



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 8, 2016

Mr. Osman Balaman
Legal Coordinator
Harmony Public Schools
9321 West Sam Houston Parkway South
Houston, Texas 77099

OR2016-17781

Dear Mr. Balaman:

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# 621860.

Harmony Public Schools ("HPS") received two requests for proposals received in response to the 2016-2017 Food Service RFP for specified locations. 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 specified third parties. Accordingly, you notified Preferred Meal Systems, Inc; Revolution Foods, Inc. ("Revolution"); NT Catering and Foods LLC; Great Western Dining Service, Inc.; Northwest Catering; and Alamo City Foods of the request for information and of their right to submit arguments stating why their 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 received comments from Revolution. We have considered the submitted arguments and reviewed the submitted information.

HPS raises section 552.104(a) of the Government Code for the submitted information, which 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, 841 (Tex. 2015). You represent the submitted information pertains to a competitive bidding situation. You state HPS solicits bids for similar services on a recurring basis. Moreover, you inform us release of the submitted information “would allow vendors to unfairly undercut future bids for such services.” After review of the information at issue and consideration of the arguments, we find HPS has established the release of the submitted information would give an advantage to a competitor or bidder. Thus, we conclude HPS may withhold the submitted information under section 552.104(a) of the Government Code.¹

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 621860

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

4 Third Parties
(w/o enclosures)

¹As our ruling is dispositive, we need not address Revolution’s arguments against disclosure of its information.