



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 19, 2015

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

OR2015-24395

Dear Ms. Parker:

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# 587813.

The Texas Department of Transportation (the "department") received two requests from the same requestor for the responses submitted by named companies for solicitation numbers 0000000700 and 0000000947. Although you state the department takes no position with respect to whether the submitted information pertaining to solicitation number 0000000947 is excepted from disclosure, you state its release may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the department notified the third parties of the request for information and of their right to submit arguments stating why their information should not be released.<sup>1</sup> *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 comments from CP&Y. We have reviewed the submitted information and the arguments submitted by CP&Y.

Initially, you state the requested information pertaining to solicitation number 0000000700 was the subject of a previous request for information, as a result of which this office issued

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<sup>1</sup>The third parties notified pursuant to section 552.305 are the following: CP&Y, Inc. ("CP&Y"); HDR Engineering, Inc.; Huitt-Zollars, Inc.; Jacobs Engineering Group; and Lockwood Andrews & Newman, Inc.

Open Records Letter No. 2015-19036 (2015). In Open Records Letter No. 2015-19036, we determined (1) the department may withhold portions of the information at issue under section 552.104(a) of the Government Code, (2) the department must withhold the information we marked under section 552.110(b) of the Government Code, (3) the department must release the remaining responsive information, and (4) any responsive information protected by copyright may only be released in accordance with copyright law. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the department must continue to rely on Open Records Letter No. 2015-19036 as previous determination and withhold or release the information pertaining to solicitation number 0000000700 in accordance with that ruling. *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 the same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address the public availability of the submitted information, which was not at issue in the previous ruling.

Next, 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has received comments from only CP&Y explaining why its information should not be released to the requestor. Thus, we have no basis to conclude the release of the submitted information would implicate the interests of the remaining third parties, and none of the submitted information may be withheld on that basis. *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.

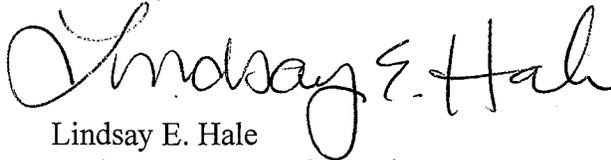
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The "test under section 552.104 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. CP&Y states it has competitors. In addition, CP&Y states the release of certain information in its proposal would provide to its competitors information that is critical to the company's "ability to effectively compete in [its] market" and would expose CP&Y "to significant downside risk, including the revelation of strategic and operational trade secrets to competing firms." After review of the information at issue and consideration of the arguments, we find CP&Y has established the release of the information at issue would give an advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we have marked under section 552.104(a).

In summary, the department must continue to rely on Open Records Letter No. 2015-19036 as previous determination and withhold or release the information pertaining to solicitation number 0000000700 in accordance with that ruling. The department may withhold the information we have marked under section 552.104(a) of the Government Code. The department must release the remaining 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](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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/eb

Ref: ID# 587813

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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