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ATTORNEY GENERAL OF TEXAS

October 28, 2019

Ms. Stacey Cormican  
Attorney  
CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296

OR2019-30317

Dear Ms. Cormican:

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# 795009.

The City Public Service Board of San Antonio d/b/a CPS Energy ("CPS Energy") received two requests from different requestors for the bid tabulation for statement of work number 10606058. Although CPS Energy takes no position as to whether the submitted information is excepted under the Act, CPS Energy states release of the submitted information may implicate the proprietary interests of Sun Coast Resources, Inc. ("Sun Coast"); Pinnacle Petroleum, Inc.; and World Fuel Services. Further, CPS Energy indicates the proprietary interests of Petroleum Traders are also implicated. Accordingly, CPS Energy states, and provides documentation showing, it notified these third parties of the request for information and of the 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 comments from Sun Coast. We have reviewed the submitted arguments and the submitted information.

Initially, 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 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 any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the

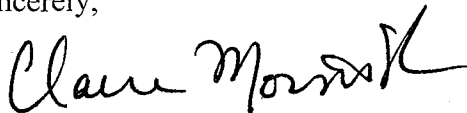
remaining third parties has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, 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. Accordingly, CPS Energy may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. Sun Coast states it has competitors. In addition, Sun Coast states release of its information would provide its competitors with information that would enable them to underbid Sun Coast in the market and would be detrimental to its business operations. After review of the information at issue and consideration of the arguments, we find Sun Coast has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude CPS Energy may withhold Sun Coast’s information under section 552.104(a) of the Government Code. CPS Energy must release the remaining 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/mo

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Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)