

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

**DISCUSSION DRAFT FOR 11/9/2005 PPEA SUBCOMMITTEE MEETING**

**A BILL to amend and reenact §§ 2.2-3705.6, 56-573.1, and 56-575.16, of the Code of Virginia and to amend the Code of Virginia by adding a section number 56.573.1:1 and by adding in Chapter 22.1 of Title 56 a section numbered 56-575.17, relating to disclosure of procurement records under the Public-Private Transportation Act of 1995 and the Public-Private Education Facilities and Infrastructure Act of 2002.**

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-3705.6, 56-573.1, and 56-575.16 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section number 56.573.1:1 and by adding in Chapter 22.1 of Title 56 a section numbered 56-575.17 as follows:**

§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

- 1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1.
- 2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.
- 3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by such

25 entities, where competition or bargaining is involved and where, if such records are made public, the  
26 financial interest of the governmental unit would be adversely affected.

27 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-  
28 239 et seq.), as such Act existed prior to July 1, 1992.

29 5. Fisheries data that would permit identification of any person or vessel, except when required  
30 by court order as specified in § 28.2-204.

31 6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost  
32 projections provided to the Department of Rail and Public Transportation, provided such information is  
33 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other  
34 laws administered by the Surface Transportation Board or the Federal Railroad Administration with  
35 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad  
36 Administration.

37 7. Confidential proprietary records related to inventory and sales, voluntarily provided by private  
38 energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy  
39 contingency planning purposes or for developing consolidated statistical information on energy supplies.

40 8. Confidential proprietary information furnished to the Board of Medical Assistance Services or  
41 the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of  
42 Chapter 10 of Title 32.1.

43 9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue  
44 and cost projections provided by a private transportation business to the Virginia Department of  
45 Transportation and the Department of Rail and Public Transportation for the purpose of conducting  
46 transportation studies needed to obtain grants or other financial assistance under the Transportation  
47 Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is  
48 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other  
49 laws administered by the Surface Transportation Board or the Federal Railroad Administration with  
50 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad

51 Administration. However, the exemption provided by this subdivision shall not apply to any wholly  
52 owned subsidiary of a public body.

53 10. Confidential information designated as provided in subsection D of § 2.2-4342 as trade  
54 secrets or proprietary information by any person who has submitted to a public body an application for  
55 prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

56 11. ~~Confidential proprietary records that are voluntarily provided by a private entity pursuant to a~~  
57 ~~proposal filed with a public entity or an affected local jurisdiction under the Public-Private~~  
58 ~~Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and~~  
59 ~~Infrastructure Act of 2002 (§ 56-575.1 et seq.), pursuant to a promise of confidentiality from the~~  
60 ~~responsible public entity or affected local jurisdiction, used by the responsible public entity or affected~~  
61 ~~local jurisdiction for purposes related to the development of a qualifying transportation facility or~~  
62 ~~qualifying project; and memoranda, working papers or other records related to proposals filed under the~~  
63 ~~Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure~~  
64 ~~Act of 2002, where, if such records were made public, the financial interest of the public or private~~  
65 ~~entity involved with such proposal or the process of competition or bargaining would be adversely~~  
66 ~~affected. In order for confidential proprietary information to be excluded from the provisions of this~~  
67 ~~chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials~~  
68 ~~for which protection from disclosure is sought, (ii) identify the data or other materials for which~~  
69 ~~protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this~~  
70 ~~subdivision, the terms "affected local jurisdiction," "public entity" and "private entity" shall be defined~~  
71 ~~as they are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education~~  
72 ~~Facilities and Infrastructure Act of 2002. However, nothing in this subdivision shall be construed to~~  
73 ~~prohibit the release of procurement records as required by § 56-573.1 or 56-575.16. Procurement records~~  
74 ~~shall not be interpreted to include proprietary, commercial or financial information, balance sheets,~~  
75 ~~financial statements, or trade secrets that may be provided by the private entity as evidence of its~~  
76 ~~qualifications. Records provided by a private entity to a public entity or affected local jurisdiction~~  
77 ~~pursuant to the provisions of the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the~~

78 Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), to the extent that  
79 such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§  
80 59.1-336 et seq.); (ii) financial information, including balance sheets and financial statements of the  
81 private entity that is not generally available to the public through regulatory disclosure or otherwise; or  
82 (iii) other proprietary records of the private entity, where, if the records were made public, the financial  
83 interest or competitive position of the public or private entity involved with such proposal would be  
84 adversely affected. In order for such records to be excluded from the provisions of this chapter, the  
85 private entity shall make a written request to the responsible public entity:

86 1. Invoking such exclusion upon submission of the data or other materials for which protection  
87 from disclosure is sought;

88 2. Identifying with specificity the data or other materials for which protection is sought; and

89 3. Stating the reasons why protection is necessary.

