



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 27, 2017

Ms. Sarah Parker
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2017-26766

Dear Ms. Parker:

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# 688111.

The Texas Department of Transportation (the "department") received a request for information pertaining to purchase order number PO60144000002998 between the department and Greentree Group, Inc. ("Greentree"). The department claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the department states release of the submitted information may implicate the proprietary interests of Greentree. Accordingly, the department states, and provides documentation showing, it notified Greentree 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 received comments from Information Services Group, Inc. ("ISG").¹ We have reviewed the submitted arguments and 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

¹ISG informs us it is a sub-contractor with Greentree.

information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The department represents the information at issue pertains to a competitive procurement that the department will be issuing in the future. In addition, the department states release of the information at this time would provide an advantage to proposers in preparing their proposals or pricing information. After review of the information at issue and consideration of the arguments, we find the department has 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.²

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 688111

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.