



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 21, 2013

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

OR2013-04712

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# 482192 (OCG No. 148138).

The University of Texas Medical Branch at Galveston (the "university") received a request for the bid tabulations pertaining to a specified Request for Proposals. You claim the submitted information is 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 third parties. Accordingly, you inform us, and provide documentation showing, you notified A&F Elevator Company, Inc.; EMR Elevator, Inc.; Kone Inc.; and ThyssenKrupp Elevator of the request and of their right to submit comments to this office as to why the requested information should not be released to the requestor. *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 received comments from Kone Inc. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state a portion of the submitted information, which you have marked, was the subject of previous requests for information, as a result of which this office issued Open Records Letter No.2013-04325 (2013). In that ruling, we determined the university may withhold the submitted information under section 552.104 of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the university may rely on Open

Records Letter No. 2013-04325 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will also address the submitted arguments for the submitted information not encompassed by the previous determination.

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).

You state the submitted information relates to a request for proposals for which a winning bidder has been selected, but no final agreement has been executed. You argue that “[b]ecause the negotiating process ends only when a final executed contract is in place, release of the submitted information before that time would disadvantage the [u]niversity in obtaining a fair contract should initial negotiations fail with the selected company.” Upon review of your arguments and the information at issue, we find you have demonstrated that public release of the submitted information would cause specific harm to the university’s interests in a particular competitive bidding situation. Thus, we conclude the remaining submitted information may be withheld under section 552.104 of the Government Code until such time as the contract has been executed.¹

In summary, the university may rely on Open Records Letter No. 2013-04325 and withhold the identical information you have marked in accordance with that ruling. The university

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure.

may withhold the remaining submitted information under section 552.104 of the Government Code.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 482192

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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