



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2011

Mr. Eric D. Bentley
Assistant General Counsel
University of Houston System
311 E. Cullen Building
Houston, Texas 77204-2028

OR2011-15409

Dear Mr. Bentley:

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# 433747.

The University of Houston (the "university") received two requests for the bid tabulations for the University Center, Cougar Place, and West Dining Hall projects. 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 Austin Commercial; Gilbane Building Company; Hensel Phelps Construction Company; J.T. Vaughn Construction, L.L.C.; Linbeck Group, L.L.C.; McCarthy and Kirksey Architecture; Pierce Goodwin Alexander & Linville; SpawGlass Construction Corporation; Tellepsen Builders, L.P. ("Tellepsen"); and Turner Construction Company. Accordingly, you have notified these third parties of the requests and of their right to submit arguments to this office as to why the requested 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 Tellepsen. We have considered the submitted arguments and reviewed the submitted information.

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 only received correspondence from Tellepsen. Thus, the remaining third parties have not demonstrated they have a protected proprietary interest in any of the 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 the submitted information on the basis of any proprietary interests the remaining third parties may have in the information. We will, however, consider Tellepsen's arguments against disclosure.

Initially, we note Tellepsen seeks to withhold information the university has not submitted for our review because it is not responsive to the instant requests for information. This ruling does not address information beyond what the university has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the university submitted as responsive to these requests for information. *See id.*

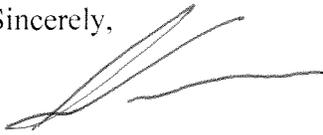
Tellepsen raises section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" *Id.* § 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. *Id.*; *see also* ORD 661 at 5.

Upon review of Tellepsen's arguments under section 552.110(b) of the Government Code, we find Tellepsen has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the submitted information would cause it substantial competitive harm. We note Tellepsen was the winning bidder with respect to the University Center project for which Tellepsen submitted a bid response and the pricing information of a winning bidder 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. *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 344-45 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). As no further exceptions against disclosure are raised, the submitted 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 433747

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Richard Sasser
Austin Commercial
3000 Wilcrest Drive, #240
Houston, Texas 77042
(w/o enclosures)

Mr. Joseph Glowacki
Turner Construction Company
4263 Dacoma
Houston, Texas 77092
(w/o enclosures)

Mr. Thomas D. Fisher
Hensel Phelps Construction Company
8326 Cross Park Drive
Austin, Texas 78754
(w/o enclosures)

Mr. Tom Vaughn
J.T. Vaughn Construction, LLC
10355 Westpark Drive
Houston, Texas 77042
(w/o enclosures)

Mr. William Scott
Linbeck Group, LLC
3900 Essex Lane, #1200
Houston, Texas 77027
(w/o enclosures)

Mr. Tad Lewis, Leed AP
McCarthy + Kirksey Architecture
8 Greenway Plaza, #1010
Houston, Texas 77046
(w/o enclosures)

Mr. David Andrews, AIA
Pierce Goodwin Alexander & Linville
3131 Briarpark, # 200
Houston, Texas 77042
(w/o enclosures)

Mr. Brent Ivey
Gilbane Building Company
1331 Lamar Street, #1170
Houston, Texas 77010
(w/o enclosures)

Mr. Michael P. Emmons
SpawGlass Construction Corporation
13800 West Road
Houston, Texas 77041
(w/o enclosures)

Mr. Brian Cooper
For Tellesen Builders
Stuber Cooper Voge, P.L.L.C.
2600 Network Boulevard, Suite 305
Frisco, Texas 75034
(w/o enclosures)