



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 17, 2020

Ms. Stacey Cormican  
Attorney  
Legal Division  
CPS Energy  
143 Navarro  
San Antonio, Texas 78205

OR2020-11178

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# 823060.

The City Public Service Board of San Antonio, d/b/a CPS Energy ("CPS Energy") received two requests from different requestors for award information and the bid tabulation pertaining to a specified request for qualifications. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Arcosa; Mica Steelworks; Preferred Sales; HCES; and Advanced Steel, Inc. Accordingly, you state, and provide documentation showing, you notified these interested third parties of the request for information and of their 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 considered the exception you claim and reviewed the submitted information.

Initially, we must address CPS Energy's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). You state, and provide documentation showing, CPS Energy received the first request for information on January

24, 2020. Thus, CPS Energy's ten-business-day deadline was February 7, 2020. However, you did not request a ruling from this office until February 10, 2020. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find CPS Energy failed to comply with the requirements of section 552.301 with respect to the first request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). CPS Energy claims section 552.104 of the Government Code for the submitted information. However, we find you have failed to establish a compelling reason to address this exception for information responsive to the first request. Accordingly, we find the information we have marked, which is responsive to the first request for award information, to include the awarded bid amount, may not be withheld under section 552.104, and must be released to the first requestor. We note in failing to establish a compelling reason for the first request, CPS Energy has failed to establish a compelling reason for the same responsive information with respect to the second request. *See Gov't Code* § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). Therefore, CPS Energy must also release the information we have marked pertaining to the awarded bid amount to the second requestor. However, as CPS Energy met its obligations under section 552.301 of the Government Code with respect to the second request for information, we will address your argument under section 552.104 for the remaining information responsive to the second request.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the interested third parties. Thus, we have no basis to conclude any of the interested third parties has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 any of the submitted information on the basis of any proprietary interest any of the interested third parties may have in the 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 remaining information at issue and consideration of the arguments, we find CPS Energy has established the release of the remaining 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, with the exception of the information we have marked for release, we conclude CPS Energy may withhold the submitted information from the second requestor under section 552.104(a).

In summary, CPS Energy must release the information we have marked to the first requestor. In addition, CPS Energy must release the information we have marked pertaining to the awarded bid amount to the second requestor. CPS Energy may withhold the remaining information from the second requestor under section 552.104(a) of the Government Code.

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,

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/be

Ref: ID# 823060

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

6 Third Parties  
(w/o enclosures)