



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2017

Mr. Sam Elsass
Legal Assistant
Texas Department of Public Safety
5805 North Lamar Boulevard
Austin, Texas 78773

OR2017-22123

Dear Mr. Elsass:

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# 677449 (PIR 17-5044 & 17-5119).

The Texas Department of Public Safety (the "department") received two requests for the bid tabulation of a specified bidding situation. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of some of this information may implicate the proprietary interests of Continental Flooring Company; Ace Floor Solutions, LLC; Concord Commercial Services, Inc.; and ACO Remodeling & Construction, Inc. Accordingly, you state, and provide documentation demonstrating, you notified the third parties of the request for information and of their 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 considered the submitted arguments and reviewed the submitted information.

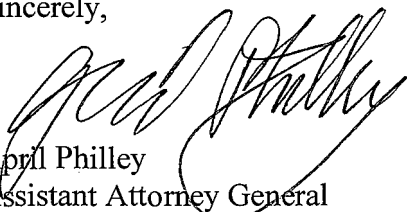
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You represent the 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 the arguments, we find the department has established the release of the submitted 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 ask this office to issue a previous determination permitting the department to withhold bid tabulations under section 552.104 of the Government Code without seeking a ruling from this office. *See* Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time.

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,



April Philley
Assistant Attorney General
Open Records Division

AP/sb

Ref: ID# 677449

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

3 Third Parties
(w/o enclosures)