



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 8, 2019

Mr. John Petrosino
Director of Compliance and Governance
Bakerripley
P. O. Box 271389
Houston, Texas 77277

OR2019-09440

Dear Mr. Petrosino:

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# 758529.

BakerRipley Community Developers ("BakerRipley") received a request for a specified request for proposals and bid tabulations related to the same. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of AHI Facility Services, Inc.; Ambassador Services, LLC; Beyond Logistics Services; GSI America, Inc.; iCLEAN, LLC; Maintenance of Houston; Marsden South, LLC; McLemore Building Maintenance, Inc.; Merchants Building Maintenance; Metroclean Commerical Building Services; Professional Janitorial Services; and U.S. Facility Tec, LLC. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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.

Initially, we note BakerRipley only submitted the specified request for proposals. We assume, to the extent any information responsive to the bid tabulations existed on the date BakerRipley received the request, BakerRipley has released it. If BakerRipley has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any third party has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, BakerRipley may not withhold the submitted information on the basis of any proprietary interest any third party may have in the 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). Although you assert the submitted information is subject to section 552.104, we find you have failed to demonstrate release of the information at issue would give an advantage to a competitor or bidder. Therefore, BakerRipley may not withhold the information at issue under section 552.104 of the Government Code. BakerRipley must release the submitted information.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/jxd

Ref: ID# 758529

Enc. Submitted documents

c: Requestor
(w/o enclosures)