

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; revising an exemption from public
 4 records requirements for sealed bids, proposals, or
 5 replies received by an agency pursuant to a
 6 competitive solicitation; providing for future
 7 legislative review and repeal of the exemption;
 8 providing a statement of public necessity; providing
 9 an effective date.

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

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 13 Section 1. Paragraph (b) of subsection (1) of section
 14 119.071, Florida Statutes, is amended to read:

15 119.071 General exemptions from inspection or copying of
 16 public records.—

17 (1) AGENCY ADMINISTRATION.—

18 (b)1. For purposes of this paragraph, "competitive
 19 solicitation" means the process of requesting and receiving
 20 sealed bids, proposals, or replies in accordance with the terms
 21 of a competitive process, regardless of the method of
 22 procurement.

23 2. Sealed bids, proposals, or replies received by an
 24 agency pursuant to a competitive solicitation are exempt from s.
 25 119.07(1) and s. 24(a), Art. I of the State Constitution until

26 72 hours, excluding Saturdays, Sundays, and state holidays,
27 after such time as the agency provides notice of an intended
28 decision, if no notice of protest is filed; the deadline to file
29 any formal written protest, if no formal written protest is
30 filed; or upon the issuance of the agency's final order or an
31 appellate court mandate or order resolving the protest, if a
32 formal written protest is filed ~~or until 30 days after opening~~
33 ~~the bids, proposals, or final replies, whichever is later~~
34 ~~earlier.~~

35 3. If an agency rejects all bids, proposals, or replies
36 submitted in response to a competitive solicitation and the
37 agency concurrently provides notice of its intent to reissue the
38 competitive solicitation, the rejected bids, proposals, or
39 replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of
40 the State Constitution until such time as provided in
41 subparagraph 2. if the agency provides notice of an intended
42 decision concerning the reissued competitive solicitation or
43 until the agency withdraws the reissued competitive
44 solicitation. Except as otherwise provided in subparagraph 2., a
45 bid, proposal, or reply is not exempt for longer than 12 months
46 after the initial agency notice rejecting all bids, proposals,
47 or replies.

48 4. This paragraph is subject to the Open Government Sunset
49 Review Act in accordance with s. 119.15 and shall stand repealed
50 on October 2, 2029, unless reviewed and saved from repeal

51 through reenactment by the Legislature.

52 Section 2. The Legislature finds that it is a public
53 necessity that sealed bids, proposals, or replies received by an
54 agency pursuant to a competitive solicitation be made exempt
55 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
56 the State Constitution until 72 hours, excluding Saturdays,
57 Sundays, and state holidays, after the agency provides notice of
58 an intended decision, if no notice of protest is filed; the
59 deadline to file any formal written protest, if no formal
60 written protest is filed; or upon the issuance of the agency's
61 final order or an appellate court mandate or order resolving the
62 protest, if a formal written protest is filed, whichever is
63 later. Currently, vendor submissions may be publicly disclosed
64 immediately after the agency gives notice of its intended
65 decision or until 30 days after opening the vendor submissions,
66 whichever is earlier. It is not uncommon for an agency's
67 evaluation of vendor submissions to take longer than 30 days,
68 which results in such submissions becoming public before the
69 agency makes its intended decision. Additionally, if a protest
70 of the intended decision is filed and the agency's final
71 decision is to reject all vendor submissions, the submissions
72 become public until the time the agency provides notice of its
73 final decision to reject all submissions, at which time the
74 submissions once again become exempt from disclosure under
75 public records requirements. These loopholes allow the

76 competitors of a vendor's submission to view the vendor's
77 pricing and other proposed offerings before the agency makes its
78 final decision and negatively impact the business interests of
79 the vendor by damaging the vendor in the marketplace. This in
80 turn makes vendors hesitant to submit responses to competitive
81 solicitations; results in a less competitive procurement with a
82 narrower range of choices for the agency; and is contrary to the
83 state's best interests. The public and private harm in
84 disclosing sealed vendor submissions before an agency's final
85 decision is made significantly outweighs any public benefit
86 derived from disclosure, and the public's ability to scrutinize
87 and monitor agency action is not diminished by this temporary
88 nondisclosure of vendor submissions. Protecting such vendor
89 submissions until the agency's final decision is made, including
90 the final decision under a reissued competitive solicitation,
91 ensures that the process of responding to a competitive
92 solicitation remains fair and economical for vendors, while
93 still preserving public oversight after a final decision is made
94 or the solicitation is withdrawn. For these reasons, the
95 Legislature finds that it is a public necessity that such
96 information be made exempt from public records requirements.

97 Section 3. This act shall take effect July 1, 2024.