



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 4, 2019

Mr. Allen M. Keller
Counsel for IDEA Public Schools
Schulman, Lopez, Hoffer & Adelstein, LLP
845 Proton Road
San Antonio, Texas 78258

OR2019-30971

Dear Mr. Keller:

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# 795049.

IDEA Public Schools ("IDEA"), which you represent, received a request for all transportation contracts for IDEA for a specified time period, including the estimated annual contract value as well as the contract for a specified purpose. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Texas Medical Transportation, Inc. Accordingly, you state, and provide documentation showing, you notified the third party 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 considered the exception you claim 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 "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 assert the submitted information pertains to competitive bidding situations for which IDEA solicits bids for student transportation services on a recurring basis. In addition, you state release of the information at issue would allow vendors to unfairly undercut future bids. We note the information you seek to withhold includes the terms of a contract. For many years, this office concluded the terms

of a contract and especially the pricing of a winning bidder is 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 it need only be shown release of competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 831, 839. After review of the information at issue and consideration of the arguments, we find you have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude IDEA 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,



Pearlie Gault
Attorney
Open Records Division

PG/eb

Ref: ID# 795049

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)