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ATTORNEY GENERAL OF TEXAS

January 22, 2016

Mr. Ronn P. Garcia
Counsel for Region 17 Education Service Center
Underwood Law Firm, P.C.
P.O. Box 16197
Lubbock, Texas 79490

OR2016-01675

Dear Mr. Garcia:

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# 594930.

The Region 17 Education Service Center (the "center"), which you represent, received a request for portions of each submitted proposal for a specified request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you notified Collier Construction Company, Lee Lewis Construction ("Lee Lewis"), and Teinert Commercial Building Services, Inc. of the request for information and of their rights 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 Lee Lewis. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note 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 only received

comments from Lee Lewis explaining why its information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has 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 center may not withhold any of the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

We understand Lee Lewis to claim its pricing information is excepted under section 552.110(b) of the Government Code, which protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6 (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm).

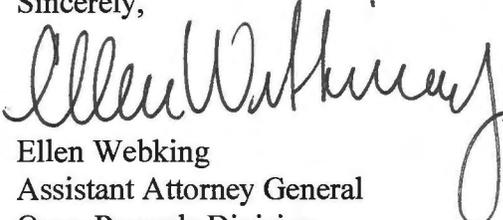
You inform us Lee Lewis was the winning bidder for the request for proposals at issue. We note the pricing information of a winning bidder, such as Lee Lewis, is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep’t of Justice Guide to the Freedom of Information Act 344-45 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Upon review, we find Lee Lewis has failed to demonstrate the release of any of its information at issue would cause it substantial competitive harm. Therefore, the center may not withhold any of the submitted information under section 552.110(b) of the Government Code. As no further exceptions to disclosure have been raised, the center must release the submitted 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,



Ellen Webking

Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 594930

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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