



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2014

Ms. Ann Manning
Counsel for the Lubbock-Cooper Independent School District
Underwood Law Firm, P.C.
P.O. Box 16197
Lubbock, Texas 79490-6197

OR2014-00798

Dear Ms. Manning:

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# 511102.

The Lubbock-Cooper Independent School District (the "district"), which you represent, received a request for a contract regarding food service management services for the fall term of the 2013-2014 school year. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you claim release of the submitted information may implicate the proprietary interests of Southwest Food Service Excellence, LLC ("Southwest"). Accordingly, you state, and provide documentation demonstrating, the district notified Southwest of the request for information and of its right to submit arguments stating why its information should not be released. *See Gov't Code* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exception you raise, and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." *Gov't Code* § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes

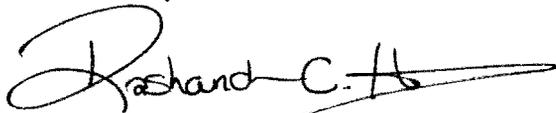
to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except information pertaining to a completed bidding process for which a contract has been executed. *See* Open Records Decision No. 541 (1990). However, this office has determined in some circumstances section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (1982) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

You inform us that at the time of the instant request, the district was seeking bids for a new request for proposals for food service management for the spring semester of the 2013-2014 school year. You state that because the new request for proposals is for the same services as the previous request for proposals, release of the submitted information at this time would place the district at a disadvantage in obtaining fair proposals for the new contract. Based on your representations and our review, we determine the district has demonstrated that release of the submitted information would harm its interests in a competitive situation. Accordingly, the district may withhold the submitted information under section 552.104 of the Government Code until the new contract is executed.

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,



Rashandra C. Hayes
Assistant Attorney General
Open Records Division

RCH/dls

Ref: ID# 511102

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)