



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 25, 2009

Ms. Holly C. Lytle
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2009-08786

Dear Ms. Lytle:

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# 347597.

El Paso County (the "county") received a request for the winning bid and scoring sheet for Bid No. 09-004, as well as a copy of the requestor's own proposal and scoring sheet.¹ You state that you have released the scoring sheet to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. You also contend the submitted information may implicate the proprietary interests of Pinnacle Social Services, L.L.C. ("Pinnacle"). You have notified Pinnacle of this request for information and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 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 exceptions you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This exception protects the 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 requires a showing of some actual or specific harm in a particular competitive situation; a general

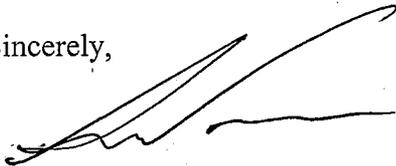
¹We note the requestor has withdrawn his request for a copy of his own proposal.

You inform us that "the El Paso County Commissioners Court voted to award the bid to [Pinnacle] subject to negotiations concerning certain contract terms." You state that negotiations are still pending and no contract has yet been approved. You contend that the release of information relating to the bidding while the negotiations are ongoing may harm the county's bargaining position or provide an advantage to one of the vendors. Based on your representations, we conclude that the county may withhold the submitted information under section 552.104. We note that the county may no longer withhold the information on this basis once the related contract has been executed and is in effect. As our ruling is dispositive, we do not address the remaining exceptions against disclosure you raise.

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 at (512) 475-2497.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 347597

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Lucia Gadney
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4626 Alabama, Suite C
El Paso, Texas 79930
(w/o enclosures)