



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2019

Ms. Deea Western
General Counsel
State Office of Risk Management
P.O. Box 13777
Austin, Texas 78711-3777

OR2019-10063

Dear Ms. Western:

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# 759266 (ORR# 97659-02).

The State Office of Risk Management ("SORM") received a request for the contract and winning proposal related to bill review services. SORM states it is releasing some of the requested information. SORM claims some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, SORM indicates release of the submitted information may implicate the proprietary interests of ISG Services, L.L.C., d/b/a Conduent ("Conduent"). Accordingly, SORM indicates it notified Conduent 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.

Initially, we note 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 Conduent explaining why the submitted information should not be released.

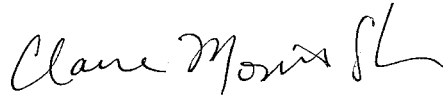
Therefore, we have no basis to conclude [3P] has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory 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, SORM may not withhold the submitted information on the basis of any proprietary interest Conduent 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 (Tex. 2015). SORM represents the information at issue pertains to a competitive bidding situation. In addition, SORM states this is a recurring procurement, explaining it is seeking to rebid the contract at issue for a term of four years, with a possibility of three additional annual renewals. Thus, SORM argues release of the information at issue, which it marked, could significantly jeopardize SORM’s future bargaining position in a recurring solicitation process by assisting bidders in determining the lowest level of service that might suffice to be awarded the contract. SORM also asserts releasing the information it marked would give all future bidders an advantage and cause harm to SORM in its ongoing procurement process. For many years, this office concluded the terms of a contract, and especially the pricing of a winning bidder, are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a briefing party need only show release of competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 841. After review of the information at issue and consideration of the arguments, we find SORM has established the release of the information it marked would give advantage to a competitor or bidder. Thus, we conclude SORM may withhold the information it marked under section 552.104(a) of the Government Code. SORM must release the remaining 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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a large initial "C" and "S".

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jxd

Ref: ID# 759266

Enc. Submitted documents

c: Requestor
(w/o enclosures)