



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2012

Ms. Zeena Angadicheril
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2012-06024

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# 451902 (UTMB OGC # 142017).

The University of Texas Medical Branch at Galveston (the "university") received a request for the contract, purchase order, and vendor information for the management of the university's medical waste facility during the prior year. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state the submitted information may implicate the proprietary interests of a third party. Accordingly, you notified Sharps Direct of the request and of its right to submit arguments to this office as to why the requested information should not be released. *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 applicability of exception to disclosure under the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code 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 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) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). 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, this office has determined in some circumstances section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *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).

The information at issue relates to an existing contract executed by the university. However, you also state that a request for proposals ("RFP") for the same services covered by this contract was pending at the time of the request and the university has not yet awarded the bid for the pending RFP. You argue releasing the submitted information would give an unfair advantage to vendors submitting information in response to the pending RFP and compromise the university's ability to negotiate the resulting transaction by revealing financial and contractual terms of the existing contract. Upon reviewing your arguments and the submitted information, we conclude you have demonstrated that public release of the information at issue would cause specific harm to the university's interests in a particular competitive bidding situation. Thus, we conclude the submitted information may be withheld under section 552.104 of the Government Code until such time as a new contract has been executed.

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,



Benjamin A. Bellomy
Assistant Attorney General
Open Records Division

BAB/sdk

Ref: ID# 451902

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Sharps Direct
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(w/o enclosures)