



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 5, 2019

Ms. Shea Smith
Assistant City Attorney
City of Sugar Land
2700 Town Center Boulevard North
Sugar Land, Texas 77479-0110

OR2019-06125

Dear Ms. Smith:

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# 753445 (ORR# W005695).

The City of Sugar Land (the "city") received a request for vendor responses to a specified request for proposals.¹ You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of the following third parties: Arroyo Associates, Inc.; Berry Dunn McNeil & Parker, LLC; DELTAWRX, LLC; Federal Engineering, Inc. ("Federal Engineering"); Matrix Consulting Group; Mission Critical Partners, LLC ("Mission Critical"); The Novak Consulting Group, Inc.; and True North Consulting Group, LLC. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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

¹The city states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

received comments from Federal Engineering and Mission Critical. We have considered the submitted arguments 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, 841 (Tex. 2015). You state the information at issue pertains to a competitive bidding situation in which a contract has not been awarded. In addition, you state release of the information at issue before the execution of the contract would allow the requestor, who bid on the project, an advantage in this situation and future bidding situations. After review of the information at issue and consideration of the arguments, we find the city has established the release of the information at issue would give advantage to a competitor or bidder. Accordingly, we conclude the city 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,



Deborah Southerland
Attorney
Open Records Division

DS/eb

²As our ruling for this information is dispositive, we need not address the remaining arguments against its disclosure.

Ref: ID# 753445

Enc. Submitted documents

c: Requestor
(w/o enclosures)

8 Third Parties
(w/o enclosures)