



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 26, 2013

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

OR2013-20643

Dear Ms. Chatterjee:

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# 506922 (OGC# 152048).

The University of Texas at Austin (the "university") received a request for four categories of information pertaining to request for proposal ("RFP") number 721-1316. You state the university does not have information responsive to categories 3 and 4.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Estrada Hinojosa & Co., Inc. ("Estrada"). Accordingly, you state you notified Estrada of the request for information and of its right to submit arguments to this office as to why the information at issue 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 your argument 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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

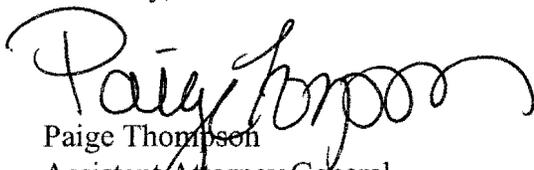
§ 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 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 information pertaining to a completed bidding process for which a contract has been executed. *See* Open Records Decision No. 541 (1990).

You state the information in Tab 6 relates to a request for proposals. Although you inform us bidding has closed and a winning bidder has been selected, you state the university has not reached a final agreement with the winning bidder. You thus assert releasing the submitted information “would disadvantage the [u]niversity in obtaining a fair contract should current negotiations fail.” You state the parties could fail to agree on final terms during the contract negotiations and the university may have to revisit other submitted proposals to determine an alternate choice from the remaining vendors. You further state 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 information in Tab 6 would cause specific harm to the university’s interests in a particular competitive bidding situation. Therefore, the university may withhold the information in Tab 6 under section 552.104 of the Government Code.

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

PT/dls

Ref: ID# 506922

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Robert A. Estrada
Chairman
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(w/o enclosures)