

By the Committee on Governmental Oversight and Accountability

585-03445-11

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1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 119.071, F.S., which
4 provides an exemption from public-records requirements
5 for bids, proposals, or replies submitted to an agency
6 in response to a competitive solicitation; expanding
7 the public-records exemption by extending the duration
8 of the exemption; providing a definition; reorganizing
9 provisions; providing for future repeal and
10 legislative review of the exemption under the Open
11 Government Sunset Review Act; amending s. 286.0113,
12 F.S., which provides an exemption from public-meetings
13 requirements for meetings at which a negotiation with
14 a vendor is conducted and which provides an exemption
15 from public-records requirements for recordings of
16 exempt meetings; providing definitions; expanding the
17 exemption to include meetings at which a negotiation
18 with a vendor is conducted pursuant to a competitive
19 solicitation, at which a vendor makes an oral
20 presentation as part of a competitive solicitation, at
21 which a vendor answers questions as part of a
22 competitive solicitation, and at which team members
23 discuss negotiation strategies; expanding the public-
24 records exemption to include any records presented at
25 an exempt meeting; reorganizing provisions; providing
26 for future repeal and legislative review under the
27 Open Government Sunset Review Act; providing a
28 statement of public necessity; providing an effective
29 date.

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31 Be It Enacted by the Legislature of the State of Florida:

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33 Section 1. Paragraph (b) of subsection (1) of section
34 119.071, Florida Statutes, is amended to read:

35 119.071 General exemptions from inspection or copying of
36 public records.—

37 (1) AGENCY ADMINISTRATION.—

38 (b)1. For purposes of this paragraph, the term "competitive
39 solicitation" means the process of requesting and receiving
40 sealed bids, proposals, or replies submitted by responsive
41 vendors in accordance with the terms of a competitive process,
42 regardless of the method of procurement.

43 2.a. Sealed bids, ~~or~~ proposals, or replies received by an
44 agency pursuant to a competitive solicitation ~~invitations to bid~~
45 ~~or requests for proposals~~ are exempt from s. 119.07(1) and s.
46 24(a), Art. I of the State Constitution until such time as the
47 agency provides notice of an a decision or intended decision to
48 make a contract award pursuant to s. 120.57(3)(a) or until 30
49 within 10 days after opening the bids, proposals, or replies bid
50 ~~or proposal opening~~, whichever is earlier.

51 3.b. If an agency rejects all bids, ~~or~~ proposals, or
52 replies submitted in response to a competitive solicitation ~~an~~
53 ~~invitation to bid or request for proposals~~ and the agency
54 concurrently provides notice of its intent to reissue the
55 competitive solicitation ~~invitation to bid or request for~~
56 ~~proposals~~, the rejected bids, ~~or~~ proposals, or replies remain
57 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
58 Constitution until such time as the agency provides notice of an

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59 ~~a decision or~~ intended decision to make a contract award
60 ~~pursuant to s. 120.57(3)(a) concerning the reissued competitive~~
61 ~~solicitation invitation to bid or request for proposals or until~~
62 ~~the agency withdraws the reissued competitive solicitation~~
63 ~~invitation to bid or request for proposals. A bid, proposal, or~~
64 ~~reply is not exempt for longer than 12 months after the initial~~
65 ~~agency notice rejecting all bids, proposals, or replies. This~~
66 ~~sub-subparagraph is subject to the Open Government Sunset Review~~
67 ~~Act in accordance with s. 119.15 and shall stand repealed on~~
68 ~~October 2, 2011, unless reviewed and saved from repeal through~~
69 ~~reenactment by the Legislature.~~

70 2.a. ~~A competitive sealed reply in response to an~~
71 ~~invitation to negotiate, as defined in s. 287.012, is exempt~~
72 ~~from s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~
73 ~~until such time as the agency provides notice of a decision or~~
74 ~~intended decision pursuant to s. 120.57(3)(a) or until 20 days~~
75 ~~after the final competitive sealed replies are all opened,~~
76 ~~whichever occurs earlier.~~

77 b. ~~If an agency rejects all competitive sealed replies in~~
78 ~~response to an invitation to negotiate and concurrently provides~~
79 ~~notice of its intent to reissue the invitation to negotiate and~~
80 ~~reissues the invitation to negotiate within 90 days after the~~
81 ~~notice of intent to reissue the invitation to negotiate, the~~
82 ~~rejected replies remain exempt from s. 119.07(1) and s. 24(a),~~
83 ~~Art. I of the State Constitution until such time as the agency~~
84 ~~provides notice of a decision or intended decision pursuant to~~
85 ~~s. 120.57(3)(a) concerning the reissued invitation to negotiate~~
86 ~~or until the agency withdraws the reissued invitation to~~
87 ~~negotiate. A competitive sealed reply is not exempt for longer~~

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88 ~~than 12 months after the initial agency notice rejecting all~~
89 ~~replies.~~

90 ~~4.e.~~ This paragraph ~~subparagraph~~ is subject to the Open
91 Government Sunset Review Act in accordance with s. 119.15 and
92 shall stand repealed on October 2, 2016 ~~2011~~, unless reviewed
93 and saved from repeal through reenactment by the Legislature.

