



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 8, 2013

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

OR2013-03960

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# 480870.

The San Antonio Water System (the "system") received a request for certain information pertaining to two specified proposals submitted in response to Request for Competitive Sealed Proposal ("RFCSP") No. P-11-003-DS, a named individual's calendar for a specified time period, and information pertaining to a specified trip by the named employee. You state the system released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.105, 552.111, and 552.113 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 Grass Valley Water, L.P. and V.V. Water Company, L.L.C. ("V.V.") 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 V.V. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us portions of the submitted information were the subjects of previous requests for information, in response to which this office issued Open Records Letter

Nos. 2011-15390 (2011) and 2011-19082 (2011). In Open Records Letter No. 2011-15390, we concluded the system may withhold the proposal at issue under section 552.104 of the Government Code until a contract is executed. In Open Records Letter No. 2011-19082, we concluded the system may withhold certain information under section 552.104 of the Government Code and must release the remaining information at issue. You state the law, facts, and circumstances on which Open Records Letter Nos. 2011-15390 and 2011-19082 were based have not changed. Accordingly, the system may continue to rely on Open Records Letter Nos. 2011-15390 and 2011-19082 as previous determinations and withhold or release the information at issue in those rulings in accordance with those rulings.<sup>1</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 raise section 552.104 for the remaining information. You explain the remaining information is directly related to the system’s internal review and technical evaluation of the proposals received in response to the RFCSP. You explain the system has completed the technical evaluations of the proposals and issued its report to the RFCSP Selection Committee (the “selection committee”), which subsequently met once. You state further meetings of the selection committee were abated and further evaluations of the proposals were deferred during 2012 while the system completed its 2012 Water Management Plan. You also state no contract has been awarded. You explain the system anticipates an addendum to the RFCSP will be issued in response to certain needs identified by the system’s 2012 Water Management Plan. You state the system also anticipates further technical evaluation will be necessary, and the system will need to conduct interviews and discussion with the bidders, all of which will require the revision of the proposals and further negotiations. Thus, you contend disclosure of the remaining information at this time would allow each bidder an advantage that would cause harm to the system. Based on your

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<sup>1</sup>As we are able to make this determination, we need not address the remaining arguments against the disclosure of this information.

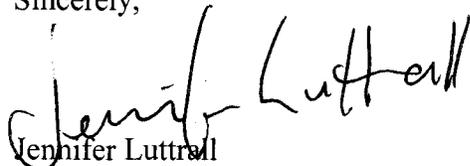
representations and our review, we conclude the system has demonstrated how release of the remaining information would harm its interests in a competitive situation. Accordingly, the system may withhold the remaining information under section 552.104 of the Government Code until a contract is executed.<sup>2</sup>

In summary, the system may continue to rely on Open Records Letter Nos. 2011-15390 and 2011-19082 as previous determinations and withhold or release the information at issue in those rulings in accordance with those rulings. The system may withhold the remaining information under section 552.104 of the Government Code.

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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 480870

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against the disclosure of the remaining information.

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