



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2014

Ms. Laurel E. Huston
Assistant County Attorney
El Paso County Hospital District Legal Unit
University Medical Center of El Paso
4815 Alameda Avenue, 8th Floor, Suite B
El Paso, Texas 79905

OR2014-14560

Dear Ms. Huston:

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# 533595 (File No. HM-14-110).

The University Medical Center of El Paso (the "center") received a request for all proposals for a specified RFP and information pertaining to the incumbent service provider, contract number, and subsequent contract amendments. You state the center has released some information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You further state the proprietary interests of American DataBank; Aurico Reports, Inc.; Certiphi Screening; First Choice Background Screening; HireRight, Inc.; Inquiries, Inc.; Kelmar Global; Kentech Consulting Inc.; PreCheck, Inc.; Shield Screening, LLC; Sterling Infosystems, Inc.; and Summit Security Services, Inc. might be implicated by the request. Accordingly, you notified the affected third parties of the request and of their right to submit arguments to this office explaining why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received arguments submitted by American DataBank; Inquiries, Inc.; Shield Screening, LLC; Sterling Infosystems, Inc.; and Summit Security Services, Inc. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this exception is to protect a governmental body's interests in competitive bidding

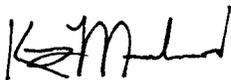
situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded and is in effect. *See id.* at 5. However, this office has determined that under some circumstances, section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *Id.*

You state the submitted information consists of proposals submitted in response to a request for proposals for background screening services issued by the center. You state the bidding process is not complete and a final contract for background screening services has not been executed. Based on your representations and our review, we conclude the center has demonstrated the applicability of section 552.104 to the submitted information. Accordingly, we conclude the center may withhold the submitted information under section 552.104 of the Government Code. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).¹

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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

¹As our ruling is dispositive, we need not address the arguments submitted by American DataBank; Inquiries, Inc.; Shield Screening, LLC; Sterling Infosystems, Inc.; and Summit Security Services, Inc.

Ref: ID# 533595

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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