94 Section 2. Subsection (2) of section 286.0113, Florida
95 Statutes, is amended to read:

96 286.0113 General exemptions from public meetings.—

97 (2) (a) For purposes of this subsection, the term:

98 1. "Competitive solicitation" means the process of
99 requesting and receiving sealed bids, proposals, or replies
100 submitted by responsive vendors in accordance with the terms of
101 a competitive process, regardless of the method of procurement.

102 2. "Team" means a group of members established by an agency
103 for the purpose of conducting negotiations as part of a
104 competitive solicitation.

105 (b)1. Any portion of a meeting at which a negotiation with
106 a vendor is conducted pursuant to a competitive solicitation, at
107 which a vendor makes an oral presentation as part of a
108 competitive solicitation, or at which a vendor answers questions
109 as part of a competitive solicitation ~~s. 287.057(1)~~ is exempt
110 from s. 286.011 and s. 24(b), Art. I of the State Constitution.

111 2. Any portion of a team meeting at which negotiation
112 strategies are discussed is exempt from s. 286.011 and s. 24(b),
113 Art. I of the State Constitution.

114 (c)1. ~~(b)1.~~ A complete recording shall be made of any
115 portion of an exempt meeting ~~made exempt in paragraph (a).~~ No
116 portion of the exempt meeting may be held off the record.

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117 2.2. The recording of and any records presented at the
118 exempt meeting are required under subparagraph 1. is exempt from
119 s. 119.07(1) and s. 24(a), Art. I of the State Constitution
120 until such time as the agency provides notice of an a decision
121 or intended decision to make a contract award pursuant to s.
122 120.57(3)(a) or until 30 20 days after opening the bids,
123 proposals, or replies the final competitive sealed replies are
124 all opened, whichever occurs earlier.

125 3.3. If the agency rejects all bids, proposals, or sealed
126 replies and concurrently provides notice of its intent to
127 reissue a competitive solicitation, the recording and any
128 records presented at the exempt meeting remain remains exempt
129 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
130 until such time as the agency provides notice of an a decision
131 or intended decision to make a contract award pursuant to s.
132 120.57(3)(a) concerning the reissued competitive solicitation
133 invitation to negotiate or until the agency withdraws the
134 reissued competitive solicitation invitation to negotiate. A
135 recording and any records presented at an exempt meeting are is
136 not exempt for longer than 12 months after the initial agency
137 notice rejecting all bids, proposals, or replies.

138 (d)(e) This subsection is subject to the Open Government
139 Sunset Review Act in accordance with s. 119.15 and shall stand
140 repealed on October 2, 2016 2011, unless reviewed and saved from
141 repeal through reenactment by the Legislature.

142 Section 3. (1) The Legislature finds that it is a public
143 necessity that bids, proposals, or replies submitted in response
144 to a competitive solicitation be made temporarily exempt from
145 public-records requirements. Such records shall be made

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146 available when the agency provides notice of an intended
147 decision to make a contract award on the competitive
148 solicitation, or when the agency rejects all bids, proposals, or
149 replies and ultimately withdraws a reissued competitive
150 solicitation. Temporarily protecting such information ensures
151 that the process of responding to a competitive solicitation
152 remains fair and economical for vendors, while still preserving
153 oversight after a competitive solicitation decision is made or
154 withdrawn.

155 (2) The Legislature also finds that it is a public
156 necessity that a meeting at which a negotiation with a vendor is
157 conducted pursuant to a competitive solicitation, at which a
158 vendor makes an oral presentation as part of a competitive
159 solicitation, or at which a vendor answers questions as part of
160 a competitive solicitation, be made exempt from public-meetings
161 requirements. In addition, it is a public necessity that any
162 records presented at such meetings be made temporarily exempt
163 from public-records requirements. The recording of the meeting
164 and any such records shall be made available when the agency
165 provides notice of an intended decision to make a contract award
166 on the competitive solicitation, or when the agency rejects all
167 bids, proposals, or replies and ultimately withdraws a reissued
168 competitive solicitation. Protecting such meetings and
169 temporarily protecting the recording and any records presented
170 by a vendor at such meetings ensures that the process of
171 responding to a competitive solicitation remains fair and
172 economical for vendors, while still preserving oversight after a
173 competitive solicitation decision is made or withdrawn. It is
174 unfair and inequitable to compel vendors to disclose to

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175 competitors the nature and details of their proposals during
176 such meetings or through the minutes or records presented at
177 such meetings. Such disclosure impedes full and frank discussion
178 of the strengths, weaknesses, and value of a bid, proposal, or
179 response, thereby limiting the ability of the agency to obtain
180 the best value for the public. The public and private harm
181 stemming from these practices outweighs the temporary delay in
182 access to records related to the competitive solicitation.

183 (3) The Legislature further finds that it is a public
184 necessity that any portion of a team meeting at which
185 negotiation strategies are discussed be made exempt from public-
186 meetings requirements. In addition, it is a public necessity
187 that the recording of such meeting be made temporarily exempt
188 from public-records requirements. The recording of the meeting
189 shall be made available when the agency provides notice of an
190 intended decision to make a contract award on the competitive
191 solicitation, or when the agency rejects all bids, proposals, or
192 replies and ultimately withdraws a reissued competitive
193 solicitation. Team members often meet to strategize about
194 competitive solicitations and the approach to take as part of
195 the evaluation process. Without the public-meetings exemption
196 and the limited public-records exemption, the effective and
197 efficient administration of the competitive solicitation process
198 would be hindered.

199 Section 4. This act shall take effect upon becoming a law.