

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 amending Subdivision (1) and adding Subdivision (7) to read as follows:

(1) "Governmental body":

(A) means:

(i) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;

(ii) a county commissioners court in the state;

(iii) a municipal governing body in the state;

(iv) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

(v) a school district board of trustees;

(vi) a county board of school trustees;

(vii) a county board of education;

1 (viii) the governing board of a special
2 district;

3 (ix) the governing body of a nonprofit
4 corporation organized under Chapter 67, Water Code, that provides a
5 water supply or wastewater service, or both, and is exempt from ad
6 valorem taxation under Section 11.30, Tax Code;

7 (x) a local workforce development board
8 created under Section 2308.253;

9 (xi) a nonprofit corporation that is
10 eligible to receive funds under the federal community services
11 block grant program and that is authorized by this state to serve a
12 geographic area of the state; ~~and~~

13 (xii) a confinement facility operated under
14 a contract with any division of the Texas Department of Criminal
15 Justice;

16 (xiii) a civil commitment housing facility
17 owned, leased, or operated by a vendor under contract with the state
18 as provided by Chapter 841, Health and Safety Code;

19 (xiv) an entity that receives public funds
20 in the current or preceding state fiscal year to manage the daily
21 operations or restoration of the Alamo, or an entity that oversees
22 such an entity; and

23 (xv) the part, section, or portion of an
24 organization, corporation, commission, committee, institution, or
25 agency that spends or that is supported in whole or in part by
26 public funds; and

27 (B) does not include:

1 (i) the judiciary; or
2 (ii) an economic development entity whose
3 mission or purpose is to develop and promote the economic growth of
4 a state agency or political subdivision with which the entity
5 contracts if:
6 (a) the entity does not receive \$1
7 million or more in public funds from a single state agency or
8 political subdivision in the current or preceding state fiscal
9 year; or
10 (b) the entity:
11 (1) either:
12 (A) does not have the
13 authority to make decisions or recommendations on behalf of a state
14 agency or political subdivision regarding tax abatements or tax
15 incentives; or
16 (B) does not require an
17 officer of the state agency or political subdivision to hold office
18 as a member of the board of directors of the entity;
19 (2) does not use staff or office
20 space of the state agency or political subdivision for no or nominal
21 consideration, unless the space is available to the public;
22 (3) to a reasonable degree,
23 tracks the entity's receipt and expenditure of public funds
24 separately from the entity's receipt and expenditure of private
25 funds; and
26 (4) provides at least quarterly
27 public reports to the state agency or political subdivision

1 regarding work performed on behalf of the state agency or political
2 subdivision.

3 (7) "Contracting information" means the following
4 information maintained by a governmental body or sent between a
5 governmental body and a vendor, contractor, potential vendor, or
6 potential contractor:

7 (A) information in a voucher or contract relating
8 to the receipt or expenditure of public funds by a governmental
9 body;

10 (B) solicitation or bid documents relating to a
11 contract with a governmental body;

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

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

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

25 SECTION 2. Subchapter B, Chapter 552, Government Code, is
26 amended by adding Section 552.0222 to read as follows:

27 Sec. 552.0222. DISCLOSURE OF CONTRACTING INFORMATION.

1 (a) Contracting information is public and must be released unless
2 excepted from disclosure under this chapter.

3 (b) The exceptions to disclosure provided by Sections
4 552.110 and 552.1101 do not apply to the following types of
5 contracting information:

6 (1) a contract described by Section 2261.253(a),
7 excluding any information that was properly redacted under
8 Subsection (e) of that section;

9 (2) a contract described by Section 322.020(c),
10 excluding any information that was properly redacted under
11 Subsection (d) of that section;

12 (3) the following contract or offer terms or their
13 functional equivalent:

14 (A) any term describing the overall or total
15 price the governmental body will or could potentially pay,
16 including overall or total value, maximum liability, and final
17 price;

18 (B) a description of the items or services to be
19 delivered with the total price for each if a total price is
20 identified for the item or service in the contract;

