



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2014

Ms. Cynthia Tynan
Attorney and Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2014-18703

Dear Ms. Tynan:

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# 539939 (OGC #157207).

The University of Texas System (the "system") received a request for the winning proposal for a specified RFP. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. In addition, you state release of the requested information may implicate the proprietary interests of Kiosk Creative, LLC ("Kiosk"); Inside Track, Inc. ("Inside Track"); Blackboard, Inc. ("Blackboard"); and Jenzabar, Inc. ("Jenzabar"). *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 Blackboard, Inside Track, and Jenzabar. We have considered the submitted arguments 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). 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 information pertaining to a completed bidding process for which a contract has been executed. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision

No. 541, this office stated the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates public disclosure of the information will allow competitors to undercut future bids, and 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); *see also* Open Records Decision No. 309 (1983) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

You inform us four proposals were selected as winners. You further inform us that although bidding has closed, the final agreements with all four winning bidders have not been executed and contract negotiations are still ongoing. You state release of the proposals at issue would negatively impact the system's negotiating position in the ongoing negotiations. Based on these representations and our review, we find the system has demonstrated that release of the submitted information would cause specific harm to the system's interests in a particular competitive bidding situation. Thus, we find the system may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.¹

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

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

Ref: ID# 539939

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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