90 The public entity shall determine whether the requested exclusion from disclosure is necessary to  
91 protect the trade secrets or financial information of the private entity. To protect other proprietary  
92 information of the private entity from disclosure, the public entity shall determine whether public  
93 disclosure prior to the execution of an interim agreement or a comprehensive agreement would  
94 adversely affect the financial interest of the public or private entity involved with such proposal or the  
95 process of competition or bargaining by either party. The public entity shall make a written  
96 determination of the nature and scope of the protection to be afforded by the public entity under this  
97 subdivision.

98 Nothing in this subdivision shall be construed to prohibit the release of (a) procurement records  
99 as required by § 56-573.1:1 or 56-575.17; (b) information concerning the terms and conditions of any  
100 interim or comprehensive agreement, service contract, lease, partnership, financing arrangement, or any  
101 agreement of any kind entered into by the responsible public entity and the private entity; (c)  
102 information concerning the performance of any private entity operating a qualifying transportation  
103 facility or a qualifying project; or (d) information concerning proposals submitted by private entities that  
104 are rejected or not pursued by the public entity, in a form that is redacted to exclude trade secrets,

105 financial information or other proprietary records protected from disclosure pursuant to the provisions of  
106 this subdivision. For the purposes of this subdivision, the terms "affected local jurisdiction," "public  
107 entity," and "private entity" shall mean the same as those terms are defined in the Public-Private  
108 Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002.

109 12. Confidential proprietary information or trade secrets, not publicly available, provided by a  
110 private person or entity to the Virginia Resources Authority or to a fund administered in connection with  
111 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such  
112 information were made public, the financial interest of the private person or entity would be adversely  
113 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of  
114 confidentiality.

115 13. Confidential proprietary records that are provided by a franchisee under § 15.2-2108 to its  
116 franchising authority pursuant to a promise of confidentiality from the franchising authority that relates  
117 to the franchisee's potential provision of new services, adoption of new technologies or implementation  
118 of improvements, where such new services, technologies or improvements have not been implemented  
119 by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made  
120 public, the competitive advantage or financial interests of the franchisee would be adversely affected. In  
121 order for confidential proprietary information to be excluded from the provisions of this chapter, the  
122 franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which  
123 protection from disclosure is sought, (ii) identify the data or other materials for which protection is  
124 sought, and (iii) state the reason why protection is necessary.

125 14. Documents and other information of a proprietary nature furnished by a supplier of charitable  
126 gaming supplies to the Department of Charitable Gaming pursuant to subsection E of § 18.2-340.34.

127 15. Records and reports related to Virginia apple producer sales provided to the Virginia State  
128 Apple Board pursuant to §§ 3.1-622 and 3.1-624.

129 16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1,  
130 submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery  
131 Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

132 17. Records submitted as a grant application, or accompanying a grant application, to the  
133 Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the  
134 extent such records contain proprietary business or research-related information produced or collected  
135 by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,  
136 technical or scholarly issues, when such information has not been publicly released, published,  
137 copyrighted or patented, if the disclosure of such information would be harmful to the competitive  
138 position of the applicant.

139 18. Confidential proprietary records and trade secrets developed and held by a local public body  
140 (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television  
141 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 2 of Title 15.2, to the extent that  
142 disclosure of such records would be harmful to the competitive position of the locality. In order for  
143 confidential proprietary information or trade secrets to be excluded from the provisions of this chapter,  
144 the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the  
145 records or portions thereof for which protection is sought, and (iii) state the reasons why protection is  
146 necessary.

147 19. Confidential proprietary records and trade secrets developed by or for a local authority  
148 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to  
149 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of  
150 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive  
151 position of the authority, except that records required to be maintained in accordance with § 15.2-2160  
152 shall be released.

