



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2009

Ms. Erin K. Stewart
Assistant General Counsel
University of North Texas System
P. O. Box 310907
Denton, Texas 75203-0907

OR2009-08087

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# 345789 (UNT PIR No. 09-092).

The University of North Texas (the "university") received a request for proposals and subsequent evaluations for a specified project. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also indicate that the release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state you have notified the third parties of the university's receipt of the request for information and of their right to submit arguments to this office as to why the information should not be released to the requestor.¹ 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 correspondence from representatives of seven third parties. We have considered the submitted arguments and reviewed the submitted information.

You seek to withhold the requested information under section 552.104 of the Government Code. Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The

¹The third parties are as follows: Adolfsen & Peterson Construction; Austin Commercial, LP; Balfour Beatty Construction, LLC; Bovis Lend Lease, Inc.; Constructors & Associates, Inc.; Gilbane Building Company; HCBeck, Ltd.; Hunt Construction Group, Inc.; JE Dunn South Central, Inc.; Lee Lewis Construction, Inc.; Manhattan Construction Company; Satterfield & Pontikes Construction, Inc.; Thos. S. Byrne, Ltd.; Turner Construction Company; Vaughn Construction; and W. G. Yates & Sons Construction Company.

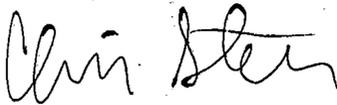
purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Furthermore, section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded. *See* Open Records Decision No. 541 at 4 (1990).

You state the information at issue consists of bid proposals regarding the specified project. You inform us that the bid proposals relate to an "active competitive bidding process," and that the university "has not yet finalized a contract with any of the bidders[.]" You claim releasing the bid proposals prior to awarding the contract would harm the university by driving up the cost of the contract or reducing the amount of service provided. Based on your representations and our review of the information at issue, we conclude the university may withhold the information at issue under section 552.104 of the Government Code until such time as a contract has been executed.² *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 expense of others and could be detrimental to public interest in contract under negotiation).

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

²As our ruling is dispositive, we need not address the third parties' arguments.

Ref: ID# 345789

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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