



July 10, 2002

Ms. Alejandra I. Villarreal  
Wickliff & Hall, P.C.  
Alamo National Plaza  
105 South St. Mary's Street, Suite 700  
San Antonio, Texas 78205

OR2002-3732

Dear Ms. Villarreal:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165411.

Alamo Workforce Development, Inc. (the "AWD"), which you represent, received a request for information relating to the procurement by AWD of workforce center contractors. You state that most of the requested information has been provided to the requestor. You claim, however, that the workforce center proposal submitted by Affiliated Computer Solutions ("ACS") is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You state, and provide documentation showing, that you have notified ACS, a third party whose proprietary interests have been implicated by the request, of the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.104 states that information is excepted from required public disclosure if release of the information would give advantage to a competitor or bidder. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). This office has long held that section 552.104 does not except information relating to competitive bidding situations once a contract is in effect. *See, e.g.*, Open Records Decision Nos. 541 (1990), 514 (1988), 306 (1982), 184 (1978), 75 (1975).

In this case, you inform us that AWD is currently negotiating with two contractors who have been selected for the workforce center contracts. You explain that “[t]he selection process will not be complete and the procurement process is still open until the contracts are negotiated and executed.” You argue that release of the submitted information would negatively impact AWD’s position in negotiations with these two contractors. Based on these arguments and our review of the submitted information, we conclude that the submitted information is excepted from disclosure based on section 552.104 until such time as the contract negotiations are complete and the contracts have been awarded and are in effect. As we are able to make this determination, we need not address your remaining claimed exception.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 165411

Enc: Submitted documents

c: Ms. Linda Rivas  
SER Jobs for Progress, Inc. of San Antonio  
1499 Hillcrest  
San Antonio, Texas 78228  
(w/o enclosures)

ACS State and Local Solutions  
515 Congress Avenue, Suite 1400  
Austin, Texas 78701  
(w/o enclosures)