



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2010

Ms. Otila Gonzalez
Administrative Assistant
Val Verde County
P.O. Box 4250
Del Rio, Texas 78841

OR2010-06316

Dear Ms. Gonzalez:

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# 379186.

Val Verde County (the "county") received a request for "the developer agreement" between the county and Val Verde County Roadbuilders related to a specified road project, and "a copy of all previous agreements with Pate Engineers or their affiliates." You state that the county will provide the requestor with a copy of a previous letter agreement between Pate Transportation Partners, L.P. ("Pate") and the county, a copy of the Project Development Agreement (the "PDA"), and "most" of the PDA attachments. The county seeks to withhold Attachments 3 and 4 to the PDA, which contain the "Guaranteed Maximum Price" and its detailed components, under sections 552.104 and 552.105 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of third parties Pate and Val Verde County Roadbuilders ("VVCR"). Accordingly, you state, and provide documentation showing, you notified Pate and VVCR of the county's receipt of the request for information and of their right to submit arguments to this office as to why their information should not be released to the requestor. *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 submitted by

an attorney on behalf of Pate and VVCR.¹ 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. 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). 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). Section 552.104 generally does not except information relating to competitive bidding after a contract has been awarded and executed. *See* Open Records Decision No. 541 (1990). However, in some situations, section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *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).

In this instance, you assert that although the contract has been awarded to Pate and assigned to VVCR, the project at issue is a phased project and bids for some phases of the project have not yet been solicited or obtained. You state if the guaranteed maximum price documents at issue are released, potential bidders would know the guaranteed maximum pricing for the phases and could increase their bids accordingly, resulting in higher prices to the county for the project. Based on these representations and our review, we find you have demonstrated how release of the guaranteed maximum price documents would harm the county’s interests in a competitive situation. Accordingly, the county may withhold the guaranteed maximum price documents under section 552.104 of the Government Code. As section 552.104 is dispositive, we do not address the remaining argument.

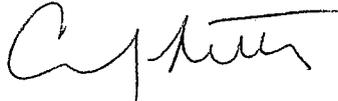
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹We note that Pate and VVCR do not claim any proprietary interest in the guaranteed maximum price documents at issue under section 552.110 of the Government Code. Pate and VVCR instead submitted comments to this office supporting the county’s claims under sections 552.104 and 552.105 of the Government Code. *See* Gov’t Code § 552.304.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 379186

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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