



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 10, 2009

Ms. Neera Chatterjee  
Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2009-17496

Dear Ms. Chatterjee:

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# 364197.

The University of Texas System (the "system") received a request for several categories of information related to janitorial services, including purchase orders and information related to a request for proposal. You state the system does not have information responsive to a portion of the request.<sup>1</sup> You claim that portions of the submitted information are excepted from disclosure under section 552.104 of the Government Code. You do not take a position as to whether the remainder of the submitted information is excepted under the Act; however, you state that its release may implicate the proprietary rights of third parties. You state, and provide documentation showing, that you have notified AHI Facility Services, Inc., Genesis Janitorial Services, International Building Services, ISS Facility Services, Inc., Kleen-Tech, Labor On Demand, Inc., Marcis & Associates, SBM, Varsity, and World Technical Services, Inc. of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received correspondence from any of the third parties explaining why their information should not be released. Thus, we have no basis for concluding that any portion of the submitted information pertaining to these third parties constitutes proprietary information, and the system may not withhold any of the submitted information on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

Next, you claim portions of the submitted information, which you have marked, are excepted under section 552.104 of the Government Code, which 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 the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *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. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded and is in effect. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You inform us that the information you have marked as excepted under section 552.104 is related to ongoing contract negotiations between the system and the selected vendors. You contend that if the marked information is released, "it would disadvantage [the s]ystem in obtaining a fair contract should initial negotiations fail." Based on your representations, we conclude the system may withhold the marked information under section 552.104 of the Government Code.

In summary, the system may withhold the information you have marked under section 552.104 of the Government 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](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, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 364197

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Julio Cisneros  
Marcis & Associates  
15803 Stornoway Drive  
Spring, Texas 77379  
(w/o enclosures)

Mr. Bob Borbeck  
SBM  
5241 Arnold Avenue  
McClellan, California 95652  
(w/o enclosures)

Mr. Rick Lalone  
Varsity  
Building 3, Suite 400  
1250 South Capital of Texas Highway  
Austin, Texas 78746  
(w/o enclosures)

Mr. Alan Warrick, II  
World Technical Services, Inc.  
1603 South W. W. White Road, Suite S604  
San Antonio, Texas 78220  
(w/o enclosures)

Mr. Richard Tovar  
Labor on Demand, Inc.  
851 Culebra Road  
San Antonio, Texas 78201  
(w/o enclosures)

Ms. Suzanne Paris  
Kleen-Tech  
7100 North Broadway 6-1  
Denver, Colorado 80221  
(w/o enclosures)

Ms. Crystal Green  
ISS Facility Services, Inc.  
1225 East 18<sup>th</sup> Street  
Kansas City, Missouri 64108  
(w/o enclosures)

Mr. Hye Kim  
International Building Services  
8204 North Lamar Boulevard B-16  
Austin, Texas 78753  
(w/o enclosures)

Mr. Richard Orillion  
AHI Facility Services, Inc.  
625 Yuma Court  
Dallas, Texas 75208  
(w/o enclosures)

Mr. Leon Bennett  
Genesis Janitorial Services  
P.O. Box 295266  
Lewisville, Texas 75029-5266  
(w/o enclosures)