



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2011

Ms. Debra L. Goetz
Atlas & Hall, L.L.P.
P.O. Box 3725
McAllen, Texas 78502-3725

OR2011-07562

Dear Ms. Goetz:

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# 418897.

The Lower Rio Grande Valley Workforce Development Board, Inc. (the "board"), which you represent, received a request for the rating sheets, submitted proposals, and winning proposal pertaining to request for proposals number 10-RFP-01-700, for a workforce system coordinator. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified C2 Global Professional Services, L.L.C. ("C2"); JobWorks, Inc.; One Stop Management; and Southwest Key Workforce, L.L.C. ("Southwest") 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 C2 and Southwest. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have not submitted any rating sheets for our review. Thus, to the extent the information responsive to the request for rating sheets existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.104 of the Government Code protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104. 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 awarded. *See* Open Records Decision No. 541 (1990).

Although you state a bidder has been chosen for the project at issue, you explain a contract has not yet been awarded. You state the board is currently negotiating the final terms and conditions of the contract. You explain, however, that if the negotiations are unsuccessful, the board would begin contract negotiations with the next chosen bidder. You assert releasing the submitted bid proposals prior to the execution of a contract would harm the board's ability to negotiate a final agreement. Based on your representations, we conclude the board may withhold the submitted information at this time under section 552.104 of the Government Code.¹ *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract under negotiation).

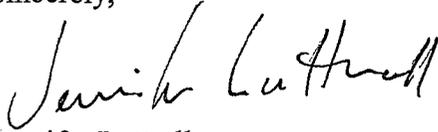
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹As our ruling is dispositive, we need not address C2's or Southwest's arguments against disclosure.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 418897

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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