



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2013

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

OR2013-16444

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# 501432.

The Texas Department of Transportation (the "department") received a request for the bid tabulations for two specified solicitation numbers. The department takes no position as to release of the information and has notified the bidders of the request for information and their right to submit arguments stating why their information should not be released.¹ *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have received comments from OnX and have considered the submitted arguments and 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

¹The bidders are PCM-G; 3-C Technology, LLC; Criner-Daniels & Associates; Compliant Technology Systems; Synetra, Inc.; Austin Ribbon & Computers; OnX USA, LLC ("OnX"); Southern Computer Warehouse; M&A Technology, Inc.; and Amagine Technologies.

that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling we have received comments from OnX only. Thus, we have no basis to conclude the other bidders have a protected proprietary interest in the submitted information pertaining to their companies. *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 the 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 information pertaining to the other bidders on the basis of any proprietary interest they may have in the information.

OnX asserts section 552.110(b) of the Government Code as an exception to disclosure of its pricing information. Section 552.110(b) excepts from disclosure "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

OnX contends release of its pricing information would cause substantial competitive harm to its future bids as it competes in response to other proposals and would likely use the same pricing information. OnX explains it has no contract in effect with the department and did not win the bids. Upon review, we find OnX has established release of its pricing information would result in substantial competitive harm. Accordingly, the department must withhold OnX's pricing information under section 552.110(b) of the Government Code.² The department must release the remaining requested 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

²Because section 552.110(b) of the Government Code is dispositive, we do not address OnX's other argument to withhold its pricing information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/som

Ref: ID# 501432

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)

3-C Technology, LLC
3200 West Pleasant Run Road, Suite 330
Lancaster, Texas 78146
(w/o enclosures)

Criner-Daniels & Associates
1776 Yorktown, Suite 525
Houston, Texas 77056
(w/o enclosures)

Compliant Technology Systems
P.O. Box 3709
Wichita Falls, Texas 76301
(w/o enclosures)

Synetra, Inc.
P.O. Box 12956
Odessa, Texas 79768
(w/o enclosures)

Austin Ribbon & Computers
9211 Waterford Centre Boulevard
Suite 202
Austin, Texas 78758
(w/o enclosures)

Ms. Ioana Ciopraga
Legal Intern
OnX Enterprise Solutions
5910 Landerbrook Drive
Suite 250
Mayfield Heights, Ohio 44124
(w/o enclosures)

Southern Computer Warehouse
1395 South Marietta Parkway
Building 300, Suite 106
Marietta, Georgia 30067
(w/o enclosures)

M&A Technology, Inc.
2045 Chenault Drive
Carrollton, Texas 75006
(w/o enclosures)

Amagine Technologies
17106 Copper Shore
Houston, Texas 77095
(w/o enclosures)