



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 10, 2015

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2015-11345

Dear Mr. Ramirez:

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# 567657.

The Lower Colorado River Authority (the "authority") received a request for the responses to a specified request for information issued by the authority. You claim the submitted information is exempted from disclosure under section 552.104 of the Government Code. In addition, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Corix Utilities (Texas), Inc. and Precision Utility, LLC 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 Precision Utility, LLC. We have considered the submitted arguments and reviewed the submitted information.

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 except information pertaining to a completed bidding process for which a contract has been executed. *See* Open Records Decision No. 541 (1990).

You inform us submitted information pertains to a request for proposal (“RFP”) issued by the authority and the information is being used by the authority in its evaluation of the responses it receives for the RFP. You state release of the information would harm the authority’s interests during negotiation of a final agreement based on the RFP. Based on your representations, we conclude the authority may withhold the submitted information under section 552.104 of the Government Code until such time as an agreement has been executed. *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).¹

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Ref: ID# 567657

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Darrin Barker
Corix Utilities (Texas), Inc.
1812 Centre Creek Drive, Suite 207
Austin, Texas 78754
(w/o enclosures)

Mr. Tony Bonaventure
Precision Utility, LLC
P.O. Box 5794
Katy, Texas 77491
(w/o enclosures)