



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 30, 2015

Ms. Ana Vieira Ayala
Senior Attorney & Public Information Coordinator
Office of General Counsel
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2015-13042

Dear Ms. Ayala:

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# 569310 (OGC# 161030).

The University of Texas System (the "system") received a request for the winning bidder's proposal for a specified request for proposals. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of a third party. Accordingly, you notified Blue Cross Blue Shield of Texas ("BCBS") of the request for information 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); *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 BCBS. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, No. 12-1007, slip op. at 17 (Tex. June 19, 2015). The system states the submitted information pertains to a competitive bidding situation in which a winning bidder has been selected, but a contract with that vendor has not been executed and negotiations regarding

the contract are ongoing. The system states “[a]t any point in the contract negotiations and before a contract is executed, the parties could fail to agree on terms and [the system] may have to revisit other submitted proposals to determine an alternate choice from the remaining bidders.” The system argues the release of the submitted information before the execution of the final agreement would disadvantage the system in obtaining a fair contract should negotiations fail with the winning bidder. Based on these representations and our review, we conclude the system has demonstrated release of the submitted information would give an advantage to a competitor or bidder. Thus, the system may withhold the submitted information under section 552.104 of the Government Code.¹ 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).

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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/cz

Ref: ID# 569310

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address BCBS’s arguments against disclosure.

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(w/o enclosures)