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ATTORNEY GENERAL OF TEXAS

March 7, 2016

Mr. Matthew K. Behrens
Assistant General Counsel
City of El Paso
El Paso Water Utilities - Public Service Board
P.O. Box 511
El Paso, Texas 79961-0001

OR2016-05200

Dear Mr. Behrens:

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# 600888.

The El Paso Water Utilities Public Service Board (the "board") received a request for information pertaining to request for qualification numbers 80-14 and 56-15. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, the board states release of the submitted information may implicate the proprietary interests of Cemex Constructions Materials South, LLC ("Cemex"), Synagro of Texas-CDR, Inc. ("Synagro"), Parker AG Services, Inc., ("Parker"), Lystek, and Jobe Materials, L.P. ("Jobe"). Accordingly, the board states, and provides documentation showing, it notified these third parties 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 Cemex, Synagro, Parker, and Jobe. We have considered the submitted arguments and reviewed the submitted 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 board represents the information at issue pertains to a competitive bidding situation relating to the disposal of water and wastewater residuals and no contract has been executed. You explain RFQ 80-14 was cancelled in August of 2015 and reinitiated as RFQ 56-15 in September of 2015. In addition,

the board states it wants to withhold the information at issue to ensure bidders do not alter their bids to the detriment of board ratepayers. After review of the information at issue and consideration of the arguments, we find the board has established the release of the information would give advantage to a competitor or bidder. Thus, we conclude the board may withhold the submitted information under section 552.104(a) of the Government Code.¹

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 600888

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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¹As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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