



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2011

Ms. Leena Chaphekar
Assistant General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 13207

OR2011-08695

Dear Ms. Chaphekar:

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# 422165.

The Employees Retirement System of Texas (the "system") received a request for information pertaining to request for proposals number 327-94656. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 executed. *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 state the submitted information relates to a request for proposals for securities lending and cash management services. You inform us ten companies responded and Deutsche Bank ("Deutsche") was selected as the highest-ranked proposer. You state negotiations with Deutsche remain ongoing and a contract has not yet been executed. You explain that, if the system fails to reach an agreement with Deutsche, the system may terminate negotiations and seek an agreement with the next highest-ranked proposer. You contend the release of the submitted information would place the system at a competitive disadvantage in future negotiations for these services and harm the system's ability to negotiate a final agreement. Based on your representations and our review, we conclude the system may withhold the submitted information under section 552.104 of the Government Code, until such time as the contract has been 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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eb

Ref: ID# 422165

Enc. Submitted documents

cc: Requestor
(w/o enclosures)