



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2016

Ms. Debra L. Goetz
Counsel for Lower Rio Grande Valley Workforce Development Board
Atlas, Hall & Rodriguez, L.L.P.
P.O. Box 3725
McAllen, Texas 78502-3725

OR2016-21724

Dear Ms. Goetz:

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# 628387.

The Lower Rio Grande Valley Workforce Development Board (the "board"), which you represent, received a request for a specified contract and corresponding proposal. 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 E. Taylor and Associates ("ETA"). Accordingly, you state you will notify ETA of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(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 reviewed the submitted information and the submitted arguments.

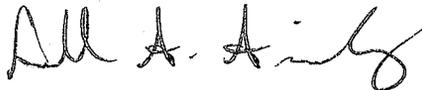
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You state, although the submitted information

pertains to a closed round of competitive bidding, the board has an open request regarding the same services. Additionally, you state release of this information could put the board at a competitive disadvantage with respect to the open round of proposals and any related negotiations. For many years, this office concluded the terms of a contract, and especially the pricing of a winning bidder, are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and it need only be shown release of competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 841. After review of the information at issue and consideration of the arguments, we find the board has established release of the information at issue 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.

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

Ref: ID# 628387

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)