KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 10, 2016

Ms. Amy Benya
Senior Assistant General Counsel
Office of Public Records
Office of the General Counsel
Lone Star College
5000 Research Forest Drive
The Woodlands, Texas 77381-4356

OR2016-25066

Dear Ms. Benya:

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# 633871 (ORR# LMC0001450).

Lone Star College System (the "system") received a request for proposals and pricing for twelve winning bidders related to request for proposals number 427.[1] 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 Burnett Specialists ("Burnett"); Clayton Personnel Services ("Clayton"); ExecuTeam Staffing, L.P. ("ExecuTeam"); JBT & Associates d/b/a Snelling Staffing ("Snelling"); Keystaff, Inc. ("Keystaff"); LATAVCO Consulting Group, L.L.C. ("LATAVCO"); Meador Staffing Services, Inc. ("Meador"); Primary Services, L.P. ("Primary"); The Spearhead Group, Inc. ("Spearhead"); Staff Solve, Inc. ("SSI"); TexcelVision, Inc. ("Texcel"); and TPI Staffing,

[1]You state the system sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Inc. ("TPI"). Accordingly, you state, and provide documentation showing, you notified Burnett, Clayton, ExecuTeam, Snelling, Keystaff, LATAVCO, Meador, Primary, Spearhead, SSI, Texcel, and TPI 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 Burnett, Keystaff, Meador, Primary, Snelling, and TPI. We have reviewed the submitted information and the submitted arguments.

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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Clayton, ExecuTeam, LATAVCO, Spearhead, SSI, or Texcel explaining why the submitted information should not be released. Therefore, we have no basis to conclude Clayton, ExecuTeam, LATAVCO, Spearhead, SSI, or Texcel 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, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the system may not withhold the submitted information on the basis of any proprietary interest Clayton, ExecuTeam, LATAVCO, Spearhead, SSI, or Texcel may have in the information.

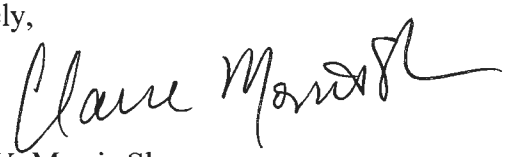
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 841. Burnett, Keystaff, Meador, Primary, Snelling and TPI state they have competitors. In addition, Burnett, Keystaff, Meador, Primary, Snelling, and TPI state release of their proposals would cause harm because access to the information at issue would give a competitive edge to their competitors. 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 a third party need only show release of its 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 Burnett, Keystaff, Meador, Primary, Snelling and TPI have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold Burnett's, Keystaff's, Meador's, Primary's, Snelling's, and TPI's proposals under section 552.104(a) of the Government Code.[2] As no exceptions to disclosure have been raised for the remaining information, the system 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 633871

c: Requestor

12 Third Parties

---

[2]As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.