

By: Capriglione

H.B. No. 2189

A BILL TO BE ENTITLED

AN ACT

relating to the disclosure of certain contracting information under the public information law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 552.003, Government Code, is amended by adding Subdivision (7) to read as follows:

(7) "Contracting information" means:

(A) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

(B) solicitation or bid documents;

(C) communications sent between a governmental body and a vendor or contractor, or potential vendor or contractor, during the solicitation, evaluation, or negotiation of a contract;

(D) documents, including bid tabulations, showing the criteria by which a governmental body evaluates each vendor or contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and

(E) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract or work performed on behalf of the governmental body.

SECTION 2. Subchapter B, Chapter 552, Government Code, is

1 amended by adding Section 552.0222 to read as follows:

2 Sec. 552.0222. DISCLOSURE OF CONTRACTING INFORMATION.
3 Contracting information is public and must be released unless
4 specially excepted from disclosure under Section 552.1101 or
5 another provision of this chapter.

6 SECTION 3. Section 552.104(a), Government Code, is amended
7 to read as follows:

8 (a) Information is excepted from the requirements of
9 Section 552.021 if a governmental body demonstrates that release of
10 the [it is] information [that, if released,] would harm its
11 interests by providing an [give] advantage to a competitor or
12 bidder in a particular ongoing competitive situation or in a
13 particular competitive situation where the governmental body
14 establishes the situation at issue is of a recurring nature or there
15 is a specific and demonstrable intent to enter into the competitive
16 situation again in the future.

17 SECTION 4. Subchapter C, Chapter 552, Government Code, is
18 amended by adding Section 552.1101 to read as follows:

19 Sec. 552.1101. EXCEPTION: CONFIDENTIALITY OF PROPRIETARY
20 INFORMATION. (a) Contracting information is excepted from the
21 requirements of Section 552.021 if the vendor or contractor or
22 potential vendor or contractor to whom the information relates
23 demonstrates that disclosure of the information would:

24 (1) reveal an individual approach to work,
25 organizational structure, staffing, line-item pricing, pricing
26 information that will be used in future solicitation or bid
27 documents, or internal operations; and

1 (2) cause competitive harm to the vendor or contractor
2 or potential vendor or contractor if released.

3 (b) The exception to disclosure provided by Subsection (a)
4 does not apply to contracting information related to:

5 (1) a contract described by Section 2261.253(a),
6 subject to Subsection (e) of that section;

7 (2) a contract described by Section 322.020(c),
8 subject to Subsection (d) of that section;

9 (3) the following contract or offer terms or their
10 functional equivalent:

11 (A) the overall or total price, overall or total
12 value, maximum liability, or other contract term that describes the
13 total consideration the governmental body will or could potentially
14 pay;

15 (B) a description of the items or services to be
16 delivered;

17 (C) the delivery and service deadlines;

18 (D) the remedies for breach of contract;

19 (E) the identity of all parties to the contract;

20 (F) the identity of all subcontractors;

21 (G) the vendor or contractor or potential vendor
22 or contractor affiliate overall or total pricing;

23 (H) the execution dates;

24 (I) the effective dates; and

25 (J) the contract duration terms; or

26 (4) information indicating whether a vendor or
27 contractor or potential vendor or contractor performed its duties

1 under a contract, including information regarding:

2 (A) a breach of contract;

3 (B) a contract variance;

4 (C) a remedial action;

5 (D) an amendment to a contract;

6 (E) any assessed or paid liquidated damages;

7 (F) a key measures report;

8 (G) a progress report; and

9 (H) a final payment checklist.

10 (c) The exception to disclosure provided by Subsection (a)
11 may be asserted only by a vendor or contractor in the manner
12 described by Section 552.305(b) for the purpose of protecting the
13 vendor or contractor's interests. A governmental body shall
14 decline to release information as provided by Section 552.305(a) to
15 the extent necessary to allow a vendor or contractor to assert the
16 exception to disclosure provided by Subsection (a).

17 SECTION 5. Sections 552.305(a) and (d), Government Code,
18 are amended to read as follows:

19 (a) In a case in which information is requested under this
20 chapter and a person's privacy or property interests may be
21 involved, including a case under Section 552.101, [~~552.104,~~
22 552.110, 552.1101, or 552.114, a governmental body may decline to
23 release the information for the purpose of requesting an attorney
24 general decision.

