



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 12, 2012

Ms. Zeena Angadicheril  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701

OR2012-00615

Dear Ms. Angadicheril:

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# 442711 (OGC# 140649).

The University of Texas Medical Branch at Galveston (the "university") received a request for a "complete copy of the awarded Request For Proposal (RFP) No.: 11-010" pertaining to laboratory testing services. You claim the submitted bid proposal information is excepted from disclosure under sections 552.104 and 552.136 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Quest Diagnostics, Inc. ("Quest"). Thus, pursuant to section 552.305 of the Government Code, you notified Quest of the request and of its right to submit arguments to this office as to why the submitted information should not be released. 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 to disclosure in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.104 of the Government Code 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 purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes

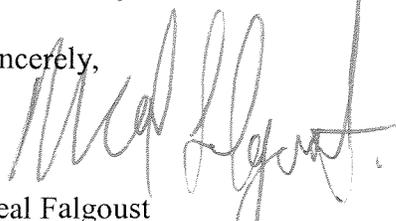
to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 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).

Although you state bidding has closed and a bidder has been chosen for the project at issue, you state a contract has not yet been awarded. You state contract negotiations between the university and the chosen bidder are still in progress. You explain, however, that if the negotiations are unsuccessful, the university may begin contract negotiations with a different bidder. You state releasing the submitted bid proposal prior to the execution of a contract would harm the university's ability to negotiate a final contract. Based on your representations and our review, we conclude the university may withhold the submitted bid proposal under section 552.104 of the Government Code. *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). As our ruling is dispositive, we need not address your remaining argument against disclosure for a portion of the submitted information.

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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/dls

Ref: ID# 442711

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Michael A. Peat  
Quest Diagnostics, Inc.  
5850 Rogerdale Road  
Houston, Texas 77072  
(w/o enclosures)