



# FIRST AMENDMENT FOUNDATION

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04 March 2013

The Honorable Gwen Margolis  
The Florida Senate  
414 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Re: SB 1152/Exemption – Financial Records

Dear Senator Margolis:

We are writing to you to express our concerns regarding SB 1152, which would expand a current public record exemption to cover almost all financial statements submitted to an agency. We believe that this bill makes for bad public policy because it eliminates public oversight and is unnecessary especially when considering current protections afforded to companies and the robust business between the state and private companies. We respectfully suggest that the bill be significantly narrowed or withdrawn from further consideration.

Current law protects financial statements provided by a prospective bidder in order to prequalify for bidding or for responding to a proposal for a road or other public works project. S. 119.071(1)(c), F.S. The justification for this exemption is sound – the financial statements of those who don't qualify aren't subject to public disclosure, nor are those who prequalify but never respond to an invitation to bid or a request for proposals. The financial statements of those who *do* qualify and later engage in the procurement process must again provide a financial statement and those statements are subject to the public records law. The justification for disclosure of financial statements of qualified bidders responding to an invitation to bid or a request for proposals is equally sound – the public must be afforded the opportunity for oversight and accountability, to be assured that a qualified bidder has the financial wherewithal to carry through on the project.

For example, Acme Corporation, a qualified bidder, may successfully bid on a contract to supply snacks to the Capitol vending machines. That does not mean, however, that Acme has the financial resources to run the Capitol's food service and cafeterias. Without access to the financial statements provided by Acme, there's no opportunity for public oversight – did Acme win the second contract because the company's owner is related to someone in government with the authority to award such contracts? Was another bidder more experienced and thus more qualified? Trust, said Ronald Reagan, but verify.

A *Miami Herald* editorial pointed out that the state contracting and outsourcing system is in need of an overhaul because of the problems created by a lack of oversight. The deficiencies include a vendor making a lowball bid to get in the door and then filing for cost overruns later. “Bad Business OUR OPINION: State needs to overhaul it contracting, out-sourcing procedures,” *The Miami Herald*, Feb. 14, 2013 (<http://www.miamiherald.com/2013/02/14/3235109/bad-business.html>). There is a high likelihood that this trend of lowball bids will explode if the public is not allowed to independently review a vendor and contractor financial stability.

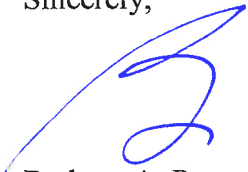
In response to the assertion that vendors are less likely to bid on government contracts because of Florida's open government laws, it would seem that our state is a haven for vendors. Just recently, CFO Jeff Atwater estimated "the total contract expenditure for Florida's 2011-12 budget cycle at \$50.4 billion – 72 percent of the budget." Mary Ellen Klas, "Cashing in on State Contracts Becomes Growth Industry", *The Miami Herald*, Feb. 9, 2013 (<http://www.miamiherald.com/2013/02/09/3226029/cashing-in-on-state-contracts.html>).

In addition, s. 119.071(1)(b), F.S., provides an exemption for sealed bids, proposals, or replies received by an agency in response to a competitive solicitation until the agency provides notices of an intended decision or until 30 days after opening the bids, proposals, or final replies. The purpose of this limited exemption is to protect the competitive process and to create a level playing field during that process. At the end of the process, the public has an opportunity to review all responses prior to the agency making its decision.

While we have addressed our concerns with your bill, we would like to emphasize that we do not oppose police that protect both trade secrets and proprietary confidential business information. In fact, we're working on a number of bills filed for this session that create new exemptions for proprietary confidential business information, and have frequently recommended the creation of a universal exemption that would apply to such information received by any agency under any circumstance.

If you have any questions, Senator Margolis, or if we can assist you in any way, please don't hesitate to contact us.

Sincerely,



Barbara A. Petersen, President

cc: The Honorable Don Gaetz, President, The Florida Senate  
Jon Kaney, General Counsel, First Amendment Foundation  
Sam Morley, General Counsel, Florida Press Association  
Sandy D'Alemberte, Florida Society of News Editors