25 (d) If release of a person's proprietary information may be
26 subject to exception under Section 552.101, 552.110, 552.1101,
27 552.113, or 552.131, the governmental body that requests an

1 attorney general decision under Section 552.301 shall make a good
2 faith attempt to notify that person of the request for the attorney
3 general decision. Notice under this subsection must:

4 (1) be in writing and sent within a reasonable time not
5 later than the 10th business day after the date the governmental
6 body receives the request for the information; and

7 (2) include:

8 (A) a copy of the written request for the
9 information, if any, received by the governmental body; and

10 (B) a statement, in the form prescribed by the
11 attorney general, that the person is entitled to submit in writing
12 to the attorney general within a reasonable time not later than the
13 10th business day after the date the person receives the notice:

14 (i) each reason the person has as to why the
15 information should be withheld; and

16 (ii) a letter, memorandum, or brief in
17 support of that reason.

18 SECTION 6. Section 552.321, Government Code, is amended by
19 adding Subsection (c) to read as follows:

20 (c) A requestor may file suit for a writ of mandamus
21 compelling a governmental body or an entity to comply with the
22 requirements of Subchapter J.

23 SECTION 7. Chapter 552, Government Code, is amended by
24 adding Subchapter J to read as follows:

25 SUBCHAPTER J. ADDITIONAL PROVISIONS RELATED TO CONTRACTING
26 INFORMATION

27 Sec. 552.371. CERTAIN ENTITIES SUBJECT TO LAW. (a) This

1 section applies only to the following entities:

2 (1) a confinement facility operated under a contract
3 with any division of the Texas Department of Criminal Justice;

4 (2) a civil commitment housing facility owned, leased,
5 or operated by a vendor under contract with the state as provided by
6 Chapter 841, Health and Safety Code;

7 (3) a child-care facility and child-placing agency as
8 those terms are defined by Section 42.002, Human Resources Code;

9 (4) an entity that receives at least \$1 million in
10 public funds in the current or preceding state fiscal year under one
11 or more contracts with the Health and Human Services Commission to
12 manage or provide health care services in the state;

13 (5) an entity that receives public funds in the
14 current or preceding state fiscal year to manage the daily
15 operations or restoration of the Alamo;

16 (6) an entity that receives at least \$1 million in
17 public funds in the current or preceding state fiscal year and those
18 public funds account for at least 51 percent of the entity's income
19 for the applicable current or preceding state fiscal year;

20 (7) an entity that maintains cash or cash equivalents
21 received from a state agency or a political subdivision with which
22 the entity contracts and those public funds constitute at least 51
23 percent of the entity's net assets; and

24 (8) an economic development entity whose mission or
25 purpose is to develop and promote the economic growth of a state
26 agency or political subdivision with which the entity contracts and
27 that receives public funds from the state agency or political

1 subdivision and that:

2 (A) requires an officer of the state agency or
3 political subdivision to hold office as a member of the board of
4 directors of the entity;

5 (B) uses staff or office space of the state
6 agency or political subdivision that is not available to the public
7 without charge;

8 (C) does not track the entity's receipt and
9 expenditure of public funds separately from the entity's receipt
10 and expenditure of private funds; or

11 (D) does not provide at least quarterly public
12 reports to the state agency or political subdivision regarding work
13 performed on behalf of the state agency or political subdivision.

14 (b) An entity to which this section applies is subject to
15 this chapter in the same manner as a governmental body for the
16 limited purpose of the disclosure of contracting information
17 related to a contract with a governmental entity that is in the
18 possession or custody of the entity.

19 (c) An entity to which this section applies may designate on
20 the Internet website of the entity one mailing address and one
21 e-mail address for receiving written requests for public
22 information.

23 (d) An entity that makes the designations described by
24 Subsection (c) is not required to respond to a written request for
25 public information that is not received at one of those addresses.

26 (e) An entity that does not make the designations described
27 by Subsection (c) must respond to a written request for public

1 information received by the entity at:

2 (1) any valid mailing address of the entity; or

3 (2) the e-mail address of the chief administrative
4 officer of the entity.

5 Sec. 552.372. CERTAIN ENTITIES SUBJECT TO REQUIREMENTS
6 RELATED TO THE LAW. (a) This section applies to an entity not
7 described by Section 552.371(a) that executes a contract with a
8 governmental body for the purchase of goods or services with a value
9 of at least \$1 million in public funds.

10 (b) This section applies to a written request for public
11 information received by a governmental body that is a party to a
12 contract described by Subsection (a) for contracting information
13 related to the contract that is in the custody or possession of the
14 entity and not maintained by the governmental body.

15 (c) A governmental body that receives a written request for
16 information described by Subsection (b) shall request that the
17 entity provide the information to the governmental body. The
18 governmental body must send the request in writing to the entity not
19 later than the third business day after the date the governmental
20 body receives the written request described by Subsection (b).

