



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 17, 2016

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

OR2016-13895

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# 614625 (Request ID# ROW 16-0330).

The Texas Department of Transportation (the "department") received four requests for all specified information regarding a specified request for proposals. 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 Halff Associates, Inc. ("Halff"); Heidaker Land Services, Inc. ("Heidaker"); HNTB Corp. ("HNTB"); Lockwood, Andrews, and Newnam, Inc. ("Lockwood"); Overland, Pacific & Cutler, Inc. ("Overland"); Percheron Field Services, Inc. ("Percheron"); and Summit Resources, LLC ("Summit").¹ Accordingly, you state, and provide documentation showing, you notified these parties of the request for information and of their right 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 arguments from Halff, Heidaker, Lockwood, and Summit. We have also received and considered comments from a requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or

¹We note Halff, Heidaker, and Summit submitted a joint proposal under the name of Halff.

should not be released). We have considered the 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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from HNTB, Overland, or Percheron explaining why the submitted information should not be released. Therefore, we have no basis to conclude those 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 related to those parties on the basis of any proprietary interest HNTB, Overland, or Percheron may have in the information.

Heidaker and Summit assert pages 227-262 and 267-289 in section seven of Half's information is protected under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, the court concluded a private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 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. Heidaker and Summit state they have competitors. In addition, Heidaker and Summit state the information at issue, if released, would give the their competitors an advantage on future related project proposals. After review of the information at issue and consideration of the arguments, we find Heidaker and Summit have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold pages 227-262 and 267-289 in section seven of Half's information under section 552.104(a) of the Government Code.²

Lockwood also asserts sections seven and fifteen of its information are protected under section 552.104 of the Government Code. Lockwood states it has competitors. In addition, Lockwood states the information at issue, if released, would allow a competitor to "usurp this information and use it in its own proposal giving it a competitive advantage." After review

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

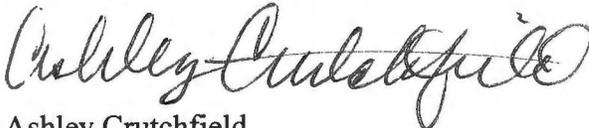
of the information at issue and consideration of the arguments, we find Lockwood has established the release of the sections seven and fifteen of its information would give advantage to a competitor or bidder. Thus, we conclude the department may withhold sections seven and fifteen of Lockwood's information under section 552.104(a) of the Government Code.

In summary, the department may withhold pages 227-262 and 267-289 in section seven of Halff's information under section 552.104(a) of the Government Code. The department may withhold sections seven and fifteen of Lockwood's information under section 552.104(a) of the Government Code. As you raise no arguments, 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, 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 614625

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)

7 Third Parties
(w/o enclosures)