



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2010

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

OR2010-15935

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# 397353.

The Lower Colorado River Authority (the "LCRA") received a request from Can-Fer Construction Company ("Can-Fer") for the following information from the winning bidder's proposal submitted in response to LCRA RFP 7561: work experience history and project references, cost breakdown per the LCRA bid form, proposed subcontractor list, and MBE Good Faith Effort documentation.¹ The LCRA received a separate request from STR Constructors, Ltd. ("STR") for all proposals submitted in response to the same RFP, excluding the proposal submitted by STR and the corporate financial information of the other bidders. You state that release of the requested information may implicate the proprietary interests of Can-Fer, Russo, and STR (collectively, the "third parties"). Accordingly, you inform us, and provide documentation showing, that you notified the third parties of the request and of their right to submit arguments to this office as to why their information should not be released. *See Gov't Code § 552.305(d)* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open

¹You inform us, and submit documentation showing, the LCRA received an initial request from Can-Fer on August 2, 2010, which sought all proposals submitted in response to LCRA RFP 7561. The submitted documentation also reflects Can-Fer subsequently withdrew the initial request and replaced it with the request at issue, which is dated August 24, 2010.

Records Decision No. 542 (1990) (statutory predecessor to section 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 received arguments from STR and an attorney for Russo, who was the winning bidder. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note STR's proposal and the corporate financial information of Can-Fer and Russo are excluded by the scope of the requests. This ruling does not address the public availability of any information that is not responsive to the requests and the LCRA is not required to release this information in response to these requests.

We also note that Russo seeks to withhold certain information that the LCRA has not submitted to this office for our review. Because some of the information that Russo seeks to withhold was not submitted by the governmental body, this ruling does not address that information and is limited to the responsive information submitted by the LCRA. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Thus, we will only address Russo's arguments against disclosure of the information that the LCRA submitted to this office for our review.

Next, an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the third party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, Can-Fer has not submitted arguments to this office explaining why any portion of its responsive information should not be released to the requestor. Therefore, we have no basis to conclude that the release of any portion of Can-Fer's responsive information would implicate this company's proprietary interests. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, we conclude the LCRA may not withhold any portion of Can-Fer's responsive information on the basis of any proprietary interests this company may have in the information.

Finally, we understand Russo to raise section 552.110(b) of the Government Code for portions of its proposal.² 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

²Although Russo does not cite to any exceptions to disclosure under the Act, section 552.110(b) is the proper exception for the substance of Russo's argument.

evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *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).

Upon review, we find Russo has failed to provide specific factual evidence demonstrating that release of any of its information at issue would result in substantial competitive harm to its interests. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Furthermore, the submitted documentation reflects Russo was the winning bidder in this instance. Although Russo argues against disclosure of its pricing information, we note this office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *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). Accordingly, none of the information at issue is excepted from disclosure under section 552.110(b) of the Government Code.

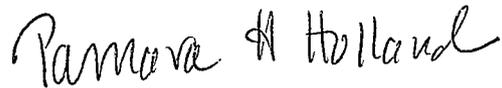
Finally, we note that some of the information at issue is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1978). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. Therefore, the responsive information must be released, but any information protected by copyright must be released in accordance with copyright law.

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 H. Holland
Assistant Attorney General
Open Records Division

THH/em

Ref: ID# 397353

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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