



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 2, 2017

Ms. Sarah Parker
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2017-25100

Dear Ms. Parker:

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# 682605.

The Texas Department of Transportation (the "department") received a request for the top five proposals submitted to three specified requests for solicitations.¹ You state you will withhold or release some of the requested information in accordance with previous rulings from this office. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of AECOM Technical Services, Inc.; American Structurepoint, Inc.; Binkley & Barfield, Inc. ("Binkley"); Bridgefarmer & Associates, Inc. ("Bridgefarmer"); Burns & McDonnell Engineering Company, Inc. ("Burns"); Civil Systems Engineering, Inc. ("Civil"); CP&Y, Inc. ("CP&Y"); Halff Associates, Inc. ("Halff"); HDR Engineering, Inc.; HNTB Corporation; Lina T. Ramey and Associates, Inc.; Rodriguez Transportation Group, Inc.; S&B Infrastructure, Ltd; and Volkert, Inc. Accordingly, you state, and provide

¹You state the department sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

documentation showing, you notified these interested third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *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 Binkley, Bridgefarmer, Burns, Civil, CP&Y, and Halff. We have considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have only received comments from Binkley, Bridgefarmer, Burns, Civil, CP&Y, and Halff. Thus, we have no basis to conclude any of the remaining interested third parties has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold any of the submitted information on the basis of any proprietary interest any of the remaining interested third parties may have in the information.

Next, we note Binkley objects to disclosure of information the department has not submitted to this office for review. This ruling does not address information that was not submitted by the department and is limited to the information the department has submitted for our review.² *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Section 552.104(a) of the Government Code exempts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 841. Binkley, Bridgefarmer, Burns, Civil, CP&Y, and Halff each state it has competitors. In addition, Binkley states release of the information at issue would allow competitors to duplicate its procedures and information without expending any resources to do so, thus giving its competitors an advantage. Bridgefarmer states release of the information at issue would give its competitors an advantage in future situations. Burns states release of the information at issue would give competitors an advantage in future

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

bidding situations by duplicating its strategies and information. Civil states release of the information at issue would provide an advantage to competitors and undercut the ability to provide competitive rates in future bidding situations. CP&Y states release of the information at issue would reveal its proprietary information and consequently place competitors at an advantage in future situations. Halff states release of the information at issue would allow competitors access to a "proven and successful format" created by Halff and place competitors at an advantage. After review of the information at issue and consideration of the arguments, we find Binkley, Bridgefarmer, Burns, Civil, CP&Y, and Halff have each established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we have marked under section 552.104(a) of the Government Code. The department must release the remaining information.

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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 682605

Enc. Submitted documents

c: Requestor
(w/o enclosures)

14 Third Parties
(w/o enclosures)