



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 29, 2016

Ms. Leena Chaphekar  
Assistant General Counsel  
Employees Retirement System of Texas  
P.O. Box 13207  
Austin, Texas 78711-3207

OR2016-17078

Dear Ms. Chaphekar:

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# 620747.

The Employees Retirement System of Texas (the "system") received a request for information pertaining to a contract for actuarial services awarded to Rudd & Wisdom, Inc. ("Rudd & Wisdom"), specifically: (1) Rudd & Wisdom's technical proposal; (2) Rudd & Wisdom's cost proposal; (3) Rudd & Wisdom's clarifications during the proposal process; (4) evaluation results and scoring that led to the award of the contract; (5) analysis of cost proposals and prospective contract fees; and (6) other applicable evaluation materials that were used. You state the system has released some information. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Rudd & Wisdom. Accordingly, you state, and provide documentation showing, you notified Rudd & Wisdom of the request for information and of its right to submit arguments to this office as to why the information at issue 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

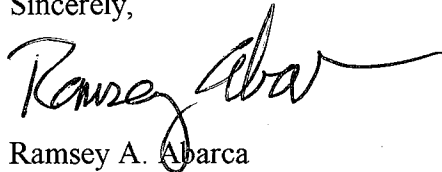
comments from Rudd & Wisdom. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You represent the information pertains to a competitive bidding situation. You state the system is required to solicit bids for actuarial services on a recurring basis. You state release of the submitted information would give the system “less negotiation power next time [the system] requests pricing for actuarial services.” You further state the release of the submitted information “would harm [the system’s] position in contractual negotiations and future commercial transactions.” After review of the information at issue and consideration of the arguments, we find the system has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the submitted information under section 552.104(a).<sup>1</sup>

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](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/bhf

---

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

Ref: ID# 620747

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosure)