



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2010

Mr. Scott A. Kelly
Deputy General Counsel
The Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2010-02217

Dear Mr. Kelly:

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# 370285.

The Texas A&M University System (the "system") received a request for the winning and second-highest ranked proposals to a specified request for quotations and the professional backgrounds and registrations of those involved in the selection. You state that, to the extent the system has information related to those involved in the selection, it will be released. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

We note the requestor has agreed to the redaction of any information identified as proprietary by the bidders. Therefore, any such information within the requested documents is not responsive to the present request for information. Our ruling does not address this non-responsive information, and the system need not release this information in response to the request.

¹Although you initially raise sections 552.101 and 552.110 of the Government Code, you do not present any arguments against disclosure under these sections. Thus, we assume you no longer urge these exceptions. Gov't Code §§ 552.301, .302.

²We understand you to assert the submitted information is a representative sample of the requested information. We assume that the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.104 of the Government Code, which protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the 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). However, in some situations, section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids).

You inform us that the system has recommended one of the bidders for the contract at issue. You also state that a contract has not been finalized. Further, you state that release of the information at issue could harm the system's ability to negotiate a final agreement. Based on your representations and our review, we conclude the system may withhold the responsive information under section 552.104 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.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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Mr. Scott A. Kelly - Page 3

Ref: ID# 370285

Enc. Submitted documents

c: Requestor
(w/o enclosures)