

1-1 By: Watson, et al. S.B. No. 943
 1-2 (In the Senate - Filed February 21, 2019; March 1, 2019,
 1-3 read first time and referred to Committee on Business & Commerce;
 1-4 April 8, 2019, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 9, Nays 0; April 8, 2019,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 943 By: Nichols

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the disclosure of certain contracting information under
 1-22 the public information law.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 552.003, Government Code, is amended by
 1-25 amending Subdivision (1) and adding Subdivision (7) to read as
 1-26 follows:

1-27 (1) "Governmental body":

1-28 (A) means:

1-29 (i) a board, commission, department,
 1-30 committee, institution, agency, or office that is within or is
 1-31 created by the executive or legislative branch of state government
 1-32 and that is directed by one or more elected or appointed members;

1-33 (ii) a county commissioners court in the
 1-34 state;

1-35 (iii) a municipal governing body in the
 1-36 state;

1-37 (iv) a deliberative body that has
 1-38 rulemaking or quasi-judicial power and that is classified as a
 1-39 department, agency, or political subdivision of a county or
 1-40 municipality;

1-41 (v) a school district board of trustees;

1-42 (vi) a county board of school trustees;

1-43 (vii) a county board of education;

1-44 (viii) the governing board of a special
 1-45 district;

1-46 (ix) the governing body of a nonprofit
 1-47 corporation organized under Chapter 67, Water Code, that provides a
 1-48 water supply or wastewater service, or both, and is exempt from ad
 1-49 valorem taxation under Section 11.30, Tax Code;

1-50 (x) a local workforce development board
 1-51 created under Section 2308.253;

1-52 (xi) a nonprofit corporation that is
 1-53 eligible to receive funds under the federal community services
 1-54 block grant program and that is authorized by this state to serve a
 1-55 geographic area of the state; ~~and~~

1-56 (xii) a confinement facility operated under
 1-57 a contract with any division of the Texas Department of Criminal
 1-58 Justice;

1-59 (xiii) a civil commitment housing facility
 1-60 owned, leased, or operated by a vendor under contract with the state

2-1 as provided by Chapter 841, Health and Safety Code;
 2-2 (xiv) an entity that receives public funds
 2-3 in the current or preceding state fiscal year to manage the daily
 2-4 operations or restoration of the Alamo, or an entity that oversees
 2-5 such an entity; and
 2-6 (xv) the part, section, or portion of an
 2-7 organization, corporation, commission, committee, institution, or
 2-8 agency that spends or that is supported in whole or in part by
 2-9 public funds; and
 2-10 (B) does not include:
 2-11 (i) the judiciary; or
 2-12 (ii) an economic development entity whose
 2-13 mission or purpose is to develop and promote the economic growth of
 2-14 a state agency or political subdivision with which the entity
 2-15 contracts if:
 2-16 (a) the entity does not receive \$1
 2-17 million or more in public funds from a single state agency or
 2-18 political subdivision in the current or preceding state fiscal
 2-19 year; or
 2-20 (b) the entity:
 2-21 (1) either:
 2-22 (A) does not have the
 2-23 authority to make decisions or recommendations on behalf of a state
 2-24 agency or political subdivision regarding tax abatements or tax
 2-25 incentives; or
 2-26 (B) does not require an
 2-27 officer of the state agency or political subdivision to hold office
 2-28 as a member of the board of directors of the entity;
 2-29 (2) does not use staff or office
 2-30 space of the state agency or political subdivision for no or nominal
 2-31 consideration, unless the space is available to the public;
 2-32 (3) to a reasonable degree,
 2-33 tracks the entity's receipt and expenditure of public funds
 2-34 separately from the entity's receipt and expenditure of private
 2-35 funds; and
 2-36 (4) provides at least quarterly
 2-37 public reports to the state agency or political subdivision
 2-38 regarding work performed on behalf of the state agency or political
 2-39 subdivision.
 2-40 (7) "Contracting information" means the following
 2-41 information maintained by a governmental body or exchanged between
 2-42 a governmental body and a vendor, contractor, potential vendor, or
 2-43 potential contractor:
 2-44 (A) information in a voucher or contract relating
 2-45 to the receipt or expenditure of public funds by a governmental
 2-46 body;
 2-47 (B) solicitation or bid documents relating to a
 2-48 contract with a governmental body;
 2-49 (C) communications sent between a governmental
 2-50 body and a vendor, contractor, potential vendor, or potential
 2-51 contractor during the solicitation, evaluation, or negotiation of a
 2-52 contract;
 2-53 (D) documents, including bid tabulations,
 2-54 showing the criteria by which a governmental body evaluates each
 2-55 vendor, contractor, potential vendor, or potential contractor
 2-56 responding to a solicitation and, if applicable, an explanation of
 2-57 why the vendor or contractor was selected; and
 2-58 (E) communications and other information sent
 2-59 between a governmental body and a vendor or contractor related to
 2-60 the performance of a final contract with the governmental body or
 2-61 work performed on behalf of the governmental body.
 2-62 SECTION 2. Subchapter B, Chapter 552, Government Code, is
 2-63 amended by adding Section 552.0222 to read as follows:
 2-64 Sec. 552.0222. DISCLOSURE OF CONTRACTING INFORMATION.
 2-65 (a) Contracting information is public and must be released unless
 2-66 excepted from disclosure.
 2-67 (b) The exceptions to disclosure provided by Sections
 2-68 552.110 and 552.1101 do not apply to the following types of
 2-69 contracting information:

3-1 (1) a contract described by Section 2261.253(a),
3-2 subject to Subsection (e) of that section;

3-3 (2) a contract described by Section 322.020(c),
3-4 subject to Subsection (d) of that section;

3-5 (3) the following contract or offer terms or their
3-6 functional equivalent:

3-7 (A) any term describing the overall or total
3-8 price the governmental body will or could potentially pay,
3-9 including overall or total value, maximum liability, and final
3-10 price;

3-11 (B) a description of the items or services to be
3-12 delivered with the total price for each if a total price is
3-13 identified for the item or service in the contract;

3-14 (C) the delivery and service deadlines;

3-15 (D) the remedies for breach of contract;

3-16 (E) the identity of all parties to the contract;

3-17 (F) the identity of all subcontractors in a
3-18 contract;

3-19 (G) the affiliate overall or total pricing for a
3-20 vendor, contractor, potential vendor, or potential contractor;

3-21 (H) the execution dates;

3-22 (I) the effective dates; and

3-23 (J) the contract duration terms, including any
3-24 extension options; or

3-25 (4) information indicating whether a vendor,
3-26 contractor, potential vendor, or potential contractor performed
3-27 its duties under a contract, including information regarding:

3-28 (A) a breach of contract;

3-29 (B) a contract variance or exception;

3-30 (C) a remedial action;

3-31 (D) an amendment to a contract;

3-32 (E) any assessed or paid liquidated damages;

3-33 (F) a key measures report;

3-34 (G) a progress report; and

3-35 (H) a final payment checklist.

3-36 (c) Notwithstanding Subsection (b), information described
3-37 by Subdivisions (3)(A) and (B) of that subsection that relates to a
3-38 retail electricity contract may not be disclosed until the delivery
3-39 start date.

3-40 SECTION 3. Section 552.104(a), Government Code, is amended
3-41 to read as follows:

3-42 (a) Information is excepted from the requirements of
3-43 Section 552.021 if a governmental body demonstrates that release of
3-44 the ~~[it is]~~ information ~~[that, if released,]~~ would harm its
3-45 interests by providing an ~~[give]~~ advantage to a competitor or
3-46 bidder in a particular ongoing competitive situation or in a
3-47 particular competitive situation where the governmental body
3-48 establishes the situation at issue is set to reoccur or there is a
3-49 specific and demonstrable intent to enter into the competitive
3-50 situation again in the future.