153 § 56-573.1. Procurement.

154 The Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to this chapter;  
155 however, a responsible public entity may enter into an interim or a comprehensive agreement only in  
156 accordance with guidelines adopted by it as follows:

157 1. A responsible public entity may enter into an interim or a comprehensive agreement in  
158 accordance with guidelines adopted by it that are consistent with procurement through "competitive  
159 sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310.

160 2. A responsible public entity may enter into an interim or a comprehensive agreement in  
161 accordance with guidelines adopted by it that are consistent with the procurement of "other than  
162 professional services" through competitive negotiation as defined in § 2.2-4301 and subsection B of §  
163 2.2-4310. Such responsible public entity shall not be required to select the proposal with the lowest price  
164 offer, but may consider price as one factor in evaluating the proposals received. Other factors that may  
165 be considered include (i) the proposed cost of the qualifying transportation facility; (ii) the general  
166 reputation, qualifications, industry experience, and financial capacity of the private entity; (iii) the  
167 proposed design, operation, and feasibility of the qualifying transportation facility; (iv) the eligibility of  
168 the facility for priority selection, review, and documentation timelines under the responsible public  
169 entity's guidelines; (v) local citizen and public entity comments; (vi) benefits to the public; (vii) the  
170 private entity's compliance with a minority business enterprise participation plan or good faith effort to  
171 comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and  
172 residents; (ix) the safety record of the private entity; (x) the ability of the facility to address the needs  
173 identified in the appropriate state, regional or local transportation plan by improving safety, reducing  
174 congestion, increasing capacity, and/or enhancing economic efficiency; and (xi) other criteria that the  
175 responsible public entity deems appropriate.

176 A responsible public entity shall proceed in accordance with the guidelines adopted by it  
177 pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted  
178 by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the  
179 public, based on (i) the probable scope, complexity, or urgency of a project; (ii) risk sharing including  
180 guaranteed cost or completion guarantees, added value, or debt or equity investments proposed by the  
181 private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that  
182 would not otherwise be available. When the responsible public entity determines to proceed according to  
183 the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in

184 writing. If a state agency is the responsible public entity, the approval of the Secretary of Transportation  
185 shall be required as more specifically set forth in the guidelines before the comprehensive agreement is  
186 signed.

187 3. Interim or comprehensive agreements for maintenance or asset management services for a  
188 transportation facility that is a highway, bridge, tunnel or overpass, and any amendment or change order  
189 thereto that increases the highway lane-miles receiving services under such an agreement shall be  
190 procured in accordance with guidelines that are consistent with procurement through "competitive  
191 sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310. Furthermore, such contracts  
192 shall be of a size and scope to encourage maximum competition and participation by agency  
193 prequalified contractors and otherwise qualified contractors.

194 4. The provisions of subdivision 3 shall not apply to maintenance or asset management services  
195 agreed to as part of the initial provisions of any interim or comprehensive agreement entered into for the  
196 original construction, reconstruction, or improvement of any highway pursuant to Chapter 22 (§ 56-556  
197 et seq.) of Title 56.

198 5. ~~Once a comprehensive agreement has been entered into, and the process of bargaining of all~~  
199 ~~phases or aspects of the comprehensive agreement is complete, a responsible public entity shall make~~  
200 ~~available, upon request, procurement records in accordance with § 2.2-4342.~~

201 6. ~~Nothing in this section shall require that professional services be procured by any method~~  
202 ~~other than competitive negotiation in accordance with the Virginia Public Procurement Act (§ 2.2-4300~~  
203 ~~et seq.).~~

204 § 56-573.1:1 Posting of conceptual proposals; public comment; public access to procurement  
205 records.

206 A. Conceptual proposals submitted in accordance with subsection A or B of § 56-560 to a  
207 responsible public entity shall be posted on the responsible public entity's website within 10 working  
208 days after the date set for receipt of bids or proposals. Trade secrets, financial information or other  
209 confidential proprietary records of the private entity excluded from disclosure under the provisions of



210 subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the  
211 responsible public entity and the private entity.

212 B. In addition to the posting requirements of subsection A, a responsible public entity shall  
213 provide, at a minimum, a 30-day public comment period from the date of posting of the submitted  
214 proposals. The public comment period required by this subsection may include a public hearing in the  
215 sole discretion of the responsible public entity.

