



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2009

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

OR2009-09348

Dear Mr. Ramirez:

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# 348461.

The Lower Colorado River Authority (the "LCRA") received a request for information from a specified request for proposals. Although you take no position as to the disclosure of the requested information, you state the information may implicate the proprietary interests of third parties. You also state, and provide documentation showing, you have notified Ace Pipe Cleaning, Inc. ("Ace"), AUI, LLC ("AUI"), National Power Rodding Corporation ("NPRC"), and National Works, Inc. ("NWI") of the request and of their opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *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 the applicability of exception to disclose under Act in certain circumstances). Ace has submitted comments to our office. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, AUI, NPRC, and NWI have not submitted to this office any reasons explaining why the requested information should not be

released. Therefore, because these companies have not demonstrated any of the submitted information is proprietary for the purposes of the Act, the LCRA may not withhold any of the information pertaining to these companies to protect their interests. *See id.* § 552.110; *see also* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

Ace claims its submitted information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); *see also* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

In order to withhold the submitted information under section 552.110(b), Ace must show how the release of the information would cause substantial competitive harm based on specific factual evidence. In this instance, Ace has only made conclusory assertions of competitive harm. Therefore, we find Ace has failed to demonstrate based on specific factual evidence how the release of the submitted information would cause substantial competitive harm to its interests. Furthermore, we note Ace was awarded the contract by the LCRA in response to this request for proposals. The pricing information of a winning bidder is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Moreover, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); ORD 541. Accordingly, the LCRA may not withhold any of the submitted information under section 552.110(b). As no further exceptions to disclosure are raised, the LCRA must release the requested information to the requestor.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 348461

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

c: Destiny Resendez
National Power Rodding Corporation
2500 West Arlington Street
Chicago, Illinois 60612
(w/o enclosures)

Greg Seely
National Works, Inc.
P.O. Box 310909
New Braunfels, Texas 78131-0909
(w/o enclosures)

April Proffitt
AUI, LLC
222 West Spring Street
Cookeville, Tennessee 38501
(w/o enclosures)

Bruce Jameson
Regional Manager
Ace Pipe Cleaning Inc.
1509 Sylvania Court
Fort Worth, Texas 76111
(w/o enclosures)

Sterling Elza
Brown Dean
Attorneys and Counselors at Law
306 West 7th Street, Suite 200
Fort Worth, Texas 76102-4905
(w/o enclosures)