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ATTORNEY GENERAL OF TEXAS

April 6, 2020

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

OR2020-10364

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# 820129.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for award information and the project start date pertaining to bid number 7000155418. Although CPS Energy takes no position regarding whether the submitted information is excepted from disclosure under the Act, it informs us its release may implicate the proprietary interests of Dimension Energy Services, LLC ("Dimension"). Accordingly, CPS Energy states, and provides documentation showing, it notified Dimension of the request for information and of its right to submit arguments to this office. *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 Dimension. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Dimension seeks to withhold information CPS Energy 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 by CPS Energy. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Dimension raises section 552.104 of the Government Code for a portion of its information. Section 552.104 excepts from disclosure information “if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” *Id.* § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov’t Code 552.104(a). Therefore, we do not address Dimension’s arguments under section 552.104 of the Government Code.

Dimension also raises section 552.110 of the Government Code for a portion of its information. Section 552.110(b) of the Government Code states, “[e]xcept as provided by [s]ection 552.0222, information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). Section 552.110(c) of the Government Code states:

- (c) Except as provided by Section 552.0222, commercial 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 is [excepted from required disclosure].

Id. § 552.110(c). Section 552.0222 of the Government Code provides, in relevant part:

- (b) The exceptions to disclosure provided by Sections 552.110 and 552.1101 do not apply to the following types of contracting information:

...

(3) the following contract or offer terms or their functional equivalent:

(A) any term describing the overall or total price the governmental body will or could potentially pay, including overall or total value, maximum liability, and final price;

(B) a description of the items or services to be delivered with the total price for each if a total price is identified for the item or service in the contract;

(C) the delivery and service deadlines;

(D) the remedies for breach of contract;

(E) the identity of all parties to the contract;

(F) the identity of all subcontractors in a contract;

(G) the affiliate overall or total pricing for a vendor, contractor, potential vendor, or potential contractor;

(H) the execution dates;

(I) the effective dates; and

(J) the contract duration terms, including any extension options[.]

Id. § 552.0222(b)(3). Dimension argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, however, we find the information at issue is subject to section 552.0222(b)(3) and may not be withheld on the basis of section 552.110(b). *See id.* §§ 552.0222(b) (listing certain types of information not excepted under section 552.110). Therefore, CPS Energy may not withhold any of the information at issue under section 552.110(b) of the Government Code.

Dimension argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, however, we find the information at issue is subject to section 552.0222(b)(3) and may not be withheld on the basis of section 552.110(c). *See id.* §§ 552.0222(b). Therefore, CPS Energy may not withhold any of the information at issue under section 552.110(c) of the Government Code. As no further arguments against disclosure are made, CPS Energy 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 <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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 820129

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)