21 (C) the delivery and service deadlines;

22 (D) the remedies for breach of contract;

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

24 (F) the identity of all subcontractors in a
25 contract;

26 (G) the affiliate overall or total pricing for a
27 vendor, contractor, potential vendor, or potential contractor;

- 1 (H) the execution dates;
- 2 (I) the effective dates; and
- 3 (J) the contract duration terms, including any
- 4 extension options; or

5 (4) information indicating whether a vendor,
6 contractor, potential vendor, or potential contractor performed
7 its duties under a contract, including information regarding:

- 8 (A) a breach of contract;
- 9 (B) a contract variance or exception;
- 10 (C) a remedial action;
- 11 (D) an amendment to a contract;
- 12 (E) any assessed or paid liquidated damages;
- 13 (F) a key measures report;
- 14 (G) a progress report; and
- 15 (H) a final payment checklist.

16 (c) Notwithstanding Subsection (b), information described
17 by Subdivisions (3)(A) and (B) of that subsection that relates to a
18 retail electricity contract may not be disclosed until the delivery
19 start date.

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

22 (a) Information is excepted from the requirements of
23 Section 552.021 if a governmental body demonstrates that release of
24 the [it is] information [that, if released,] would harm its
25 interests by providing an [give] advantage to a competitor or
26 bidder in a particular ongoing competitive situation or in a
27 particular competitive situation where the governmental body

1 establishes the situation at issue is set to reoccur or there is a
2 specific and demonstrable intent to enter into the competitive
3 situation again in the future.

4 SECTION 4. Section 552.110, Government Code, is amended to
5 read as follows:

6 Sec. 552.110. EXCEPTION: CONFIDENTIALITY OF TRADE SECRETS;
7 CONFIDENTIALITY OF CERTAIN COMMERCIAL OR FINANCIAL INFORMATION.

8 (a) In this section, "trade secret" means all forms and types of
9 information, including business, scientific, technical, economic,
10 or engineering information, and any formula, design, prototype,
11 pattern, plan, compilation, program device, program, code, device,
12 method, technique, process, procedure, financial data, or list of
13 actual or potential customers or suppliers, whether tangible or
14 intangible and whether or however stored, compiled, or memorialized
15 physically, electronically, graphically, photographically, or in
16 writing if:

17 (1) the owner of the trade secret has taken reasonable
18 measures under the circumstances to keep the information secret;
19 and

20 (2) the information derives independent economic
21 value, actual or potential, from not being generally known to, and
22 not being readily ascertainable through proper means by, another
23 person who can obtain economic value from the disclosure or use of
24 the information.

25 (b) Except as provided by Section 552.0222, information [A
26 trade secret obtained from a person and privileged or confidential
27 by statute or judicial decision] is excepted from the requirements

1 of Section 552.021 if it is demonstrated based on specific factual
2 evidence that the information is a trade secret.

3 (c) Except as provided by Section 552.0222, commercial
4 [(b) Commercial] or financial information for which it is
5 demonstrated based on specific factual evidence that disclosure
6 would cause substantial competitive harm to the person from whom
7 the information was obtained is excepted from the requirements of
8 Section 552.021.

9 SECTION 5. Subchapter C, Chapter 552, Government Code, is
10 amended by adding Section 552.1101 to read as follows:

11 Sec. 552.1101. EXCEPTION: CONFIDENTIALITY OF PROPRIETARY
12 INFORMATION. (a) Except as provided by Section 552.0222,
13 information submitted to a governmental body by a vendor,
14 contractor, potential vendor, or potential contractor in response
15 to a request for a bid, proposal, or qualification is excepted from
16 the requirements of Section 552.021 if the vendor, contractor,
17 potential vendor, or potential contractor that the information
18 relates to demonstrates based on specific factual evidence that
19 disclosure of the information would:

- 20 (1) reveal an individual approach to:
21 (A) work;
22 (B) organizational structure;
23 (C) staffing;
24 (D) internal operations;
25 (E) processes; or
26 (F) discounts, pricing methodology, pricing per
27 kilowatt hour, cost data, or other pricing information that will be

1 used in future solicitation or bid documents; and

2 (2) give advantage to a competitor.

