



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 23, 2009

Mr. Humberto F. Aguilera  
Attorneys for San Antonio Independent School District  
Escamilla & Poneck, Inc.  
P.O. Box 200  
San Antonio, Texas 78205

OR2009-16614

Dear Mr. Aguilera:

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# 362619.

The San Antonio Independent School District (the "district"), which you represent, received a request for the bids, bid tabulation sheet, and contract pertaining to a specified request for proposals. You state the district does not have information responsive to the requested contract.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code.<sup>2</sup> You also state that release of the information may implicate the proprietary interests of River City Waste, Inc., IESI Solid Waste Services, Allied Waste, and Texas Disposal Systems, Inc. (collectively, the "third parties"). Accordingly, you state you have notified the third parties of the request and of their right to

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

<sup>2</sup>Although you also cite to sections 552.101 and 552.110 of the Government Code, you have provided no arguments explaining how these exceptions are applicable to the submitted information. Therefore, we assume you no longer assert these sections. *See Gov't Code* §§ 552.301, .302.

submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." 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). 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 awarded. *See* Open Records Decision No. 541 (1990).

You state the bidding process for the specified request for proposal is not complete and a contract has not been executed. You assert release of the submitted bids and bid tabulation sheet at this stage in the bidding process would harm the district's negotiating interests and compromise the bidding process. Based on your representations, we conclude the district 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.oag.state.tx.us/open/index\\_orl.php](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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/eb

Ref: ID# 362619

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

River City Waste, INC.  
4514 Billy Sames  
Adkins, Texas 78101  
(w/o enclosures)

IESI Solid Waste Services  
2010 IH 10 West  
Seguin, Texas 78155  
(w/o enclosures)

Allied Waste  
4542 SE Loop 410  
San Antonio, Texas 78222  
(w/o enclosures)

Texas Disposal Systems, Inc.  
11601 Starcrest  
San Antonio, Texas 78247  
(w/o enclosures)