

House Bill 513

By: Representative Shanahan of the 10<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 13 of the Official Code of Georgia Annotated, relating to contracts, so as to  
2 define a certain term; to provide for the approval and filing of bonds for certain public works  
3 contracts; to provide bonding requirements for certain public works contracts; to provide for  
4 bid bonds; to provide for cash in lieu of bonds; to provide for the withdrawal of bids; to  
5 provide for affiliated corporations bidding on the same project; to provide for actions on bid  
6 bonds; to provide for performance bonds; to provide for acceptable substitutes for  
7 performance bonds; to provide for actions on performance bonds; to provide for payment  
8 bonds; to provide for the liability of the contracting party to subcontractors; to provide for  
9 notice of commencement of work; to provide for the rights of persons protected by payment  
10 bonds; to provide that the state shall not be a party to any related action; to provide for the  
11 availability of copies of payment bonds and security deposit agreements; to provide a time  
12 limitation for certain actions; to provide that certain requirements relating to public works  
13 contracts shall not apply to hospital authorities except in certain circumstances; to amend  
14 Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries,  
15 so as to change certain references contained therein to comply with the changes wrought by  
16 this Act; to amend Title 36 of the Official Code of Georgia Annotated, relating to local  
17 government, so as to change certain references contain therein; to reorganize the structure  
18 of certain portions of such title; to provide that certain requirements relating to public works  
19 contracts shall not apply to hospital authorities except in certain circumstances; to repeal  
20 conflicting laws; and for other purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **SECTION 1.**

23 Title 13 of the Official Code of Georgia Annotated, relating to contracts, is amended by  
24 striking in its entirety Chapter 10, relating to contracts for public works, and inserting in lieu  
25 thereof the following:

## "CHAPTER 10

## ARTICLE 1

Part 1

~~13-10-1.~~

~~(a)(1) If the state or any public board or body thereof requires a bid bond for any particular public work, no bid for a contract with the state or any public board or body thereof for the doing of such public work shall be valid for any purpose, unless the contractor shall give a bid bond with good and sufficient surety or sureties approved by the governing authority for the faithful acceptance of the contract payable to, in favor of, and for the protection of the state or public board or body thereof for which the contract is to be awarded. The bid bond shall be in the amount of not less than 5 percent of the total amount payable by the terms of the contract. No bid shall be read aloud or considered if a proper bid bond or other security authorized in paragraph (2) of this subsection has not been submitted. The provisions of this subsection shall not apply to any bid for a contract which is required by law to be accompanied by a proposal guaranty and shall not apply to bids for contracts with any public agency or body which receives funding from the United States Department of Transportation and which is primarily engaged in the business of public transportation.~~

~~(2) In lieu of the bid bond provided for in paragraph (1) of this subsection, the state or any public board or body thereof may accept a cashier's check, certified check, or cash in the amount of not less than 5 percent of the total amount payable by the terms of the contract payable to and for the protection of the state or public board or body thereof for which the contract is to be awarded.~~

~~(3)(A) Any public entity receiving bids subject to this subsection shall permit a bidder to withdraw its bid from consideration after the bid opening without forfeiture of its bid security if:~~

~~(i) The bidder has made an appreciable error in the calculation of his or her bid that can be documented by clear and convincing written evidence;~~

~~(ii) Such errors can be clearly shown by objective evidence drawn from inspection of the original work papers, documents, or materials used in the preparation of the bid sought to be withdrawn;~~

~~(iii) The bidder serves written notice upon the public entity which invited proposals for the work prior to the award of the contract and not later than 48 hours after the opening of bids, excluding Saturdays and Sundays and legal holidays;~~

1 ~~(iv) The bid was submitted in good faith and the mistake was due to a calculation or~~  
2 ~~clerical error, an inadvertent omission, or a typographical error as opposed to an error~~  
3 ~~in judgment, and~~

4 ~~(v) The withdrawal of the bid will not result in undue prejudice to the public entity~~  
5 ~~or other bidders by placing them in a materially worse position than they would have~~  
6 ~~occupied if the bid had never been submitted.~~

7 ~~(B) In the event that the apparent successful bidder has withdrawn its bid, action on the~~  
8 ~~remaining bids should be considered as though the withdrawn bid had not been~~  
9 ~~received.~~

