



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2010

Mr. Frank J. Garza
Law Offices of Davidson & Troilo
Attorney for Brownsville Public Utility Board
7550 West IH-10, Suite 800
San Antonio, Texas 78229-5815

OR2010-06363

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# 377911.

The Brownsville Public Utility Board (the "board"), which you represent, received two requests for the bid tabulations for Aluminum Based Water Treatment Coagulant for 2009. You state that the board will release some responsive information to the requestors. You claim the remaining requested information is excepted from disclosure under section 552.104 of the Government Code. You also explain that the submitted information may contain third party proprietary information subject to exception under the Act. Accordingly, you have notified Kemira Water Solutions, Inc. ("Kemira") and ALTIVIA of this request for information and of each company's right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information. We have also considered comments received from Kemira.

Section 552.104 of the Government Code excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this exception is to protect a governmental body's interests in competitive bidding

situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded and is in effect. *See id.* at 5. However, this office has determined that under some circumstances, section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *Id.*

In this instance, you inform us that the submitted bid tabulations concern a contract that the board has already awarded. However, you state that the board recently issued another request for proposals for Aluminum Based Water Treatment Coagulant, which is still pending. Further, you claim that the pricing information at issue is similar to the currently pending request for proposals. You state that if the submitted pricing information is released, it will give competitors an unfair advantage in the current bidding process. Based on your representations and our review of the submitted information, we find you have demonstrated that release of the submitted information would harm the board's interests in a particular ongoing competitive situation. *See* ORD 592. Therefore, the board may withhold the submitted information under section 552.104 of the Government Code.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.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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

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

Ref: ID# 377911

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

c: Mr. Nadeem Husain
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