



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2011

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

OR2011-13611

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# 430577 (OGC #138378).

The University of Texas at Austin (the "university") received a request for the proposals submitted in response to RFP No. 2011016-mpblb. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified FiberLight, L.L.C. ("FiberLight"); Qwest Communications Company, L.L.C.; TeliaSonera International Carrier, Inc. ("TeliaSonera"); and TW Telecom Holdings, Inc. ("TW") of the request for information and 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 governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from FiberLight, TeliaSonera, and TW. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code, which protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the 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 protects information from disclosure if the governmental body

demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). However, in some situations, section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids).

You state the submitted information relates to a request for proposals. You inform us a winning bidder was selected and negotiations with the winning bidder remain ongoing and a contract has not yet been executed. You explain that, if the university fails to reach an agreement with the winning bidder, the university may terminate negotiations and seek an agreement with the next highest-ranked proposer. You contend release of the submitted information would place the university at a competitive disadvantage in future negotiations for these services and 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 the contract has been executed. As our ruling is dispositive, we need not address the arguments submitted by FiberLight, TeliaSonera, and TW.

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 430577

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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