



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2011

Ms. Zeena Angadicheril
University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2909

OR2011-00270

Dear Ms. Angadicheril:

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# 404979 (OGC# 133875).

The University of Texas Medical Branch at Galveston (the "university") received a request for (1) the contract for accounting services between the university and Mir Fox Rodriguez, P.C. ("MFR"); (2) the contract between the university and MFR from 2009 identifying a named company as a historically underutilized business; (3) documents showing MFR's obligations to the university regarding MFR's use of historically underutilized businesses in general; (4) notices of non-compliance sent by the university to MFR in relation to historically underutilized businesses; and (5) information relating to the resolution or settlement of the university's non-compliance complaint. You state the university does not have information responsive to item four of the request.¹ You also state the university is releasing information responsive to item five of the request. Although you take no position with respect to the public availability of the requested information, you have notified MFR of the request and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Decision No. 542 (1990) (determining that 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 received and considered comments from MFR and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing an interested party may submit comments stating why information should or should not be released).

MFR raises section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information that is considered to be confidential under other law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). However, MFR has failed to direct our attention to any law, nor are we aware of any law, under which any of the information at issue is considered to be confidential for purposes of section 552.101. Therefore, none of the submitted information may be withheld under section 552.101.

MFR argues portions of the submitted contract are excepted from disclosure pursuant to section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999).

MFR seeks to withhold its pricing information and its subcontractor information; including vendor identification numbers, percentage of work to be completed by the subcontractors, and amount to be paid to subcontractors, under section 552.110(b). Upon review of MFR's arguments and the information at issue, we conclude MFR has not made the specific factual or evidentiary showing that release of the information at issue would cause MFR substantial competitive harm. *See* Open Records Decision No. 319 at 3 (1982) (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). Further, we note the pricing information contained in a contract with a governmental body, such as the contract at issue, is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices

charged government is a cost of doing business with government). Moreover, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). We therefore conclude the university may not withhold any of the information at issue under section 552.110(b). As no other exceptions to disclosure are raised, the university must release the submitted 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 404979

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)