



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2014

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

OR2014-07481

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# 521660 (El Paso County Hospital District File Nos. HM-14-044, HM-14-047).

The El Paso County Hospital District (the "district") received two requests for information pertaining to submitted responses to a specified Request for Proposals ("RFP"), including the proposals submitted, the names and associated information of firms that submitted responses, the scoring summary the district generated in response to the RFP, and the name of the winning vendor. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code.¹ Additionally, you state the release of the submitted information may implicate the proprietary interests of ApolloMD, Somnia, Inc. ("Somnia"), Texas Tech University Health Sciences Center, and Staff Care, Inc. Accordingly, you state you notified the third parties 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); *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 in certain circumstances). We have received arguments from Somnia. We have considered the submitted arguments and reviewed the submitted information.

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

¹Although you do not cite to section 552.104 of the Government Code in your brief, we understand you to raise this exception based on the substance of your arguments.

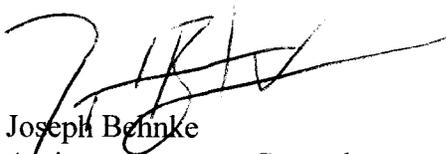
purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). This office has long held that section 552.104 does not except information relating to competitive bidding situations once a contract has been executed. *See, e.g.*, Open Records Decision Nos. 541, 514 (1988), 306 (1982), 184 (1978), 75 (1975).

You state although the district has selected a vendor in response to the RFP issued, no contract has been signed. You argue that, because the district is currently negotiating a contract, the release of the submitted information could prevent the district from obtaining more favorable offers and could allow competitors to undercut bids. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is underway would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract under negotiation). Based on your representations and our review, we agree the district may withhold the submitted information under section 552.104 of the Government Code until a contract has been executed.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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/tch

²As our ruling is dispositive, we need not address the third party arguments against disclosure of this information.

Ref: ID# 521660

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)

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