



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2009

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2009-17516

Dear Mr. Smith:

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# 363821.

The Texas Health and Human Services Commission (the "commission") received a request for Implementation Advanced Planning Documents ("IAPD") and amendments for the current Texas Integrated Eligibility Redesign System ("TIERS") Software Development and Technical Support Services. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the 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 (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). Section 552.104 does not protect information relating to competitive bidding once a contract has been awarded and is in effect. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You inform us the commission issued a request for proposals (the "RFP") for procurement of TIERS Software Development and Technical Support Services. You state that the

submitted information is related to the resulting competitive bidding process that has yet to result in the selection of a winning bidder. You explain that the requested IAPD "details the commission's procurement strategy in the RFP" and must be filed with the Centers for Medicare and Medicaid Services to modify an existing Medicaid program. You state that the IAPD "contains significant factual and analytical details surrounding the RFP that would give an unfair advantage to the recipients of this information." You argue that release of the information in question at this time would adversely affect the competitive process itself and put the commission at a competitive disadvantage by giving vendors insight into the commission's analysis of its eligibility system and estimated budget for this project. You state that this information would "significantly assist vendors in preparing their respective pricing proposals when responding to the RFP." Based on your representations, we conclude that the commission may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.

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, toll free at (888) 672-6787.

Sincerely,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/sdk

Ref: ID# 363821

Enc. Submitted documents

c: Requestor
(w/o enclosures)