



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2018

Mr. Sam Elsass
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2018-02092

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# 693407 (PIR# 17-8201).

The Texas Department of Public Safety (the "department") received a request for the bid tabulation, awarded contractor, and anticipated start and end date related to a specified bid. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state, and provide documentation showing, you notified Environmental Reconstruction Services, Green Star Environmental, and Rykin Pump Co. 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 considered the exception you claim 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 also assert release of the submitted

information would “harm [the department’s] purchasing interests and weaken the [d]epartment’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 it contends “could artificially inflate prices and prevent the [d]epartment from getting best value[.]” Upon review, we find you have 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 also ask this office to issue a previous determination that would permit the department to withhold bid tabulations 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, 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 693407

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)