



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2013

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

OR2013-20203

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# 506131.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for specified bid tabulations.¹ Although you take no position as to whether the requested information is excepted under the Act, you state release of this information may implicate the proprietary interests of Air Hygiene, Inc. ("Air"), CEMTEK Environmental, Inc. ("CEMTEK"), Grace Consulting, Inc. ("Grace"), Metco Environmental ("Metco"), Shaw Environmental & Infrastructure, Inc. ("Shaw"), and Weston Solutions, Inc. ("Weston"). Accordingly, you state you notified these third parties 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 comments from Weston and on behalf of Metco. We have reviewed the submitted information and the submitted arguments.

¹We note CPS sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

Initially, we note 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 Air, CEMTEK, Grace, or Shaw explaining why the submitted information should not be released. Therefore, we have no basis to conclude Air, CEMTEK, Grace, or Shaw 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 Air, CEMTEK, Grace, or Shaw may have in the information.

Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *Id.*; see also ORD 661 at 5 (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm).

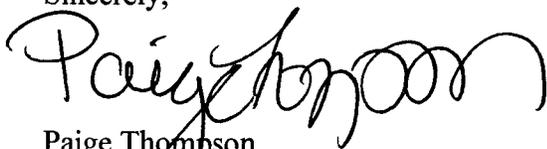
Metco and Weston claim portions of the submitted information constitute commercial or financial information excepted under section 552.110(b) of the Government Code. Upon review, we find Metco and Weston have not provided specific factual evidence that substantial competitive injury would likely result from the release of the information at issue. See ORD 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Although Metco and Weston seek to withhold their pricing information, CPS informs our office Metco and Weston were the winning bidders with respect to the contracts at issue. We note the pricing information of a winning bidder is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). See Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); see also Open Records Decision No. 319 at 3 (1982) (information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing is not ordinarily excepted from disclosure under statutory predecessor to section 552.110). See generally Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Further, the terms of a contract

with a governmental body are generally not excepted from public disclosure. See Gov't Code 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Accordingly, CPS may not withhold any of Metco's or Weston's information under section 552.110(b). As no further exceptions to disclosure have been raised, the submitted information must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/bhf

Ref: ID# 506131

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Air Hygiene, Inc.
1600 West Tacoma Street
Broken Arrow, Oklahoma 74012
(w/o enclosures)

Grace Consulting, Inc.
510 Dickson Street
Wellington, Ohio 44090
(w/o enclosures)

CEMTEK Environmental, Inc.
3041 South Orange Avenue
Santa Ana, California 92707
(w/o enclosures)

Metco Environmental
P.O. Box 598
Addison, Texas 75001
(w/o enclosures)

Ms. Megan M. Schwartz
Assistant General Counsel
Weston Solutions
1400 Weston Way
P.O. Box 2653
West Chester, Pennsylvania 19380
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Shaw Environmental & Infrastructure, Inc.
4171 Essen Lane
Baton Rouge, Louisiana 70809
(w/o enclosures)