



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 17, 2020

Ms. Cynthia Tynan  
Assistant General Counsel & Public Information Coordinator  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701

OR2020-01606

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# 806030 (OGC# 193356).

The University of Texas at El Paso (the "university") received a request for certain information pertaining to a specified request for proposals. You state you do not have information responsive to portions of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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). 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). You represent the information at issue pertains to a competitive bidding situation. You state a contract has not been executed and that the "bidding and negotiating process ends only when the final executed contract is in place[.]" In addition, you state release of the submitted information "would compromise the bidding process, placing the [u]niversity at a competitive disadvantage in the bid negotiations, and

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<sup>1</sup> The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

undercut the [u]niversity's ability to receive the best price for the services at issue." Upon review of the information at issue and consideration of the arguments, we find the university has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the submitted 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Kimbell Kesling  
Attorney  
Open Records Division

KK/mo

Ref: ID# 806030

Enc. Submitted documents

c: Requestor  
(w/o enclosures)