



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 24, 1997

Ms. Sharon Alexander
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR97-2136

Dear Ms. Alexander:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110266.

The Texas Department of Health (the department) received two open records requests for the identity of the bidders who have submitted proposals to the department in connection with an RFP for the department's Quality Monitor Project and for copies of those bidders' proposals. You explain that the competitive bidding process is still on-going and that no contract has been awarded. You therefore seek to withhold the requested information pursuant to section 552.104 of the Government Code.

Section 552.104 of the Open Records Act protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.,* Open Records Decision No. 463 (1987). Governmental bodies may withhold this type of information while the governmental officials are in the process of interpreting the proposals and the competitors are free to furnish additional information. *Cf.* Open Records Decision No. 170 (1977). Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect, Open Records Decision Nos. 306 (1982), 184 (1978), or where no contract is awarded. Open Records Decision No. 201 (1978).

Because you state that the department has not yet awarded the contract, the department may withhold the requested information at this time pursuant to section 552.104. Release of this information during the time that competitors may clarify, modify, or

withdraw their proposals could result in an advantage to the other competitors for the contract or damage the department's ability to obtain truly competitive bids.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/ch

Ref.: ID# 110266

Enclosures: Submitted documents

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