



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2011

Mr. Fernando C. Gomez
Vice Chancellor and General Counsel
The Texas State University System
200 East 10th Street, Suite 600
Austin, Texas 78701-2407

OR2011-10885

Dear Mr. Gomez:

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# 425276.

Texas State University-San Marcos (the "university") received a request for "the itemized bid tab for the previous Job Order Contracting for General Contractors." You claim that 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.

Initially, we note you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). You do not assert, however, nor does our review of our records indicate, you have been authorized to withhold any of the redacted information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); ORD 673. Because we are unable to discern the nature of the redacted information, the university has failed to comply with section 552.301, and such information is presumed public under

section 552.302. See Gov't Code §§ 552.301(1)(D), .302. Thus, we conclude that the university must release the redacted information to the requestor. If you believe that the redacted information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

We next address your argument for the remaining information. Section 552.104 of the Government Code excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). 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 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978) (section 552.104 no longer applicable when bidding had been completed and contract is in effect). However, this office has determined that under some circumstances, section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar good on a recurring basis. *Id.*

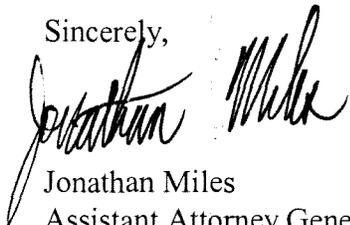
The remaining information consists of the itemized bid tabulation from the university's previous Request for Proposals ("RFP") for General Contractors. However, you inform us the university is currently seeking bids for a similar RFP. You state the requested itemized bid tabulation "is the same as the bid tab that will be used to evaluate bids received in response to the current RFP." You further state that because the bid tabulation provides "coefficient information (weighting)" that will be used in the bid evaluations, release of the submitted information will enable the requestor to obtain an advantage in the development of the bid, and, thus, negatively impact the university's ability to have a fair and competitive bidding process. Based on your representations and our review, we find you have demonstrated release of the submitted information would cause specific harm to the university's interest in this particular competitive situation. Accordingly, the university may withhold the remaining non-redacted 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,

A handwritten signature in black ink, appearing to read "Jonathan Miles". The signature is written in a cursive style with a large initial "J".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 425276

Enc. Submitted documents

c: Requestor
(w/o enclosures)

