



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2009

Ms. Holly C. Lytle
Assistant County Attorney
El Paso County, Texas
County Courthouse
500 E. San Antonio, Room 503
El Paso, Texas 79901

OR2009-08847

Dear Ms. Lytle:

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# 347285.

El Paso County (the "county") received a request for the grading matrix, the winning bidder's proposal and pricing, and a copy of the contract awarded for request for proposals number 08-150. You state you have no contract responsive to the request.¹ You state you are releasing some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.104 of the Government Code. You also state that release of this information may implicate the proprietary interests of NovaPro Risk Solutions, L.P. ("NovaPro"). Accordingly, you have notified NovaPro of the request and of its opportunity to submit arguments to this office as to why its information should be excepted from public disclosure. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from NovaPro. We have considered the submitted arguments and reviewed the submitted information.

¹ We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

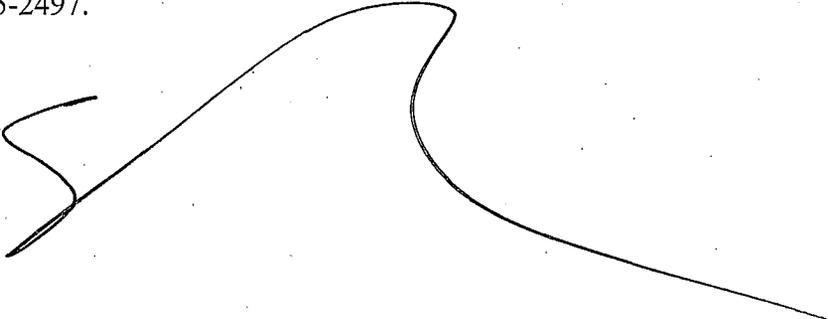
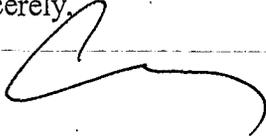
Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). However, section 552.104 does not except from disclosure information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You state the county received eight bids for the request for proposals at issue. You further state that on November 24, 2008, the El Paso County Commissioners Court awarded NovaPro with the winning bid subject to contract negotiations. You state the contract negotiations are still pending and no contract has been approved. You argue that release of the submitted information while negotiations are ongoing may hurt the county's bargaining position. Based on your representations and our review of the submitted information, we conclude that the county may withhold the submitted information in its entirety at this time pursuant to section 552.104 of the Government Code.² However, we note that the county may no longer withhold the submitted information under section 552.104 once a contract has been executed.

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 at (512) 475-2497.

Sincerely,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

² As our ruling is dispositive, we need not address NovaPro's arguments against disclosure.

Ref: ID# 347285

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Ms. Kathleen Becker
NovaPro Risk Solutions
300 East Main Street, Suite 740
El Paso, Texas 79901
(w/o enclosures)