



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
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July 26, 1977

Honorable Everett L. Anschutz
Executive Director
Employees Retirement System
of Texas
Box 12337, Capitol Station
Austin, Texas 78711

Open Records Decision No.170

Re: Release of bids under
the Open Records Act.

Honorable E. J. Voorhis
Commissioner of Insurance
State Board of Insurance
1110 San Jacinto
Austin, Texas 78786

Gentlemen:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., regarding the release of bids submitted by insurance companies to underwrite the employees' group insurance program under the Texas Employees Uniform Group Insurance Benefits Act, article 350-2, Texas Insurance Code.

Section 5(a) of article 3.50-2 establishes a procedure for the submission, examination, evaluation and awarding of competitive bids. Bids are submitted to the State Board of Insurance for certification of actuarial soundness and then transferred to the custody of the Board of Trustees of the Employees Retirement System. You state that bids on this year's Employees' Uniform Group Insurance Program were due on June 9, 1977. The Board of Trustees proposed to release the bids for public examination at a later meeting at which the Commissioner of Insurance was to present the State Board's report on the examination and evaluation of the bids, followed by the report prepared by the staff of the Employees Retirement System. Each bidder was given an opportunity to present an oral statement and to respond to questions. The Board of Trustees was then scheduled to award the contract. You have received a request for access to the bids submitted by each insurance carrier on the date they are received by you. You contend that all bids should be withheld from public disclosure under the section 3(a)(4) exception until the meeting of the Board of Trustees at which the staff report was to be made.

Section 3(a)(4) of the Open Records Act excepts from disclosure "information which, if released, would give advantage to competitors or bidders."

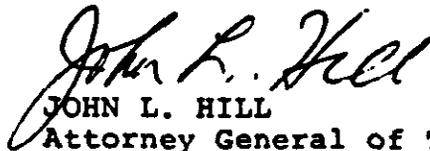
The specifications and bids involved in this process are lengthy and complex documents. While the bid amounts may not be changed after submission, important definitions and commitments in regard to type and methods of services to be provided in connection with the contract may be ambiguous. The task of reading and evaluating the bids requires a reasonable amount of time to clarify what is offered in a particular bid. During the period between the date the bids are submitted and the meeting of the Board of Trustees to award the contract, the Board intended to make inquiry of the bidders to resolve any ambiguities relating to definitions and the nature of the services offered. The Board's position is that a bidder's clarification of his particular bid during this period should not be influenced by knowledge of the other proposals. In addition, a bidder with advance knowledge of the proposals of other bidders could submit in its oral presentation to the Board additional information not submitted originally. In sum, the Board desires to limit modification of bids, while reserving the right to have a bid clarified. For these reasons, you state your belief that the bidding process continues to be competitive until the Board of Trustees makes its award.

In our opinion, this conclusion is valid. In Open Records Decision No. 46 (1974) at 2, we stated that "information concerning the identity of those who have submitted bids (before the last day for bidding), would be of advantage to other competitors or bidders. . . ." See also Open Records Decision No. 75 (1975). So long as negotiations are in progress regarding interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to its proposed contract, we believe that the bidding should be deemed competitive. Release of the bids while the bidding is still competitive would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract being let. It is our opinion, therefore, that, based upon the circumstances you have described, bids submitted by insurance companies to underwrite the Employees' Uniform Group Insurance Program are within the section 3(a)(4) exception and are not required to be disclosed prior to the public hearing at which the Board of Trustees of the Employees Retirement System awards the contract.

Honorable Everett L. Anschutz
Honorable E. J. Voorhis

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Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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