



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 21, 2020

Mr. Marshall Swanson
Counsel for the Port of Corpus Christi Authority of Nueces County
Welder & Leshin, LLP
800 North Shoreline Boulevard, Suite 300 North
Corpus Christi, Texas 78401

OR2020-32015

Dear Mr. Swanson:

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# 858159.

The Port of Corpus Christi Authority of Nueces County (the "authority"), which you represent, received a request for all submissions pertaining to a specified bid solicitation and a copy of the request for proposals issued by the authority. You state the authority has released some information to the requestor. You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of the following third parties: Cyret Technologies, Inc.; Denovo Ventures, LLC; Grant Thornton Public, LLC ("Grant Thornton"); iKW Solutions, Inc.; Smartbridge, LLC ("Smartbridge"); and Syntax Systems Limited, LLC. Accordingly, you state, and provide documentation demonstrating, the authority 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 Grant Thornton and Smartbridge. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

Code § 552.101. This section encompasses information made confidential by other statutes. Section 60.405 of the Water Code provides, in pertinent part:

(a) Notwithstanding Section 60.404, items other than construction services valued at more than the amount authorized by Section 60.403(a) for routine purchases or contracts may be purchased under the procedure provided by this section.

...

(e) If so provided in the request for proposals, information in proposals may not be disclosed to the public until the contract is awarded. After a contract is awarded, proposals shall be open for public inspection, except that information contained in a proposal identified as a trade secret or as confidential shall be kept confidential.

Water Code § 60.405(a), (e). Section 60.405 of the Water Code governs competitive sealed proposals for port authority districts subject to subchapter N of Chapter 60 of the Water Code that involve “items other than construction services” valued at \$50,000 or greater. *See id.* §§ 60.401(a) (providing subchapter N is only applicable to port authority districts that adopt it by resolution), .402(1); *see also id.* § 60.403(a) (providing, in part, the executive director of a port authority district may make routine purchases or contracts in an amount not to exceed \$50,000). We understand the authority has adopted subchapter N of title 60 of the Water Code. *See id.* § 60.401(a). You explain the bid solicitation specified in the present request was solicited pursuant to section 60.405 of the Water Code, pertains to the solicitation of technologies and services regarding the authority’s software system, and is valued at more than \$50,000. *See id.* §§ 60.405(a), .403(a). You state, and submit documentation demonstrating, the bid solicitation at issue provided that the proposals submitted in response to the solicitation are confidential until the conclusion of the solicitation process. *See id.* § 60.405(e). You inform us the authority has not yet awarded a contract in response to the bid solicitation at issue. Thus, you assert, and we agree, the information submitted as Exhibit D is made confidential under section 60.405(e). Accordingly, the authority must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 60.405(e) of the Water Code.¹

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

¹ As our ruling is dispositive, we need not address the arguments of Grant Thornton and Smartbridge against disclosure of the information at issue.

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/rm

Ref: ID# 858159

Enc. Submitted documents

c: Requestor

c: 6 Third Parties