

Senate Bill 586

By: Senators Gooch of the 51st, Dugan of the 30th, Watson of the 1st, Anavitarte of the 31st,
Ginn of the 47th and others

AS PASSED

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Part 2 of Article 3 of Chapter 4 of Title 32 of the Official Code of Georgia
2 Annotated, relating to exercise by counties of power to contract for road projects generally,
3 so as to authorize the use of the design-build contracting method by counties; to provide for
4 procedures, conditions, and limitations upon such contracting method; to provide for an
5 exception to contract limitations; to provide for related matters; to repeal conflicting laws;
6 and for other purposes.

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

8 **SECTION 1.**

9 Part 2 of Article 3 of Chapter 4 of Title 32 of the Official Code of Georgia Annotated,
10 relating to exercise by counties of power to contract for road projects generally, is amended
11 in Code Section 32-4-63, relating to limitations on power to contract and at least two
12 estimates required for certain expenditures, by revising subsection (a) as follows:

13 "(a) A county is prohibited from negotiating a contract except a contract:

14 (1) Involving the expenditure of less than \$200,000.00;

15 (2) With a state agency or county or municipality with which a county is authorized to
16 contract in accordance with the provisions of Code Sections 32-4-61 and 32-4-62;

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17 (3) For the purchase of those materials, supplies, and equipment necessary for the
 18 county's construction and maintenance of its public roads and for the support and
 19 maintenance of the county's forces used in such work, as authorized by Chapter 91 of
 20 Title 36;

21 (4) Subject to Article 6 of Chapter 6 of this title, with a railroad or railway company or
 22 a publicly or privately owned utility concerning relocation of its line, tracks, or facilities
 23 where the same are not then located in a public road and such relocation or
 24 grade-crossing elimination is necessary as an incident to the construction of a new public
 25 road or to the reconstruction or maintenance of an existing public road. Nothing
 26 contained in this paragraph shall be construed as requiring a county to furnish a site or
 27 right of way for railroad or railway lines or tracks of public utility facilities required to
 28 be removed from a public road;

29 (5) For engineering or other kinds of professional or specialized services;

30 (6) For emergency maintenance requiring immediate repairs to a public road, including
 31 but not limited to bridge repairs, snow and ice removal, and repairs due to flood
 32 conditions; ~~or~~

33 (7) Otherwise expressly authorized by law; or

34 (8) That is a design-build contract as provided for in Code Section 32-4-74."

35 **SECTION 2.**

36 Said part is further amended by revising Code Section 32-4-74, relating to applicability of
 37 other laws to part, and by enacting a new Code section to read as follows:

38 "32-4-74.

39 (a) As used in this Code section, the term:

40 (1) 'Design-build procedure' means a method of contracting under which a county
 41 contracts with another party that will both design and build the structures, facilities,
 42 systems, and other items specified in the contract.

- 43 (2) 'Project' means a transportation related undertaking which provides a public benefit.
44 (b) A county may use the design-build procedure for projects that include buildings,
45 bridges and approaches, rail corridors, technology deployments, and limited or controlled
46 access projects or projects that may be constructed within existing rights of way where the
47 scope of work can be clearly defined or when a significant savings in project delivery time
48 can be attained.
- 49 (c) When a county determines that it is in the best interests of the public, a county may
50 combine any or all of the environmental services, utility relocation services, right of way
51 services, design services, and construction phases of a public road or other project into a
52 single contract using a design-build procedure. Design-build contracts may be advertised
53 and awarded notwithstanding the requirements of Code Section 32-4-63; provided,
54 however, that construction activities shall not begin on any portion of such project until
55 title to the necessary rights of way and easements for the construction of that portion of the
56 project has vested in the county and all railroad crossing and utility agreements have been
57 executed.
- 58 (d) A county shall adopt by resolution procedures for administering design-build contracts.
59 Such procedures shall include, but not be limited to:
- 60 (1) Prequalification requirements;
61 (2) Public advertisement procedures;
62 (3) Request for qualification requirements;
63 (4) Request for proposal requirements;
64 (5) Criteria for evaluating technical information and project costs;
65 (6) Criteria for selection and award process, provided that the resolution shall specify
66 that the criteria for selection shall consist of the following minimum two components for
67 any two-step procurement process:
- 68 (A) A statement of qualifications from which a county will determine a list of qualified
69 firms for the project, provided that, if a county determines it is in the county's best

70 interest, it may omit this requirement and move directly to a one-step procurement
71 process through the issuance of a request for proposal from which a county may select
72 the lowest qualified bidder; and

73 (B) From the list of qualified firms as provided in subparagraph (A) of this paragraph,
74 a technical proposal and a price proposal from each firm from which a county shall
75 select the lowest qualified bidder or, in the event a county uses the best value
76 procurement process, the request for proposal shall specify the requirements necessary
77 for the selection of the best value proposal which shall include, at a minimum, a
78 weighted cost component and a technical component. A proposal shall only be
79 considered nonresponsive if it does not contain all the information and level of detail
80 requested in the request for proposal. A proposal shall not be deemed to be
81 nonresponsive solely on the basis of minor irregularities in the proposal that do not
82 directly affect the ability to fairly evaluate the merits of the proposal. Notwithstanding
83 the requirements of Code Section 36-91-21, under no circumstances shall a county use
84 a 'best and final offer' standard in awarding a contract in order to induce one proposer
85 to bid against an offer of another proposer. A county may provide for a stipulated fee
86 to be awarded to the short list of qualified firms that provide a responsive, successful
87 proposal. In consideration for paying the stipulated fee, a county may use any ideas or
88 information contained in the proposals in connection with the contract awarded for the
89 project, or in connection with a subsequent procurement, without obligation to pay any
90 additional compensation to the unsuccessful proposers;

91 (7) Identification of those projects that a county believes are candidates for design-build
92 contracting; and

93 (8) Criteria for resolution of contract issues. A county may adopt a method for resolving
94 issues and disputes through negotiations at the project level by the program manager up
95 to and including a dispute review board procedure. Regardless of the status or disposition
96 of the issue or dispute, the design-builder and a county shall continue to perform their

97 contractual responsibilities. This paragraph shall not prevent an aggrieved party from
98 seeking judicial review.

99 (e) In contracting for design-build projects, a county shall be limited to contracting for no
100 more than 50 percent of the total amount of construction projects awarded in the previous
101 fiscal year.

102 (f) Any firm selected for a design-build project shall self-perform at least 30 percent of the
103 project.

104 32-4-75.

105 Except as indicated to the contrary in this part, Chapter 91 of Title 36 shall not apply to this
106 part."

107

SECTION 3.

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