



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2010

Mr. Ty H. Embrey
Lloyd Gosselink
For Bastrop County Water Control and Improvement District No. 2
816 Congress Avenue, Suite 1900
Austin, Texas 78701

OR2010-00648

Dear Mr. Embrey:

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# 367135.

The Bastrop County Water Control and Improvement District No. 2 (the "district") received two requests from the same requestor for several categories of information related to two specified contracts. You state the district will release some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state that the submitted documents may contain proprietary information of third parties subject to exception under the Act. Accordingly, you provide documentation showing that the system notified G & A Partners, Paychex Business Solutions, Gevity, ProSource Management Solutions, and TriNet of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered your arguments and reviewed the submitted information.

You raise section 552.104 of the Government Code, which protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect 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 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). However, in some situations, section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids).

You inform us that the district has selected one of the bidders. You also state that the district is still in the process of negotiating a contract and that a contract has not been finalized. Further, you state that the submitted information is related to these ongoing contract negotiations. 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, 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 367135

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)