



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 16, 2015

Ms. Laura Garza Jimenez
County Attorney
County of Nueces
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2015-19316

Dear Ms. Jimenez:

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# 579534.

The Nueces County Purchasing Department (the "county") received a request for the financial offer sections of all proposals submitted to the county for an inmate phone contract in addition to the score cards and the categories on how each vendor was scored.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Global Tel* Link Corporation and IC Solutions. Accordingly, you state you notified these entities of the request for information and of their rights to submit arguments to this office as to why the information at issue 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

¹You state the county sought and received clarification of the request for information. *See Gov't Code § 552.222(b)* (stating governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

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 of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. 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, 2015 WL 3854264, at *7 (Tex. June 19, 2015). The county states the submitted information pertains to a competitive bidding situation in which a winning bidder has been selected, but a contract with that vendor has not been executed and negotiations regarding the contract are ongoing. The county asserts the release of the submitted information would harm the county’s ability to negotiate the contract because other competitors’ proposals would be known. Further, the county argues the release of the submitted information before the execution of the final agreement would disadvantage the county in obtaining a fair contract should negotiations fail with the winning bidder. Based on these representations and our review, we conclude the county has demonstrated release of the submitted information would give an advantage to a competitor or bidder. Thus, the county may withhold the submitted information under section 552.104 of the Government Code. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/som

Ref: ID# 579534

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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