



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 23, 2015

Ms. Sarah Parker
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2015-19950

Dear Ms. Parker:

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# 580254.

The Texas Department of Transportation (the "department") received a request for scoring and evaluation documents pertaining to the evaluation of specified proposals. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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*, No. 12-1007, 2015 WL 3854264, at *9 (Tex. June 19, 2015). You represent the information pertains to a competitive bidding situation. You acknowledge the submitted scoring and evaluation criteria documents relate to contracts that have been awarded and

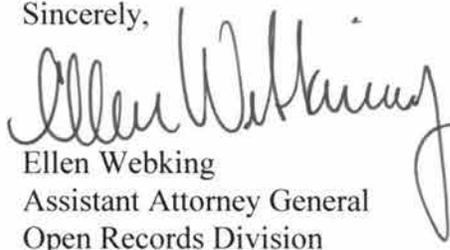
¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

executed. However, you state the department “solicits proposals for professional services, including the same types of services at issue here, on a recurring basis.” You assert the disclosure of the submitted information will undercut the department’s negotiating position with respect to future procurements for such contracts. You also state disclosure of this information would allow third-party competitors to tailor their letters of interest to specific evaluation criteria, undermining the quality of letters of interest and undermining competition among competitors. After review of the information at issue and consideration of the arguments, we find the department has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the submitted information under section 552.104(a).²

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 580254

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining argument against disclosure.