10 ~~(C) In the event the project is relet for bids, under no circumstances shall the bidder~~  
11 ~~who has filed a request to withdraw be permitted to rebid the work.~~

12 ~~(D) No bidder who is permitted to withdraw a bid shall for compensation supply any~~  
13 ~~material or labor to, or perform any subcontract or other work agreement for, the person~~  
14 ~~or firm to whom the contract is awarded or otherwise benefit, directly or indirectly,~~  
15 ~~from the performance of the project for which the withdrawn bid was submitted.~~

16 ~~(b) No contract with this state or any public board or body thereof, for the doing of any~~  
17 ~~public work shall be valid for any purpose, unless the contractor shall give:~~

18 ~~(1) A performance bond with good and sufficient surety or sureties payable to, in favor~~  
19 ~~of, and for the protection of the state or public board or body thereof for which the work~~  
20 ~~is to be done. The performance bond shall be in the amount of at least the total amount~~  
21 ~~payable by the terms of the contract;~~

22 ~~(2)(A) A payment bond with good and sufficient surety or sureties, payable to the state~~  
23 ~~or public board or body thereof for which the work is to be done, and for the use and~~  
24 ~~protection of all subcontractors and all persons supplying labor, materials, machinery,~~  
25 ~~and equipment in the prosecution of the work provided for in the contract. The payment~~  
26 ~~bond shall be in the amount of at least the total amount payable by the terms of the~~  
27 ~~contract.~~

28 ~~(B) In lieu of the payment bond provided for in subparagraph (A) of this paragraph, the~~  
29 ~~state or any public board or body thereof may accept a cashier's check, certified check,~~  
30 ~~or cash in the amount of at least the total amount payable by the terms of the contract~~  
31 ~~for the use and protection of all subcontractors and all persons supplying labor,~~  
32 ~~materials, machinery, and equipment in the prosecution of work provided in the~~  
33 ~~contract.~~

34 ~~(c) This Code section shall not apply where the total contract price does not exceed~~  
35 ~~\$40,000.00; provided, however, that the state or any department or agency thereof may in~~  
36 ~~its discretion require performance and payment bonds or bid bonds or other security for any~~  
37 ~~public works contract.~~

~~(d) Where the amount of any bond required under the other subsections of this Code section does not exceed \$300,000.00, the state or any public board or body thereof may, in its sole discretion, accept an irrevocable letter of credit issued by a bank or savings and loan association, as defined in Code Section 7-1-4, in the amount of and in lieu of the bond otherwise required under the other subsections of this Code section.~~

~~(e)(1) As used in this subsection, the term 'affiliated corporation' means with respect to any corporation any other corporation related thereto: as a parent corporation; as a subsidiary corporation; as a sister corporation; by common ownership or control; or by control of one corporation by the other. For purposes of this subsection, a corporation shall include a person or a company.~~

~~(2) In any case where two or more affiliated corporations bid for a contract under this Code section and any one or more of such affiliated corporations subsequently rescind or revoke their bid or bids in favor of another such affiliated corporation whose bid is for a higher amount and the contract is awarded at such higher amount to such other affiliated corporation, then the bid bond, proposal guaranty, or other security otherwise required under this Code section of each affiliated corporation rescinding or revoking its bid shall be forfeited.~~

~~(f) Any bid bond, performance bond, or payment bond required by this Code section shall be approved as to form and as to the solvency of the surety by the officer of the state or public board or body thereof who negotiates the contract on behalf of the public entity. Said approval shall be obtained prior to the bid's being accepted.~~

~~13-10-2.~~

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

~~(1) 'Contractor' means a person having a direct contract with the owner.~~

~~(2) 'Lower tier subcontractor' means a person other than a contractor having a direct contract with a subcontractor.~~

~~(3) 'Owner' means the state, any county, municipal corporation, authority, board of education, or other public board, public body, department, agency, instrumentality, or political subdivision of the state.~~

~~(4) 'Owner's authorized contract representative' means the architect or engineer in charge of the project for the owner or such other contract representative or officer as designated in the contract documents as the party representing the owner's interest regarding administration and oversight of the project.~~

~~(5) 'Subcontractor' means a person other than an owner having a direct contract with the contractor.~~