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

5 (1) information in a voucher or contract relating to
6 the receipt or expenditure of public funds by a governmental body;
7 or

8 (2) communications and other information sent between
9 a governmental body and a vendor or contractor related to the
10 performance of a final contract with the governmental body or work
11 performed on behalf of the governmental body.

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

21 SECTION 6. Section 552.131, Government Code, is amended by
22 adding Subsection (b-1) to read as follows:

23 (b-1) An economic development entity whose mission or
24 purpose is to develop and promote the economic growth of a state
25 agency or political subdivision with which the entity contracts may
26 assert the exceptions under this section in the manner described by
27 Section 552.305(b) with respect to information that is in the

1 economic development entity's custody or control.

2 SECTION 7. Sections 552.305(a) and (d), Government Code,
3 are amended to read as follows:

4 (a) In a case in which information is requested under this
5 chapter and a person's privacy or property interests may be
6 involved, including a case under Section 552.101, [~~552.104,~~
7 552.110, 552.1101, [~~or~~] 552.114, 552.131, or 552.143, a
8 governmental body may decline to release the information for the
9 purpose of requesting an attorney general decision.

10 (d) If release of a person's proprietary information may be
11 subject to exception under Section 552.101, 552.110, 552.1101,
12 552.113, [~~or~~] 552.131, or 552.143, the governmental body that
13 requests an attorney general decision under Section 552.301 shall
14 make a good faith attempt to notify that person of the request for
15 the attorney general decision. Notice under this subsection must:

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

19 (2) include:

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

22 (B) a statement, in the form prescribed by the
23 attorney general, that the person is entitled to submit in writing
24 to the attorney general within a reasonable time not later than the
25 10th business day after the date the person receives the notice:

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

1 (ii) a letter, memorandum, or brief in
2 support of that reason.

3 SECTION 8. Section 552.321, Government Code, is amended by
4 adding Subsection (c) to read as follows:

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

8 SECTION 9. Chapter 552, Government Code, is amended by
9 adding Subchapter J to read as follows:

10 SUBCHAPTER J. ADDITIONAL PROVISIONS RELATED TO CONTRACTING
11 INFORMATION

12 Sec. 552.371. CERTAIN ENTITIES REQUIRED TO PROVIDE
13 CONTRACTING INFORMATION TO GOVERNMENTAL BODY IN CONNECTION WITH
14 REQUEST. (a) This section applies to an entity that is not a
15 governmental body that executes a contract with a governmental body
16 that:

17 (1) has a stated expenditure of at least \$1 million in
18 public funds for the purchase of goods or services by the
19 governmental body; or

20 (2) results in the expenditure of at least \$1 million
21 in public funds for the purchase of goods or services by the
22 governmental body in a fiscal year of the governmental body.

23 (b) This section applies to a written request for public
24 information received by a governmental body that is a party to a
25 contract described by Subsection (a) for contracting information
26 related to the contract that is in the custody or possession of the
27 entity and not maintained by the governmental body.

1 (c) A governmental body that receives a written request for
2 information described by Subsection (b) shall request that the
3 entity provide the information to the governmental body. The
4 governmental body must send the request in writing to the entity not
5 later than the third business day after the date the governmental
6 body receives the written request described by Subsection (b).

