



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 10, 2010

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

OR2010-08486

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# 382262.

The University of Texas System (the "university") received a request for the scoring of the requestor's and the winning bidder's submissions, as well as a copy of the winning bid relating to contractor employee screening services.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. Further, you state that the submitted documents may contain proprietary information of a third party subject to exception under the Act. Accordingly, you provide documentation showing that the university notified FC Background, LLC of the request for information and of its 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 considered the exception you claim and reviewed the submitted information.

Initially, we note you have indicated information in the submitted documents that you state is nonresponsive to the present request for information, as it pertains to companies other than those named by the requestor. Therefore, the information you have indicated is not responsive to the present request. The university need not release nonresponsive information in response to this request, and this ruling will not address that information.

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<sup>1</sup>We note the university received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

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 executed. *See* Open Records Decision No. 541 (1990).

You state that while the bidding has closed, the contract for contractor employee screening services has not been executed. You also state negotiations are ongoing, and the university may "have to revisit other submitted proposals to determine an alternate choice from the remaining vendors." You further state that because the contract has not been executed, release of the submitted information at this time would place the university at a disadvantage in obtaining a fair contract should the initial negotiations fail. Based on your representations and our review, we conclude the university has demonstrated that release of the submitted information would harm its interests in a competitive situation. Accordingly, the university may withhold the responsive submitted information under section 552.104 of the Government Code until the contract is executed.

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](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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

Ref: ID# 382262

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)