



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2011

Ms. Talibah Young
Assistant General Counsel
University of Houston System
311 E. Cullen Building
Houston, Texas 77204

OR2011-14989

Dear Ms. Young:

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# 433171.

The University of Houston (the "university") received a request for all proposals submitted for a specified university building project. Although you take no position on whether the requested information is excepted from disclosure, you state release of this information may implicate the proprietary interests of D.E. Harvey Builders ("Harvey"), Gilbane Building Company ("Gilbane"), Hensel Phelps Construction Company ("Hensel Phelps"), Tellepsen Builders, L.P. ("Tellepsen"), and Turner Construction Company ("Turner"). Accordingly, you have notified these third parties of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from Hensel Phelps and Tellepsen. We have reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received correspondence from Harvey, Gilbane, or Turner. Thus, Harvey, Gilbane, and Turner have not demonstrated that they have a protected proprietary interests in any of their submitted information. *See id.* § 552.110(a)-(b); Open

Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the university may not withhold any of Harvey's, Gilbane's, or Turner's submitted information on the basis of any proprietary interests Harvey, Gilbane, and Turner may have in their information. However, we will consider Hensel Phelps's and Tellepsen's arguments against disclosure under section 552.110 of the Government Code.

Section 552.110(b) of the Government Code protects "[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 requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Hensel Phelps and Tellepsen claim portions of their submitted information are excepted from disclosure under section 552.110(b) of the Government Code. Upon review, we find Hensel Phelps has demonstrated its pricing information constitutes commercial or financial information, the release of which would cause the company substantial competitive harm. Accordingly, the university must withhold this information, which we have marked, under section 552.110(b) of the Government Code. However, we find Hensel Phelps has failed to demonstrate any of its remaining information constitutes commercial or financial information, the release of which would cause the company substantial competitive harm. Accordingly, no portion of Hensel Phelps's remaining information may be withheld under section 552.110(b) of the Government Code. Additionally, we find Tellepsen has made only conclusory allegations that the release of the information it seeks to withhold would result in substantial damage to its competitive position. Thus, Tellepsen has not demonstrated that substantial competitive injury would result from the release of any of its information at issue. *See* Open Records Decision Nos. 661, 509 at 5 (1988) (because bid specifications and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (information relating to organization and personnel, professional references, market studies, and qualifications are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Further, we note that Tellepsen was selected as an approved vendor in this instance. 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* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal

cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Accordingly, no portion of Tellepsen's proposal may be withheld under section 552.110(b).

In summary, the university must withhold Hensel Phelps's pricing information, which we have marked, under section 552.110(b) of the Government Code. The remaining information must be released.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 433171

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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