



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2016

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2016-11067

Dear Ms. Soucy:

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# 610029 (Comptroller ID# 12208509445).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for information pertaining to request for proposals number 529-16-0001 issued by the Texas Health and Human Services Commission (the "commission"). Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the interests of the commission. Accordingly, you state, and provide documentation showing, you notified the commission of this request and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the commission. We have considered the submitted argument and reviewed the submitted information.

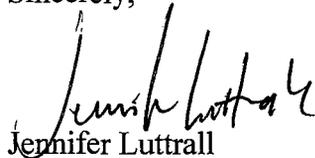
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The commission represents the submitted information pertains to a competitive bidding situation and the contract has not been executed between the

commission and the winning bidder. In addition, the commission states if negotiations with the selected bidder break down, the commission would enter into competitive negotiations with another vendor that submitted a proposal. The commission states release of the submitted information would jeopardize the commission's bargaining position were it to enter into contract negotiations with another vendor. After review of the information at issue and consideration of the arguments, we find the commission has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the comptroller may withhold the submitted information under section 552.104(a) of the Government Code on behalf of the commission.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 610029

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)