



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 11, 2013

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

OR2013-15789

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# 499158.

The Texas Department of Transportation (the "department") received a request for a list of the winning firms, a copy of each of the winning proposals, and the scores and evaluations for each winning proposal submitted in response to a specified department request for proposals relating to stormwater services, as well as the scores for a specified joint venture proposal. You state you are releasing the requested list of winning firms. You claim a portion of the submitted information, which you have marked as Exhibit B, is excepted from disclosure under section 552.104 of the Government Code. You state the department takes no position with respect to the public availability of the remaining submitted information, which you have marked as Exhibit C. However, you state release of this information may implicate the proprietary interests of TRC Environmental Corporation ("TRC"), Atkins North America, Inc. ("Atkins"), AECOM Technical Services, Inc. ("AECOM"), and Dannenbaum, Walter P. Moore and Terra Nova Joint Venturers ("Dannenbaum"). Accordingly, you state and provide documentation showing, you have notified these 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 (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 considered the exception you claim and reviewed the submitted information, a portion of which consists of a representative sample.¹

Section 552.104 of the Government Code exempts 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). Generally, section 552.104 does not except information from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated that the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates that public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *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); *see also* Open Records Decision No. 309 (1982) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

In this instance, you inform us that the scoring and evaluation criteria documents submitted as Exhibit B relate to successful bids that have resulted in contracts between the department and the involved third parties; thus, this information does not pertain to a currently competitive bidding situation. However, you claim that although the contracts arising from these specific competitive procurements have been executed, the department plans on re-using these scoring/evaluation criteria for other stormwater service contracts in upcoming fiscal years. You state the department "routinely" hires contractors for stormwater services and that release of the scoring/evaluation criteria in Exhibit B "will compromise the competitive process in [the department's] next contract procurement process for these services." Based on your representations and our review of the information at issue, we

¹We assume that the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

agree the department may withhold the information in Exhibit B under section 552.104 of the Government Code.

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) 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 any third parties explaining why any of their requested information should not be released. Therefore, we have no basis to conclude these companies 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 information in Exhibit C on the basis of any proprietary interests these companies may have in the information. As no exceptions to disclosure were raised for this information, it must be released.

In summary, the department may withhold the information in Exhibit B under section 552.104 of the Government Code. The remaining information must be released.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 499158

Enc. Submitted documents

c: Requestor
(w/o enclosures)

TRC Environmental Corporation
505 East Huntland Drive, Suite 250
Austin, Texas 78752
(w/o enclosures)

Atkins North America, Inc.
6504 Bridge Point Parkway, Suite 200
Austin, Texas 78730
(w/o enclosures)

AECOM Technical Services, Inc.
5444 Westheimer Road, Suite 200
Houston, Texas 77056
(w/o enclosures)

Dannenbaum, Walter P. Moore and Terra Nova Joint Venturers
3100 West Alabama Street
Houston, Texas 77098-2094
(w/o enclosures)