



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 4, 2019

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

OR2019-27831

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# 789145.

The Texas Department of Transportation (the "department") received a request for information related to twenty-six specified solicitations, including project names, locations of work, and responses submitted by the winning bidders.¹ You state the department will release some information. Although the department takes no position as to whether the information at issue is excepted from disclosure under the Act, you state release of the information may implicate the proprietary interests of twenty different third parties. Accordingly, you state, and provide documentation showing, you notified AECOM Technical Services, Inc. ("AECOM"); AIA Engineers, LLC ("AIA"); Atkins North America, Inc. ("Atkins"); BGE, Inc. ("BGE"); Civiltech Engineering, Inc.; Cobb, Fendley, & Associates, Inc. ("CobbFendley"); Entech Civil Engineers, Inc.; Halff Associates, Inc. ("Halff"); HDR Engineering, Inc. ("HDR"); HNTB Corporation; Huitt-Zollars, Inc. ("Huitt-Zollars"); Jacobs Engineering Group, Inc. ("Jacobs"); Johnson, Mirmiran, & Thompson, Inc. ("JMT"); Kimley-Horn & Associates, Inc.; LJA Engineering, Inc. ("LJA"); Michael Baker International, Inc.; Pape-Dawson Consulting Engineers, Inc. ("Pape-

¹You state the department sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Dawson”); Solaray Engineering, Inc.; Teague, Nall, & Perkins, Inc.; and Teds Infrastructure Group, Inc. of the request for information and of their rights 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 AECOM, AIA, Atkins, BGE, CobbFendley, Halff, HDR, Huitt-Zollars, Jacobs, JMT, LJA, and Pape-Dawson. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note AIA seeks to withhold information the department did not submit for our review. Because such information was not submitted, this ruling does not address that information and is limited to the information submitted as responsive by the department. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Next, you state some of the requested information was the subject of previous requests for information, as a result of which this office issued rulings. We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the requested information is identical to information previously requested and ruled upon by this office, we conclude the department may rely on those previous rulings and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the submitted information is not identical to the information responsive to these previous rulings, we will address the submitted arguments against disclosure.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude those parties have protected proprietary interests in the submitted information. *See id.* § 552.110; 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 portion of the submitted information related to the remaining third parties on the basis of any proprietary interest they may have in the information.

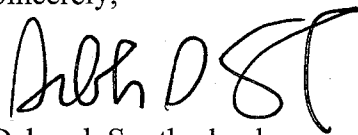
Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A

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. AECOM, AIA, Atkins, BGE, CobbFendley, Halff, HDR, Huitt-Zollars, Jacobs, JMT, LJA, and Pape-Dawson each state they have competitors. In addition, these third parties each state release of the information at issue would give an advantage to their competitors. After review of the information at issue and consideration of the arguments, we find AECOM, AIA, Atkins, BGE, CobbFendley, Halff, HDR, Huitt-Zollars, Jacobs, JMT, LJA, and Pape-Dawson have established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we marked under section 552.104(a) of the Government Code.² 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Deborah Southerland
Attorney
Open Records Division

DS/be

Ref: ID# 789145

Enc. Submitted documents

c: Requestor
(w/o enclosures)

20 Third Parties
(w/o enclosures)

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