



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 11, 2017

Mr. W. Montgomery Meitler  
Senior Counsel  
Office of Legal Services  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2017-20655

Dear Mr. Meitler:

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# 674837 (TEA PIR# 30008).

The Texas Education Agency (the "TEA") received a request for the awarded vendor's proposal submitted in response to a specified request for proposals, excluding references and financial information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Southern Methodist University ("SMU"). Accordingly, you state, and provide documentation showing, you notified SMU 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 SMU. We have reviewed the submitted information and considered the submitted arguments.

Initially, we note some of the submitted information, which you marked, is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the agency is not required to release such information in response to this request.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). In

considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, a private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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." *Id.* at 841. SMU states it has competitors. SMU states it regularly bids on contracts of the nature at issue. Further, SMU states release of the information at issue would give a competitive advantage to its competitors. After review of the information at issue and consideration of the arguments, we find SMU has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the TEA may withhold the responsive information under section 552.104(a) 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](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,



Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MC/gw

Ref: ID# 674837

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)