



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 10, 2010

Ms. Connie Crawford
Assistant County Attorney
El Paso County Hospital District Legal Department
4815 Alameda Avenue, 8th Floor, Suite B
El Paso, Texas 79905

OR2010-13755

Dear Ms. Crawford:

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# 398087 (HO-10-228).

The El Paso County Hospital District (the "county") received a request for information pertaining to Bid # 830-05/10-004. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state the release of the information at issue may implicate the proprietary interests of The Foret Companies; Low-High Construction; Medlock Commercial Contractors, L.L.C.; Smart Construction Managers, L.L.C.; CPME, L.L.C.; EPCON, Inc.; F.T. James Construction, Inc.; Garco Commercial, L.L.C.; and High Ridge General Contractor, Inc. (collectively, the "third parties"). Accordingly, you notified the third parties of the request and of their right to submit arguments stating why their information should not be released. *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 exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't

Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing 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). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state the bidding process has not been concluded and no contract has been executed. You assert disclosure of the submitted information at this time would give an advantage to competitors or other bidders and negatively impact negotiations. Based on your representations and our review, we conclude the county has demonstrated how release of the submitted information at issue would harm its interests in a competitive situation. Accordingly, the county may withhold the submitted information under section 552.104 of the Government Code until the contract is executed.

Although you request a previous determination regarding this type of information, we decline to issue such a ruling at this time. 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 398087

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Ricardo Escobar
The Foret Companies
118 North Piedras
El Paso, Texas 79905
(w/o enclosures)

Mr. David Montoya
High Ridge General Contractor Inc
488 South Yarbrough Drive, Suite D
El Paso, Texas 79915
(w/o enclosures)

Mr. Armando Silva
Low-High Construction
3615 Nations Avenue
El Paso, Texas 79930
(w/o enclosures)

Mr. Edgar Garcia
Garco Commercial LLC
428 Amalia Drive
El Paso, Texas 79928
(w/o enclosures)

Mr. Paul Graham
FT James Construction Inc
700 West Paisano
El Paso, Texas 79901
(w/o enclosures)

Ms. Aurora Holguin
Medlock Commercial Contractors LLC
7310 Remcon Circle, Suite A
El Paso, Texas 79912
(w/o enclosures)

Mr. Mickey Loweree
Smart Construction Managers LLC
572 North Mesa
El Paso, Texas 79912
(w/o enclosures)

Mr. Sammy Diaz
CPME LLC
1116 Montana Avenue
El Paso, Texas 79902
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Mr. Eduardo Rodriguez
EPCON Inc
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