



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2015

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

OR2015-22581

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# 584850.

The City of El Paso (the "city") received a request for a specified response to a specified solicitation and a specified scoring sheet. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You state release of this information may implicate the proprietary interest of Datamark Inc. ("Datamark"). Accordingly, you state, and provide documentation showing, that you notified Datamark of the request for information and of its right 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 explain applicability of exception in the Act in certain circumstances). We have received arguments submitted by Datamark. We have considered the exceptions claimed and reviewed the submitted information.

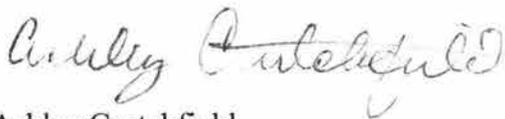
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). You represent the submitted information relates to a competitive bidding situation. The submitted documentation reflects, and you state, the city has not selected a winning bidder. After review of the information at issue and

consideration of the submitted arguments, we find the city has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the submitted responsive information under section 552.104(a).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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 584850

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. William F. Randag
President
DATAMARK, Inc.
123 West Mills Avenue, Suite 400
El Paso, Texas 79901
(w/o enclosures)

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