



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2009

Ms. Neera Chatterjee
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2009-15634

Dear Ms. Chatterjee:

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# 360330.

The University of Texas System (the "system") received a request for the bid tab and list of subcontractor bidders for a specified project. You claim the submitted bid proposal information is excepted from disclosure under sections 552.104 and 552.137 of the Government Code. Furthermore, you state release of the submitted information may implicate the proprietary interests of The Beck Group ("Beck"), Environmental Growth Chambers, and RW Smith & Co. Accordingly, you state the system notified each company of the request and of its right to submit arguments to this office as to why the submitted bid proposal information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.104 of the Government Code protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104. The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes

to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990).

Although you acknowledge a contract has been executed between the system and the general contractor for the project at issue, you state a contract between the general contractor and a subcontractor for a portion of the project has not yet been awarded. You explain a subcontractor has not been chosen at this point and the system has "ultimate input into and review of the selected subcontractor." You assert release of the bid proposals submitted by subcontractors at this stage in the bidding process would harm the system's and its general contractor's ability to negotiate a final agreement with a subcontractor. Based on your representations, we conclude the system may withhold the submitted subcontractor bid proposal information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure for portions of the 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 360330

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)

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Mr. Phil Summer
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