



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 10, 2015

Ms. Leslie O. Haby
Assistant Criminal District Attorney
Civil Section
Bexar County
101 West Nueva Street, 7th Floor
San Antonio, Texas 78205

OR2015-23694

Dear Ms. Haby:

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# 588588.

The Bexar County Purchasing Department (the "department") received a request for information pertaining to RFP # 364, Online Benefit Enrollment Services. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. You also state release of the submitted information may implicate the interests of the following third parties: Aetna; Bay Bridge Administrators, LLC; Benelogic, LLC ("Benelogic"); Businessolver; EBSO, Inc.; First Financial Group of America; and Preferred Choice Insurance. Accordingly, you notified these third parties of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 exception in certain circumstances). We have received comments from Benelogic. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

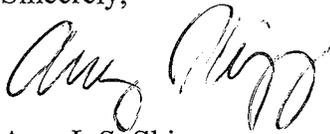
¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested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

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 submitted information pertains to a competitive bidding situation. In addition, you state release of the requested information “could give one of the other bidders an unfair competitive advantage in current or future solicitations by providing proprietary information about the other bidders.” Further, you assert the department’s contract negotiation position could be impaired in future solicitations if the submitted information was released. After review of the information at issue and consideration of the arguments, we find the department has established the release of the submitted 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) of the Government Code. As our ruling on this issue is dispositive, we do not address the remaining arguments against disclosure.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/akg

Ref: ID# 588588

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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