ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2009

Mr. W. Montgomery Meitler
Assistant Counsel
Office of Legal Services
Texas Education Agency
701 North Congress Avenue
Austin, Texas 78701-1494

OR2009-12305

Dear Mr. Meitler:

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# 354105 (TEA PIR # 11415, 11428, 11434, 11467).

The Texas Education Agency (the "agency") received four requests for the evaluation/scoring sheets and winning proposal pertaining to a specified Request for offers. You state the agency will release the responsive evaluation/scoring sheets. You indicate that the agency has redacted social security numbers pursuant to section 552.147 of the Government Code.[1] Although you take no position as to the disclosure of the submitted information, you state the information may implicate the proprietary interests of a third party, Oak Hill Technology, Inc. ("Oak Hill"). You also state the agency has notified Oak Hill of the request and of its opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *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 the applicability of

[1]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

exception to disclose under Act in certain circumstances). Oak Hill has submitted comments to our office. We have considered the submitted arguments and reviewed the submitted information.

We note the submitted information includes Oak Hill's tax return form. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by section 6103(a) of title 26 of the United States Code, which provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, the corporate tax return information we have marked is confidential under section 6103(a) of title 26 of the United States Code, and the agency must withhold it under section 552.101 of the Government Code in conjunction with federal law.

Oak Hill asserts its price quote is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Upon review of Oak Hill's argument and the submitted price quote, we find Oak Hill has made only conclusory allegations that release of its price quote would result in substantial damage to its competitive position. Thus, Oak Hill has not demonstrated substantial competitive injury would likely result from the release of its price quote. *See id.* (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Furthermore, we note that Oak Hill was the winning bidder. The pricing information of a winning bidder is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Therefore, the agency may not withhold Oak Hill's price quote under section 552.110(b) of the Government Code.

In summary, the agency must withhold the tax return form we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The remaining information must be released.

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 Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 354105

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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