



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2013

Mr. Todd A. Clark
Counsel for the Austin Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2013-10387

Dear Mr. Clark:

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# 492484.

The Austin Independent School District (the "district"), which you represent, received a request for specified proposals submitted by the American Institutes for Research (the "American Institutes") and John Hopkins University ("John Hopkins"). You claim the submitted information is exempted from disclosure under sections 552.102, 552.103, and 552.104 of the Government Code.¹ You also inform us the release of this information may implicate the proprietary interests of the American Institutes and John Hopkins. Accordingly, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have received comments from John Hopkins. We have considered the submitted arguments and reviewed the submitted information.

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

¹Although you raise section 552.102 of the Government Code in conjunction with sections 552.103 and 552.104 of the Government Code, we note section 552.102 does not encompass other statutes.

§ 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).

You represent the submitted proposals pertain to a pending competitive bidding process. You inform us this information is still under review and a contract has not been executed. Additionally, you explain the release of the information at issue could give an advantage to a competitor or proposer in the district's ongoing attempts to secure the services at issue and may harm the district's negotiating position in this particular competitive situation. Based on your representations and our review, we conclude the district may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.² *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 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/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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 492484

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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