



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2011

Mr. Phil Steven Kosub
Water Resource Counsel
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

OR2011-15390

Dear Mr. Kosub:

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# 433662.

The San Antonio Water System (the "system") received two requests from different requestors for the proposals submitted in response to Request for Competitive Sealed Proposal ("RFCSP") No. P-11-003-DS, and a specific presentation made to the system on a specified date. You claim that the requested information is excepted from disclosure under sections 552.101, 552.104, 552.105, and 552.113 of the Government Code. Additionally, you believe release of the requested information may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the system notified the third parties of the request for information and of their right to submit arguments stating why their information should not be released.¹ See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and

¹The third parties notified pursuant to section 552.305 are: Abengoa with Blue Water Systems ("Abengoa"); Dimmit Utility Water Supply Corporation ("Dimmit"); Earthwater Technology International, Inc.; Grass Valley Water, L.P.; Guadalupe-Blanco River Authority; Oscar Renda Contracting, Inc. ("Oscar Renda"); South Texas Water Resources ("STWR"); V.V. Water Company, L.L.C. ("V.V. Water"); and Water Exploration Co., Ltd.

explain applicability of exception in certain circumstances). We have reviewed the submitted information and the arguments submitted by representatives for Abengoa, Dimmit, Oscar Renda, STWR, and V.V. Water.

You state the system has not been able to locate or identify any information responsive to the request for the specified presentation. Thus, you explain the system sought clarification from the second requestor as to this portion of her request. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). You state that the system has not received clarification from the second requestor for this portion of her request. Thus, we find the system is not required to release information in response to that portion of the second request. However, if the second requestor clarifies that portion of her request for information, the system must seek a ruling from this office before withholding any responsive information from the requestor. *See City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed). However, we note that the Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

We address your argument under section 552.104 of the Government Code for the submitted information, as it is potentially the most encompassing exception you raise. Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." 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).

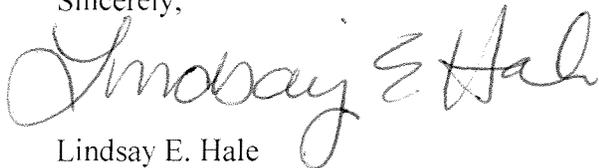
You explain the bids for the RFCSP at issue have not yet been evaluated and no contract has been awarded. You further explain the system anticipates interviews and discussion with the bidders, which will require the revision of the proposals and further negotiations. Thus, you contend disclosure of the submitted information at this time would allow each bidder an advantage that would cause harm to the system. Based on your representations and our review, we conclude the system has demonstrated how release of the submitted information would harm its interests in a competitive situation. Accordingly, the system may withhold the submitted information under section 552.104 of the Government Code until a contract

is executed. As our ruling is dispositive, we need not address your remaining arguments, or the arguments submitted by the third parties, against disclosure of the submitted information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 433662

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Mr. Trooper Smith
Counsel for Guadalupe-Blanco River
Authority
Freese and Nichols, Inc.
4040 Broadway Street, Suite 600
San Antonio, Texas 78209
(w/o enclosures)

Mr. Dean Davenport
President
Water Exploration Co., Ltd.
11844 Bandera Road, PMB #411
Helotes, Texas 78023
(w/o enclosures)

Mr. Phil Watkins
General Counsel
Dimmit Utility Water Supply Corporation
926 Chulie Drive
San Antonio, Texas 78216
(w/o enclosures)

Mr. Ray Smith
Grass Valley Water, L.P.
1155 Jones Lane
Kingsbury, Texas 78638
(w/o enclosures)

Dr. John J. Littlejohn
V.V. Water Company, L.L.C.
P.O. Box 82
Beeville, Texas 78104
(w/o enclosures)

Schuyler Marshall
Counsel for Abengoa and Blue
Water Systems
The Terrill Firm, P.C.
810 West 10th Street
Austin, Texas 78701
(w/o enclosures)

Mr. Richard Jackson
Earthwater Technology International, Inc.
15303 Huebner Road, Building 15
San Antonio, Texas 78248
(w/o enclosures)

Blakely L. Fernandez
Counsel for South Texas Water Resources
Tuggey Fernandez LLP
611 South Congress Avenue, Suite 340
Austin, Texas 78704
(w/o enclosures)

Ms. Patricia L. Stein
Counsel for Oscar Renda Contracting, Inc.
Canterbury, Elder, Gooch, Surratt, Shapiro
& Stein
5005 LBJ Freeway, Suite 1000
Dallas, Texas 75244
(w/o enclosures)