



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 5, 2016

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

OR2016-00265

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# 592889.

The Texas Department of Transportation (the "department") received a request for information pertaining to six specified competitive procurements. You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, although you take no position as to whether the remaining information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Garver and KSA Engineers, Inc. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of the right of each 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 considered the submitted argument and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific

factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the department may not withhold the information in Exhibit B on the basis of any proprietary interest the third parties may have in the 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 (Tex. 2015). The department states the information in Exhibit C pertains to a competitive bidding situation. In addition, the department states the procurements at issue are still under negotiation, and the contracts have not been executed. Further, the department states release of the information in Exhibit C would provide an advantage to proposers and could undermine the contract negotiation process. After review of the information at issue and consideration of the arguments, we find the department has established the release of the information in Exhibit C would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information in Exhibit C under section 552.104(a) of the Government Code.

In summary, the department may withhold the information in Exhibit C under section 552.104(a) of the Government Code. The department must release the remaining information.

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/akg

Ref: ID# 592889

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Garver
3755 South Capital of Texas Highway #105
Austin, Texas 78704
(w/o enclosures)

KSA Engineers, Inc.
4833 Spicewood Springs Road #20
Austin, Texas 78759
(w/o enclosures)