



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 20, 2013

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

OR2013-02775

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# 479241 (UT OGC# 147404).

The University of Texas of the Permian Basin (the "university") received a request for the bid proposal and contract pricing for the university's current provider of custodial services. You state the university no longer maintains a copy of the requested proposal.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Southeast Service Corp ("Southeast"). Accordingly, you have notified this third party of the request and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

have received comments from Southeast. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have marked information that is not responsive to the instant request. This ruling does not address the public availability of any non-responsive information, and the university need not release any non-responsive information in response to this request.

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 consists of portions of a contract executed by the university. However, you inform us the responsive information relates to a current request for proposals ("RFP") for the same services covered by the information at issue. You state the bidding process for this RFP is ongoing and a winning bidder has not yet been selected. You argue because this bidding process ends only when a final executed contract is in place, release of the responsive information before that time would disadvantage the university in obtaining a fair contract. Based on your representations and our review, we find you have demonstrated the public release of the responsive information would cause specific harm to the university's interests in a particular competitive bidding situation. Thus, we conclude the responsive information may be withheld under section 552.104 of the Government Code until such time a new contract has been executed.<sup>2</sup>

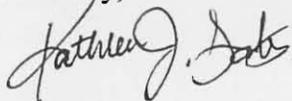
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<sup>2</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure.

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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/dls

Ref: ID# 479241

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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