



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 18, 2017

Ms. Michele Freeland  
Legal Assistant  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2017-18910

Dear Ms. Freeland:

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# 671626 (ORR# 17-3947).

The Texas Department of Public Safety (the "department") received a request for the bid tabulation, award letter, and proposal response submitted by the winning vendor for bid number 405-17-B002446. 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 Ceda-Tex Services, Inc.; Sames, Inc.; and Concord Commercial Services, L.L.C. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of the 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 exception you claim and reviewed the submitted information.

Initially, we note you have not submitted any information responsive to the portions of the request seeking the award letter and proposal response submitted by the winning vendor. Thus, to the extent such information existed and was maintained by the department on the date the department received the request for information, we presume the department has released it. If not, the department must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no

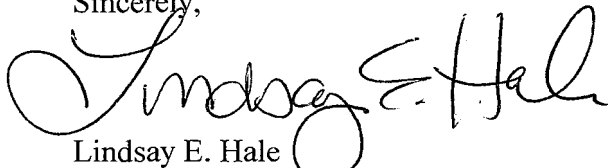
exceptions apply to the requested information, it must release the information as soon as possible).

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 submitted information pertains to a competitive bidding situation. You assert release of the information at issue would “harm [the department’s] purchasing interests and weaken [the department’s] bargaining position as it deliberates options and negotiates best value now and in the future” because it would allow competing vendors to know the prices offered, which you contend “could artificially inflate prices and prevent the [d]epartment from getting best value[.]” After review of the information at issue and consideration of your arguments, we find you have established the release of the information would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the submitted information under section 552.104(a) of the Government Code.

You also ask this office to issue a previous determination that would permit the department to withhold information under section 552.104 of the Government Code without requesting a ruling from this office. Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tdw

Ref: ID# 671626

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 3 Third Parties  
(w/o enclosures)