



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 23, 2015

Mr. Steve Smeltzer
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2015-24516

Dear Mr. Smeltzer:

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# 588373.

The Texas Department of Criminal Justice (the "department") received a request for records related to contracted services, equipment, and activities regarding Willacy State Jail and its associated facilities. You claim the submitted information is excepted from disclosure under sections 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of Corrections Corporation of America ("CCA"). Accordingly, you have notified CCA of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public 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. 466 S.W. 3d 831 (Tex. 2015). The department states the submitted information pertains to competitive bidding situations. In addition, the

department states, although the information at issue relates to contracts that have been awarded and executed, it solicits proposals for these types of services on a recurring basis and disclosure of the information at issue will provide an advantage to third-party 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) of the Government Code.

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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/bhf

Ref: ID# 588373

Enc. Submitted documents

c: Requestor
(w/o enclosures)