



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2012

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

OR2012-01861

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# 444677.

The Texas Department of Transportation (the "department") received a request for letters of interest received in response to solicitation number 31-118P5001 and evaluation results of the responses. You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of several third parties. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released.¹ *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits

¹The third parties notified were AECOM Technical Services, Inc.; Aguirre & Fields, LP; AIA Engineers Ltd.; APIA Engineering Consulting, LLC; ARCADIS U.S., Inc.; Arredondo, Zepeda & Brunz, LLC; ARS Engineers, Inc.; Binkley & Barfield, Inc. ("Binkley"); Bridgefarmer & Associates, Inc.; Brown & Gay Engineers, Inc.; CH2M Hill; Chica & Associates, Inc.; Civil Associates, Inc.; CP&Y, Inc.; Dannenbaum Engineering Corporation; Halff Associates, Inc.; Huitt-Zollars, Inc.; IEA, Inc.; Jacobs Engineering Group, Inc.; Janssen & Spaans Engineering, Inc.; Kennedy Consulting, Ltd; Kimley-Horn & Associates, Inc.; Lina T. Ramey & Associates, Inc.; Lockwood Andrews & Newman, Inc.; Othon, Inc.; Parsons Brinckerhoff Americas, Inc.; PBS&J; R. G. Miller Engineers, Inc.; Rodriguez Transportation Group; STV, Incorporated; Teague Nall and Perkins, Inc.; Trans Systems; and URS Corporation.

governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received correspondence from Binkley stating Binkley does not object to release of its information. We have reviewed the submitted arguments and the submitted information, a portion of which consists of a representative sample.²

Initially, 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 of the remaining third parties explaining why any portion of the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have a protected proprietary interest 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. Further, as noted above, in correspondence to this office, Binkley states it does not object to release of its information at issue. Accordingly, the department may not withhold any portion of the submitted information on the basis of any proprietary interest any third party may have in the information.

Section 552.104 of the Government Code excepts from required public 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) (discussing statutory predecessor). 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 executed. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates 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

²We assume the "representative sample" of records 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 those records contain substantially different types of information than that submitted to this office.

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 (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 argue the disclosure of the requested evaluation documents “would harm [the department]’s competitive interests pertaining to the bidding process used in awarding contracts for professional engineering services.” You inform us “[d]isclosure of this information would allow third party bidders to tailor their bids to specific evaluation criteria, undermining the quality of proposals and undermining competition among bidders.” You state the department “solicits bids for professional engineering services, including the same types of services at issue here, on a recurring basis.” You assert the release of the information at issue “will undercut [the department’s] negotiating position with respect to future procurements for such contracts.” Based on your representations, we find you have demonstrated public release of Exhibit B would cause specific harm to the department’s interests in particular competitive situations. Therefore, the department may withhold Exhibit B under section 552.104 of the Government Code.

In summary, the department may withhold Exhibit B under section 552.104 of the Government Code. As no further exceptions to disclosure have been raised, 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.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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 444677

Enc. Submitted documents

c: Requestor
(w/o enclosures)

AECOM Technical Services, Inc.
17300 Dallas Parkway, Suite 1010
Dallas, Texas 75248
(w/o enclosures)

Aguirre & Fields, LP
221 West Exchange Avenue
Fort Worth, Texas 76164
(w/o enclosures)

AIA Engineers Ltd.
15310 Park Row
Houston, Texas 77084
(w/o enclosures)

Binkley & Barfield, Inc.
1255 West 15th Street, Suite 250
Plano, Texas 75206
(w/o enclosures)

ARCADIS U.S., Inc.
12400 Coit Road, Suite 1200
Dallas, Texas 75251-2005
(w/o enclosures)

Arredondo, Zepeda & Brunz, LLC
11355 McCree Road
Dallas, Texas 75238
(w/o enclosures)

ARS Engineers, Inc.
5910 North Central Expressway
Suite 1000
Dallas, Texas 75206
(w/o enclosures)

Bridgefarmer & Associates, Inc.
12801 North Central Expressway
Suite 400
Dallas, Texas 75243
(w/o enclosures)

APIA Engineering Consulting, LLC
5910 North Central Expressway
Suite 1475
Dallas, Texas 75206
(w/o enclosures)

Brown & Gay Engineers, Inc.
2595 Dallas Parkway, Suite 204
Frisco, Texas 75034
(w/o enclosures)

CH2M Hill
14701 Saint Mary's Lane, Suite 300
Houston, Texas 77079
(w/o enclosures)

Chica & Associates, Inc.
3385 North 3rd Street, Suite 14
Abilene, Texas 79601
(w/o enclosures)

Civil Associates, Inc.
1521 Northwest Highway
Garland, Texas 75041
(w/o enclosures)

CP&Y, Inc.
1820 Regal Row
Dallas, Texas 75235
(w/o enclosures)

Half Associates, Inc.
1201 North Bowser Road
Richardson, Texas 75081-2275
(w/o enclosures)

Huitt-Zollars, Inc.
1717 McKinney Avenue
Suite 1400
Dallas, Texas 75202-1236
(w/o enclosures)

IEA, Inc.
18333 Preston Road, Suite 150
Dallas, Texas 75252
(w/o enclosures)

Jacobs Engineering Group, Inc.
7950 Elmbrook Drive
Dallas, Texas 75247
(w/o enclosures)

Janssen & Spaans Engineering, Inc.
9120 Harrison Park Court
Indianapolis, Indiana 46216
(w/o enclosures)

Kennedy Consulting Ltd
1871 Harroun Avenue, Suite 101
McKinney, Texas 75069
(w/o enclosures)

Kimley-Horn & Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251
(w/o enclosures)

Lina T. Ramey & Associates, Inc.
1349 Empire Central, Suite 900
Dallas, Texas 75247
(w/o enclosures)

Dannenbaum Engineering Corporation
6421 Camp Bowie Boulevard, Suite 400
Fort Worth, Texas 76116-5421
(w/o enclosures)

Lockwood Andrews & Newman, Inc.
8350 North Central Expressway
Suite 1400
Dallas, Texas 75206
(w/o enclosures)

Othon, Inc.
11910 Greenville Avenue, Suite 200
Dallas, Texas 75243
(w/o enclosures)

Parsons Brinckerhoff
2777 Stemmons Freeway, Suite 1333
Dallas, Texas 75207
(w/o enclosures)

PBSJ
18383 Preston Road
Dallas, Texas 75252
(w/o enclosures)

R. G. Miller Engineers, Inc.
12121 Wickchester Lane, Suite 200
Houston, Texas 77079
(w/o enclosures)

Rodriguez Transportation Group
4949 Hedgcocke, Suite 200
Plano, Texas 75024
(w/o enclosures)

STV, Inc.
7557 Rambler Road, Suite 1050
Dallas, Texas 75231-2305
(w/o enclosures)

Teague Nall and Perkins
1100 Macon Street
Fort Worth, Texas 76137
(w/o enclosures)

Trans Systems
3030 LBJ Freeway, Suite 900
Dallas, Texas 75234
(w/o enclosures)

URS Corporation
1950 North Stemmons Freeway
Suite 6000
Dallas, Texas 75207
(w/o enclosures)