3-51 SECTION 4. Section 552.110, Government Code, is amended to
3-52 read as follows:

3-53 Sec. 552.110. EXCEPTION: CONFIDENTIALITY OF TRADE
3-54 SECRETS; CONFIDENTIALITY OF CERTAIN COMMERCIAL OR FINANCIAL
3-55 INFORMATION. (a) In this section, "trade secret" means all forms
3-56 and types of information, including business, scientific,
3-57 technical, economic, or engineering information, and any formula,
3-58 design, prototype, pattern, plan, compilation, program device,
3-59 program, code, device, method, technique, process, procedure,
3-60 financial data, or list of actual or potential customers or
3-61 suppliers, whether tangible or intangible and whether or however
3-62 stored, compiled, or memorialized physically, electronically,
3-63 graphically, photographically, or in writing if:

3-64 (1) the owner of the trade secret has taken reasonable
3-65 measures under the circumstances to keep the information secret;
3-66 and

3-67 (2) the information derives independent economic
3-68 value, actual or potential, from not being generally known to, and
3-69 not being readily ascertainable through proper means by, another

4-1 person who can obtain economic value from the disclosure or use of
4-2 the information.

4-3 (b) Except as provided by Section 552.0222, information [A
4-4 trade secret obtained from a person and privileged or confidential
4-5 by statute or judicial decision] is excepted from the requirements
4-6 of Section 552.021 if it is demonstrated based on specific factual
4-7 evidence that the information is a trade secret.

4-8 (c) Except as provided by Section 552.0222, commercial
4-9 [(b) Commercial] or financial information for which it is
4-10 demonstrated based on specific factual evidence that disclosure
4-11 would cause substantial competitive harm to the person from whom
4-12 the information was obtained is excepted from the requirements of
4-13 Section 552.021.

4-14 SECTION 5. Subchapter C, Chapter 552, Government Code, is
4-15 amended by adding Section 552.1101 to read as follows:

4-16 Sec. 552.1101. EXCEPTION: CONFIDENTIALITY OF PROPRIETARY
4-17 INFORMATION. (a) Except as provided by Section 552.0222,

4-18 information submitted to a governmental body by a vendor,
4-19 contractor, potential vendor, or potential contractor in response
4-20 to a request for a bid, proposal, or qualification is excepted from
4-21 the requirements of Section 552.021 if the vendor, contractor,
4-22 potential vendor, or potential contractor that the information
4-23 relates to demonstrates based on specific factual evidence that
4-24 disclosure of the information would:

4-25 (1) reveal an individual approach to:

- 4-26 (A) work;
- 4-27 (B) organizational structure;
- 4-28 (C) staffing;
- 4-29 (D) internal operations;
- 4-30 (E) processes; or
- 4-31 (F) discounts, pricing methodology, pricing per
4-32 kilowatt hour, cost data, or other pricing information that will be
4-33 used in future solicitation or bid documents; and

4-34 (2) give advantage to a competitor.

4-35 (b) The exception to disclosure provided by Subsection (a)
4-36 does not apply to:

4-37 (1) information in a voucher or contract relating to
4-38 the receipt or expenditure of public funds by a governmental body;
4-39 or

4-40 (2) communications and other information sent between
4-41 a governmental body and a vendor or contractor related to the
4-42 performance of a final contract with the governmental body or work
4-43 performed on behalf of the governmental body.

4-44 (c) The exception to disclosure provided by Subsection (a)
4-45 may be asserted only by a vendor, contractor, potential vendor, or
4-46 potential contractor in the manner described by Section 552.305(b)
4-47 for the purpose of protecting the interests of the vendor,
4-48 contractor, potential vendor, or potential contractor. A
4-49 governmental body shall decline to release information as provided
4-50 by Section 552.305(a) to the extent necessary to allow a vendor,
4-51 contractor, potential vendor, or potential contractor to assert the
4-52 exception to disclosure provided by Subsection (a).

4-53 SECTION 6. Section 552.131, Government Code, is amended by
4-54 adding Subsection (b-1) to read as follows:

4-55 (b-1) An economic development entity whose mission or
4-56 purpose is to develop and promote the economic growth of a state
4-57 agency or political subdivision with which the entity contracts may
4-58 assert the exceptions under this section in the manner described by
4-59 Section 552.305(b) with respect to information that is in the
4-60 economic development entity's custody or control.

