



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2010

Ms. Peggy Scheffler
Records Management Coordinator
Bexar Metropolitan Water District
P.O. Box 245994
San Antonio, Texas 78224-5994

OR2010-14615

Dear Ms. Scheffler:

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# 394637.

The Bexar Metropolitan Water District (the "district") received a request for information pertaining to the current contract for security services. You state the district has released some of the requested information to the requestor. You indicate that the district does not have a responsive bid tabulation sheet from the current contract.¹ You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception 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). The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *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 allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). However, section 552.104 does not except from disclosure

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You inform us the district "prepared an Invitation for Bid # 2010-002 soliciting potential vendors for the purpose of entering into a new three year security contract." You state that a bidder has not been selected and a contract has not been negotiated and signed. You state the current agreement for security contract runs on a month-to-month basis. You assert the submitted information, which relates to the existing agreement, could be used unfairly and to the district's detriment by the competing bidders in the ongoing bidding process. Based on your representations and our review of the information at issue, we find the district has demonstrated the submitted information is excepted from disclosure by section 552.104. We therefore 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/eb

Ref: ID# 394637

Enc. Submitted documents

c: Requestor
(w/o enclosures)