



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 30, 2016

Mr. Eduardo Arredondo
Burnet County Attorney
Burnet County
220 South Pierce
Burnet, Texas 78611

OR2016-28757

Dear Mr. Arredondo:

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# 640108.

The Burnet County Auditor's Office (the "auditor's office"), which you represent, received a request for specified contracts, a specified staffing plan, specified proposals, and the completed score sheet. You state you have released some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state, and provide documentation showing, you notified the University of Texas Medical Branch ("UTMB") 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 § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received comments from UTMB. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note UTMB objects to disclosure of information the auditor's office has not submitted to this office for review. This ruling does not address information that was not submitted by the auditor's office and is limited to the information the auditor's office has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body

requesting decision from Attorney General must submit copy of specific information requested).

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). 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*, 466 S.W.3d 831 (Tex. 2015). UTMB states it has specific marketplace interests in the information at issue because UTMB is competing with private entities in the correctional facility healthcare marketplace. In addition, UTMB states the requested information consists of details of the agreements between UTMB and Burnet County including pricing and scheduling information. UTMB also states release of the information at issue would allow its competitors an unfair advantage and could result in a loss of financial and marketplace advantages. UTMB argues allowing competitors access to the information at issue will undermine its ability to compete in this marketplace. Thus, UTMB seeks to withhold the terms of the contract.

For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d 831 at 831, 839. After review of the information at issue and consideration of the arguments, we find UTMB has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the auditor’s office may withhold the marked information under section 552.104(a). As no arguments against disclosure of the remaining information are raised, it must be released.

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 640108

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)