216 C. Once the process of bargaining of all phases or aspects of an interim or a comprehensive  
217 agreement is complete, but before an interim agreement or a comprehensive agreement is entered into, a  
218 responsible public entity shall post the proposed agreement on its website.

219 D. In addition, the responsible public entity shall make available, upon request, procurement  
220 records as follows:

221 1. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to  
222 inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the  
223 event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise,  
224 bid records shall be open to public inspection only after award of the contract.

225 2. Any competitive negotiation offeror, including a private entity requesting approval of a  
226 qualifying project pursuant to subsection A of § 56-560, upon request, shall be afforded the opportunity  
227 to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals  
228 are completed but prior to award, except in the event that the public body decides not to accept any of  
229 the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection  
230 only after award of the contract.

231 3. Any inspection of procurement transaction records under this section shall be subject to  
232 reasonable restrictions to ensure the security and integrity of the records.

233 4. Cost estimates relating to a proposed procurement transaction prepared by or for a public body  
234 shall not be open to public inspection.

235 E. Procurement records shall not be interpreted to include trade secrets of the private entity as  
236 defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), financial information, including balance

237 sheets or financial statements of the private entity that are not generally available to the public through  
238 regulatory disclosure or otherwise, or other proprietary records excluded from disclosure under  
239 subdivision 11 of § 2.2-3705.6.

240 F. The provisions of this section shall apply regardless of whether the process of bargaining will  
241 result in an interim or a comprehensive agreement.

242 § 56-575.16. Procurement.

243 The Virginia Public Procurement Act (§ 2.2-4300 et seq.) and any interpretations, regulations, or  
244 guidelines of the Division of Engineering and Buildings of the Department of General Services or the  
245 Virginia Information Technologies Agency, including the Capital Outlay Manual and those  
246 interpretations, regulations or guidelines developed pursuant to §§ 2.2-1131, 2.2-1132, 2.2-1133, 2.2-  
247 1149, and 2.2-1502, except those developed by the Division or the Virginia Information Technologies  
248 Agency in accordance with this chapter when the Commonwealth is the responsible public entity, shall  
249 not apply to this chapter. However, a responsible public entity may enter into a comprehensive  
250 agreement only in accordance with guidelines adopted by it as follows:

251 1. A responsible public entity may enter into a comprehensive agreement in accordance with  
252 guidelines adopted by it that are consistent with procurement through competitive sealed bidding as  
253 defined in § 2.2-4301 and subsection B of § 2.2-4310.

254 2. A responsible public entity may enter into a comprehensive agreement in accordance with  
255 guidelines adopted by it that are consistent with the procurement of "other than professional services"  
256 through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310. Such  
257 responsible public entity shall not be required to select the proposal with the lowest price offer, but may  
258 consider price as one factor in evaluating the proposals received. Other factors that may be considered  
259 include (i) the proposed cost of the qualifying facility; (ii) the general reputation, industry experience,  
260 and financial capacity of the private entity; (iii) the proposed design of the qualifying project; (iv) the  
261 eligibility of the facility for accelerated selection, review, and documentation timelines under the  
262 responsible public entity's guidelines; (v) local citizen and government comments; (vi) benefits to the  
263 public; (vii) the private entity's compliance with a minority business enterprise participation plan or

264 good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local  
265 contractors and residents; and (ix) other criteria that the responsible public entity deems appropriate.

266 A responsible public entity shall proceed in accordance with the guidelines adopted by it  
267 pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted  
268 by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the  
269 public, based on (i) the probable scope, complexity or priority of the project; (ii) risk sharing including  
270 guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the  
271 private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that  
272 would not otherwise be available. When the responsible public entity determines to proceed according to  
273 the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in  
274 writing. If a state agency is the responsible public entity, the approval of the responsible Governor's  
275 Secretary, or the Governor, shall be required before the responsible public entity may enter into a  
276 comprehensive agreement pursuant to this subdivision.

277 3. Nothing in this chapter shall authorize or require that a responsible public entity obtain  
278 professional services through any process except in accordance with guidelines adopted by it that are  
279 consistent with the procurement of "professional services" through competitive negotiation as defined in  
280 § 2.2-4301 and subsection B of § 2.2-4310.

