



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2010

Mr. John A. Kazen
Kazen, Meurer & Pérez, L.L.P.
For Laredo Independent School District
P.O. Box 6237
Laredo, Texas 78042-6237

OR2010-02209

Dear Mr. Kazen:

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# 370109.

The Laredo Independent School District (the "district"), which you represent, received a request for five categories of information pertaining to the evaluation process, as well as any negotiations with the winning bidder, regarding the request for competitive sealed proposals ("RFCSP") for the central kitchen facility project. You claim the submitted evaluation materials are excepted from disclosure under section 552.104 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104. 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

¹Although you also raise section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you have withdrawn your claim under this exception. *See* Gov't Code §§ 552.301, .302.

except information from disclosure after bidding is completed and a contract has been executed. *See* Open Records Decision No. 541 (1990).

You state the evaluation process for the RFCSP at issue is not complete and a contract has not been awarded. You explain that, although the district's administration has finished its evaluation process, the district's board of trustees (the "board") is currently evaluating the submitted responses to decide if a contract should be awarded. You further explain the board may reject all of the submitted responses and direct the RFCSP to be re-bid. You state release of the submitted evaluation materials at this stage in the bidding process would allow the requestor, who is one of the bidders being considered, to gain an unfair advantage over the other bidders, which you state would result in substantial competitive harm to the district. Based on your representations, we conclude the district may withhold the submitted evaluation materials under section 552.104 of the Government Code.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 370109

Enc. Submitted documents

c: Requestor
(w/o enclosures)