



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 7, 2020

Ms. Stacey Cormican
Attorney
CPS Energy
145 Navarro Street
San Antonio, Texas 78205

OR2020-10455

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# 820946.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for the award information for Collective Numbers 7000156286, 7000156830, and 7000156532. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. You also state release of the submitted information may implicate the interests of Graybar Electric Company, Inc.; KBS Electrical Distributors; and Techline, Inc. Accordingly, you notified these third parties of the request for information and of their right to submit arguments stating why their information should not be released. *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 considered the exceptions you claim and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, 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." Gov't Code § 552.104(a). 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." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find CPS Energy has established the release of the information at issue would harm its interests by providing an advantage to a competitor or bidder in a particular competitive situation that is set to reoccur or for which CPS Energy has demonstrated there is a specific and demonstrable intent to enter into the competitive situation again in the future. Thus, we conclude CPS Energy may withhold the submitted information under section 552.104(a) of the Government Code.¹

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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/gw

Ref: ID# 820946

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Parties
(w/o enclosures)

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.