281 4. A responsible public entity shall not proceed to consider any request by a private entity for  
282 approval of a qualifying project pursuant to subsection A of § 56-575.4 until the responsible public  
283 entity has adopted and made publicly available guidelines that are sufficient to enable the responsible  
284 public entity to comply with this chapter. Such guidelines shall:

285 a. If the responsible public entity is not an agency or authority of the Commonwealth, require the  
286 responsible public entity to engage the services of qualified professionals, which may include an  
287 architect, professional engineer or certified public accountant, not employed by the responsible public  
288 entity to provide to the responsible public entity independent analysis regarding the specifics,  
289 advantages, disadvantages, and the long- and short-term costs of any request by a private entity for  
290 approval of a qualifying project, unless the governing body of the responsible public entity determines

291 that such analysis of a request by a private entity for approval of a qualifying project shall be performed  
292 by employees of the responsible public entity.

293 b. Provide for the posting and publishing of public notice of a private entity's request for  
294 approval of a qualifying project pursuant to subsection A of § 56-575.4 and a reasonable time period,  
295 determined by the responsible public entity to be appropriate to encourage competition and public-  
296 private partnerships pursuant to the goals of this chapter, such reasonable period not to be less than 45  
297 days, during which the responsible public entity will receive competing proposals pursuant to that  
298 subsection.

299 Such guidelines shall also require advertising the public notice in the Virginia Business  
300 Opportunities publication and posting a notice on the Commonwealth's electronic procurement website.

301 ~~5. Once a comprehensive agreement has been entered into, and the process of bargaining of all~~  
302 ~~phases or aspects of the comprehensive agreement is complete, a responsible public entity shall make~~  
303 ~~available, upon request, procurement records in accordance with § 2.2-4342.~~

304 ~~6.~~A responsible public entity that is a school board or a county, city or town may enter into an  
305 interim or comprehensive agreement under this chapter only with the approval of the local governing  
306 body.

307 § 56-575.17. Posting of conceptual proposals; public comment; public access to procurement  
308 records.

309 A. Conceptual proposals submitted in accordance with subsection A or B of § 56-575.4 to a  
310 responsible public entity shall be posted on the responsible public entity's website within 10 working  
311 days after the date set for receipt of bids or proposals. Trade secrets, financial information, or other  
312 confidential proprietary records of the private entity excluded from disclosure under the provisions of  
313 subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the  
314 responsible public entity and the private entity.

315 B. In addition to the posting requirements of subsection A, a responsible public entity shall  
316 provide, at a minimum, a 30-day public comment period from the date of posting of the submitted

317 proposals. The public comment period required by this subsection may include a public hearing in the  
318 sole discretion of the responsible public entity.

319 C. Once the process of bargaining of all phases or aspects of an interim or a comprehensive  
320 agreement is complete, but before an interim agreement or a comprehensive agreement is entered into, a  
321 responsible public entity shall post the proposed agreement on its website.

322 D. In addition, the responsible public entity shall make available, upon request, procurement  
323 records as follows:

324 1. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to  
325 inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the  
326 event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise,  
327 bid records shall be open to public inspection only after award of the contract.

328 2. Any competitive negotiation offeror, including a private entity requesting approval of a  
329 qualifying project pursuant to subsection A of § 56-575.4, upon request, shall be afforded the  
330 opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of  
331 proposals are completed but prior to award, except in the event that the public body decides not to  
332 accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to  
333 public inspection only after award of the contract.

334 3. Any inspection of procurement transaction records under this section shall be subject to  
335 reasonable restrictions to ensure the security and integrity of the records.

336 4. Cost estimates relating to a proposed procurement transaction prepared by or for a public body  
337 shall not be open to public inspection.

338 E. Procurement records shall not be interpreted to include trade secrets of the private entity as  
339 defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), financial information, including balance  
340 sheets or financial statements of the private entity that are not generally available to the public through  
341 regulatory disclosure or otherwise, or other proprietary records excluded from disclosure under  
342 subdivision 11 of § 2.2-3705.6.

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F. The provisions of this section shall apply regardless of whether the process of bargaining will

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result in an interim or a comprehensive agreement.

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