



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 19, 2016

Ms. Hadassah Schloss
Director, Open Government
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2016-21082

Dear Ms. Schloss:

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# 627690.

The Texas General Land Office (the "GLO") received a request for the awarded contracts, successful vendor proposals, and proposal scoring sheets for a specified solicitation for professional engineering and environmental site assessment services.¹ You state the GLO has released the requested contracts and scoring sheets. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of AECOM Technical Services, Inc. ("AECOM"); Bury Holdings, Inc. ("Bury"); Cardno, Inc. ("Cardno"); Cobb, Fendley & Associates, Inc. ("Cobb"); Dannenbaum Engineering Corporation ("Dannenbaum"); Environmental & Infrastructure, Inc. ("E&I"); Halff Associates, Inc. ("Halff"); and TRE & Associates, L.L.C. ("TRE"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue 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

¹We note the GLO 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).

comments from AECOM 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 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 Bury, Cardno, Cobb, Dannenbaum, E&I, or TRE explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of these third parties has 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 GLO may not withhold the submitted information on the basis of any proprietary interest Bury, Cardno, Cobb, Dannenbaum, E&I, or TRE 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 and Halff both state they have competitors. In addition, both AECOM and Halff state release of portions of their information would give their competitors an unfair advantage in bidding on future projects. After review of the information at issue and consideration of the arguments, we find AECOM and Halff have established the release of the information at issue, which we marked, would give advantage to a competitor or bidder. Thus, we conclude the GLO may withhold the information we marked under section 552.104(a) of the Government Code.²

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

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

In summary, the GLO may withhold the information we marked in AECOM's and Halff's proposals under section 552.104(a) of the Government Code. The GLO must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 627690

Enc. Submitted documents

c: Requestor
(w/o enclosures)

8 Third Parties
(w/o enclosures)