

PRESENTED AT

UT Technology Law Conference

May 23-24, 2024
Austin, Texas

Confidential Information and Intellectual Property In Government Contracting: State and Federal

**Edmund Amorosi
Martin Zelinsky**

Contact Information:

Edmund Amorosi
Haynes Boone, LLP
Tysons Corner, VA
edmund.amorosi@haynesboone.com
703.336.2307

Martin Zelinsky
Law Office of Martin H. Zelinsky
Westminster, CO
martin.zelinsky@outlook.com
512.965.7506

Texas Public Information Act

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

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

(b) Except as provided by Section [552.0222](#), information is excepted from the requirements of Section [552.021](#) if it is demonstrated based on specific factual evidence that the information is a trade secret.

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

Sec. 552.1101. EXCEPTION: CONFIDENTIALITY OF PROPRIETARY INFORMATION. (a) Except as provided by Section [552.0222](#), information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section [552.021](#) if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

- (1) reveal an individual approach to:
 - (A) work;
 - (B) organizational structure;
 - (C) staffing;
 - (D) internal operations;
 - (E) processes; or
 - (F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and
- (2) give advantage to a competitor.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

- (1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or
- (2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

(c) The exception to disclosure provided by Subsection (a) may be asserted only by a vendor, contractor, potential vendor, or potential contractor in the manner described by Section [552.305](#)(b) for the purpose of protecting the interests of the vendor, contractor, potential vendor, or potential contractor. A governmental body shall decline to release information as provided by Section [552.305](#)(a) to the extent

necessary to allow a vendor, contractor, potential vendor, or potential contractor to assert the exception to disclosure provided by Subsection (a).

Sec. 552.0222. DISCLOSURE OF CONTRACTING INFORMATION. (a) Contracting information is public and must be released unless excepted from disclosure under this chapter.

(b) The exceptions to disclosure provided by Sections [552.110](#) and [552.1101](#) do not apply to the following types of contracting information:

- (1) a contract described by Section [2261.253](#)(a), excluding any information that was properly redacted under Subsection (e) of that section;
- (2) a contract described by Section [322.020](#)(c), excluding any information that was properly redacted under Subsection (d) of that section;
- (3) the following contract or offer terms or their functional equivalent:
 - (A) any term describing the overall or total price the governmental body will or could potentially pay, including overall or total value, maximum liability, and final price;
 - (B) a description of the items or services to be delivered with the total price for each if a total price is identified for the item or service in the contract;
 - (C) the delivery and service deadlines;
 - (D) the remedies for breach of contract;
 - (E) the identity of all parties to the contract;
 - (F) the identity of all subcontractors in a contract;
 - (G) the affiliate overall or total pricing for a vendor, contractor, potential vendor, or potential contractor;
 - (H) the execution dates;
 - (I) the effective dates; and
 - (J) the contract duration terms, including any extension options; or
- (4) information indicating whether a vendor, contractor, potential vendor, or potential contractor performed its duties under a contract, including information regarding:
 - (A) a breach of contract;
 - (B) a contract variance or exception;
 - (C) a remedial action;
 - (D) an amendment to a contract;
 - (E) any assessed or paid liquidated damages;
 - (F) a key measures report;
 - (G) a progress report; and
 - (H) a final payment checklist.

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

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Confidential Information and IP in Government Contracting: State and Federal

Also available as part of the eCourse

[2024 Technology Law eConference](#)

First appeared as part of the conference materials for the
37th Annual Technology Law Conference session

"Confidential Information and IP in Government Contracting: State and Federal"