

Senate Bill 179

By: Senators Hill of the 6th and Dugan of the 30th

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 10 of Title 13, Chapter 91 of Title 36, and Part 1 of Article 3 of Chapter
 2 5 of Title 50 of the Official Code of Georgia Annotated, relating to contracts for public
 3 works, public works bidding, and general authority, duties, and procedure relative to state
 4 purchasing, respectively, so as to provide that, if a sealed competitive proposal is requested
 5 and price or project cost is not a selection or evaluation factor, no bid bond shall be required;
 6 to provide for an exception; to provide for certain contracting and bidding requirements for
 7 governmental entities and the Department of Administrative Services relative to public works
 8 construction contracts; to correct statutory references; to authorize incentives in contracts for
 9 early project completion by contractors; to provide for related matters; to provide an effective
 10 date; to repeal conflicting laws; and for other purposes.

11 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

12 **SECTION 1.**

13 Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to contracts for
 14 public works, is amended by revising Code Section 13-10-3, relating to determining Georgia
 15 residency for business, preferences, and adherence to policies and procedures of State
 16 Construction Manual, as follows:

17 "13-10-3.

18 (a) For the purpose of determining residency under this Code section, a Georgia resident
 19 business shall include any business that regularly maintains a place from which business
 20 is physically conducted in Georgia for at least one year prior to any bid or proposal
 21 submitted pursuant to this Code section or a new business that is domiciled in Georgia
 22 which regularly maintains a place from which business is physically conducted in Georgia;
 23 provided, however, that a place of business shall not include a post office box, site trailer,
 24 or temporary structure.

25 (b) Whenever the state contracts for the doing of a public work, materialmen, contractors,
 26 builders, architects, engineers, and laborers resident in the State of Georgia are to be

27 granted the same preference over materialmen, contractors, builders, architects, engineers,
28 and laborers resident in another state in the same manner, on the same basis, and to the
29 same extent that preference is granted in awarding bids for the same goods or services by
30 such other state to materialmen, contractors, builders, architects, engineers, and laborers
31 resident in such other state over materialmen, contractors, builders, architects, engineers,
32 and laborers resident in the State of Georgia. However, these requirements shall in no way
33 impair the ability of the state to compare the quality of materials proposed for purchase and
34 to compare the qualifications, character, responsibility, and fitness of materialmen,
35 contractors, builders, architects, engineers, and laborers proposed for employment in its
36 consideration of the purchase of materials or employment of persons. This subsection shall
37 not apply to transportation projects for which federal aid funds are available.

38 (c) All state agencies, authorities, departments, commissions, boards, and similar entities
39 shall adhere to the policies and procedures contained in the State Construction Manual for
40 project management and procurement of, and contracting for, design, construction, and
41 other project related professional services for all state owned buildings in Georgia funded
42 by state bonds or other state revenue. The State Construction Manual shall be jointly
43 edited and posted on a state website by the Georgia State Financing and Investment
44 Commission and the Board of Regents of the University System of Georgia and shall be
45 updated on a periodic basis to reflect evolving owner needs and industry best practices after
46 consultation with other state agency and industry stakeholders.

47 (d)(1) To the extent permitted by law, no state agency, authority, department,
48 commission, board, or similar entity that contracts for public works construction shall,
49 in its bid documents, specifications, project agreements, or other controlling documents
50 for a public works construction contract:

51 (A) Require or prohibit bidders, offerors, contractors, subcontractors, or material
52 suppliers to enter into or adhere to prehire agreements, project labor agreements,
53 collective bargaining agreements, or any other agreement with one or more labor
54 organizations on the same or other related construction projects; or

55 (B) Discriminate against, or treat differently, bidders, offerors, contractors,
56 subcontractors, or material suppliers for becoming or refusing to become or remain
57 signatories or otherwise to adhere to agreements with one or more labor organizations
58 on the same or other related construction projects.

59 (2) Nothing in this subsection shall prohibit bidders, offerors, contractors,
60 subcontractors, or material suppliers from voluntarily entering into agreements described
61 in paragraph (1) of this subsection.

