

CHAPTER 2011-140

Committee Substitute for House Bill No. 7223

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides an exemption from public records requirements for bids, proposals, or replies submitted to an agency in response to a competitive solicitation; expanding the public records exemption by extending the duration of the exemption; providing a definition; reorganizing the exemption; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; amending s. 286.0113, F.S., which provides an exemption from public meetings requirements for meetings at which a negotiation with a vendor is conducted and which provides an exemption from public records requirements for recordings of exempt meetings; expanding the public meetings exemption to include meetings at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, at which a vendor answers questions as part of a competitive solicitation, and at which team members discuss negotiation strategies; expanding the public records exemption to include any records presented at an exempt meeting; providing definitions; reorganizing the exemption; providing for future repeal and legislative review of the public meetings and public records exemptions under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

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

119.071 General exemptions from inspection or copying of public records.

(1) AGENCY ADMINISTRATION.—

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

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

3.b. If an agency rejects all bids, or proposals, or replies submitted in response to a competitive solicitation an invitation to bid or request for

proposals and the agency concurrently provides notice of its intent to reissue the competitive solicitation invitation to bid or request for proposals, the rejected bids, or proposals, or replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued competitive solicitation invitation to bid or request for proposals or until the agency withdraws the reissued competitive solicitation invitation to bid or request for proposals. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

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

b. — If an agency rejects all competitive sealed replies in response to an invitation to negotiate and concurrently provides notice of its intent to reissue the invitation to negotiate and reissues the invitation to negotiate within 90 days after the notice of intent to reissue the invitation to negotiate, the rejected replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued invitation to negotiate or until the agency withdraws the reissued invitation to negotiate. A competitive sealed reply is not exempt for longer than 12 months after the initial agency notice rejecting all replies.

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

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

286.0113 General exemptions from public meetings.—

(2)(a) For purposes of this subsection:

1. “Competitive solicitation” means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

2. “Team” means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

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

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

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

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

3. If the agency rejects all bids, proposals, or sealed replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remains exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued competitive solicitation invitation to negotiate or until the agency withdraws the reissued competitive solicitation invitation to negotiate. A recording and any records presented at an exempt meeting are is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

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

Section 3. (1) The Legislature finds that it is a public necessity that bids, proposals, or replies submitted to an agency in response to a competitive solicitation be made temporarily exempt from public records requirements. Such records shall be made available when the agency provides notice of an intended decision, or when the agency rejects all bids, proposals, or replies and ultimately withdraws a reissued competitive solicitation. Temporarily protecting such information ensures that the process of responding to a competitive solicitation remains fair and economical for vendors, while still preserving oversight after a competitive solicitation decision is made or withdrawn.

(2) The Legislature also finds that it is a public necessity that a meeting at which a negotiation with a vendor is conducted pursuant to a competitive

solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation be made exempt from public meetings requirements. In addition, it is a public necessity that any records presented at such meetings be made temporarily exempt from public records requirements. The recording of the meeting and any such records shall be made available when the agency provides notice of an intended decision, or when the agency rejects all bids, proposals, or replies and ultimately withdraws a reissued competitive solicitation. Protecting such meetings and temporarily protecting the recording and any records presented by a vendor at such meetings, ensures that the process of responding to a competitive solicitation remains fair and economical for vendors, while still preserving oversight after a competitive solicitation decision is made or withdrawn. It is unfair and inequitable to compel vendors to disclose to competitors the nature and details of their proposals during such meetings or through the minutes or records presented at such meetings. Such disclosure impedes full and frank discussion of the strengths, weaknesses, and value of a bid, proposal, or response, thereby limiting the ability of the agency to obtain the best value for the public. The public and private harm stemming from these practices outweighs the temporary delay in access to records related to the competitive solicitation.

(3) The Legislature further finds that it is a public necessity that any portion of a team meeting at which negotiation strategies are discussed be made exempt from public meetings requirements. In addition, it is a public necessity that the recording of such meeting be made temporarily exempt from public records requirements. The recording of the meeting shall be made available when the agency provides notice of an intended decision, or when the agency rejects all bids, proposals, or replies and ultimately withdraws a reissued competitive solicitation. Team members often meet to strategize about competitive solicitations and the approach to take as part of the evaluation process. Without the public meeting exemption and the limited public record exemption, the effective and efficient administration of the competitive solicitation process would be hindered.

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

Approved by the Governor June 2, 2011.

Filed in Office Secretary of State June 2, 2011.