



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 23, 2017

Mr. Steven M. Levesque
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2017-19271

Dear Mr. Levesque:

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# 672210.

The City of Abilene (the "city") received a request for the proposals submitted in response to a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.111 of the Government Code. You also state you notified RSI Responsive Services International; Siemens Industry, Inc. ("Siemens"); Sigma Surveillance, Inc.; Tel Pro Communications; and Wyatt Electrical Services Inc. 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 received comments from Siemens. We have considered the submitted arguments and reviewed the submitted information.

Although you contend some of the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See Gov't Code § 552.110* (excepting from disclosure "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision" and "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained"). Thus, we do not address your argument under section 552.110.

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, 841 (Tex. 2015). You represent the information pertains to a competitive bidding situation. You explain the city has not yet awarded a contract for the request for proposals at issue. In addition, you state release of the submitted information could “put the [c]ity at a disadvantage.” After review of the information at issue and consideration of the arguments, we find you have established the release of the information at issue would give an 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/bw

Ref: ID# 672210

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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