



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 7, 2015

Ms. Katheryne Ellison  
Assistant General Counsel  
Houston Independent School District  
4400 West 18<sup>th</sup> Street  
Houston, Texas 77092-8501

OR2015-06584

Dear Ms. Ellison:

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# 558952 (Ref Nos. KTRK011315 and S121714).

The Houston Independent School District (the "district") received two requests for information pertaining to district competitive sealed proposals no. 14-11-05. You state the district will release some of the requested information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the interests of twenty third parties. Accordingly, you notified these third parties of the request for information and of their right to submit arguments stating why their information should not be released.<sup>1</sup> 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).

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<sup>1</sup>The notified third parties are: 3i Construction, L.L.C.; Brandt Construction & Facility Services; C and CNET Associates, Inc.; Centennial Contractors Enterprises, Inc.; Corte Enterprises; DivisionOne Construction; E Contractors USA, L.L.C.; Dura Pier Facilities Services, Ltd. d/b/a Facilities Sources ("Dura Pier"); Gadberry Construction Company, Inc.; Houston KACO; Jamail & Smith Construction; Just Construction; Kellogg, Brown & Root, L.L.C. ("KBR"); LMC Corporation ("LMC"); Oz Building Contractors, Inc.; P2MG, L.L.C.; Quadra Mind Enterprises, Inc.; Site and Field Engineering, L.L.C.; Sterling Structures, Inc.; and Westco Ventures, L.L.C..

We have received comments from Dura Pier, KBR, and LMC. We have considered the submitted arguments and reviewed the submitted information, a portion of which consists of a representative sample.<sup>2</sup>

Section 552.104 of the Government Code exempts 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 exempt information pertaining to a completed bidding process for which a contract has been executed. *See* Open Records Decision No. 541 (1990).

The district claims release of the submitted information would compromise the district’s bargaining position with regard to the contracts at issue. You inform us that, although the district’s board of trustees has selected vendors, the final contracts have not been executed. You state release of the submitted information would interfere with the district’s bargaining position in the event the competitive sealed proposals must be re-bid by “allowing future bidders for the same services to determine the lowest level of service that might suffice to win an award[.]” Based on your representations, we conclude the district may withhold the submitted information under section 552.104 of the Government Code until such time as the contracts have been executed.<sup>3</sup> *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in advantage to certain bidders at the expense of others and could be detrimental to public interest in contract under negotiation).

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/>

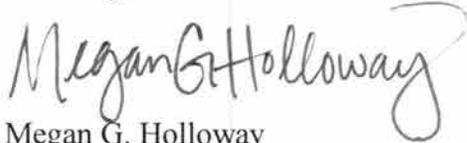
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<sup>2</sup>We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

[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,



Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/akg

Ref: ID# 558952

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

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