



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 4, 2016

Ms. Jennifer Burnett  
Attorney & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West 7<sup>th</sup> Street, Suite 600  
Austin, Texas 78701-2901

OR2016-24604

Dear Ms. Burnett:

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# 633322 (UT OGC# 171627).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for information pertaining to a specified solicitation. 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 Enforme Interactive, Ernst & Young, LLP, The Research Associates, Inc., Research Works, Inc., and L.E.K. Consulting, LLC. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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 submitted arguments and reviewed the submitted information.

Initially, we note the submitted information includes contracts for the purchase of services from private vendors that are subject to the posting requirements in section 2261.253 of the Government Code. Section 2261.253(a) provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

Gov't Code § 2261.253(a)(1). The submitted contracts are between the university, which is a state agency, and private vendors for the purchases of services, and the contracts are not expired or completed. *See id.* §§ 2261.002(2) (“state agency” has meaning assigned by Gov't Code § 2151.002), 2151.002(3) (“state agency” includes university system or institution of higher education as defined by Educ. Code § 61.003). Accordingly, the submitted contracts are required to be posted on the university's internet website. Although you seek to withhold these contracts under section 552.104 of the Government Code, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Consequently, the university must release the submitted contracts in their entirety.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov't Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The university represents the submitted proposals pertain to a competitive bidding situation in which all of the contracts have not been executed. In addition, the university states release of the information at issue would “provide bidders with unfair insight into the qualifications, reputations, pricing, and experience of the selected bidders, placing the [u]niversity at a competitive disadvantage with respect to negotiating the fifth, unexecuted contract.” After review of the information at issue and consideration of the arguments, we find the university has established release of this information would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the submitted proposals under section 552.104(a) 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](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,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/som

Ref: ID# 633322

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

5 Third Parties  
(w/o enclosures)