



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2012

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

OR2012-01760

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# 444236.

The City Public Service Board of San Antonio ("CPS Energy") received a request for "the existing contracts for General Construction Services with CPS." Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of MJC & Associates ("MJC"). Accordingly, you state you notified MJC of the request for information and of the company's right to submit arguments to this office as to why the submitted information 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 correspondence from MJC. We have 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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). This office received a letter from MJC dated December 6, 2011, in which it informs us it does not object to the release of most of the requested information, but that it "is NOT willing to disclose the Exhibit B-1, Rate

Schedule” [emphasis in original]. However, MJC provided this office with no arguments as to why this information should not be released, and as of the date of this letter, this office has not received any further comments from MJC explaining why the submitted information should not be released. Therefore, we have no basis to conclude that this third party has 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. Furthermore, we note MJC was the winning bidder with respect to the contract at issue, and the pricing information of a winning bidder is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep’t of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Accordingly, CPS Energy may not withhold any portion of the submitted information based upon the proprietary interests of MJC. The submitted information must, therefore, be released to the requestor.

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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 444236

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Mr. Michael J. Cotugno
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(w/o enclosures)