



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 14, 2016

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

OR2016-05805

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# 601585.

The Brownsville Public Utilities Board (the "board"), which you represent, received a request for the winning bidder's proposal and the rating chart associated with a specified request for proposals. You state the board will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of Mercury Associates ("Mercury"). Accordingly, you state, and provide documentation showing, you notified Mercury of the request for information and of Mercury's 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.

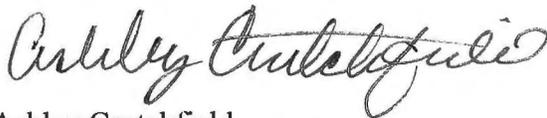
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing*

Co. v. Paxton, 466 S.W.3d 831 (Tex. 2015). You represent the information pertains to a competitive bidding situation and the contract has not been executed. In addition, you state “the release of this information may give another bidder who submitted a proposal an advantage.” 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).

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 601585

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Randy Owen
Senior Vice President
Mercury Associates
7361 Calhoun Place, Suite 680
Rockville, Maryland 20855
(w/o enclosures)