



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2009

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

OR2009-06993

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# 344426.

The Texas Department of Transportation (the "department") received a request for copies of solicitations in response to Bid No. B442008042106000 by Eagle Construction and Environmental Services, L.P. ("Eagle"); USA Environmental, L.P. ("USA Environmental"); Tetra Tech; and Texas Strike Force, Inc. ("Texas Strike Force"). You state you will provide the requestor with some of the requested information. You further state that our office has previously ruled on a portion of the requested information. Although you take no position with respect to the public availability of the remaining requested information, you state that its release may implicate the proprietary interests of Texas Strike Force. Accordingly, you have notified Texas Strike Force of the request and of its right 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) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have reviewed the submitted information.

Initially, you inform us that information pertaining to the solicitations in response to Bid No. B442008042106000 by Eagle, USA Environmental, and Tetra Tech was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-14613 (2008). In that ruling, we concluded that the department must withhold the information we marked under sections 552.110(a) and 552.136 of the Government Code and noted that any information that is protected by copyright must be released only in accordance with copyright law. As we have no indication that the law, facts,

and circumstances on which the prior ruling was based have changed, the department must continue to rely on that ruling as a previous determination and withhold or release the requested information in accordance with Open Records Letter No. 2008-14613. *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).

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 Texas Strike Force explaining why its information should not be released. Therefore, we have no basis to conclude that Texas Strike Force 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 (1990). Accordingly, the submitted 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.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 at (512) 475-2497.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 344426

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Anthony Cavasos
Texas Strikeforce, Inc.
2505 Meadowlark Lane
St Paul, Texas 75098
(w/o enclosures)