



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2011

Mr. Dan Junell
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701

OR2011-17753

Dear Mr. Junell:

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# 437752.

The Teacher Retirement System ("TRS") received two requests from different requestors for (1) information related to the TRS Enterprise Application Modernization project ("TEAM") and (2) all Quality Assurance Team ("QAT") documents submitted to the Legislative Budget Board (the "LBB") or QAT regarding TEAM during a specified time period and all communications from TRS to the LBB regarding TEAM during a specified time period. You state you have released most of the responsive information to the requestors. You claim some of the submitted information is excepted from disclosure pursuant to sections 552.104 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the information at issue is subject to section 552.022 of the Government Code. Section 552.022(a) provides in relevant part the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(5) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 2 (to be codified as an amendment to Gov't Code § 552.022(a)). Although you assert this information is excepted from disclosure under section 552.111, this section is discretionary and does not make information confidential under the Act. *Id.* §§ 3-26, 28-37 (providing for “confidentiality” of information under specified exceptions); *see* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Therefore, TRS may not withhold the information subject to section 552.022 under section 552.111. However, because information subject to section 552.022 may be withheld under section 552.104 of the Government Code, we will consider your claim under this exception. *See* Gov't Code § 552.104 (b) (information protected by section 552.104 not subject to required public disclosure under section 552.022(a)).

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 information you have marked in Exhibits 1.2 and 1.5(a) relates to a request for offers (“RFO”) to provide services for the implementation of the TEAM program. You inform us that, although TRS is currently in negotiations with a vendor, a contract has not been executed. You assert release of the information at issue would put TRS at a competitive disadvantage by revealing TRS’s analysis of its TEAM projects and estimated budgets for the current RFO and future projects. Based on your representations and our review, we conclude TRS may withhold the information you have marked under

section 552.104 of the Government Code, until such time as the contract has been executed.¹ As you raise no exceptions to disclosure of the remaining information, it 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 437752

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.