



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2009

Ms. Erin K. Stewart
Staff Attorney
University of North Texas System
Office of General Counsel
P.O. Box 310907
Denton, Texas 76203-0907

OR2009-00690

Dear Ms. Stewart:

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# 332843 (UNT PIR No. 09-029).

The University of North Texas (the "university") received a request for copies of bid responses for each vendor that responded to the request for proposals for the EMR/PM System for the Student Health Center. You state information responsive to the request for which no opinion is being sought and for which no third-party interest is implicated will be made available to the requestor. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also contend release of the requested information may implicate the proprietary interests of third parties. Accordingly, you have notified the interested third-parties, HealthTec/Catalis, Inc. Fusion Product, NextGen Healthcare Information Systems, Inc., and Media Highway, of this request and of each company's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have received comments from Media Highway. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 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 purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including those in which the governmental body may wish to withhold

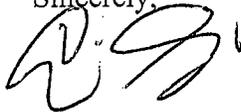
information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). However, section 552.104 does not except from disclosure information relating to competitive bidding situations once a contract has been awarded and executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You inform us the submitted information pertains to a competitive bidding situation in which a contract has not yet been awarded. You further state the university "has a particular marketplace interest in acquiring software for its Student Health and Wellness Center at the lowest possible cost, and this interest may be harmed by the disclosure of [the requested] information as [disclosure] could cause the final cost of the contract to go up." After considering your representations and reviewing the submitted information, we conclude the university may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress 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 under negotiation). As our ruling is dispositive, we need not address Media Highway's arguments against disclosure of its information.

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, 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 at (512) 475-2497.

Sincerely,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/eeg

Ref: ID# 332843

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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