



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2011

Ms. Ursula Parks
Deputy Director
Texas Legislative Budget Board
1501 North Congress Avenue, Fifth Floor
Austin, Texas 78701

OR2011-17786

Dear Ms. Parks:

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# 437742.

The Texas Legislative Budget Board (the "board") received a request for (1) last updated State Project Portfolio and quality assurance review status as referenced in the QAT Policy and Procedure Manual and (2) business cases, business case workbooks, statewide impact analysis, project plans, project charters, review gate approvals, acquisition plans and corrective action plans submitted to the board during a specified time period. You state you have released some of the responsive information to the requestor. You claim some of the submitted information is excepted from disclosure pursuant to sections 552.104 and 552.110 of the Government Code. You indicate release of some of the submitted information may implicate the proprietary interests of the Teacher Retirement System of Texas ("TRS"), which you notified of the request. We have received comments from TRS. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

The board and TRS raise 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." *Id.* § 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).

TRS explains the information the board submitted as Exhibit G consists of TRS's Business Case Workbook for the TRS Enterprise Application Modernization project ("TEAM"). TRS states portions of Exhibit G contain significant budgetary, analytical, and strategic details concerning specific project budgets and relate to a request for offers ("RFO") to provide services for the implementation of the TEAM program. TRS informs us that, although TRS is currently in negotiations with a vendor, a contract has not been executed. TRS asserts 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 TRS's representations and our review, we conclude TRS may withhold the information we have marked under section 552.104 of the Government Code, until such time as the contract has been executed.¹ As no other exceptions have been raised 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 Luttrall
Assistant Attorney General
Open Records Division

JLU/dls

¹As our ruling is dispositive, we need not address the board's or TRS's remaining argument against disclosure.

Ref: ID# 437742

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Dan Junell
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701
(w/o enclosures)