

New Law Impacts Bidders' Access to Public Records and Evaluation Committee Meetings

July 1, 2011

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On June 2, 2011, Governor Scott signed [HB 7223](#) into law. This new legislation amends Florida's Public Records and Sunshine Laws, by expanding "exemptions" applicable to bids, proposals and replies to sealed competitive solicitations, and closes evaluation meetings from the public in certain instances.

First, [Section 119.071, Florida Statutes](#) was amended to provide that sealed bids, proposals, or replies received by a Florida public agency shall remain exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier. This means that bidders will not be able to procure a copy of their competitor's bids until an intended decision is reached or 30 days has elapsed since the time of the bid opening. The prior version of the law provided for a 10 day exemption.

Next, [Section 286.0113, Florida Statutes](#) was amended to provide that meetings of persons appointed to evaluate bids or proposals and negotiate contracts shall be closed in certain circumstances. Specifically, portions of such meetings may now be closed to the public during oral presentations made by a vendor, or where a vendor answers questions. In other words, neither bidders, nor the public will be permitted to sit in on meetings wherein their competitors are making presentations or discussing their bid or proposal with the committee members. The portions of these meetings must still be recorded and are subject to disclosure at the time of an intended award decision or within 30 days of the bid or proposal opening, whichever is earlier. Portions of the meetings that do not involve presentations, questions and answers, or negotiation strategy or negotiation sessions are still open to the public and competing bidders, but the new law makes it more difficult to observe the entire decision making process until after the records become available for inspection and copying.

The Public Records and Sunshine Laws have traditionally been used as tools by

bidders and members of the public to monitor the competitive bidding evaluation and award process. The new law limits a bidders' ability to have instant or real time access to information and portions of public meetings, and applies to all governmental agencies at the state and local levels. Considering that the time to protest award decisions is usually limited to days, bidders will need to be extra diligent in procuring competitor bids and records from closed sessions as soon as they become available, and in order to raise any concerns with award decisions in a timely manner.