



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 10, 2017

Ms. Jo Ann Pate
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2017-07494

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# 652882 (PIR# W058495 and W058588).

The City of Fort Worth (the "city") received two requests for the bid tabulations and results for a specified request for proposal. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of ARK Contracting Services; Atkin Bros. Equipment Company, Inc.; Jackson Construction, Ltd.; and Stabile & Winn, Inc. Therefore, the city notified the specified third parties of the request for information and of their right 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 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). You represent the information pertains to a competitive bidding situation. In addition, you state the city has not yet awarded a contract

to any of the bidders. After awarding a contract, the city must still engage in negotiations before executing that contract, and release of the submitted information will harm the city's negotiating position. Additionally, should negotiations fail you state the city will have to award the contract to another bidder or start the bidding process over, and release of the information would harm the city's position. After review of the information at issue and consideration of the arguments, we find 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).

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/tdw

Ref: ID# 652882

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Party Requestors
(w/o enclosures)