



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2010

Mr. R. Brooks Moore
Assistant General Counsel
Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845

OR2010-09021

Dear Mr. Moore:

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# 383830 (TAMU 10-150 & TAMU 10-197).

The Texas A&M University (the "university") received two requests for information relating to the university's Master Security Plan RFP Main 10-0007. The first request seeks all information related to the RFP. The second request seeks the top five proposals and scoring sheets. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the information responsive to the second request may implicate the proprietary interests of third parties Kroll Security Group, Inc. ("Kroll"), Safir Rosetti, Threat Analysis Group, and TranSystems. Accordingly, you state, and provide documentation showing, you notified these third parties of the university's receipt of the second request for information and of their right to submit arguments to this office as to why their information should not be released to the requestor. *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). Kroll has responded to this notice. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code 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 a governmental body's interests in competitive bidding situations. *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 that a contract for the project related to the submitted information has not been finalized. You further state that release of the requested records would create potential harm to the university's ability to negotiate a final agreement. Based on these representations, we find that the university may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to public interest in the contract under negotiation).

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 383830

Enc. Submitted documents

c: Requestors
(w/o enclosures)

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