



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 16, 2022

Mr. Eric Nguyen
City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2022-28558

Dear Mr. Nguyen:

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# 972730 (Ref. No. R072870).

The City of Houston (the "city") received a request for the bid tabulations pertaining to a specified solicitation. Although you take no position as to whether the submitted information is excepted from disclosure, you state release of this information may implicate the proprietary interests of Essential Equipment, L.L.C. ("Essential Equipment") and Indepth Utility Solutions, L.L.C. ("Indepth"). Accordingly, you notified these third parties of the request for information and of each company's 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 Act in certain circumstances). We have received comments from Indepth. We have considered the submitted arguments and reviewed the submitted information.

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 Essential Equipment explaining why the submitted information should not be released. Therefore, we have no basis to conclude Essential Equipment has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the

applicability of the exception). Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest Essential Equipment may have in the information.

Section 552.1101 of the Government Code provides, in relevant part, as follows:

(a) Except as provided by Section 552.0222, information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contract that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organization structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents, and

(2) give advantage to a competitor.

Gov't Code § 552.1101(a). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). Indepth asserts disclosure of the information at issue would reveal an individual approach to its pricing methodology and give advantage to a competitor. Upon review, we find Indepth has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the city must withhold the information we marked under section 552.1101(a) of the Government Code. However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101. Additionally, we find Indpeth has failed to demonstrate the applicability of section 552.1101 to any portion of the remaining information. Therefore, the city may not withhold any of the remaining information at issue under section 552.1101(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 <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,

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/eb

Ref: ID# 972730

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)