



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2012

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

OR2012-04540

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# 449202.

The City Public Service Board of San Antonio d/b/a CPS Energy ("CPS") received ten requests for the bid tabulation for request for proposals number 7000106891. You state that, although CPS takes no position with respect to the requested information, it may implicate the interests of third parties. Accordingly, you state CPS notified the third parties of the request for information and of their right to submit arguments stating why their information should not be released.¹ See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 applicability of exception in certain circumstances). We have reviewed the submitted information and the arguments submitted by Buildmore and Yates.

Initially, Buildmore and Yates each seek to withhold information CPS did not submit 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

¹The third parties notified pursuant to section 552.305 are Buildem Construction, Inc. ("Buildem"); Buildmore Construction, Inc. ("Buildmore"); Business World Contractors, LLC ("Business World"); Duo Construction, LLC ("Duo"); F.A. Nunnally Co. ("F.A."); FMO, Inc. ("FMO"); Jamco Ventures, LLC ("Jamco"); JC Stoddard Construction ("Stoddard"); Joel Northcutt Construction ("Northcutt"); Kegley, Inc. ("Kegley"); Milcon Construction, LLC ("Milcon"); MJC & Associates ("MJC"); MLP Ventures, Inc. ("MLP"); Tejas Premier Building Contractor, Inc. ("Tejas"); Valla Construction Inc. ("Valla"); and W.G. Yates & Sons Construction Company ("Yates").

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).

Next, 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) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See id.* § 552.305(d)(2)(B). You inform our office that Buildem, Duo, F.A., Jamco, Tejas, and Northcutt do not object to release of their information. We note the submitted information reflects MJC does not object to release of its submitted information. As of the date of this letter, this office has not received comments from Business World, FMO, Kegley, Milcon, MLP, Stoddard, or Valla explaining why their information should not be released to the requestor. In correspondence to this office, Buildmore states it does not object to release of any of its information submitted by CPS. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate these third parties' interests. *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, we conclude that CPS may not withhold any of the submitted information on the basis of any interest Buildem, Buildmore, Business World, Duo, F.A., FMO, Jamco, Kegley, Milcon, MJC, MLP, Stoddard, Tejas, Northcutt, or Valla may have in the information.

Yates asserts some of its information is excepted from disclosure under section 552.110 of the Government Code. 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); Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

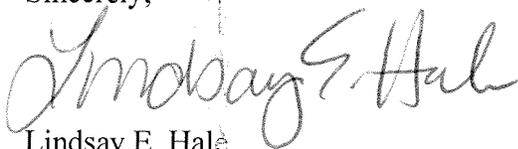
Yates claims its hourly rate pricing information constitutes commercial information that, if released, would cause the company substantial competitive harm. Upon review, we conclude Yates has established that release of its pricing information would cause the company substantial competitive injury. Accordingly, CPS must withhold the pricing information we have marked under section 552.110(b) of the Government Code.² As no further exceptions to disclosure are raised, CPS must release the remaining information.

²As our ruling is dispositive, we need not address Yates' remaining argument under section 552.110(a) of the Government Code for this 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 449202

Enc. Submitted documents

c: 10 Requestors
(w/o enclosures)

Mr. Wayne Pape
FMO, Inc.
5221 Port Entry
San Antonio, Texas 78222
(w/o enclosures)

Mr. Joshua Darst
Valla Construction Inc.
555 Fredericksburg Road, Suite 202
San Antonio, Texas 78229
(w/o enclosures)

Ms. Heather F. Bennett
W.G. Yates & Sons Construction
500 Greymont Avenue, Suite A
Jackson, Mississippi 39202
(w/o enclosures)

Ms. Tanya Brown
Buildmore Construction, Inc.
1109 West Blanco
San Antonio, Texas 78232
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Duo Construction, LLC
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