



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 26, 2019

Mr. Lance Kennedy
Counsel for the City of Pilot Point
Messer, Rockefeller & Fort, PLLC
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2019-05342

Dear Mr. Kennedy:

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# 751884 (ORR ID: PP112718TL).

The City of Pilot Point (the "city"), which you represent, received a request for the payment bond executed by BDN Utilities, Inc. ("BDN") in connection with a specified planned development neighborhood project. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of BDN. Accordingly, you state, and provide documentation showing, the city notified BDN 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 BDN. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information, which we marked, is not responsive to the request for information because it does not consist of the payment bond specified by the requestor. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information in response to this request.

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). 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. BDN states it has competitors. In addition, BDN states release of the information at issue would give its competitors an advantage by allowing them to attack BDN’s market share, underbid BDN on public construction projects, and make decisions related to BDN’s ability to maintain or expand its business. After review of the information at issue and consideration of the arguments, we find BDN has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the responsive information under section 552.104(a) of the Government Code.¹

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/mo

Ref: ID# 751884

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address BDN’s remaining argument against disclosure of this information.