21 (d) Notwithstanding Section 552.301:

22 (1) a request for an attorney general's decision under
23 Section 552.301(b) to determine whether contracting information
24 subject to a written request described by Subsection (b) falls
25 within an exception to disclosure under this chapter is considered
26 timely if made not later than the 13th business day after the date
27 the governmental body receives the written request described by

1 Subsection (b);

2 (2) the statement and copy described by Section
3 552.301(d) is considered timely if provided to the requestor not
4 later than the 13th business day after the date the governmental
5 body receives the written request described by Subsection (b);

6 (3) a submission described by Section 552.301(e) is
7 considered timely if submitted to the attorney general not later
8 than the 18th business day after the date the governmental body
9 receives the written request described by Subsection (b); and

10 (4) a copy described by Section 552.301(e-1) is
11 considered timely if sent to the requestor not later than the 18th
12 business day after the date the governmental body receives the
13 written request described by Subsection (b).

14 Sec. 552.373. BIDS AND CONTRACTS. (a) A contract described
15 by Section 552.371:

16 (1) must include a provision that outlines the
17 responsibilities of the contracting entity under that section;

18 (2) must include contact information for the office of
19 the attorney general; and

20 (3) may not include a provision that has the effect of
21 limiting a requirement imposed on the contracting entity under this
22 subchapter.

23 (b) A contract described by Section 552.372 must require a
24 contracting entity to:

25 (1) preserve all contracting information related to
26 the contract for the duration of the contract;

27 (2) promptly produce any contracting information

1 related to the contract that is in the custody or possession of the
2 entity on request of the governmental body; and

3 (3) on completion of the contract, either:

4 (A) provide at no cost to the governmental body
5 all contracting information related to the contract that is in the
6 custody or possession of the entity; or

7 (B) preserve the contracting information related
8 to the contract as provided by the records retention requirements
9 applicable to the governmental body.

10 (c) A bid for a contract described by Section 552.371 or
11 552.372 and the contract must include the following statement: "The
12 contractor or vendor certifies that the individual or business
13 entity named in this (include "bid" or "contract" as applicable) is
14 in compliance with the requirements of Subchapter J, Chapter 552,
15 Government Code, that are applicable to the contractor or vendor
16 and agrees that the contract can be terminated if the contractor or
17 vendor fails to comply with a requirement of that subchapter."

18 (d) A governmental body may not accept a bid for a contract
19 described by Section 552.371 or 552.372 or award the contract to an
20 entity that the governmental body has determined has knowingly or
21 intentionally failed to comply with this subchapter in a previous
22 bid or contract described by those sections.

23 Sec. 552.374. NONCOMPLIANCE WITH PROVISION OF SUBCHAPTER.
24 A governmental entity that is the party to a contract described by
25 Section 552.371 or 552.372 shall provide notice to the entity that
26 is a party to the contract if the entity fails to comply with a
27 requirement of this subchapter applicable to the entity. The notice

1 must:

2 (1) be in writing;

3 (2) state the requirement of this subchapter that the
4 entity has violated; and

5 (3) advise the entity that the governmental body may
6 terminate the contract without further obligation to the entity if
7 the entity does not cure the violation on or before the third
8 business day after the date the governmental entity provides the
9 notice.

10 Sec. 552.375. TERMINATION OF CONTRACT FOR NONCOMPLIANCE.

11 (a) A governmental body may terminate a contract described by
12 Section 552.371 or 552.372 if:

13 (1) the governmental body provides notice under
14 Section 552.374 to the entity that is party to the contract;

15 (2) the contracting entity does not cure the violation
16 in the period prescribed by Section 552.374;

17 (3) the governmental body determines that the
18 contracting entity has intentionally or knowingly failed to comply
19 with a requirement of this subchapter; and

20 (4) the governmental body determines that the entity
21 has not taken adequate steps to ensure future compliance with the
22 requirements of this subchapter.

23 (b) For the purpose of Subsection (a), an entity has taken
24 adequate steps to ensure future compliance with this subchapter if:

25 (1) the entity produces contracting information
26 requested by the governmental body that is in the custody or
27 possession of the entity not later than the third business day after

1 the date the governmental body makes the request; and

2 (2) the entity establishes a records management
3 program to enable the entity to comply with this subchapter.

4 Sec. 552.376. CAUSE OF ACTION NOT CREATED. This subchapter
5 does not create a cause of action to contest a bid for or the award
6 of a state contract.

7 SECTION 8. The changes in law made by this Act apply only to
8 a request for public information that is received by a governmental
9 body or an officer for public information on or after the effective
10 date of this Act.

11 SECTION 9. Subchapter J, Chapter 552, Government Code, as
12 added by this Act, applies only to a contract described by that
13 subchapter that is executed on or after the effective date of this
14 Act.

15 SECTION 10. This Act takes effect January 1, 2020.