



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 13, 1996

Mr. Michael D. McKinney, M.D.
Commissioner
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR96-2398

Dear Mr. McKinney:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102542.

The Texas Health and Human Services Commission (the "commission") received a request for the following information regarding the proposed integrated enrollment services procurement currently under consideration by the commission and the State Council on Competitive Government (the "council"):

1. All questions and comments submitted by State and Federal agencies and vendors, specifically EDS, Unisys, Maximus, and Andersen Consulting;
2. Responses to those questions and comments prepared by the commission and council; and
3. Responses to questions circulated by the commission regarding the proposed participation of state agencies in the integrated enrollment procurement.

You state that you intend to provide the requestor with the information described in item 3 of the request. As for items 1 and 2 of the request, you contend that the information responsive to these items is excepted from disclosure pursuant to sections 552.104 and 552.111 of the Government Code.

You inform us that you previously submitted some of the information responsive to item 1 of the request to this office for a ruling. In Open Records Letter No. 96-1799 (1996), we ruled that this information is excepted from disclosure under section 552.104. As the circumstances

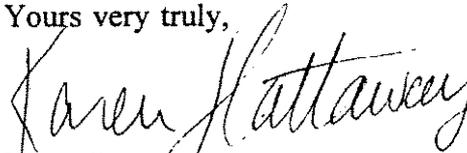
on which we based that letter ruling have not changed, we conclude that you may continue to withhold that information from disclosure under section 552.104 pending the award of a contract for integrated enrollment services.

As for the remainder of the information responsive to item 1 of the request (Exhibit D) and the information responsive to item 2 of the request (Exhibit E), you contend that this information is also excepted from disclosure under section 552.104. Section 552.104 protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Section 552.104 is generally invoked to except information relating to competitive bidding situations involving specific commercial or contractual matters. Open Records Decision No. 463 (1987). Governmental bodies may withhold this type of information while governmental officials are in the process of evaluating proposals. Open Records Decision No. 170 (1977). Section 552.104 does not, however, information from disclosure once the bidding is over and the contract is in effect. Open Records Decision Nos. 306 (1982); 184 (1978).

You assert that releasing the information contained in Exhibits D and E would provide the requestor with insight into the state's deliberations regarding the proposed procurement and thereby undermine the state's bargaining position with prospective contractors. Under these circumstances, we conclude that the commission may withhold Exhibits D and E from public disclosure pursuant to section 552.104 until such time as the contract is awarded.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 102542

Enclosures: Submitted documents

¹Because we conclude that you may withhold the information at issue from disclosure pursuant to section 552.104, we need not address your section 552.111 claim at this time.

cc: Ms. Claudia Langguth
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Lockheed Martin
701 Brazos, Suite 500
Austin, Texas 78701
(w/o enclosures)