



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2010

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

OR2010-09315

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# 383995.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received seven requests for the bid tabulation for RFP number 7000009289. Although you take no position with respect to the public availability of the submitted information, you indicate its release may implicate the proprietary interests of Keller-Martin Construction ("Keller-Martin"). Accordingly, you state, and have provided documentation showing, you notified Keller-Martin of the request and of its right 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) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have reviewed the submitted information.

¹You state MJC & Associates; The Stuthoff Company, Inc.; Pletz Construction, LLC; ABECO Contracting, Inc.; PECO Construction Co., Ltd.; Lamda Construction I, Ltd.; Browning Construction Co.; and Brasfield & Gorrie have been notified and do not object to the release of their information.

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 Keller-Martin explaining why the submitted information should not be released. Therefore, we have no basis to conclude Keller-Martin has 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, CPS may not withhold the submitted information on the basis of any proprietary interest Keller-Martin may have in the information. As no exceptions to disclosure have been raised, the submitted information must be released to the requestors.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 383995

Enc. Submitted documents

cc: 7 Requestors
(w/o enclosures)