



March 21, 2000

Mr. Robert A Schulman
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800 Brazos Street, Suite 870
Austin, Texas 78701

OR2000-1109

Dear Mr. Schulman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133516.

The United Independent School District, located in Laredo, Texas (the "district"), which you represent, received a request for five categories of information related to bidding for construction of a district high school. You claim that the responsive bidding packets submitted to the district in this bidding, as well as the ranking sheet used to evaluate the bids, are excepted from disclosure under section 552.104 of the Government Code. You have supplied this information to this office for review, marked as exhibits B, C, D, and E. We assume that any remaining responsive information has been released. Pursuant to Government Code section 552.301, you have notified the third parties whose interests are implicated by the release of the responsive information. One of the parties responded, arguing that a portion of its submitted bid packet is excepted from disclosure under sections 552.101, 552.104 and 552.110. As the information excepted by section 552.104, as raised by the district, includes all of the information which the third party seeks to have withheld, this decision is limited to discussion of that section and the submitted information.

Section 552.104 excepts from required public disclosure, "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 at 2 (1991).

You state that “the School board has not yet taken action on the bid proposals.” Furthermore, you explain that “Education Code § 44.039 permits the District to ‘negotiate’ with the offerors prior to awarding a contract,” and that release of the bids and evaluation criteria “would defeat the purpose of the negotiations.”

In Open Records Decision No. 170 (1977), this office stated that

[s]o long as negotiations are in progress regarding interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to its proposed contract, we believe that the bidding should be deemed competitive. Release of the bids while the bidding is still competitive would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract being let.

Open Records Decision No. 170 at 2 (1977). From your assertions, we conclude that the bidding process is “still competitive” under the standard enunciated above. You may therefore withhold the information in exhibits B, C, D, and E from required public disclosure under section 552.104 at this time. However, once a contract has been executed *and* the competitive bidding process is completed, you may not continue to withhold this information under section 552.104. *See* Open Records Decision No. 541 (1990).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 133516

Encl Submitted documents

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