



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2010

Mr. Damon C. Derrick
Office of General Counsel
Stephen F. Austin State University
P.O. Box 13065, SFA Station
Nacogdoches, Texas 75962-3065

OR2010-01417

Dear Mr. Derrick:

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# 368626.

Stephen F. Austin State University (the "university") received two requests for the following information related to project SFA HAZBLDG: copies of the quotations submitted by all bidders other than the first requestor and all companies' information pertaining to this bid other than that of the second requestor. You claim the submitted bid proposals are excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted bid proposals may implicate the proprietary interests of third parties US Chemical Storage, LLC ("US Chemical"), A&A Sheet Metal Products, Inc. ("A&A"), and Safety Storage, Inc. ("Safety Storage"). Accordingly, you state, and provide documentation showing, you notified US Chemical, A&A, and Safety Storage of the university's receipt of the requests for information and of each company's right to submit arguments to this office as to why its information should not be released to the requestors. *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 considered the submitted comments and have reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). 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).

You state the invitation to bid for project SFA HAZBLDG was canceled prior to an award being made and that a new invitation to bid will be issued in the near future. You state release of the bids received on the prior invitation may harm the university's interests in this competitive bidding situation by influencing future bidders to base their bids only on the past bids from other companies rather than bidding the lowest or best possible bid. You indicate if the submitted bid proposals are released, a company who receives the released bid proposals would gain a competitive advantage because the company would be able to base its bid on the past bids. Based on your representations and our review, we conclude the university has demonstrated how release of the submitted bid proposals would harm its interests in a competitive situation. Accordingly, the university may withhold the submitted bid proposals under section 552.104 of the Government Code. As our ruling is dispositive, we need not address any remaining arguments against disclosure of the submitted bid proposals.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 368626

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Dustin Bucher
US Chemical Storage, LLC
355 Industrial Park Drive
Boone, North Carolina 28607
(w/o enclosures)

Ms. Christina Schult
A&A Sheet Metal Products
5122 North State Road, 39
LaPorte, Indiana 46350
(w/o enclosures)

Mr. Kevin Kalk
A&A Sheet Metal Products
5122 North State Road, 39
LaPorte, Indiana 46350
(w/o enclosures)
