. (collectively the "third parties"). Accordingly, you state, and provide documentation showing, that the LCRA notified the third parties of the request and of their right to submit arguments stating why their 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 under the Act in certain circumstances). We have considered your arguments and reviewed the submitted information.

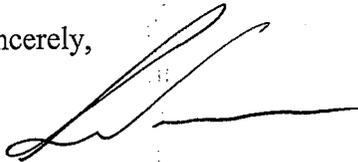
Section 552.104 of the Government Code exempts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding 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 exempt bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state the LCRA does not currently have a contract in place with the winning bidders of the specified request for proposal. You assert disclosure of the submitted bid tabulation at this time would hinder the LCRA's ability to negotiate or renegotiate the contract terms before the execution of the contract with the winning bidders. Based on your representations and our review, we conclude the LCRA has demonstrated how release of the submitted bid tabulation sheets would harm its interests in a competitive situation. Accordingly, the LCRA may withhold the submitted information under section 552.104 of the Government Code until the contract is executed.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 361754

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: Mr. Michael Dysart
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Manor, Texas 78653
(w/o enclosures)

Mr. Manny Trinidad
BPI Environmental Services, Inc.
P.O. Box 341839
Lakeway, Texas 78734
(w/o enclosures)

Ms. Linda Eppes
Sundance Contracting
400 Cowgirl Crossing
Marble Falls, Texas 78654
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Ms. Veronica Warnock
A-Z Fence Co., LLC
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Mr. Devin Wedward
Metalink Corporation
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