62 (3) The head of a governmental entity may exempt a particular public works construction
63 contract from the requirements of any or all of the provisions of paragraph (1) of this

64 subsection if the governmental entity finds, after public notice and a hearing, that special
 65 circumstances require an exemption to avert an imminent threat to public health or safety.
 66 A finding of special circumstance under this paragraph shall not be based on the
 67 possibility or presence of a labor dispute concerning the use of contractors or
 68 subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with
 69 one or more labor organizations or concerning employees on the particular project who
 70 are not members of or affiliated with a labor organization."

71 **SECTION 2.**

72 Said chapter is further amended in Code Section 13-10-20, relating to large public works
 73 contracts, requirements for bid bonds, and withdrawal of bid, by adding a new subsection to
 74 read as follows:

75 "(e) When the state invites competitive sealed proposals for a public works construction
 76 project and the request for proposals for such project states that price or project cost will
 77 not be a selection or evaluation factor, no bid bond shall be required unless the state
 78 provides for a bid bond in the request for proposals and specifies the amount of such bond."

79 **SECTION 3.**

80 Said chapter is further amended by revising subsection (b) of Code Section 13-10-62, relating
 81 to notice of commencement, as follows:

82 "(b) The failure to file a notice of commencement shall render the notice to the contractor
 83 requirements of paragraph ~~(1)~~ (2) of subsection (a) of Code Section 13-10-63 inapplicable."

84 **SECTION 4.**

85 Said chapter is further amended in Article 1, relating to general provisions, by adding a new
 86 part to read as follows:

87 "Part 5

88 13-10-70.

89 Public works construction contracts may include both liquidated damages provisions for
 90 late construction project completion and incentive provisions for early construction project
 91 completion when the project schedule is deemed to have value. The terms of the liquidated
 92 damages provisions and the incentive provisions shall be established in advance as a part
 93 of the construction contract and included within the terms of the bid or proposal."

94 **SECTION 5.**

95 Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to public works
96 bidding, is amended in Code Section 36-91-21, relating to competitive award requirements,
97 by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and by
98 adding a new subsection to read as follows:

99 "(f)(1) Unless otherwise required by law, no governmental entity that contracts for public
100 works construction shall in its bid documents, specifications, project agreements, or other
101 controlling documents for a public works construction contract:

102 (A) Require or prohibit bidders, offerors, contractors, subcontractors, or material
103 suppliers to enter into or adhere to prehire agreements, project labor agreements,
104 collective bargaining agreements, or any other agreement with one or more labor
105 organizations on the same or other related construction projects; or

106 (B) Discriminate against, or treat differently, bidders, offerors, contractors,
107 subcontractors, or material suppliers for becoming or refusing to become or remain
108 signatories or otherwise to adhere to agreements with one or more labor organizations
109 on the same or other related construction projects.

110 (2) Nothing in this subsection shall prohibit bidders, offerors, contractors,
111 subcontractors, or material suppliers from voluntarily entering into agreements described
112 in paragraph (1) of this subsection.

113 (3) The head of a governmental entity may exempt a particular public works construction
114 contract from the requirements of any or all of the provisions of paragraph (1) of this
115 subsection if the governmental entity finds, after public notice and a hearing, that special
116 circumstances require an exemption to avert an imminent threat to public health or safety.

117 A finding of special circumstance under this paragraph shall not be based on the
118 possibility or presence of a labor dispute concerning the use of contractors or
119 subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with
120 one or more labor organizations or concerning employees on the particular project who
121 are not members of or affiliated with a labor organization."

122 **SECTION 6.**

123 Said chapter is further amended in Article 2, relating to contracting and bidding
124 requirements, by adding a new Code section to read as follows:

125 "36-91-23.

126 Public works construction contracts may include both liquidated damages provisions for
127 late construction project completion and incentive provisions for early construction project
128 completion when the project schedule is deemed to have value. The terms of the liquidated

129 damages provisions and the incentive provisions shall be established in advance as a part
 130 of the construction contract and included within the terms of the bid or proposal."

131 **SECTION 7.**

132 Said chapter is further amended in Part 1 of Article 3, relating to general provisions regarding
 133 bonds, by adding a new Code section to read as follows:

134 "36-91-41.

