



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2011

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

OR2011-12621

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# 428742.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received four requests for a copy of the bid tabulation for RFP-7000102937-General Construction Services. 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 FMO, Inc. ("FMO"); JSR, Inc. ("JSR"); Milcon Construction, L.L.C. ("Milcon"); and MLP Ventures, Inc. ("MLP"). Accordingly, you notified these third parties of the request for information and of their 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) (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 reviewed the submitted information.

¹You state Finser Construction and Remodeling, Inc., MJC & Associates, and Pletz Construction do not object to the release of their 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 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, FMO, JSR, Milcon, and MLP have not submitted comments to this office explaining why the submitted information should not be released. Therefore, we have no basis to conclude that these companies have a protected proprietary interest 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 any portion of the submitted information based upon the proprietary interests of FMO, JSR, Milcon, or MLP. As no exceptions to disclosure are raised, CPS must release the submitted 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.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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 428742

Enc. Submitted documents

c: Requestors
(w/o enclosures)

Mr. Oscar Garza
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419 West Cevallos Street
San Antonio, Texas 78204
(w/o enclosures)

Mr. Wayne Pape
FMO, Inc.
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