



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 28, 2017

Mr. Darin Darby
Counsel for Workforce Solutions Capital Area
Escamilla & Poneck, LLP
700 North St. Mary's Street, Suite 850
San Antonio, Texas 78205

OR2017-22235

Dear Mr. Darby:

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# 678392.

Workforce Solutions Capital Area ("WSCA"), which you represent, received a request for score sheets, committee feedback, and the selected proposal for a specified request for proposals. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state you notified C2 Global Professional Services, LLC ("C2") of the request for information and of its 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 C2. We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the WSCA's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. Gov't Code § 552.301(b). You state WSCA received the request for information on July 14, 2017. Accordingly, WSCA's ten-business-day deadline was

July 28, 2017. Although you timely requested a ruling from this office, you did not raise section 552.104 of the Government Code until August 4, 2017, after the ten-business-day deadline passed. Consequently, we find WSCA failed to comply with the procedural requirements of section 552.301 of the Government.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). By failing to timely raise section 552.104 of the Government Code, we find WSCA has failed to establish a compelling reason to address its claim under this section. However, we note third party interests can provide a compelling reason to overcome the presumption of openness against disclosure of the submitted information. Accordingly, we will consider C-2's arguments against disclosure of 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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, 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. C2 states it has competitors. In addition, C2 states release of this information would allow its competitors to undercut future bids by C2. After review of the information at issue and consideration of the arguments, we find C2 has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the WSCA may withhold the submitted information under section 552.104(a).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

¹As our ruling is dispositive, we need not address C2's remaining arguments against disclosure.

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 "Emily Kunst". The signature is written in a cursive style with a long horizontal stroke at the end.

Emily Kunst
Assistant Attorney General
Open Records Division

EK/tdw

Ref: ID# 678392

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)