



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 11, 2019

Ms. Sol M. Cortez
Senior Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2019-25423

Dear Ms. Cortez:

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# 785052 (Ref. No. 19-1004-975).

The City of El Paso (the "city") received a request for information pertaining to a specified request for statement of qualifications ("RFQ"). You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code.¹ You also state release of the submitted information may implicate the proprietary interests of CDA Architects; EXIGO; Huitt-Zollars; Minjares Mora Architects, Inc.; and MNK Architects ("MNK"). Accordingly, you state, and provide documentation showing, you notified these interested third parties of the request for information and of their 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 received comments from Exigo and MNK. 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

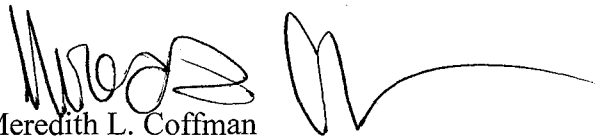
¹ Although you do not raise section 552.104 of the Government Code for Exhibits D1-D5 in your brief, we understand you to assert this exception for this information as it is duplicative of Exhibits C1-C5.

“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 submitted information pertains to a competitive bidding situation. In addition, you state the city is currently in negotiations with a third party regarding the specified RFQ, and a final contract has not been executed. 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 submitted information under section 552.104(a).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 <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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/be

Ref: ID# 785052

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.