

RFP Process of the Rapid City CVB

Given recent public discussion, we are writing to explain how the Rapid City Convention and Visitors Bureau (“CVB”) responds to a planner who expresses an interest in bringing visitors to Rapid City.

The CVB staff works with the planner to identify his or her needs such as the number of hotel rooms, meeting space, catering/banquet, and equipment needs. That information is input into the CVB’s computer program known as Infotrac and the resulting “lead” is sent electronically to all Rapid City BID motels and hotels that meet the planner’s criteria.

Each hotel is requested to upload its proposal onto the CVB’s computer program and provide a copy to the CVB by hard copy or electronically. The CVB prepares a summary of the proposals. It forwards the summary along with the individual hotel proposals to the meeting planner.

The proposals of each hotel (and summary) are given to the meeting planner; they are not shared with other hotels because the proposal of each hotel is considered to be propriety, confidential, and a trade secret.

After receiving the proposals (and summary), the meeting planner may call the CVB with questions, but the CVB recommends that the planner contact the hotels directly to negotiate with the hotels and decide which proposal to accept. The meeting planner may or may not advise the CVB of the results of his or her negotiations until the CVB makes its follow-up call to get the information for our InfoTrac sales records.

The CVB is not involved in negotiations with the meeting planner and does not pick the winner. Negotiating “the deal” is strictly between the planner and the hotels. In other words, the CVB is a conduit for passing information back and forth. The CVB is not a negotiator or a decision maker. The CVB does not even know the winning proposal unless the planner discloses it when we make our follow-up call for our records.

The CVB is a division of the Rapid City Chamber of Commerce, a South Dakota non-profit corporation; it’s not a government agency. There is, however, a government agency involved in the funding of the operations of the CVB. It’s known as the Bid Improvement District, commonly referred to as the BID Board.

The BID was created by a Rapid City Ordinance which requires hotels within Rapid City (50 rooms or more) to collect \$2.00 per room, per night, for every room that is rented. City government collects the \$2.00 “tax” from each hotel and delivers it to the CVB who is to use the funds to “market and promote the City of Rapid City and the hotels within the district.”

The BID Board is a unique creature of our local city government with no day –to-day operations. It has no involvement in the operations of the CVB, including the meeting planning process.

One of Rapid City’s hotel owners became upset because it was not winning what it considers to be sufficient proposals from meeting planners. That owner made various demands of the CVB and BID Board. The upset owner withdrew one of its original demands for disclosure of BID room numbers agreeing such disclosure would be inappropriate and unlawful. It persists, however, in demanding that the winning proposal rates be disclosed. It argues that it’s entitled to disclosure under South Dakota’s access to government records law because the BID Board is a government agency.

We agree that the BID Board is a government agency, but it has no involvement in the meeting planning process so has no records to be disclosed. Only the CVB is involved so only the CVB has records. Because no government agency is involved and there are no government records to be disclosed - the statutes governing access to government records simply do not apply.

Ultimately, it’s the character of the information at issue that mandates it not be disclosed. Even under the access to government records statutes, information that is proprietary, confidential, and is a trade secret must not be disclosed.

BID board member hotels and others in Rapid City – other than the one upset owner - agree that the winning proposal is proprietary, confidential, and a trade secret and should not be disclosed. To our knowledge, every other CVB in the country shares our view. Despite repeated requests, the upset owner has not identified one CVB in the country that has adopted the upset owner’s argument and discloses the information.

Legal research supports the conclusion that the information at issue is proprietary, confidential, and a trade secret. For example, in *Ovation Plumbing, Inc. v. Furton*, 33 P.3d, 1221 (Col.Ct.App. 2001), the Court held that a winning bid was a trade secret and was misappropriated by competitor for a subsequent project. Substantial damages were awarded. Beyond trade secrets, sharing such information leads to price-fixing concerns.

Members of the CVB and BID hotels - other than the one upset owner - are intensely supportive of CVB policies and procedures and will take whatever action is reasonable and necessary to protect them. Proprietary, confidential, and trade secret business information must be protected and we will.

We are available to talk with you about this at your convenience.