



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 6, 2017

Mr. Joseph J. Gorfida, Jr.
Counsel for the City of Sachse
Nichols, Jackson, Dillard, Hager, & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

OR2017-02635

Dear Mr. Gorfida:

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# 645001.

The City of Sachse (the "city"), which you represent, received a request for all submitted documents, including data sheets, pricing, technical details, and references for each proposal submitted in response to a specified request for proposal. You state you have released some information to the requestor. Although the city takes no position on the submitted information, you state the release of this information may implicate the proprietary interests of Thirkettle Corporation d/b/a Aqua Metric Sales Company ("Thirkettle"). Accordingly, you state, and provide documentation showing, you notified Thirkettle 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 Thirkettle. We have considered the submitted arguments and reviewed the submitted information.

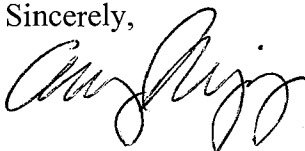
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 841. Thirkettle states it has competitors. In addition, Thirkettle states the

release of its customer list, unique processes, hardware arrangements, and software configurations would provide its competitors with cost savings and the opportunity to copy Thirkettle's process in future bidding situations resulting in financial harm and competitive disadvantages to Thirkettle. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 831, 842. After review of the information at issue and consideration of the arguments, we find Thirkettle has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude city may withhold the marked information under section 552.104(a) of the Government Code.¹ The remaining information must be released.

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,



Amy L. S. Shipp
Assistant Attorney General
Open Records Division

ALS/eb

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

Ref: ID# 645001

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)