

Public Records Legislative Study Committee

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BGS Standard Language Regarding Confidentiality to Bidders:

Request for Proposal (RFP) documents state:

- **CONFIDENTIALITY:** The successful response will become part of the contract file and will become a matter of public record, as will all other responses received. If the response includes material that is considered by the bidder to be proprietary and confidential under 1 V.S.A. Chapter 5, the bidder shall clearly designate the material as such, explaining why such material should be considered confidential. The bidder must identify each page or section of the response that it believes is proprietary and confidential with sufficient grounds to justify each exemption from release, including the prospective harm to the competitive position of the bidder if the identified material were to be released. Under no circumstances can the entire response or price information be marked confidential. Responses so marked may not be considered.

Process when Public Records Act Request is Received:

Standard Practice: Decision point regarding disclosure is made when contract is executed, or when decision is made to void and/or cancel the RFP.

- **Generally:** Executed contracts are subject to Vermont's Public Record statutes (1 V.S.A. §§ 315 – 320). When bids or proposals are accepted in response to an RFP, the State of Vermont treats all documents sent to the State in response to an RFP as public records which are exempt from disclosure to the public until a contract decision has been made. Once the contract has been fully executed, or the State has decided not to execute a contract at all, all documents associated with the bid, including all vendor proposals and evaluation notes, are open to the public. Prior to fulfillment of a public records request, BGS strives to ensure that they have redacted any content that would be considered a trade secret.
- **Purchasing & Contracting Practice:** When a record request is received, a review of the file is conducted. If the file contains a contract that has been executed; staff determine whether any aspects of the file marked proprietary and confidential, and files are marked for review by BGS Counsel and/or AG input. If it is unclear whether the file contains trade secret/confidential business information (or the file has not been marked as containing confidential information), files are reviewed for any confidential and proprietary information, and further input may be requested from the vendor for clarification.

Potential Exceptions:

- More recent interpretation includes: In instances where an RFP is cancelled and is going to be reviewed, altered, and re-issued, it may be considered exempt from disclosure as records related to ongoing contract negotiations (1. V.S.A. § 317(c)(15)). This occurs when there is some concern that the "new" RFP would be somehow compromised by the release of the original or previous RFP. When requests of this nature are received, BGS Counsel and AG input is requested.