

By: Capriglione

H.B. No. 2492

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(1-a), Government Code, is amended to read as follows:

(1-a) "Contracting information" means the following information maintained by a governmental body or sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor:

(A) information in a voucher, ~~or~~ contract, or financial document relating to the receipt or expenditure of public funds by a governmental body;

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

(C) communications sent between a governmental body and a vendor, contractor, potential vendor, or potential 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, contractor, potential vendor, or potential contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and

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

5 SECTION 2. Section [552.0222](#), Government Code, is amended by
6 amending Subsection (b) and adding Subsections (d), (e), and (f) to
7 read as follows:

8 (b) The exceptions to disclosure provided by Sections
9 [552.104](#), [552.108](#), [552.110](#), and [552.1101](#) do not apply to the
10 following types of contracting information:

11 (1) a contract described by Section [2261.253\(a\)](#),
12 excluding any information that was properly redacted under
13 Subsection (e) of that section;

14 (2) a contract described by Section [322.020\(c\)](#),
15 excluding any information that was properly redacted under
16 Subsection (d) of that section;

17 (3) the following contract or offer terms or their
18 functional equivalent:

19 (A) any term describing the overall or total
20 price the governmental body will or could potentially pay,
21 including overall or total value, maximum liability, and final
22 price;

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

26 (C) the delivery and service deadlines;

27 (D) the remedies for breach of contract;

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

2 (F) the identity of all subcontractors in a
3 contract;

4 (G) the affiliate overall or total pricing for a
5 vendor, contractor, potential vendor, or potential contractor,
6 including operating costs;

7 (H) the execution dates;

8 (I) the effective dates; and

9 (J) the contract duration terms, including any
10 extension options; [~~or~~]

11 (4) information indicating whether a vendor,
12 contractor, potential vendor, or potential contractor performed
13 its duties under a contract, including information regarding:

14 (A) a breach of contract;

15 (B) a contract variance or exception;

16 (C) a remedial action;

17 (D) an amendment to a contract;

18 (E) any assessed or paid liquidated damages;

19 (F) a key measures report;

20 (G) a progress report; and

21 (H) a final payment checklist; or

22 (5) communications and other information sent between
23 a governmental body and a vendor, contractor, potential vendor, or
24 potential contractor concerning information described by this
25 subsection.

26 (d) Section 552.305(a) does not apply to information
27 subject to disclosure under Subsection (b). A governmental body

1 may not decline to release information subject to disclosure under
2 Subsection (b) in order to allow a vendor, contractor, potential
3 vendor, or potential contractor to assert an exception to
4 disclosure listed in that subsection.

5 (e) A governmental body shall release information subject
6 to disclosure under Subsection (b) in unredacted form, even if the
7 governmental body has or will request a decision from the attorney
8 general under Subchapter G regarding other information subject to
9 the request.

10 (f) Notwithstanding another provision of this chapter, a
11 governmental body may not request an attorney general's decision
12 under Subchapter G regarding information subject to disclosure
13 under Subsection (b).

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

16 (a) Except as provided by Section 552.0222, information
17 [Information] is excepted from the requirements of Section 552.021
18 if a governmental body demonstrates that release of the information
19 would harm its interests by providing a substantial ~~an~~ advantage
20 to a competitor or bidder in a particular ongoing competitive
21 situation or in a particular competitive situation where the
22 governmental body establishes the situation at issue is set to
23 reoccur or there is a specific and demonstrable intent to enter into
24 the competitive situation again in the future.

25 SECTION 4. Sections 552.108(a) and (b), Government Code,
26 are amended to read as follows:

27 (a) Except as provided by Section 552.0222, information

1 ~~[Information]~~ held by a law enforcement agency or prosecutor that
2 deals with the detection, investigation, or prosecution of crime is
3 excepted from the requirements of Section 552.021 if:

4 (1) release of the information would interfere with
5 the detection, investigation, or prosecution of crime;

6 (2) it is information that deals with the detection,
7 investigation, or prosecution of crime only in relation to an
8 investigation that did not result in conviction or deferred
9 adjudication;

10 (3) it is information relating to a threat against a
11 peace officer or detention officer collected or disseminated under
12 Section 411.048; or

13 (4) it is information that:

14 (A) is prepared by an attorney representing the
15 state in anticipation of or in the course of preparing for criminal
16 litigation; or

17 (B) reflects the mental impressions or legal
18 reasoning of an attorney representing the state.

19 (b) Except as provided by Section 552.0222, an ~~[An]~~ internal
20 record or notation of a law enforcement agency or prosecutor that is
21 maintained for internal use in matters relating to law enforcement
22 or prosecution is excepted from the requirements of Section 552.021
23 if:

24 (1) release of the internal record or notation would
25 interfere with law enforcement or prosecution;

26 (2) the internal record or notation relates to law
27 enforcement only in relation to an investigation that did not

1 result in conviction or deferred adjudication; or

2 (3) the internal record or notation:

3 (A) is prepared by an attorney representing the
4 state in anticipation of or in the course of preparing for criminal
5 litigation; or

6 (B) reflects the mental impressions or legal
7 reasoning of an attorney representing the state.

8 SECTION 5. Sections 552.1101(a) and (c), Government Code,
9 are amended to read as follows:

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

18 (1) reveal an individual approach to:

19 (A) work;

20 (B) organizational structure;

21 (C) staffing;

22 (D) internal operations;

23 (E) processes; or

24 (F) discounts, pricing methodology, pricing per
25 kilowatt hour, cost data, or other pricing information that will be
26 used in future solicitation or bid documents; and

27 (2) give a substantial advantage to a competitor.

1 (c) The exception to disclosure provided by Subsection (a)
2 may be asserted only by a vendor, contractor, potential vendor, or
3 potential contractor in the manner described by Section 552.305(b)
4 for the purpose of protecting the interests of the vendor,
5 contractor, potential vendor, or potential contractor. A
6 governmental body shall decline to release information as provided
7 by Section 552.305(a), unless the information is subject to
8 disclosure under Section 552.0222(b), to the extent necessary to
9 allow a vendor, contractor, potential vendor, or potential
10 contractor to assert the exception to disclosure provided by
11 Subsection (a).

12 SECTION 6. Section 321.3022(f), Tax Code, is repealed.

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

17 SECTION 8. This Act takes effect September 1, 2023.