



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2013

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

OR2013-01447

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# 478234.

The Texas Health and Human Services Commission (the "commission") received four requests for information related to request for information ("RFI") number 529-13-2000102125. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Accenture and HP Enterprises. Accordingly, you have notified both Accenture and HP Enterprises of the request and of their right to submit arguments to this office as to why their information should not be released. *See Gov't Code* § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from Accenture and HP Enterprises. We have considered the submitted argument and reviewed the submitted information.

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. 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) (discussing statutory predecessor)*. 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 information from disclosure after bidding is

completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (1983) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

In this instance, you explain the information at issue is “an integral part of a scheduled Request for Proposals (‘RFP’) pertaining to the Texas Medicaid Management Information System (‘MMIS’)” and was announced “as a component of the ongoing solicitation for the MMIS project due to its size and complexity.” You further assert “releasing the RFI responses at this time would grant potential RFP respondents valuable insight into the possible structure and requirements of the RFP, thereby allowing them a ‘head start’ in the preparation of their respective proposals.” You argue this would result in an unfair advantage to entities competing for the bid and harm the commission’s interests in particular competitive situations. Therefore, the commission may withhold the submitted information under section 552.104 of the Government Code. As we make this determination, we do not address the remaining arguments against disclosure.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 478234

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)

Mr. Chris Deelsnyder
Accenture
Suite 300
1501 South MoPac Expressway
Austin, Texas 78746
(Third party w/o enclosures)

Mr. William A. Van Blarcum
Senior Counsel
Hewlett-Packard Company
MS H4-1H-13
5400 Legacy Drive
Plano, Texas 75024
(Third party w/o enclosures)