



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 24, 2015

Ms. Karen K. Vance
Lone Star College System
5000 Research Forest Drive
The Woodlands, Texas 77381-4356

OR2015-12514

Dear Ms. Vance:

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# 568386 (LSCS File No. PR15-0327-00087).

The Lone Star College System (the "system") received a request for all bids, responses, and bid tabulation sheets related 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 this request implicates the proprietary interests of certain third parties.¹ Accordingly, you state, and provides documentation demonstrating, the system notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *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 Dahill. We have considered the submitted arguments and reviewed the submitted information.

¹The notified third parties are: Canon Solutions America, Inc., Dahill Office Technology Corporation ("Dahill"), ImageNet Consulting, Konica Minolta Business Solutions, Marimon Business Systems Inc., Office Systems of Texas, Ricoh USA, Inc., and Zeno Imaging.

Initially, you inform us the submitted bid tabulation was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-07155 (2015). In Open Records Letter No. 2015-07155, we concluded the system may withhold the information at issue under section 552.104 of the Government Code. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the submitted bid tabulation, we conclude the system may continue to rely on Open Records Letter No. 2015-07155 as a previous determination and withhold that 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 information is or is not excepted from disclosure).

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).

We understand the remaining information was submitted in connection with a request for proposals for the lease and maintenance of multifunction copiers. You state, although the system has selected a preferred vendor and entered into negotiations with that vendor, the contract arising from that process has not yet been awarded or executed. You claim release of the information at issue would undermine the contract negotiation process because, should negotiations fail, the system may issue a new request for proposals. Based on your representations and our review, we conclude you have demonstrated the applicability of section 552.104 to the information at issue. Accordingly, the system may withhold the remaining information 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).

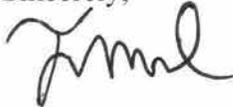
In summary, the system may continue to rely on Open Records Letter No. 2015-07155 as a previous determination and withhold the submitted bid tabulation in accordance with that

ruling. The system may withhold the remaining 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.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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 568386

Enc. Submitted documents

Requestor
(w/o enclosures)

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