



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2012

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

OR2012-13657

Dear Ms. Alexander:

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# 464153.

The Texas Department of Transportation (the "department") received two requests for bid tabulations regarding RFQ# Q292012039653000 and RFQ# Q292012030872000. You state you are providing some information to one of the requestors.¹ Although you take no position on whether the requested information is excepted from disclosure, you state release of this information may implicate the proprietary interests of Globe Electric Supply Company and Guardian Industrial Supply. Accordingly, you have notified these third parties of the request and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have reviewed the submitted information.

We note that 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

¹You state the department does not have a bid tabulation for Q292012030872000 because the procurement was cancelled and re-advertised as Q292012039653000. You further state the only information pertaining to tabulations for Q292012030872000 consists of a vendor list, which you are providing to the requestor. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed) (Act does not require governmental body to release information that did not exist when request for information was received or to prepare new information in response to a request).

date of this decision, we have not received correspondence from either of these companies. Therefore, we have no basis to conclude either of these companies has protected proprietary interests 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 the submitted information on the basis of any proprietary interests these companies may have in the information. As no arguments against disclosure have been received, the department must release the submitted information in its entirety.

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, toll free at (888) 672-6787.

Sincerely,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/eb

Ref: ID# 464153

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Globe Electric Supply Company
P.O. Box 710548
Houston, Texas 77271
(w/o enclosures)