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ATTORNEY GENERAL OF TEXAS

August 2, 2016

Mr. Robert W. Wilson
Counsel for Harlandale Independent School District
Sánchez & Wilson
6243 IH-10 West, Suite 1025
San Antonio, Texas 78201

OR2016-17306

Dear Mr. Wilson:

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# 621227 (S&W File No. 6054).

The Harlandale Independent School District (the "district"), which you represent, received a request for all information related to specified requests for proposals within a specified period of time.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of BoDen, LLC; Stoddard Construction Management, Inc.; Pugh Constructors; D. Wilson Construction Company; Cadence McShane Construction Company, LLC ("Cadence"); Gonzalez & De La Garza; Whiting-Turner Contracting Company; Guido Construction Company; and Enriquez Construction Group, LLC. Accordingly, you state, and provide documentation showing, the district notified these third parties of the request for information and of their rights 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

¹We note the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

explain applicability of exception in the Act in certain circumstances). We have received comments from Cadence. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention the district did not comply with the procedural requirements of the Act. The requestor asserts she was not timely notified of the district's request for a ruling from this office as required by section 552.301(d) of the Government Code. Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). Pursuant to section 552.302, a governmental body's failure to timely provide the requestor with a copy of its written communication to this office results in the presumption that the information is public. *Id.* § 552.302. We note the district received the request after business hours on May 9, 2016. Therefore, the district received the request for information on May 10, 2016. We have no indication the district was closed for business any days between May 10, 2016 and May 24, 2016. Thus, the ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was May 24, 2016. The envelope in which the district submitted the information required by section 552.301(b) bears a meter-mark of May 24, 2016. The request for a ruling to this office was timely mailed on May 24, 2016. The request for a ruling indicates the requestor was copied on the correspondence. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the district complied with the procedural requirements mandated by subsection 552.301(d) of the Government Code.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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 information pertains to a competitive bidding situation. You state a contract has not been awarded and the district is currently negotiating with the contractors for the construction projects at issue in the submitted information. You assert disclosure of the submitted information would harm the district's bargaining position. After review of the information at issue and consideration of the arguments, we find the district has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the submitted information under section 552.104(a) of the Government Code.²

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

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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/bhf

Ref: ID# 621227

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)