



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2009

Ms. Andrea Slater Gulley
Underwood, Wilson, Berry, Stein & Johnson, P.C.
P.O. Box 9158
Amarillo, Texas 79105-9158

OR2009-12294

Dear Ms. Gulley:

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# 354078.

The Amarillo Independent School District (the "district"), which you represent, received two requests for proposals received in response to an RFP regarding "Pharmaceutical Benefits Management," including information identifying the winning bidder. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You also state, and provide documentation showing, that the district notified fifteen interested third parties of these requests and of their right to submit arguments stating why their information should not be released.¹ See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The

¹The third parties are: Blue Cross/Blue Shield, Catalyst Rx, ClearScript, Express Scripts, HealthSCOPE Benefits, IMS, Mutual Assistance Administrators ("MAA"), Innovanté, MaxorPlus, Restat LLC, Texas Municipal League, United Health Care Insurance Co., U.S. Script, Walgreens, and WellDyne Rx. We note that MAA has informed this office that it did not submit a proposal to the district in response to the specified RFP at issue.

purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded and is in effect. *See id.* at 5. However, this office has determined that under some circumstances, section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *Id.*

You inform us that the submitted proposals relate to a contract to provide pharmaceutical benefits management to the district where the district has awarded the bid. You state that the district requests bids for this service "at least once every three years." You contend that release of the submitted information would give a prospective bidder an unfair competitive advantage by allowing it to undercut future bids, preventing the district from receiving the lowest bid possible. Having considered your arguments, we find that you have demonstrated that section 552.104 is applicable to the submitted information. Therefore, we conclude that the district may withhold the submitted information under section 552.104 of the Government Code.²

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

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

Ref: ID# 354078

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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