1 ~~(b) In any contract for the performance of any construction project entered into on or after~~  
2 ~~July 1, 1985, with an owner, as defined in paragraph (3) of subsection (a) of this Code~~  
3 ~~section, such contract shall provide for the following:~~

4 ~~(1) After work has commenced at the construction site, progress payments to be made~~  
5 ~~on some periodic basis, and at least monthly, based on the value of work completed as~~  
6 ~~may be provided in the contract documents plus the value of materials and equipment~~  
7 ~~suitably stored, insured, and protected at the construction site, and at the owner's~~  
8 ~~discretion such materials and equipment suitably stored, insured, and protected off site~~  
9 ~~at a location approved by the owner's authorized contract representative when allowed~~  
10 ~~by the contract documents, less retainage, and~~

11 ~~(2)(A) Retainage to a maximum of 10 percent of each progress payment, provided,~~  
12 ~~however, that, when 50 percent of the contract value including change orders and other~~  
13 ~~additions to the contract value provided for by the contract documents is due and the~~  
14 ~~manner of completion of the contract work and its progress are reasonably satisfactory~~  
15 ~~to the owner's authorized contract representative, the owner shall withhold no more~~  
16 ~~retainage. At the discretion of the owner and with the approval of the contractor, the~~  
17 ~~retainage of each subcontractor may be released separately as the subcontractor~~  
18 ~~completes his work.~~

19 ~~(B) If, after discontinuing the retention, the owner's authorized contract representative~~  
20 ~~determines that the work is unsatisfactory or has fallen behind schedule, retention may~~  
21 ~~be resumed at the previous level. If retention is resumed by an owner, the contractor~~  
22 ~~and subcontractors shall be entitled to resume withholding retainage accordingly.~~

23 ~~(C) At substantial completion of the work or such other standard of completion as may~~  
24 ~~be provided in the contract documents and as the owner's authorized contract~~  
25 ~~representative determines the work to be reasonably satisfactory, the owner shall within~~  
26 ~~30 days after invoice and other appropriate documentation as may be required by the~~  
27 ~~contract documents are provided pay the retainage to the contractor. If at that time~~  
28 ~~there are any remaining incomplete minor items, an amount equal to 200 percent of the~~  
29 ~~value of each item as determined by the owner's authorized contract representative~~  
30 ~~shall be withheld until such item or items are completed. The reduced retainage shall~~  
31 ~~be shared by the contractor and subcontractors as their interests may appear.~~

32 ~~(D) The contractor shall, within ten days from the contractor's receipt of retainage~~  
33 ~~from the owner, pass through payments to subcontractors and shall reduce each~~  
34 ~~subcontractor's retainage in the same manner as the contractor's retainage is reduced~~  
35 ~~by the owner, provided that the value of each subcontractor's work complete and in~~  
36 ~~place equals 50 percent of his subcontract value, including approved change orders and~~  
37 ~~other additions to the subcontract value and provided, further, that the work of the~~

1 ~~subcontractor is proceeding satisfactorily and the subcontractor has provided or~~  
2 ~~provides such satisfactory reasonable assurances of continued performance and~~  
3 ~~financial responsibility to complete his work including any warranty work as the~~  
4 ~~contractor in his reasonable discretion may require, including, but not limited to, a~~  
5 ~~payment and performance bond.~~

6 ~~(E) The subcontractor shall, within ten days from the subcontractor's receipt of~~  
7 ~~retainage from the contractor, pass through payments to lower tier subcontractors and~~  
8 ~~shall reduce each lower tier subcontractor's retainage in the same manner as the~~  
9 ~~subcontractor's retainage is reduced by the contractor, provided that the value of each~~  
10 ~~lower tier subcontractor's work complete and in place equals 50 percent of his~~  
11 ~~subcontract value, including approved change orders and other additions to the~~  
12 ~~subcontract value and provided, further, that the work of the lower tier subcontractor~~  
13 ~~is proceeding satisfactorily and the lower tier subcontractor has provided or provides~~  
14 ~~such satisfactory reasonable assurances of continued performance and financial~~  
15 ~~responsibility to complete his work including any warranty work as the subcontractor~~  
16 ~~in his reasonable discretion may require, including, but not limited to, a payment and~~  
17 ~~performance bond.~~