4-61 SECTION 7. Sections 552.305(a) and (d), Government Code,
4-62 are amended to read as follows:

4-63 (a) In a case in which information is requested under this
4-64 chapter and a person's privacy or property interests may be
4-65 involved, including a case under Section 552.101, [552.104,
4-66 552.110, 552.1101, [or] 552.114, 552.131, or 552.143, a
4-67 governmental body may decline to release the information for the
4-68 purpose of requesting an attorney general decision.

4-69 (d) If release of a person's proprietary information may be

5-1 subject to exception under Section 552.101, 552.110, 552.1101,
 5-2 552.113, [✗] 552.131, or 552.143, the governmental body that
 5-3 requests an attorney general decision under Section 552.301 shall
 5-4 make a good faith attempt to notify that person of the request for
 5-5 the attorney general decision. Notice under this subsection must:

5-6 (1) be in writing and sent within a reasonable time not
 5-7 later than the 10th business day after the date the governmental
 5-8 body receives the request for the information; and

5-9 (2) include:
 5-10 (A) a copy of the written request for the
 5-11 information, if any, received by the governmental body; and

5-12 (B) a statement, in the form prescribed by the
 5-13 attorney general, that the person is entitled to submit in writing
 5-14 to the attorney general within a reasonable time not later than the
 5-15 10th business day after the date the person receives the notice:

5-16 (i) each reason the person has as to why the
 5-17 information should be withheld; and

5-18 (ii) a letter, memorandum, or brief in
 5-19 support of that reason.

5-20 SECTION 8. Section 552.321, Government Code, is amended by
 5-21 adding Subsection (c) to read as follows:

5-22 (c) A requestor may file suit for a writ of mandamus
 5-23 compelling a governmental body or an entity to comply with the
 5-24 requirements of Subchapter J.

5-25 SECTION 9. Chapter 552, Government Code, is amended by
 5-26 adding Subchapter J to read as follows:

5-27 SUBCHAPTER J. ADDITIONAL PROVISIONS RELATED TO CONTRACTING
 5-28 INFORMATION

5-29 Sec. 552.371. CERTAIN ENTITIES REQUIRED TO PROVIDE
 5-30 CONTRACTING INFORMATION TO GOVERNMENTAL BODY IN CONNECTION WITH
 5-31 REQUEST. (a) This section applies to an entity that executes a
 5-32 contract with a governmental body that includes the receipt or
 5-33 expenditure of at least \$1 million in public funds for the purchase
 5-34 of goods or services.

5-35 (b) This section applies to a written request for public
 5-36 information received by a governmental body that is a party to a
 5-37 contract described by Subsection (a) for contracting information
 5-38 related to the contract that is in the custody or possession of the
 5-39 entity and not maintained by the governmental body.

5-40 (c) A governmental body that receives a written request for
 5-41 information described by Subsection (b) shall request that the
 5-42 entity provide the information to the governmental body. The
 5-43 governmental body must send the request in writing to the entity not
 5-44 later than the third business day after the date the governmental
 5-45 body receives the written request described by Subsection (b).

5-46 (d) Notwithstanding Section 552.301:

5-47 (1) a request for an attorney general's decision under
 5-48 Section 552.301(b) to determine whether contracting information
 5-49 subject to a written request described by Subsection (b) falls
 5-50 within an exception to disclosure under this chapter is considered
 5-51 timely if made not later than the 13th business day after the date
 5-52 the governmental body receives the written request described by
 5-53 Subsection (b);

5-54 (2) the statement and copy described by Section
 5-55 552.301(d) is considered timely if provided to the requestor not
 5-56 later than the 13th business day after the date the governmental
 5-57 body receives the written request described by Subsection (b);

5-58 (3) a submission described by Section 552.301(e) is
 5-59 considered timely if submitted to the attorney general not later
 5-60 than the 18th business day after the date the governmental body
 5-61 receives the written request described by Subsection (b); and

5-62 (4) a copy described by Section 552.301(e-1) is
 5-63 considered timely if sent to the requestor not later than the 18th
 5-64 business day after the date the governmental body receives the
 5-65 written request described by Subsection (b).

