



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2010

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

OR2010-16958

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# 400085 (El Paso County File Nos. HO-10-239, HO-10-240, HO-10-241, and HO-10-251).

The El Paso County Hospital District d/b/a University Medical Center of El Paso (the "district"), received a request for information pertaining to RFP# 830-07/10-010-Employee Parking Garage Remodeling, RFP# 830-07/10-011-UMC Clinic Roof, and RFP# 830-07/10-012-UMC Concepcion Remediation, and received another similar request for information pertaining to RFP# 830-07/10-012-UMC Concepcion Remediation.¹ 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 D&H Petroleum & Environmental Services; Rhino Environmental Services, Inc; Medlock Commercial Contractors, LLC; HRT Roofing and Construction, Inc.; F.T. James Construction, Inc.; Alamo Roofing and Metal Co., Inc.; and CentiMark Roofing (collectively, the "third parties"). Accordingly, you notified the third parties of the requests and of their right to

¹You indicate the district sought and received clarification of one of the requests for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

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 representative sample of information.²

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." 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 processes for each of the three projects have not been concluded and no contracts have been executed. You assert disclosure of the submitted information at this time would give an advantage to competitors or other bidders. Based on your representations and our review, we conclude the district has demonstrated how release of the submitted information at issue would harm its interests in a competitive situation. Accordingly, the district may withhold the submitted information under section 552.104 of the Government Code until the contracts are 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

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/bs

Ref: ID# 400085

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Mr. Victor Ayala
D&H Petroleum & Environmental Services
P.O. Box 17969
El Paso, Texas 79917
(w/o enclosures)

Mr. Steve Medlock, Principal
Medlock Commercial Contractors, LLC
7310 Remcon Circle, Suite A
El Paso, Texas 79912
(w/o enclosures)

Mr. Humberto Hernandez, General Manager
HRT Roofing and Construction, Inc.
107 South Ascarate
El Paso, Texas 79905
(w/o enclosures)

Mr. Frank T. James, President
F.T. James Construction, Inc.
700 West Paisano
El Paso, Texas 79901
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Mr. Tomas Villarreal, President
Alamo Roofing and Metal Co., Inc.
5671 Beacon Avenue
El Paso, Texas 79905
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Mr. Timothy M. Dunlap, President & C.O.O.
Mr. Josh McLaughlin, Senior Project Manager
CentiMark Roofing
12 Grandview Circle
Cannonsburg, Pennsylvania 15317
(w/o enclosures)