7 (d) Notwithstanding Section 552.301:

8 (1) a request for an attorney general's decision under
9 Section 552.301(b) to determine whether contracting information
10 subject to a written request described by Subsection (b) falls
11 within an exception to disclosure under this chapter is considered
12 timely if made not later than the 13th business day after the date
13 the governmental body receives the written request described by
14 Subsection (b);

15 (2) the statement and copy described by Section
16 552.301(d) is considered timely if provided to the requestor not
17 later than the 13th business day after the date the governmental
18 body receives the written request described by Subsection (b);

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

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

27 (e) Section 552.302 does not apply to information described

1 by Subsection (b) if the governmental body:

2 (1) complies with the requirements of Subsection (c)
3 in a good faith effort to obtain the information from the
4 contracting entity;

5 (2) is unable to meet a deadline described by
6 Subsection (d) because the contracting entity failed to provide the
7 information to the governmental body not later than the 13th
8 business day after the date the governmental body received the
9 written request for the information; and

10 (3) if applicable and notwithstanding the deadlines
11 prescribed by Sections 552.301(b), (d), (e), and (e-1), complies
12 with the requirements of those subsections not later than the
13 eighth business day after the date the governmental body receives
14 the information from the contracting entity.

15 (f) Nothing in this section affects the deadlines or duties
16 of a governmental body under Section 552.301 regarding information
17 the governmental body maintains, including contracting
18 information.

19 Sec. 552.372. BIDS AND CONTRACTS. (a) A contract
20 described by Section 552.371 must require a contracting entity to:

21 (1) preserve all contracting information related to
22 the contract as provided by the records retention requirements
23 applicable to the governmental body for the duration of the
24 contract;

25 (2) promptly provide to the governmental body any
26 contracting information related to the contract that is in the
27 custody or possession of the entity on request of the governmental

1 body; and

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

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

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

9 (b) Unless Section 552.374(c) applies, a bid for a contract
10 described by Section 552.371 and the contract must include the
11 following statement: "The requirements of Subchapter J, Chapter
12 552, Government Code, may apply to this (include "bid" or
13 "contract" as applicable) and the contractor or vendor agrees that
14 the contract can be terminated if the contractor or vendor
15 knowingly or intentionally fails to comply with a requirement of
16 that subchapter."

17 (c) A governmental body may not accept a bid for a contract
18 described by Section 552.371 or award the contract to an entity that
19 the governmental body has determined has knowingly or intentionally
20 failed to comply with this subchapter in a previous bid or contract
21 described by that section unless the governmental body determines
22 and documents that the entity has taken adequate steps to ensure
23 future compliance with the requirements of this subchapter.

24 Sec. 552.373. NONCOMPLIANCE WITH PROVISION OF SUBCHAPTER.
25 A governmental body that is the party to a contract described by
26 Section 552.371 shall provide notice to the entity that is a party
27 to the contract if the entity fails to comply with a requirement of

1 this subchapter applicable to the entity. The notice must:

2 (1) be in writing;

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

5 (3) unless Section 552.374(c) applies, advise the
6 entity that the governmental body may terminate the contract
7 without further obligation to the entity if the entity does not cure
8 the violation on or before the 10th business day after the date the
9 governmental body provides the notice.

10 Sec. 552.374. TERMINATION OF CONTRACT FOR NONCOMPLIANCE.

11 (a) Subject to Subsection (c), a governmental body may terminate a
12 contract described by Section 552.371 if:

13 (1) the governmental body provides notice under
14 Section 552.373 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 552.373;

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 10th 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 (c) A governmental body may not terminate a contract under
5 this section if the contract is related to the purchase or
6 underwriting of a public security, the contract is or may be used as
7 collateral on a loan, or the contract's proceeds are used to pay
8 debt service of a public security or loan.

9 Sec. 552.375. OTHER CONTRACT PROVISIONS. Nothing in this
10 subchapter prevents a governmental body from including and
11 enforcing more stringent requirements in a contract to increase
12 accountability or transparency.

13 Sec. 552.376. CAUSE OF ACTION NOT CREATED. This subchapter
14 does not create a cause of action to contest a bid for or the award
15 of a contract with a governmental body.

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

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

24 SECTION 12. This Act takes effect January 1, 2020.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 943 passed the Senate on April 10, 2019, by the following vote: Yeas 29, Nays 1; and that the Senate concurred in House amendment on May 23, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 943 passed the House, with amendment, on May 17, 2019, by the following vote: Yeas 144, Nays 2, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor