



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 1, 1997

Ms. Sharon Alexander  
Staff Attorney  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199

OR97-2209

Dear Ms. Alexander:

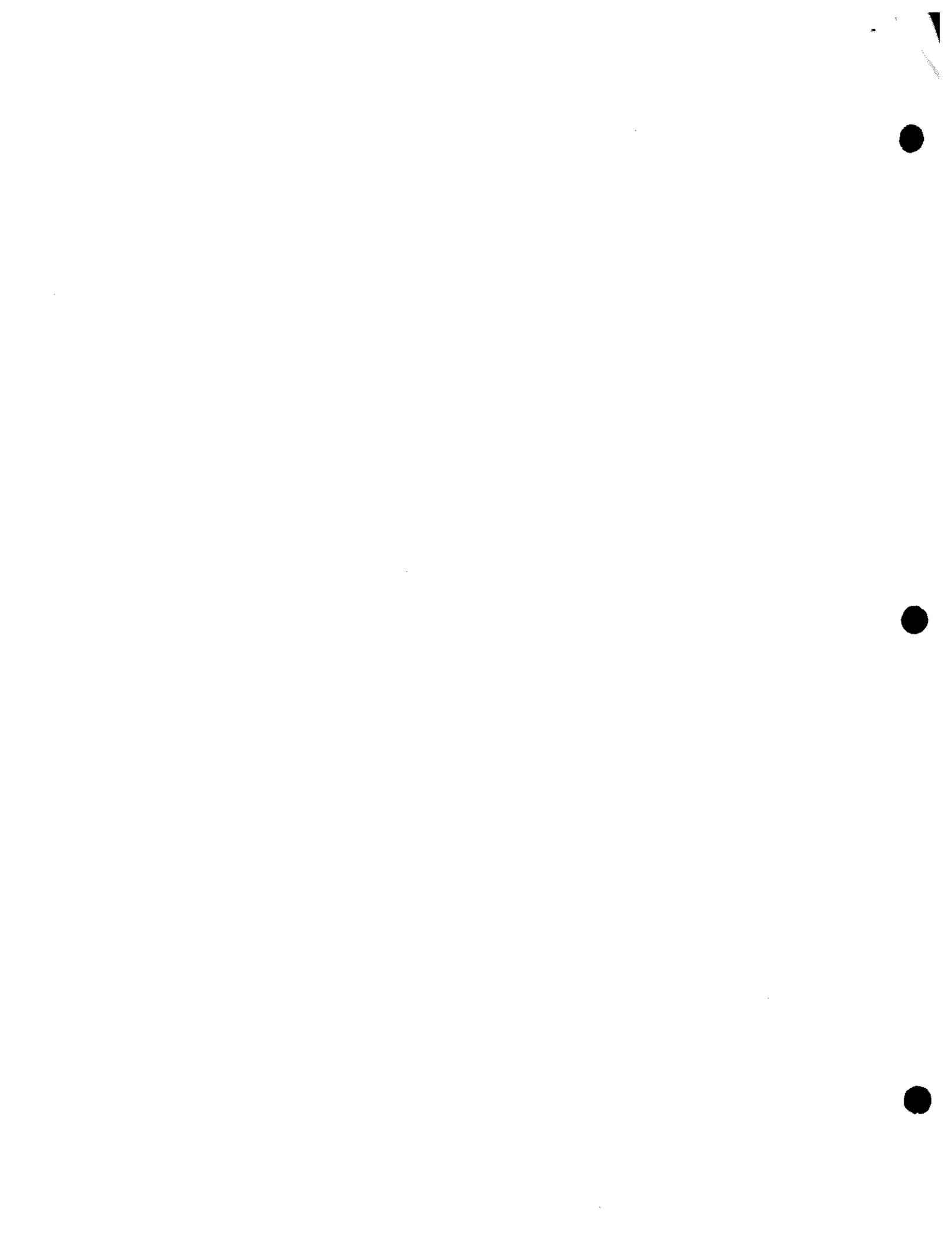
You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your requests were assigned ID#s 108935 and 109246.<sup>1</sup>

The Texas Department of Health (the "department") received several requests for information which you contend relates to the Enrollment Broker Contractor RFP. In response to the request, you submitted to this office for review some of the information you assert is responsive. You state that "[t]he public information requested, which is not confidential, will be provided to each requestor." However, you claim that the remaining information at issue is excepted from disclosure. In your initial request for a ruling, you stated that "all of the requested information pertaining to HCF-96-02, the Enrollment Broker contract, is confidential," pursuant to section 552.104 of the Government Code. In your subsequent request for a ruling you asserted sections 552.110 and 552.111, in addition to section 552.104 of the Government Code. We have considered the exceptions and arguments you have raised and have reviewed the submitted information.

Initially, we note that in Open Records Letter Nos. 97-0856 (1997), 97-1564 (1997), and 97-1675 (1997), our office specifically addressed the release of related information pursuant to section 552.104 of the Government Code. Therefore, if the requested records overlap with any information which was the subject of our previous rulings, then the department should withhold or release this information as directed by those rulings. A copy of the related rulings are enclosed for your convenience.

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<sup>1</sup>We have combined the two related files, because the requestors seek information which you contend relates to the Enrollment Broker Contractor request for proposal ("RFP").



Section 552.104 states that:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

Section 552.104 protects the government's interest in purchasing by assuring that the bidding process will be truly competitive. *See* Open Records Decision Nos. 592 (1991) (exception protects interests of governmental body, usually in competitive bidding situations), 583 (1990), 554 (1990). Generally, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990).

You assert that "[t]he department issued five Requests for Proposals (RFPs), which will result in five separate service contracts with organizations to assist in certain functions performed for the Texas Medicaid Program." The department also asserts that the five RFPs, which are at issue in this request, should be considered as "one competitive bid process," because "the services sought to be procured are highly interrelated, with potential overlap and potential for one contractor to be awarded more than one of the service contracts." Furthermore, you contend the competitive bidding procedures have not yet been completed for any of the five Medicaid service contracts, so none of the five contracts has yet been awarded." Because you state that the department has not yet awarded the service contracts with regard to this matter, we conclude that pursuant to section 552.104 you may withhold the submitted information, until such time as a final contract is awarded.<sup>2</sup>

As we resolve your request under section 552.104, we need not specifically address your other claimed exceptions at this time. 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Sam Haddad  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>Section 552.104 does not except this information after the contract is awarded. *See* Open Records Decision No. 514 (1988).



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Ref.: ID#s 108935, 109246

Enclosures: Open Records Letter Nos. 97-0856; 97-1564; 97-1675 (1997)  
Submitted documents

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