18 ~~(c) This Code section shall not apply to:~~

19 ~~(1) Any contracts let by the Department of Transportation of this state for the~~  
20 ~~construction, improvement, or maintenance of roads or highways in this state or purposes~~  
21 ~~incidental thereto; or~~

22 ~~(2) Any contracts whose value or duration at the time of the award does not exceed~~  
23 ~~\$150,000.00 or 45 days in duration.~~

24 ~~(d) Contract and subcontract provisions inconsistent with the benefits extended to~~  
25 ~~contractors, subcontractors, and lower tier subcontractors by this Code section shall be~~  
26 ~~unenforceable; provided, however, that nothing in this Code section shall render~~  
27 ~~unenforceable any contract or subcontract provisions allowing greater benefits to be~~  
28 ~~extended to such contractors, subcontractors, or lower tier subcontractors, the provisions~~  
29 ~~and benefits of this Code section being minimal only.~~

30 ~~(e) Nothing shall preclude a payor under this Code section, prior to making a payment,~~  
31 ~~from requiring the payee to submit satisfactory evidence that all payrolls, material bills, and~~  
32 ~~other indebtedness connected with the work have been paid.~~

33 13-10-1.

34 As used in this article, the term 'state' means the state of Georgia, any agency of the state,  
35 and any state authority.

13-10-2.

(a)(1) Any bid bond, performance bond, payment bond, or security deposit required for a state public works construction contract shall be approved and filed with the treasurer or the person performing the duties usually performed by a treasurer of the obligee named in such bond. At the option of the state, if the surety named in the bond is other than a surety company authorized by law to do business in this state pursuant to a current certificate of authority to transact surety business by the Commissioner of Insurance, such bond shall not be approved and filed unless such surety is on the United States Department of Treasury's list of approved bond sureties.

(2) Any bid bond, performance bond, or payment bond required by this chapter shall be approved as to form and as to the solvency of the surety by an officer of the state or the agency or authority of the state negotiating the contract on behalf of the state. In the case of a bid bond, such approval shall be obtained prior to acceptance of the bid or proposal. In the case of a payment bond or a performance bond, such approval shall be obtained prior to the execution of the contract.

(b) Whenever, in the judgment of the obligee:

(1) Any surety on a bid, performance, or payment bond has become insolvent;

(2) Any corporate surety is no longer certified or approved by the Commissioner of Insurance to do business in the state; or

(3) For any cause there are no longer proper or sufficient sureties on any or all of the bonds,

the obligee may require the contractor to strengthen any or all of the bonds or to furnish a new or additional bond or bonds within ten days. Thereupon, if so ordered by the obligee, all work on the contract shall cease unless such new or additional bond or bonds are furnished. If such bond or bonds are not furnished within such time, the obligee may terminate the contract and complete the same as the agent of and at the expense of the contractor and his or her sureties.

Part 213-10-20.

(a) Bid bonds shall be required for all state public works construction contracts subject to the requirements of this chapter with estimated bids or proposals over \$100,000.00; provided, however, that the state or any public board or body of the state may require a bid bond for projects with estimated bids or proposals of \$100,000.00 or less.

(b) In the case of competitive sealed bids, except as provided in Code Sections 13-10-22 and 13-10-23, a bid may not be revoked or withdrawn until 60 days after the time set by

1 the state or any public board or body of the state for opening of bids. Upon expiration of  
 2 such 60 day time period, the bid will cease to be valid, unless the bidder provides written  
 3 notice to the state prior to the scheduled expiration date that the bid will be extended for  
 4 a time period specified by the state.

5 (c) In the case of competitive sealed proposals, the state shall advise offerors in the request  
 6 for proposals of the number of days that offerors will be required to honor their proposals;  
 7 provided, however, that if an offeror is not selected within 60 days of opening the  
 8 proposals, any offeror that is determined by the state to be unlikely of being selected for  
 9 contract award shall be released from his or her proposal.