135 When a governmental entity invites competitive sealed proposals for a public works
 136 construction project and the request for proposals for such project states that price or
 137 project cost will not be a selection or evaluation factor, no bid bond shall be required unless
 138 the governmental entity provides for a bid bond in the request for proposals and specifies
 139 the amount of such bond."

140 **SECTION 8.**

141 Said chapter is further amended by revising subsection (b) of Code Section 36-91-92, relating
 142 to notice of commencement, as follows:

143 "(b) The failure to file a notice of commencement shall render the notice to contractor
 144 requirements of paragraph ~~(1)~~ (2) of subsection (a) of Code Section 36-91-93 inapplicable."

145 **SECTION 9.**

146 Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated,
 147 relating to general authority, duties, and procedure relative to state purchasing, is amended
 148 by revising Code Section 50-5-72, relating to construction and public works contracts
 149 conducted by the Department of Administrative Services and exceptions, as follows:

150 "50-5-72.

151 (a) Notwithstanding any other provision of this part or any other law dealing with the
 152 subject matter contained in this Code section to the contrary, all construction or public
 153 works contracts, exceeding a total expenditure of \$100,000.00, of any department, board,
 154 bureau, commission, office, or agency of the state government, except as provided in this
 155 Code section, shall be conducted and negotiated by the Department of Administrative
 156 Services in accordance with this part; provided, however, that any expenditure of less than
 157 \$100,000.00 shall still be subject to review and approval by the Department of
 158 Administrative Services, which may approve noncompetitive expenditures of up to
 159 \$100,000.00.

160 (b) All advertising costs incurred in connection with such contracts shall be borne by and
 161 paid from the funds appropriated to and available to the department, board, bureau,
 162 commission, office, or agency of the state government for which the contract is negotiated.

163 (c)(1) Notwithstanding subsections (a) and (b) of this Code section and to the extent
 164 permitted by law, the Department of Administrative Services shall not in its bid
 165 documents, specifications, project agreements, or other controlling documents for a
 166 public works construction contract:

167 (A) Require or prohibit bidders, offerors, contractors, subcontractors, or material
 168 suppliers to enter into or adhere to prehire agreements, project labor agreements,
 169 collective bargaining agreements, or any other agreement with one or more labor
 170 organizations on the same or other related construction projects; or

171 (B) Discriminate against, or treat differently, bidders, offerors, contractors,
 172 subcontractors, or material suppliers for becoming or refusing to become or remain
 173 signatories or otherwise to adhere to agreements with one or more labor organizations
 174 on the same or other related construction projects.

175 (2) Nothing in this subsection shall prohibit bidders, offerors, contractors,
 176 subcontractors, or material suppliers from voluntarily entering into agreements described
 177 in paragraph (1) of this subsection.

178 (3) The head of a governmental entity may exempt a particular public works construction
 179 contract from the requirements of any or all of the provisions of paragraph (1) of this
 180 subsection if the governmental entity finds, after public notice and a hearing, that special
 181 circumstances require an exemption to avert an imminent threat to public health or safety.
 182 A finding of special circumstance under this paragraph shall not be based on the
 183 possibility or presence of a labor dispute concerning the use of contractors or
 184 subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with
 185 one or more labor organizations or concerning employees on the particular project who
 186 are not members of or affiliated with a labor organization.

187 (d) The commissioner of administrative services is authorized and directed to promulgate
 188 such rules and regulations as shall carry out the additional duties and responsibilities placed
 189 upon the department by this Code section.

190 (e) Nothing contained in this Code section shall apply to or affect the Department of
 191 Transportation, the several public authorities of this state, including the Stone Mountain
 192 Memorial Association and the Board of Regents of the University System of Georgia, or
 193 the expenditure of money credited to the account of this state in the Unemployment Trust
 194 Fund by the secretary of the treasury of the United States pursuant to Section 903 of the
 195 Social Security Act and appropriated as provided in Code Section 34-8-85. No contract
 196 in existence on March 18, 1964, shall be affected by this Code section, and such contract
 197 may continue to be utilized."

198 **SECTION 10.**

199 This Act shall become effective upon its approval by the Governor or upon its becoming law
200 without such approval.

201 **SECTION 11.**

202 All laws and parts of laws in conflict with this Act are repealed.