



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 10, 2019

Mr. Joseph R. Crawford  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2019-15326

Dear Mr. Crawford:

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# 769752 (GC No. 25839).

The City of Houston (the "city") received a request for unit pricing worksheets for specified solicitations for a defined period of time. You claim some the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the remaining information may implicate the proprietary interests of Grava, L.L.C.; Horseshoe Construction; Lopez Utilities Contractor, L.L.C.; Menade Incorporated; Neerie Construction, L.L.C.; North Houston Pole Line; PM Construction & Rehab, L.L.C.; Portland Utilities Construction Co., L.L.C.; Reliance Construction Services; RePipe Construction, L.L.C.; T Construction, L.L.C.; Texas Pride Utilities; Vaught Services, L.L.C.; Vortex Turnkey Solutions, L.L.C. Accordingly, you state, and provide documentation showing, you notified the interested 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.

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) of the Government Code 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 of third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the third parties have protected proprietary interests in the submitted information. *See id.* § 552.110; Open

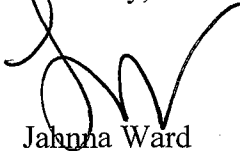
Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold any portion of the submitted information on the basis of any proprietary interest the third parties 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). You represent the information at issue pertains to an ongoing competitive bidding situation. You state the solicitation has closed, but a final contract has not been approved by the city council. In addition, you state the release of the information at issue would negatively impact negotiations between the city and the selected bidder. Further, you argue “in the event a contract is not awarded in relation to the current bidding process, the release of the responsive information would negatively impact the prices future bidders offer.” 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. Thus, we conclude the city may withhold the information you have indicated section 552.104(a) of the Government Code. The city 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](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,



Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/be

Ref: ID# 769752

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

14 Third Parties  
(w/o enclosures)