10 (d) If the state requires a bid bond for any public works construction contract, no bid or  
 11 proposal for a contract with the state shall be valid for any purpose unless the contractor  
 12 gives a bid bond with good and sufficient surety or sureties approved by the state. The bid  
 13 bond shall be in the amount of not less than 5 percent of the total amount payable by the  
 14 terms of the contract. No bid or proposal shall be considered if a proper bid bond or other  
 15 security authorized in Code Section 13-10-21 has not been submitted. The provisions of  
 16 this subsection shall not apply to any bid or proposal for a contract that is required by law  
 17 to be accompanied by a proposal guaranty and shall not apply to any bid or proposal for  
 18 a contract with any public agency or body which receives funding from the United States  
 19 Department of Transportation and which is primarily engaged in the business of public  
 20 transportation.

21 13-10-21.

22 (a) In lieu of the bid bond provided for in Code Section 13-10-20, the state may accept a  
 23 cashier's check, certified check, or cash in the amount of not less than 5 percent of the total  
 24 amount payable by the terms of the contract payable to and for the protection of the state.

25 (b) When the amount of any bid bond required under this article does not exceed  
 26 \$300,000.00, the state may, in its sole discretion, accept an irrevocable letter of credit  
 27 issued by a bank or savings and loan association, as defined in Code Section 7-1-4, in the  
 28 amount of and in lieu of the bond otherwise required under Code Section 13-10-20.

29 13-10-22.

30 (a) As used in this Code section, the term 'bid' shall include proposals and the term 'bidder'  
 31 shall include offerors.

32 (b) When receiving bids subject to this article, the state shall permit a bidder to withdraw  
 33 a bid from consideration after the bid opening without forfeiture of the bid security if the  
 34 bidder has made an appreciable error in the calculation of his or her bid and if:

1 (1) Such error in the calculation of his or her bid can be documented by clear and  
 2 convincing written evidence;

3 (2) Such error can be clearly shown by objective evidence drawn from inspection of the  
 4 original work papers, documents, or materials used in the preparation of the bid sought  
 5 to be withdrawn;

6 (3) The bidder serves written notice upon the state or the agency or authority of the state  
 7 which invited proposals for the work prior to the award of the contract and not later than  
 8 48 hours after the opening of bids, excluding Saturdays, Sundays, and legal holidays;

9 (4) The bid was submitted in good faith and the mistake was due to a calculation or  
 10 clerical error, an inadvertent omission, or a typographical error as opposed to an error in  
 11 judgment; and

12 (5) The withdrawal of the bid will not result in undue prejudice to the state or other  
 13 bidders by placing them in a materially worse position than they would have occupied if  
 14 the bid had never been submitted.

15 (c) In the event that an apparent successful bidder has withdrawn his or her bid as provided  
 16 in subsection (a) of this Code section, action on the remaining bids should be considered  
 17 as though the withdrawn bid had not been received. In the event the project is relet for bids,  
 18 under no circumstances shall a bidder who has filed a request to withdraw a bid be  
 19 permitted to resubmit a bid for the work.

20 (d) No bidder who is permitted to withdraw a bid pursuant to subsection (a) of this Code  
 21 section shall for compensation supply any material or labor to, or perform any subcontract  
 22 or other work agreement for, the person or firm to whom the contract is awarded or  
 23 otherwise benefit, directly or indirectly, from the performance of the project for which the  
 24 withdrawn bid was submitted.

25 13-10-23.

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

27 (1) 'Affiliated corporation' means, with respect to any corporation, any other corporation  
 28 related thereto:

29 (A) As a parent corporation;

30 (B) As a subsidiary corporation;

31 (C) As a sister corporation;

32 (D) By common ownership or control; or

33 (E) By control of one corporation by the other.

34 (2) The term 'bid' shall include proposals.

35 (b) In any case where two or more affiliated corporations bid for a contract under this  
 36 Code section and any one or more of such affiliated corporations subsequently rescind or

1 revoke their bid or bids in favor of another such affiliated corporation whose bid is for a  
2 higher amount and the contract is awarded at such higher amount to such other affiliated  
3 corporation, then the bid bond, proposal guaranty, or other security otherwise required  
4 under this article of each affiliated corporation rescinding or revoking its bid shall be  
5 forfeited.

6 13-10-24.

7 The obligee in any bid bond required to be given in accordance with this article shall be  
8 entitled to maintain an action thereon at any time upon any breach of such bond; provided,  
9 however, that no action may be instituted on the bonds or security deposits after one year  
10 from the completion of the contract and the acceptance of the public work by the state.

11 Part 3

12 13-10-40.

