



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 14, 2016

Ms. Jacqueline E. Hojem
Public Information Coordinator
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

OR2016-25308

Dear Ms. Hojem:

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# 634243 (MTA No. 2016-0517).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for information related to the winning proposals submitted in response to METRO RFQ1600003 – Architectural and Engineering Services. Although the authority takes 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 Midtown Engineers, LLC ("Midtown") and Huitt-Zollars, Inc. ("Huitt-Zollars"). Accordingly, you state, and provide documentation showing, you 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 Midtown and Huitt-Zollars. We have considered the submitted arguments and reviewed the submitted information.

Midtown and Huitt-Zollars state their information is excepted from disclosure under section 552.104 of the Government Code.¹ 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. Midtown and Huitt-Zollars state they have competitors. In addition, Huitt-Zollars states release of its information “will provide that competitor with an unfair and unjust competitive advantage on future projects.” Midtown states release of its information “would provide potential competitors an insight into [its] internal processes and approaches. This insight would remove any competitive advantage developed by [Midtown] and allow other engineering consultants the opportunity to mirror our internally developed and executed approach.” After review of the information at issue and consideration of the arguments, we find Midtown and Huitt-Zollars have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority 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,



Erin Groff
Assistant Attorney General
Open Records Division

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¹Although Midtown does not raise section 552.104 of the Government Code in its brief, we understand it to raise this exception based on the substance of its arguments.

Ref: ID# 633243

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)