



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2010

Mr. Kipling D. Giles
Senior Counsel
Legal Services Division
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296

OR2010-18487

Dear Mr. Giles:

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# 402652.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received three requests for the bid tabulation for RFQ 7000095080. Although you take no position with respect to the public availability of the submitted information, you indicate its release may implicate the proprietary interests of G.W. Mitchell Construction; Browning Construction Co.; MJC & Associates; Peco Construction Co., LTD; and Bartek Construction Co.; (collectively, the "third parties"). Accordingly, you state, and have provided documentation showing, you notified the third parties of the request and of their right to submit arguments to this office as to why the submitted information should not be released.¹ See Gov't Code § 552.305(d); see also 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 the applicability of exception to disclose under Act in certain circumstances). We have reviewed the submitted information.

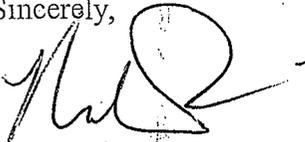
¹You state Guido Brothers Construction; Davila Construction, Inc.; and FMO, Inc. have been notified and do not object to the release of their information.

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 third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the third parties have protected proprietary interests 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 may not withhold the submitted information on the basis of any proprietary interest the third parties may have in the information. As no exceptions to disclosure have been raised, the submitted information must be released to the requestors.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 402652

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Bill Mitchell
G.W. Mitchell Construction
2002 North St. Mary's Street
San Antonio, Texas 78212
(w/o enclosures)

Mr. Craig Browning
Browning Construction Co.
903 Basse Road
San Antonio, Texas 78212
(w/o enclosures)

Mr. George Gaiser, Jr.
MJC & Associates
10906 Laureate Drive, Suite 100
San Antonio, Texas 78249
(w/o enclosures)

Mr. Richard Garza
Peco Construction Co., LTD
5400-2 New Highway 90 West
San Antonio, Texas 78227
(w/o enclosures)