



THE TEXAS A&M UNIVERSITY SYSTEM

September 22, 2021

Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

VIA UPS DELIVERY

Re: Request for a Decision regarding a Public Information Request from Robert Montoya to Texas A&M University (F002037-090721)

Dear Open Records Division:

On September 8, 2021¹, Texas A&M University (the “university”) received an open records request from Robert Montoya (“requestor”). The request, enclosed as Exhibit A, seeks certain information regarding a procurement opportunity with the university.

We believe that some of the responsive information, a representative sample of which is enclosed as Exhibit B, is excepted from disclosure under section 552.104 of the Texas Public Information Act, chapter 552, Texas Government Code, (the “Act”) as explained below. Accordingly, we request a decision regarding the enclosed information.

Section 552.104. Exception: Information Related to Competition or Bidding

Section 552.104 of the Act excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” TEX. GOV’T CODE ANN. § 552.104(a) (West 2012). As the Texas Supreme Court has recognized, the applicable test is whether the information, if disclosed, “would be an advantage” to a competitor or bidder, “not whether it would be a decisive advantage.” *See Boeing Company v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015).

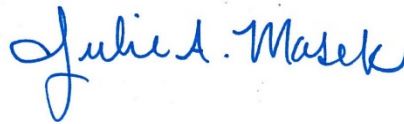
Here, the information represented by the sample enclosed in Exhibit B, relates to a pending competitive bidding process. We were advised by the university that a final agreement has not yet been executed with any of the parties as shown by the sample enclosed in Exhibit B. We contend

¹ The request was originally received on September 07, 2021. *See* Exhibit A. The university requested clarification/narrowing of the request on September 07, 2021, and the requestor provided clarification/narrowing on September 08, 2021, making it the official date of receipt, thus making the 10th day after the receipt of the request today, September 22, 2021.

that the release of the requested records would interfere with the bidding process and harm the university's ability to negotiate a final agreement with terms most favorable to the university. Therefore, we believe the disclosure of the information in Exhibit B would give an advantage to a competitor or bidder and that this information should be withheld under section 552.104(a).

Thank you for your consideration of this matter. If you have any questions, please feel free to contact me.

Sincerely,



Julie A. Masek
Assistant General Counsel

Enclosures: Exhibits A, B

cc: Robert Montoya

TAMU Open Records