



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 21, 2015

Ms. Sol M. Cortez
Assistant City Attorney
City of El Paso
Office of the City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

OR2015-22064

Dear Ms. Cortez:

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# 584466.

The City of El Paso (the "city") received a request for information pertaining to a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. Additionally, the city states release of the submitted information may implicate the proprietary interests of Black Stallion Contractors, Inc.; CMD Endeavors, Inc. ("CMD"); Danny Sunder Construction, Inc.; Horizone Construction 1, Ltd.; International Eagle Enterprises, Inc.; Martinez Bros. Contractors, L.L.C.; Ultimate Concrete, L.L.C. ("UC"); and ZTEX Construction, Inc. ("ZTEX"). Accordingly, the city states, and provides documentation showing, it notified the 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 CMD, UC, and ZTEX. We have reviewed the submitted arguments and reviewed the submitted information.

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*, 466 S.W.3d 831 (Tex. 2015). You represent the information pertains to a competitive bidding situation. In addition, you state the procurement process relating to this request for proposals has not been completed and the contract has not yet been awarded. After review of the information at issue and consideration of the arguments, we find city has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude city 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 584466

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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

Mr. Heriberto Martinez
Manager
Martinez Bros Contractors, LLC
5875 Cromo Drive, Suite 200
El Paso, Texas 79912
(w/o enclosures)

Ms. Ruby Corral
Treasurer
International Eagle Enterprises, Inc.
P.O. Box 26336
El Paso, Texas 79926
(w/o enclosures)

Mr. Luis De Stefano
President
Horizone Construction 1 Ltd
4529 Osborne, Suite A
El Paso, Texas 79902
(w/o enclosures)

Mr. Edward Dev. Bunn, Jr.
Counsel for CMD Endeavors, Inc.
Firth Johnston Bunn Kerr Law Firm
P.O. Box 942
El Paso, Texas 79946-0942
(w/o enclosures)

Mr. Shawn Sander
Vice President
Danny Sunder Construction, Inc.
P.O. Box 370937
El Paso, Texas 79933
(w/o enclosures)

Mr. Hector Luna
President
Black Stallion Contractors, Inc.
861 Springfire Drive
El Paso, Texas 79912
(w/o enclosures)

Mr. Myer J. Lipson
Counsel for ZTEX Construction, Inc.
Lipson & Dallas, P.c.
1444 Montana Avenue, Suite 200
El Paso, Texas 79902-5657
(w/o enclosures)

Mr. Jesse Guzman
Ultimate Concrete, LLC
14300 Montana Avenue
El Paso, Texas 79938
(w/o enclosures)