



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2015

Ms. Andrea Sheehan
Assistant General Counsel
Texas Association of School Boards
P.O. Box 400
Austin, Texas 78767-0400

OR2015-13238

Dear Ms. Sheehan:

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# 570184.

The Texas Association of School Boards, Inc., custodian of records for the Texas Local Government Purchasing Cooperative d/b/a BuyBoard (the "cooperative"), received a request for the latest contracts, price lists, and negotiated discounts from three cooperative vendors for two cooperative contracts. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.130 of the Government Code. You also state the release of the submitted information may implicate the proprietary interests of GovDeals, Inc.; Deer & Company (John Deere); and New Holland Agriculture. Accordingly, you state, and provide documentation showing, you notified these 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) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exceptions to disclosure under the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from public 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*, No. 12-1007, slip op. at 17 (Tex. June 19, 2015). You state the cooperative has specific marketplace interests in the submitted information because “the various commodities and services available for purchase through the BuyBoard may also be available for purchase not only through other purchasing cooperatives, but also in the general marketplace through an independent procurement process.” You further assert the cooperative “is one of multiple intergovernmental purchasing cooperatives that eligible entities might choose to join and through which they may opt to make purchases of commodities and services.” You inform us the submitted information “reveals information solicited from vendors and provided specifically to the [c]ooperative in a competitive proposal invitation process.” You argue the release of this information would “provide competitors with an unfair advantage by enabling them to determine prices, terms, and conditions necessary to beat the cooperative’s prices, terms, and conditions, which would harm the cooperative’s competitive interests in this marketplace.” Upon review, we find the cooperative has established the release of the submitted information would give an advantage to a competitor or bidder. Therefore, we conclude the cooperative may withhold the submitted information under section 552.104(a) of the Government 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 570184

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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