



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 29, 2016

Ms. Jo Ann Pate
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-26339

Dear Ms. Pate:

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# 635559 (Fort Worth Reference No. W054925).

The City of Fort Worth (the "city") received a request for information pertaining to a specified request for proposals. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Atlas Utility Supply Company ("Atlas"); Mueller Systems, LLC ("Mueller"); Thirkettle Corporation ("Thirkettle"); and Zenner Performance Meters, Inc. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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 Atlas, Mueller, and Thirkettle. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested 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 submitted information pertains to a competitive bidding situation. You inform us a final contract has not been awarded. You argue release of the information at issue would undermine the contract negotiation process because until a final written contract is signed, negotiations with the selected bidder may fail, causing the city to select an alternate provider or issue a new request for proposals. After review of the information at issue and consideration of the arguments, we find the city has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 635559

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)

¹As we are able to make this determination, we need not address the remaining arguments against disclosure.