



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 27, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-2510

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118905.

The Texas Department of Health (the "department") received a request for a "list of all HMO's that have submitted letters of interest to participate in the Medicaid HMO program in Dallas County." You contend that the requested information is excepted from required public disclosure by section 552.104 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue. You have submitted several letters as the responsive information.

Section 552.104 of the Government Code states:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. See Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. See Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 at 4 (1990), 520 at 4 (1989). A general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records Decision No. 463 at 2 (1987).

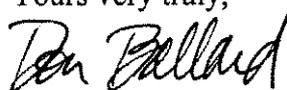
You explain that the department is currently in a competitive bidding and contracting process for the implementation of the managed health care delivery services for the Dallas area Medicaid program. You state that the department has released a request for application for the Dallas area and requested that potential bidders submit a letter of interest to the department. You indicate that the department seeks these letters for several strategic reasons. You also argue that

[i]f a prospective bidder who knew all the competitors were going to be, TDH is concerned that the bids would be more responsive to the capabilities of the competition, rather than the Request for Application. In addition, the bidders would have the benefit of the same information that TDH had requested the Letter of Interest to provide: to gauge the competitiveness and quality of the marketplace, and submit bids accordingly.

This office has previously recognized that information concerning the identity of those who have submitted bids (before the last day of bidding), would be of advantage to other competitors of bidders. Attorney General Opinion MW-591 (1982); Open Records Decision No. 46 (1974). *See* Open Records Decision No. 170 (1977). We have stated that merely knowing the identities of other bidders could furnish a bidder with insights concerning the others' competitive capabilities which he may then use in structuring his own bid. Attorney General Opinion MW-591 (1982). However, we have also stated that "we are unable to find that knowledge of the identity of the numerous potential bidders . . . is information which, if released, would give advantage to competitors or actual bidders." ORD 46. The information sought in this request consists of potential bidders who have submitted letters of interest to participate in a particular program. They do not consist merely of a list of numerous potential bidders for a variety of government contracts or proposals. We believe that release of the potential bidders in this situation presents the same potential harm as the release of actual bidders' identities. Release of the potential bidders who have submitted a letter of interest would reveal the names of likely bidders. And, the likelihood that these companies will actually bid on the specific contract at issue is substantial. Attorney General Opinion MW-591 at 2 (1982). Consequently, we find that the department may withhold the requested information at this time under section 552.104.

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 questions about this ruling, please contact our office.

Yours very truly,



Don Ballard

Assistant Attorney General
Open Records Division

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Ref: ID# 118905

Enclosures: Submitted documents

cc: Mr. Charles Ornstein
Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)