



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2014

Ms. Katheryne Ellison
Assistant General Counsel
Public Information Office
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2014-21155

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# 543977 (HISD ID# H090515).

The Houston Independent School District (the "district") received a request for documents and information pertaining to project costs for Yates High School. You state the district has provided some of the requested information to the requestor. You claim the submitted information is 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 excepts 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 at 8 (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).

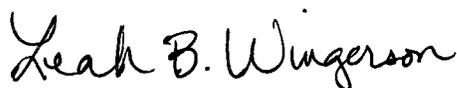
¹ Although you originally raised section 552.101 of the Government Code, you have not provided any arguments explaining the applicability of this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

You inform us the district is utilizing construction manager at risk ("CMAR") firms to manage construction projects at Yates High School and other district campuses. You explain the district's Board of Trustees has authorized the district's superintendent to "negotiate, execute, and amend contracts with the approved CMAR firms, including the acceptance of the guaranteed maximum price, in amounts not to exceed the overall project budget for each project." You have also provided documentation stating "[i]n the event that the [approved] CMAR is unable to provide a [guaranteed maximum price] proposal that is acceptable to [the district] . . . , the superintendent . . . is authorized to terminate negotiations and/or the agreement with that firm and negotiate, execute, and amend contracts with the next-highest-ranked best value CMAR firm to obtain an acceptable [guaranteed maximum price]." You state "a guaranteed maximum price with the CMAR firm selected for Yates High School has not yet been accepted by the [d]istrict." You argue release of the submitted Yates High School construction budget information would harm the district's interests in a competitive bidding situation by interfering with the district's ability to negotiate the lowest possible guaranteed maximum price for the project. 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 guaranteed maximum price has been accepted by the district for the project at issue. *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/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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 543977

Enc. Submitted documents

c: Requestor
(w/o enclosures)