



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 17, 2010

Mr. Kipling D. Giles  
Senior Counsel  
Legal Services Division  
CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296

OR2010-03791

Dear Mr. Giles:

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# 373889.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for information pertaining to the award of a specified contract, including information regarding the city's evaluation process and cost parameters. Although you take no position on the public availability of the submitted information, you state that the information at issue may implicate the interests of third parties. Accordingly, you submit documentation showing that you notified StreamServe DS LLC ("SSDL") and HP Exstream ("HP") pursuant to the Act. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from SSDL. We have considered the submitted arguments and reviewed the submitted information.

We note that 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 requested information relating to that party should be withheld from disclosure. *See*

Gov't Code § 552.305(d)(2)(B). As of the date of this letter, only SSDL has submitted comments to this office regarding how release of its submitted information will affect its proprietary interests. Thus, we have no basis to conclude that the release of any portion of HP's submitted information would implicate its proprietary interests. *See, e.g.*, Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, CPS may not withhold any portion of the submitted information on the basis of any proprietary interest HP may have in the information.

SSDL asserts that its pricing information is excepted under section 552.110 of the Government Code.<sup>1</sup> 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); *see also* ORD 661.

We note that SSDL was the winning bidder in this instance. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). We find that SSDL has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the submitted information would cause the company substantial competitive harm. *See* Open Records Decision 319 (1982). We therefore conclude that CPS may not withhold any of the submitted information under section 552.110(b) of the Government Code. As no further exceptions are raised, the submitted information must be released to the requestor.

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<sup>1</sup>We note that SSDL also seeks to withhold its customer list under section 552.110(b) of the Government Code. However, we note that CPS has not submitted this information for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by CPS. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 373889

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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