



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2013

Mr. Randall Miller
Assistant Criminal District Attorney
Civil Division
Dallas County District Attorney's Office
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2013-16976

Dear Mr. Miller:

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# 500991.

Dallas County (the "county") received a request for the bid tabulation and current contract for janitorial services for specified buildings. You state the county will release the requested bid tabulation information. You claim the remaining requested information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the remaining requested information may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the county 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 explain applicability of exception in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has

¹The third parties notified pursuant to section 552.305 are: American Facility Services; Oriental Building Services, Inc.; Selrico Services, Inc.; and Villeda Building Service, LLC.

not received comments from any of the third parties explaining why their information should not be released to the requestor. Thus, we have no basis to conclude the release of any portion of the information at issue would implicate the third parties' interests, and none of the information at issue may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, 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), 542 at 3.

Section 552.104 of the Government Code exempts 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 exempt bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). However, this office has determined in some circumstances section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (1982) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

The information at issue consists of an existing contract between the county and a third party, which you state is scheduled to terminate in September 2013. You explain the county is re-soliciting the contract and it is being competitively bid again. You assert release of Exhibit B may give an advantage to a potential bidder. Based on your representations and our review, we conclude the county has demonstrated how release of Exhibit B would harm its interests in a competitive situation. Accordingly, the county may withhold Exhibit B under section 552.104 until the new contract is executed. As no exceptions are raised for Exhibit C, the county must release Exhibit C to the requestor.

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.texasattorneygeneral.gov/open/>

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 500991

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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Selrico Services, Inc.
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San Antonio, Texas 78212
(w/o enclosures)

Mr. Kevin McCann
American Facility Services
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(w/o enclosures)

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