ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2013

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

OR2013-18410

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# 503673 (OGC# 151468).

The University of Texas Medical Branch at Galveston (the "university") received a request for the coefficients for a specified job order contract. You claim the 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 Williams & Thomas, LLP ("Williams & Thomas") and The Trevino Group, Inc. ("Trevino") 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 received comments from an attorney on behalf of Trevino. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code excepts 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 and certain other competitive situations. *See* Open Records Decision No. 592 (1991) (discussing statutory predecessor). 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 information 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 submitted information relates to existing contracts executed by the university. However, you explain there is also an outstanding Request for Proposals ("RFP") for the same services. Although you state bidding has closed, you inform us the university has not selected a winning bidder, and no final agreement exists at this time. You contend release of the submitted information "could impair the [u]niversity's efforts at procuring and negotiating a contract related to the pending RFP." You further state the university may have to revisit other submitted proposals to determine an alternate choice from the remaining vendors, and if the remaining vendors do not satisfy the university's needs, a new RFP might be issued. Based on your representations and our review, we find you have demonstrated public release of the submitted information would cause specific harm to the university's interests in a particular competitive bidding situation. Therefore, the university may withhold the submitted information under section 552.104 of the Government Code.[1]

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Paige Thompson
Assistant Attorney General
Open Records Division

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[1]As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 503673

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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