



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 17, 2019

Mr. Neal Falgoust
Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767

OR2019-23564A

Dear Mr. Falgoust:

This office issued Open Records Letter No. 2019-23564 (2019) on August 23, 2019. We have examined this ruling and determined we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on August 23, 2019. Your request was assigned ID# 795020 (ORR# C033328).

The City of Austin (the "city") received a request for submitted bids and the awarded contract related to request for proposals number 8700 DDM3000. The city claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception the city claims and reviewed the submitted representative sample of information.¹

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 city represents the information at issue pertains to a competitive bidding situation in which the bidding period has closed but the

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

city has not executed a final contract. Thus, the city states release of the submitted information would harm the city's ability to negotiate a final contract and would put bidders at an advantage should the city need to re-issue the solicitation. After review of the information at issue and consideration of the arguments, we find the city has established the release of the information would give advantage to a competitor or bidder. Thus, we conclude the city 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

Ref: ID# 795020

Enc. Submitted documents

c: Requestor
(w/o enclosures)