



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 29, 2009

Mr. Scott A. Kelly
Deputy General Counsel
The Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2009-10525

Dear Mr. Kelly:

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# 350635.

The Texas A&M University System (the "university") received a request for all bid packages and HUB Subcontracting Plans ("HSPs") for all bidders for a specified project. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have not received correspondence from any of the third parties. We have considered the exception you claim 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 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 submitted information consists of bid packages and HSPs regarding the specified project. You inform us that the bid packages and HSPs relate to a project for which

a final contract has not been executed. You claim releasing the bid packages prior to awarding the contract would harm the university's ability to negotiate a final agreement. Based on your representations and our review, 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 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/sdk

Ref: ID# 350635

Enc. Submitted documents

c: Requestor
(w/o enclosures)