



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 20, 2020

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

OR2020-29143

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# 854252.

The City of San Antonio Public Service Board ("CPS Energy") received a request for a specified contract. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of ISS Facility Services ("ISS").¹ Accordingly, you state, and provide documentation showing, you notified ISS of the request for information and of their right to submit arguments to this office as to why the information at issue 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 arguments from ISS. We have considered the submitted arguments and reviewed the submitted information.

Section 552.1101 of the Government Code provides, in relevant part:

- (a) . . . [I]nformation submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the

¹ We note CPS Energy did not comply with the requirements of section 552.301(b) of the Government Code in providing some of the information at issue. *See* Gov't Code § 552.301(b). Nonetheless, we note the interests of a third party can provide compelling reasons to overcome the presumption of openness. Accordingly, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

Gov't Code § 552.1101(a). ISS asserts disclosure of the submitted information would reveal an individual approach to internal operations and pricing methodology and give advantage to a competitor. Upon review, we find ISS has failed to provide the specific factual evidence necessary to withhold any of the submitted information at issue under section 552.1101(a) of the Government Code, and CPS Energy may not withhold it on that basis. 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,

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/jm

Ref: ID# 854252

c: Requestor

Third Party