



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2019

Mr. Brian O'reilly
Counsel for the North Texas Tollway Authority
Locke Lorde, L. L. P.
600 Congress, Suite 2200
Austin, Texas 78701

OR2019-05620

Dear Mr. O'Reilly:

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# 753744 (NTTA ID 2018-03073)

The North Texas Tollway Authority (the "authority"), which you represent, received a request for information pertaining to a specified request for qualifications. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the authority states release of the submitted information may implicate the proprietary interests of CDM Smith, Inc. Accordingly, the authority states, and provides documentation showing, it notified the third party 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 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 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 authority states the information at issue pertains to a competitive bidding situation in which a contract has not been executed. The

authority further states "release of information related to the procurement could also place [the authority] at a competitive disadvantage in potential future negotiations." After review of the information at issue and consideration of the arguments, we find the authority has established the release of the information would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the submitted information under section 552.104(a) of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PS/jxd

Ref: ID# 753744

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)