



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2010

Mr. Frank J. Garza
Davidson & Troilo
7550 West IH-10, Suite 800
San Antonio, Texas 78229-5815

OR2010-14926

Dear Mr. Garza:

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# 395377.

The Brownsville Public Utility Board (the "board"), which you represent, received two requests for bids submitted in response to a specified request for proposals. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Further, you 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 board notified Contec Systems Industrial Corporation; Environmental Systems Corporation; GE Energy Management Services, Inc. ("GE"); and Teledyne Monitor Labs 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 received comments from Babcock & Wilcox Power Generation Group, Inc., GE's successor in interest. We have considered the submitted arguments and reviewed the submitted information, a portion of which consists of a representative sample.¹

¹We 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.

Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing 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 executed. *See* Open Records Decision No. 541 (1990).

You state that, while the bidding has closed, the contract related to the specified request for proposals has not been executed. You indicate that, should negotiations with the winning bidder be unsuccessful, release of the submitted information at this time would place the board at a disadvantage in negotiations with the next highest bidder. Based on your representations and our review, we conclude the board has demonstrated that release of the submitted information would harm its interests in a competitive situation. Accordingly, the board may withhold the submitted information under section 552.104 of the Government Code until the contract is executed. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 395377

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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