



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 30, 2015

Mr. Cobby Caputo
Counsel for the Austin Community College District
Bickerstaff Heath Delgado Acosta, L.L.P.
3711 South Mopac Expressway, Building One, Suite 300
Austin, Texas 78746

OR2015-27258

Dear Mr. Caputo:

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# 592676.

The Austin Community College District (the "college"), which you represent, received a request for the pricing submitted by bidders and the scoring pertaining to a specified request for qualifications. You state you have released the requested scoring information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you notified American Constructors, SpawGlass, DPR Construction, Bartlett Cocke General Contractors, Balfour Beatty Construction, SKANSKA, and Swinerton Builders 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 legal counsel for SKANSKA, DPR Construction, and legal counsel for American Constructors. 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 that those records contain substantially different types of information than that submitted to this office.

Section 552.104 of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. 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 state the submitted information pertains to a competitive bidding situation in which a winning bidder has been selected, but a contract with that vendor has not been executed and negotiations regarding the contract are ongoing. In addition, you state “[d]isclosure of the requested information would . . . put [the college] in a competitive disadvantage should it fail to enter into a contract with the winning bidder, and therefore have to enter into negotiations with one of more of the other Third Parties in order to determine an alternate choice from amongst the bidders on the project.” Based on these representations and our review, we conclude the college has demonstrated release of the submitted information would give an advantage to a competitor or bidder. Thus, the college may withhold the submitted information under section 552.104(a) of the Government Code.² *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MT/bhf

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 592676

Enc. Submitted documents

c: Requestor
(w/o enclosures)

American Constructors
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(w/o enclosures)

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Mr. Kirby Baird
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