



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2012

Mr. K. Scott Oliver
Corporate Counsel
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

OR2012-05671

Dear Mr. Oliver:

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# 451695.

The San Antonio Water System (the "system") received a request for bid information from a named bidder pertaining to a specified project. You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state the submitted information may implicate the proprietary interests of a third party. Accordingly, you notified Pesado Construction Company, Inc. ("Pesado") of the request and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have received comments from a law firm representing Pesado. We have considered the submitted arguments and reviewed the submitted information.

Both the system and Pesado argue that the submitted information is excepted from disclosure pursuant to section 552.104 of the Government Code. However, section 552.104 only protects the interests of a governmental body and does not protect the interests of third

parties. *See* Open Records Decision No. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). Thus, we will not consider Pesado's arguments under section 552.104. *See* ORD 592 at 8. However, we will address the system's arguments under section 552.104 for 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. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body). 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 after all bids were received and evaluated for the project at issue, the system made the decision to reject all bids for the project and has re-bid the same project. You claim the release of the requested information would give an advantage to the other competitors and bidders. Based on your representations and our review, we conclude the system has demonstrated the applicability of section 552.104 to the requested information. Accordingly, we conclude the system may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.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 expense of others and could be detrimental to public interest in 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

¹ Because our ruling under section 552.104 is dispositive, we do not address Pesado's remaining 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,

A handwritten signature in black ink, appearing to read 'Ben Bellomy', with a stylized flourish at the end.

Benjamin A. Bellomy
Assistant Attorney General
Open Records Division

BAB/eb

Ref: ID# 451695

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Marshall L. Armstrong
Warren, Drugan & Barrows, P.C.
800 Broadway
San Antonio, Texas 78215
(w/o enclosures)