



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2011

Ms. Sandra Poel
Senior Contracts Paralegal & Public Information Coordinator
Texas Guaranteed Student Loan Corporation
P.O. Box 83100
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OR2011-18892

Dear Ms. Poel:

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# 440558.

The Texas Guaranteed Student Loan Corporation ("TG") received a request for "the award items for the 2009 procurement," including (1) the signed contract, (2) the evaluation/scoring document, (3) a list of companies that requested the RFP and that submitted a proposal, (4) any reports related to contract performance, and (5) the 2009 RFP and any associated addendums. You claim that the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.139 of the Government Code. You also explain this information may contain third party proprietary information subject to exception under the Act. Accordingly, you have notified EAS, Inc., Account Control Technology, Inc., General Revenue Corporation ("General Revenue"), Progressive Financial Services, Inc., Regional Adjustment Bureau, Inc., Van Ru Credit Corporation, and Windham Professionals, Inc. of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); 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 considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from General Revenue.

Initially, we note General Revenue seeks to withhold information TG did not submit for our review.¹ Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by TG. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Next, 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 EAS, Inc., Account Control Technology, Inc., Progressive Financial Services, Inc., Regional Adjustment Bureau, Inc., Van Ru Credit Corporation, or Windham Professionals, Inc. Although you argue the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the proprietary interests of third parties, not the interests of a governmental body. Thus, as we have not received any arguments from the third parties listed above, we have no basis for concluding that any portion of the submitted information is excepted from disclosure under section 552.110. *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, TG may not withhold the submitted information on the basis of section 552.110 of the Government Code.

You also raise section 552.104 of the Government Code for the information in Exhibit B, which excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 104(a). 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 awarded. *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); *see also Open Records Decision No. 309* (suggesting that such principle will apply

¹General Revenue seeks to withhold portions of its proposal submitted in response to the procurement at issue. However, we note the request by its terms does not seek the actual responses from third parties to the request for proposals.

when governmental body solicits bids for same or similar goods or services on recurring basis).

You state that “TG uses the same evaluation methodology for soliciting the same services on a recurring basis.” You further state that “the contracts at issue are for 1 year, with 3 renewals” and that “at each year, the parties have the option of renewing the contract or letting it lapse,” so that “the re-solicitation on the contract could potentially be each year, but no later than 2013.” You assert that release of the information at issue “would cause injury to future procurements.” Based on our review of your arguments and the submitted information, we find in this instance that you have adequately demonstrated that release of the information at issue would cause potential harm to TG’s interests in the upcoming competitive solicitation. Accordingly, we conclude that TG may withhold the information in Exhibit B under section 552.104 of the Government Code.

With regard to the information in Exhibit C, you raise sections 552.139 and 2059.055 of the Government Code. Section 552.139 of the Government Code provides:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report;

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body’s or contractor’s electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov’t Code § 552.139. You state the information in Exhibit C relates to computer network security. You explain this information reveals “the security sufficiency and the identification of the systems that are used by the vendors.” Based on your representations and our review, we find you have not demonstrated how the information in Exhibit C relates to computer network security, or to the design, operation, or defense of TG’s computer network as contemplated in section 552.139(a). Further, we find you have failed to explain how the information at issue consists of a computer network vulnerability report or assessment as

contemplated by section 552.139(b). Accordingly, TG may not withhold any of the information in Exhibit C under section 552.139 of the Government Code.

Section 2059.055 of the Government Code provides in pertinent part:

(b) Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;
- (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
- (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Gov't Code § 2059.055(b). You argue the information in Exhibit C is confidential pursuant to section 2059.055 of the Government Code. We note section 2059.055 only applies to network security information. Chapter 2059 is entitled "Texas Computer Network Security System," and section 2059.001(3) of the Government Code defines "network security" as "the protection of computer systems and technology assets from unauthorized external intervention or improper use." *See id.* § 2059.001(3). Upon review, we find you have failed to explain how the information at issue consists of network security information as defined above. Thus, we find the information in Exhibit C does not constitute confidential network security information as described in section 2059.055. Accordingly, TG may not withhold any of the information in Exhibit C under section 2059.055 of the Government Code.

In summary, TG may withhold the information in Exhibit B under section 552.104 of the Government Code. The remaining information must be released to the requestor.

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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 440558

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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