



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2019

Mr. Frank J. Garza
Counsel for the Brownsville Public Utilities Board
Davidson Troilo Beam & Garza, PC
601 NW Loop 410, Suite 100
San Antonio, Texas 78216-5511

OR2019-14569

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# 768442.

The Brownsville Public Utilities Board (the "board"), which you represent, received a request for proposals submitted by AXA Equitable Life Insurance Company ("AXA"), ICMA-RA, and VOYA Retirement Insurance & Annuity Company ("VOYA") for a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of AXA, ICMA-RA, and VOYA. Accordingly, you state, and provide documentation showing, you notified these interested third parties of the request for information and of their 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 AXA. We have considered the submitted arguments 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 represent the information at issue pertains to a competitive bidding situation. In addition, you state negotiations with AXA are ongoing, and there is no executed final contract. You state release of the information at issue would affect the board’s ability to negotiate the contract terms. After review of the information at issue and consideration of the arguments, we find the board has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the board may withhold the submitted information under section 552.104(a).¹

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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/mo

Ref: ID# 768442

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.