



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 28, 2012

Ms. Zeena Angadicheril  
Office of the General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2012-03074

Dear Ms. Angadicheril:

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# 446672 (OGC No. 141304).

The University of Texas at Austin (the "university") received a request for four categories of information pertaining to Job Order Contracts. You state you have released some of the information to the requestor. You claim the remaining submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Alpha Building Corporation and Warden Construction Company 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); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code 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 at issue relates to existing Job Order Contracts executed by the university. However, you explain there is also an outstanding Request for Proposals (“RFP”) for the same services. You inform us bidding for this RFP is not yet closed, and therefore, no final agreements have been executed. You contend release of the information you have marked would harm the university’s ability to negotiate final agreements. Based on your representations and our review, we conclude the university may withhold the information you have marked under section 552.104 of the Government Code, until such time as the contracts have been executed.

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](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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/em

Ref: ID# 446672

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Gregory Lagimoniere  
Warden Construction Company  
3653 Regent Boulevard, Suite 201  
Jacksonville, Florida 32224  
(w/o enclosures)

Ms. Kathleen Acock  
Alpha Building Corporation  
24850 Blanco Road  
San Antonio, Texas 78258  
(w/o enclosures)