

Part I Chapter 50 Public Access to Procurement Information

- A. General.** Agencies should provide the public with access to public records to the fullest extent required by law consistent with the agencies' duties and statutory obligations to protect the interests and rights of those who do business with the Commonwealth.
- B. Bid Tabulations.** At bid opening, or within a reasonable time thereafter, the Purchasing Agency is required to record the name of each bidder and the amount of each bid. This record known as the "bid tab" shall be made available for public inspection. The Department of General Services shall post the bid tab on its website.
- C. Right to Know Law.** The Pennsylvania Right to Know Law (RTKL) provides that, unless a specific statutory, regulatory, or judicial exemption applies, all records of an agency should be available for public inspection. It is essential that agencies respond to requests for access to public records in a timely, efficient and legally appropriate manner in order to assure the ability of individuals to exercise their right of access to public records relating to the procurement of supplies, services, and construction by the government.
- 1. Agency Open Records Officer (AORO).** Each agency has a management level official or employee of the agency, who has been designated by the agency head to be the agency's Open Records Officer (AORO). Agencies may also designate a deputy AORO to perform the duties of the AORO in the absence of, or as directed by, the chief AORO. Working with the agency records coordinator and Records Legal Liaison, the AORO shall receive RTKL requests submitted to the agency at the RTKL office at which such RTKL official is located; direct requests to other appropriate persons, including contractors who perform a governmental function; track the agency's progress in responding to RTKL requests; redirect a RTKL request to another agency when appropriate and be responsible for the issuance of interim and final responses to RTKL requests.
 - 2. Procedure.** As a general rule, an agency has only 5-business days to respond to a Right-to-Know request. The AORO should be the main contact person for all Right-to-Know matters. Any Right-to-Know request received by the agency should be immediately forwarded to the AORO, regardless of its contents.
 - 3. Records Covered.**
 - a. Access to Public Records.** The RTKL presumes that all records are open to the public unless a specific exception exempts the record from public disclosure. This is a change from prior law, which required that only certain records be released to the public.
 - b. Exemption from Disclosure.** Below is a list of items that are exempt from disclosure under the new RTKL. It is intended only to provide some general guidance, and does not cover every type of procurement document. If there is any question about whether a particular

document should be released, it is recommended that you contact agency legal counsel or the agency's AORO.

- c. **Financial Information.** Any financial information that a bidder or offeror is required to provide in its bid, proposal, or prequalification document to demonstrate the bidder's or offeror's capability to fully perform the contract requirements is exempt from disclosure, and should not be released to the public.
- d. **Bids and Proposals.** Bids and proposals do not become "public records" prior to the award of the contract or purchase order or until all bids have been rejected.
- e. **Trade Secrets and Confidential Proprietary Information.** Documents that contain trade secrets or confidential proprietary information are exempt from public disclosure. In order for this provision to be applicable, the bidder/offeror/contractor must provide, with the bid, quote, proposal, or contract, a written statement noting that the document contains a trade secret or confidential proprietary information. Agency legal counsel or the AORO must be consulted whenever a request is made for materials that are labeled as containing trade secrets or confidential proprietary information.
- f. **Correspondence and Memoranda.** Depending on the circumstances, correspondence, email, hand-written notes and memoranda concerning an IFB, RFP, contract, or contract performance may or may not be considered public records. When a request is received for such a document, agency legal counsel or the AORO should be consulted.
- g. **Personal Information.** The names, personal identification numbers, and personal financial information related to a contractor's employees should be redacted when included in otherwise public records such as certified payrolls.
- h. **Protected Health Information.** Information related to the physical or mental condition of an individual, the provision of health care to an individual, or the payment for the provision of health care to an individual that identifies or could be used to identify the individual is not subject to public disclosure, and should be redacted.
- i. **Sensitive Documents.** Sensitive records, which if released, might reasonably operate to impair a person's privacy rights or to impair the security of an individual or a group of individuals, including any interest of such persons in their persons, property or reputations should be withheld. When a request is received for a document that contains sensitive information, agency legal counsel or the AORO should be consulted.
- j. **Sensitive security information.** Information exempt from disclosure pursuant to 65 P.S. §67.708 (b) (1) (2), (3) and (4); and information related to the expenditure of funds from the U.S. Department of Homeland Security, the U.S. Department of Defense or

other federal or state funds expended for homeland security, national defense, law enforcement or other public safety activities, including public health preparedness; or information related to the expenditure of funds to ensure the security of public utilities, infrastructure or other essential public resources should not be released to the public without approval by agency legal counsel with input from the Office of General Counsel.

D. Chapter 17 Posting Requirements.

1. **Contracts executed after July 1, 2008.** Purchasing agencies are required to post, within ten days all Commonwealth contracts and stand alone purchase orders executed after July 1, 2008 with a total value of at least \$5,000 on the Pennsylvania Department of Treasury's website along with a summary that contains the following information:
 - a. Date of execution.
 - b. Amount of the contract.
 - c. Beginning date of the contract.
 - d. End date of the contract, if applicable.
 - e. Name of the agency entering into the contract.
 - f. The name of all parties executing the contract.
 - g. Subject matter of the contract.
2. **Contracts executed before July 1, 2008.** A contract executed prior to July 1, 2008 does not need to be uploaded, unless an extension of that contract is filed after July 1, 2008.
3. **Other Documents.** Part I Chapter 17 requires that all riders, exhibits, appendices or attachments to contracts that are incorporated into the contract and attached to the contract should be uploaded along with the contract, unless they are otherwise publicly available in which case a link or other reference should be listed in the summary. Other documents related to the contract need not be uploaded nor referenced on the summary unless it is established that the intent of the parties was to include the document as part of the contract.
4. **Posting Procedure.** Information on the procedure for posting can be found by on the Treasury website (www.patreasury.org) or by clicking here http://contracts.patreasury.org/Help/Agency_Help.html.

References:

1. http://contracts.patresury.org/Help/Agency_Help.html