



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 28, 2016

Mr. Les Trobman
General Counsel
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

OR2016-26152

Dear Mr. Trobman:

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# 635453.

The Texas Water Development Board (the "board") received a request for all bids related to a specified statement of work. You state you have released some information to the requestor. The board claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Further, the board informs us release of this information may implicate the proprietary interests of Dewberry Consultants, LLC ("Dewberry") and AECOM Technical Services, Inc. Accordingly, the board states, and provides documentation showing, it notified these third parties of the request for information and of their 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 Dewberry. We have considered the submitted arguments and reviewed the submitted information.

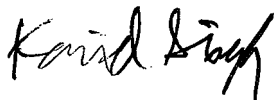
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). We understand the board to assert the submitted information pertains to a competitive bidding situation. In addition, the board

states “a bidder has been chosen but the [statement of work] is still pending signature and final approval” Furthermore, the board states there “remains a possibility that the [statement of work] will not be approved” and “another bidding process will have to be undertaken.” After review of the information at issue and consideration of the arguments, we find the board has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the board may withhold the submitted information under section 552.104(a) of the Government Code.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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/bhf

Ref: ID# 635453

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)

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