KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 9, 2015

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

OR2015-25766

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# 589908.

The Texas Department of Transportation (the "department") received a request for evaluation information pertaining to a specified solicitation. The department states it has released some of the requested information to the requestor. The department claims the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted representative sample of information.[1]

Section 552.104(a) 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). The department states the submitted information pertains to competitive bidding situations. In addition, the department states, although the information

[1]We 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.

at issue relates to contracts that have been awarded and executed, the department 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.[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,

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 589908

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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