



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 2, 2017

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

OR2017-12126

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# 660420.

The Brownsville Public Utility Board (the "board"), which you represent, received a request for proposals and ranking criteria related to a specified request for proposals. The board claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the board states release of the submitted information may implicate the proprietary interests of Boreas Group ("Boreas"); Excergy Corporation ("Excergy"); and Leidos Engineering, L.L.C. Accordingly, the board states, and provides documentation showing, it notified the third parties of the request for information and of the 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 received comments from Boreas and Excergy. We have reviewed the submitted information and the submitted arguments.

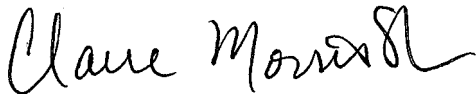
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The board represents the information at issue pertains to a competitive bidding situation. In addition, the board states it has selected a

winning bidder, but states the contract for these services is still under negotiation and has not been executed. Thus, the board argues release of the requested information would cause harm because, if the board is unable to negotiate a contract with the selected vendor and must enter negotiations with another entity, such release could undermine the board's ability to negotiate the specific terms of a contract. After review of the information at issue and consideration of the arguments, we find the board has established the release of the information would give advantage to a competitor or bidder. Thus, we conclude the board may withhold the submitted information under section 552.104(a) of the Government Code.<sup>1</sup>

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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/tdw

Ref: ID# 660420

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)

---

<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.