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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FISCAL POLICY & RESOURCES
ANALYSIS**

BILL #: HB 1951 (PCB FPR 02-07)
RELATING TO: Public Records/Competitive Bidding
SPONSOR(S): Committee on Fiscal Policy & Resources
TIED BILL(S): PCB FPR 02-01

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) FISCAL POLICY & RESOURCES
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill provides an exemption for certain documents submitted by vendors in the course of competitive bidding, similar to other already-exempt documents submitted in the same process. These documents will be made available for public inspection later in the procurement process.

This bill also provides a public meeting exemption for procurement teams of state agencies when discussing, evaluating or negotiating the submissions in the procurement process.

This bill is a single-subject bill, and provides a statement of public necessity, as required by Art. I, section 24, Florida Constitution, for exemptions from our Sunshine Laws.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Article I, section 24, Florida Constitution, provides that the Legislature is authorized to provide by general law for exemptions from the public access requirements. Any such law must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law. Such laws must contain only public records exemptions or public meetings exemptions and must relate to one subject. For purposes of creating new exemptions or analyzing current exemptions pursuant to the Open Government Sunset Review Act, staff of the House of Representatives Committee on State Administration uses the following definition of public necessity:

A public necessity justifying an exemption exists when, after considering the public good served by access to the record or meeting and the public or private harm that could be caused by allowing or denying access to the record or meeting, it is determined that the presumption in favor of open records and meetings is overcome because the public's interests are best served by denying access in whole or in part to the record or meeting; and, access is denied to as little of the record or meeting as is practicable.

Currently, Florida law provides a public record exemption for sealed bids or proposals received by an agency pursuant to invitations to bid (ITBs) or requests for proposals (RFPs) in the competitive bidding process. A similar, more narrow exemption exists for certain procurement documents submitted to the Department of Environmental Protection for pollution response action contracts. Currently there is no exemption from public meeting laws for procurement teams. Many participants in the procurement process believe that procurement teams can more effectively discuss the contents of the procurement documents, and engage in more effective discussion with vendors when meeting in private.

These public record and public meeting exemptions are the result of months of discussion among interested parties over revisions to state competitive bidding process under Chapter 287.

C. EFFECT OF PROPOSED CHANGES:

See the section-by-section analysis below.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends sec. 119.07(1)(m) to include “replies” to the type of exempt documents, and “invitations to negotiate” to the type of exempt procurement method, and amends the time at which these documents are available for public inspection. It also clarifies that a vendor does not lose trade secret protection when submitting such confidential information in the procurement process.

Section 2. Amends sec. 287.0595 to similarly include “proposals” and “replies” to the type of exempt documents, and amends the time at which these documents are available for public inspection.

Section 3. Creates sec. 286.011(9) to provide a public meeting exemption for procurement teams to meet in private to discuss, evaluate or negotiate bids, proposals, or replies received from vendors in response to an invitation to bid, request for proposals, or invitation to negotiate. It also provides certain requirements the chairs of these meeting must perform, including the taking of minutes.

Section 4. Provides a statement of public necessity.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require cities or counties to expend funds or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of cities or counties to raise revenue in the aggregate

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with cities or counties.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

Staff Director:

Douglas Pile

Lynne Overton