



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 1, 2017

Mr. Frank J. Garza
Counsel for the Brownsville Public Utility Board
Davidson Troilo Ream & Garza
601 Northwest Loop 410, Suite 100
San Antonio, Texas 78216-5511

OR2017-02278

Dear Mr. Garza:

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# 645553.

The Brownsville Public Utility Board (the "board"), which you represent, received a request for information pertaining to a specified request for proposals. You state the board will release some information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Further, you state release of this information may implicate the proprietary interests of Access Services Corporation. Accordingly, you state you notified this third party of the request for information and of its 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 considered the exception you claim and reviewed the submitted information.

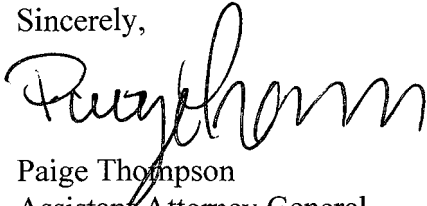
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You state the board has made a decision with respect to the specified request for proposals. However, you state the board has not yet

commenced negotiations with the selected firm and a contract has not been executed. You assert if the board is unable to negotiate a contract with the selected vendor, the board may open contract negotiations with another bidder. You further assert release of the submitted information could affect the ability of the board to negotiate the specific terms of the contract. Thus, we conclude the board has established the release of the information at issue would give an advantage to a competitor or bidder and it may withhold the submitted information 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 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/eb

Ref: ID# 645553

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)