ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 2, 2004

Ms. Rosemary M. Marin
Scott, Hulse, Marshall, Feuille, Finger & Thurmond, P.C.
1100 Chase Tower
201 East Main Drive
El Paso, Texas 79901

OR2004-7513

Dear Ms. Marin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211194.

The Yselta Independent School District ("YISD"), which you represent, received two requests for information pertaining to request for proposals ("RFP") #24-322-034CSP. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. We have considered the exceptions you claim 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." The purpose of section 552.104 is to protect a governmental body's interests in competitive situations, typically in the context of competitive bidding. *See* Open Records Decision No. 592 (1991). A governmental body seeking to withhold information from disclosure pursuant to section 552.104 must demonstrate some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 generally does not except bidding information after the competitive bidding has concluded and a contract has been executed. *See* Open Records Decision No. 541 (1990).

In this instance, you state that the submitted information relates to service contracts that "have not yet been executed." You assert that "if [the requestors] (or other vendors) are allowed access to this information before the contracts are in effect, then [the requestors] will

be at a competitive advantage over all other vendors." Based on your arguments and our review of the submitted information, we conclude that the submitted information may be withheld pursuant to section 552.104 until the contracts have been executed. As our ruling is dispositive, we need not address the applicability of the remaining exceptions raised by YISD.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 211194

Enc. Submitted documents

c: Mr. David Wysong
Access Administrators, Inc.
7100 Westwind, Suite 115
El Paso, TX 79912
(w/o enclosures)

Ms. Ann M. Miettinen
Legal Services Specialist
United Behavioral Health
9900 Bren Road East - MN008-T410
Minnetonka, MN 55343
(w/o enclosures)

Mr. Stephen R. Ford
Assistant Legal Counsel
ValueOptions
240 Corporate Boulevard, 301/308
Norfolk, VA 23502
(w/o enclosures)

Ms. Susan Spiegal
Vice President, Legal Affairs
Magellan Health Services
14100 Magellan Plaza, 2nd Floor
Maryland Heights, MO 63043
(w/o enclosures)

Ms. Heather L. Westphal
Counsel to APS Healthcare, Inc.
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, DC 20004
(w/o enclosures)

Mr. Frank Madeo
Beech Street Corporation
25500 Commercentre Drive
Lake Forest, CA 92630
(w/o enclosures)

Ms. Lois Dean
Blue Cross & Blue Shield of Texas
908 South Central Expressway
Richardson, TX 75080
(w/o enclosures)

Ceridian Corporation
3311 east Old Shakopee Road
Minneapolis, MN 55425
(w/o enclosures)

Ms. Jodi Aronson Prohofsky
Cigna Behavioral Health
11095 Viking Drive, Suite 350
Eden Prairie, MN 55344
(w/o enclosures)

Mr. Charles L. Knight
Community First Health Plans, Inc.
4801 NW Loop 410, Suite 1000
San Antonio, TX 78229
(w/o enclosures)

Ms. Kathleen M. McEntee
ComPsych Corporation
455 North Cityfront Plaza Drive, 13th Floor
Chicago, IL 60611
(w/o enclosures)

Mr. Paul Alan Boskind
Deer Oaks EAP Services
7272 Wurzbach Road, Suite 601
San Antonio, TX 78240
(w/o enclosures)

Mr. Robert Budd
Delta Dental Insurance Company
1431 Greenway Drive, Suite 520
Irving, TX 75038
(w/o enclosures)

Mr. Bob Davis
Denver Reserve Corporation
7852 South Elati Street, Suite 200
Littleton, CO 80120
(w/o enclosures)

Mr. David S. Glauser
Educators Mutual Insurance Association
852 East Arrowhead Lane
Murray, UT 84107
(w/o enclosures)

Mr Mike Cummins
Great-West Life & Annuity Insurance Company
8515 East Orchard Road
Greenwood Village, CO 80111
(w/o enclosures)

Ms. Lisa M. Spredemann
ING Employees Benefits
7720 North 16th Street #150
Phoenix, AZ 85020
(w/o enclosures)

Ms. Deborah Ontiveros
Integrity Employee Assistance
1600 Lee Trevino, Suite C-7
El Paso, TX 79936
(w/o enclosures)

Mr. Mike Nunez
MERCER Human Resource Consulting
201 Third Street NW, Suite 1450
Albuquerque, NM 87102
(w/o enclosures)

Mr. Hector R. Morales
MCED-MHCM Inc. d/b/a ACCESS EAP
1900 Denver
El Paso, TX 79902
(w/o enclosures)

Mr. Gary D. Robinson
WageWorks, Inc.
Two Waters Park Drive, Suite 250
San Mateo, CA 94403
(w/o enclosures)

Ms. Megan Rigby
WEB-TPA Employer Services
8500 Freeport Parkway South, Suite 400
Irving, TX 75603
(w/o enclosures)

Ms. Christina Almanza
Wellness WORKS
3333 North Mesa
El Paso, TX 79902
(w/o enclosures)