



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2012

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

OR2012-12939

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# 462462.

The Texas Department of Transportation (the "department") received two requests for the bid tabulation for solicitation number Q442012035611000, and another request from one of the requestors for the bid tabulation for solicitation number Q442012034179000. Although you take no position on the public availability of the requested information, you state the requested information may implicate the proprietary interests of third parties. Accordingly, you inform us you notified Al-Razaq Computing Services ("ACS"); Checkpoint Services, Inc.; Southern Computer Warehouse; SHI Government Solution; CDW Government LLC; Computer Tech; US Tech; Criner-Daniels & Associates; Desert Communications; Technology Assets, LLC; Austin Ribbon and Computers; Dykon Computer Help Center; Alinec Technologies; Hied, Inc.; Omega Business Systems; Flores and Associates; and PC Mall Gov., Inc. (collectively, the "third parties") of the request and of their right to submit comments to this office as to why the requested information should not be released to the requestor. *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 applicability of exception to disclosure under

the Act in certain circumstances). We have received comments from ACS. We have considered the submitted arguments and reviewed the submitted information.

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 received comments ACS, but we have not received comments from any of the remaining third parties on why their submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties 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 submitted information on the basis of any proprietary interest the remaining third parties may have in it.

ACS raises section 552.110(b) of the Government Code to withhold its submitted information. Section 552.110(b) protects “[c]ommercial 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.* § 552.110(b); ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

ACS argues release of its pricing information would give its competitors an advantage by allowing them to determine competitive pricing for future bids. Upon review, we find ACS has established release of its pricing information would result in substantial competitive harm. Accordingly, the department must withhold ACS's pricing information, which we have marked, under section 552.110(b) of the Government Code. As no further exceptions to disclosure were 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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 462462

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Checkpoint Services, Inc.
1790 Commerce Drive, Suite A-1
El Paso, Texas 79912
(w/o enclosures)

US Tech
1236 San Jacinto Mall
Baytown, Texas 77521
(w/o enclosures)

Al-Razaq Computing Services
6001 Savoy Drive, Suite 505
Houston, Texas 77036
(w/o enclosures)

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

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

Computer Tech
Suite 100
3910 FM 196 Road West
Houston, Texas 77068
(w/o enclosures)

SHI Government Solution
Suite 375
1301 South Mopac Expressway
Austin, Texas 78746
(w/o enclosures)

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

Desert Communications
7100 Westwind, Suite 300
El Paso, Texas 79912
(w/o enclosures)

Technology Assets, LLC
789 North Grove Road, Suite 103
Richardson, Texas 75081
(w/o enclosures)

Dykon Computer Help Center
10700 Stancliff Road
Houston, Texas 77099
(w/o enclosures)

Alinec Technologies
2112 Rutland Drive, Suite 180
Austin, Texas 78758
(w/o enclosures)

CDW Government
230 North Milwaukee Avenue
Vernon Mills, Illinois 60061
(w/o enclosures)

PC Mall Gov. Inc.
7421 Gateway Court
Manassas, Virginia 20109
(w/o enclosures)

Flores and Associates
8300 North Lamar Boulevard, Suite 101A
Austin, Texas 78753
(w/o enclosures)

Omega Business Systems
2700 Hitson Lane
Fort Worth, Texas 76112
(w/o enclosures)

Hied Inc.
1850 North Greenville, Suite 170
Richardson, Texas 75081
(w/o enclosures)