5-66 Sec. 552.372. BIDS AND CONTRACTS. (a) A contract
 5-67 described by Section 552.371 must require a contracting entity to:

5-68 (1) preserve all contracting information related to
 5-69 the contract for the duration of the contract;

6-1 (2) promptly produce any contracting information
6-2 related to the contract that is in the custody or possession of the
6-3 entity on request of the governmental body; and

6-4 (3) on completion of the contract, either:
6-5 (A) provide at no cost to the governmental body
6-6 all contracting information related to the contract that is in the
6-7 custody or possession of the entity; or

6-8 (B) preserve the contracting information related
6-9 to the contract as provided by the records retention requirements
6-10 applicable to the governmental body.

6-11 (b) A bid for a contract described by Section 552.371 and
6-12 the contract must include the following statement: "The
6-13 requirements of Subchapter J, Chapter 552, Government Code, may
6-14 apply to this (include "bid" or "contract" as applicable) and the
6-15 contractor or vendor agrees that the contract can be terminated if
6-16 the contractor or vendor knowingly or intentionally fails to comply
6-17 with a requirement of that subchapter."

6-18 (c) A governmental body may not accept a bid for a contract
6-19 described by Section 552.371 or award the contract to an entity that
6-20 the governmental body has determined has knowingly or intentionally
6-21 failed to comply with this subchapter in a previous bid or contract
6-22 described by that section unless the governmental body determines
6-23 and documents that the entity has taken adequate steps to ensure
6-24 future compliance with the requirements of this subchapter.

6-25 Sec. 552.373. NONCOMPLIANCE WITH PROVISION OF SUBCHAPTER.
6-26 A governmental body that is the party to a contract described by
6-27 Section 552.371 shall provide notice to the entity that is a party
6-28 to the contract if the entity fails to comply with a requirement of
6-29 this subchapter applicable to the entity. The notice must:

6-30 (1) be in writing;
6-31 (2) state the requirement of this subchapter that the
6-32 entity has violated; and

6-33 (3) advise the entity that the governmental body may
6-34 terminate the contract without further obligation to the entity if
6-35 the entity does not cure the violation on or before the 10th
6-36 business day after the date the governmental body provides the
6-37 notice.

6-38 Sec. 552.374. TERMINATION OF CONTRACT FOR NONCOMPLIANCE.

6-39 (a) A governmental body may terminate a contract described by
6-40 Section 552.371 if:

6-41 (1) the governmental body provides notice under
6-42 Section 552.373 to the entity that is party to the contract;

6-43 (2) the contracting entity does not cure the violation
6-44 in the period prescribed by Section 552.373;

6-45 (3) the governmental body determines that the
6-46 contracting entity has intentionally or knowingly failed to comply
6-47 with a requirement of this subchapter; and

6-48 (4) the governmental body determines that the entity
6-49 has not taken adequate steps to ensure future compliance with the
6-50 requirements of this subchapter.

6-51 (b) For the purpose of Subsection (a), an entity has taken
6-52 adequate steps to ensure future compliance with this subchapter if:

6-53 (1) the entity produces contracting information
6-54 requested by the governmental body that is in the custody or
6-55 possession of the entity not later than the 10th business day after
6-56 the date the governmental body makes the request; and

6-57 (2) the entity establishes a records management
6-58 program to enable the entity to comply with this subchapter.

6-59 Sec. 552.375. CAUSE OF ACTION NOT CREATED. This subchapter
6-60 does not create a cause of action to contest a bid for or the award
6-61 of a contract with a governmental body.

6-62 SECTION 10. The changes in law made by this Act apply only
6-63 to a request for public information that is received by a
6-64 governmental body or an officer for public information on or after
6-65 the effective date of this Act.

6-66 SECTION 11. Subchapter J, Chapter 552, Government Code, as
6-67 added by this Act, applies only to a contract described by that
6-68 subchapter that is executed on or after the effective date of this
6-69 Act.

7-1 SECTION 12. This Act takes effect January 1, 2020.

7-2 * * * * *