13 Except as otherwise provided in Title 32, performance bonds shall be required for all state  
14 public works construction contracts with an estimated contract amount greater than  
15 \$100,000.00; provided, however, that the state may require a performance bond for public  
16 works construction contracts that are estimated at \$100,000.00 or less. No public works  
17 construction contract requiring a performance bond shall be valid for any purpose unless  
18 the contractor gives such performance bond. The performance bond shall be in the amount  
19 of at least the total amount payable by the terms of the contract and shall be increased as  
20 the contract amount is increased.

21 13-10-41.

22 When the amount of the performance bond required under this article does not exceed  
23 \$300,000.00, the state may, in its sole discretion, accept an irrevocable letter of credit by  
24 a bank or savings and loan association, as defined in Code Section 7-1-4, in the amount of  
25 and in lieu of the bond otherwise required under this article.

26 13-10-42.

27 The obligee in any performance bond required to be given in accordance with this article  
28 shall be entitled to maintain an action thereon at any time upon any breach of such bond;  
29 provided, however, no action can be instituted on the bonds or security deposits after one  
30 year from the completion of the contract and the acceptance of the public work by the state.

Part 413-10-60.

Except as otherwise provided in Title 32, payment bonds shall be required for all state public works construction contracts with an estimated contract amount greater than \$100,000.00; provided, however, that the state may require a payment bond for public works construction contracts that are estimated at \$100,000.00 or less. No public works construction contract requiring a payment bond shall be valid for any purpose unless the contractor gives such payment bond; provided, however, that in lieu of such payment bond, the state, in its discretion, may accept a cashier's check, certified check, or cash for the use and protection of all subcontractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of work provided in the contract. The payment bond or other security accepted in lieu of a payment bond shall be in the amount of at least the total amount payable by the terms of the initial contract and shall be increased if requested by the state as the contract amount is increased.

13-10-61.

If a payment bond or security deposit is not taken in the manner and form required in this article, the corporation or body for which work is done under the contract shall be liable to all subcontractors and to all persons supplying labor, materials, machinery, or equipment to the contractor or subcontractor thereunder for any loss resulting to them from such failure. No agreement, modification, or change in the contract change, in the work covered by the contract, or extension of time for the completion of the contract shall release the sureties of such payment bond.

13-10-62.

(a) The contractor furnishing the payment bond or security deposit shall post on the public works construction site and file with the clerk of the superior court in the county in which the site is located a notice of commencement no later than 15 days after the contractor physically commences work on the project and supply a copy of the notice of commencement to any subcontractor, materialman, or person who makes a written request of the contractor. Failure to supply a copy of the notice of commencement within ten calendar days of receipt of the written request from such subcontractor, materialman, or person shall render the provisions of paragraph (1) of subsection (a) of Code Section 13-10-63 inapplicable to such subcontractor, materialman, or person making the request. The notice of commencement shall include:

(1) The name, address, and telephone number of the contractor;

1 (2) The name and location of the public work being constructed or a general description  
 2 of the improvement;

3 (3) The name and address of the state or the agency or authority of the state that is  
 4 contracting for the public works construction;

5 (4) The name and address of the surety for the performance and payment bonds, if any;  
 6 and

7 (5) The name and address of the holder of the security deposit provided, if any.

8 (b) The failure to file a notice of commencement shall render the notice to the contractor  
 9 requirements of paragraph (1) of subsection (a) of Code Section 13-10-63 inapplicable.

10 (c) The clerk of the superior court shall file the notice of commencement within the  
 11 records of that office and maintain an index separate from other real estate records or an  
 12 index with the preliminary notices specified in subsection (a) of Code Section 44-14-361.3.  
 13 Each such notice of commencement shall be indexed under the name of the state and the  
 14 name of the contractor as contained in the notice of commencement.

15 13-10-63.

16 (a) Every person entitled to the protection of the payment bond or security deposit required  
 17 to be given who has not been paid in full for labor or materials furnished in the prosecution  
 18 of the work referred to in such bond or security deposit before the expiration of a period  
 19 of 90 days after the day on which the last of the labor was done or performed by such  
 20 person or the material or equipment or machinery was furnished or supplied by such person  
 21 for which such claim is made, or when he or she has completed his or her subcontract for  
 22 which claim is made, shall have the right to bring an action on such payment bond or  
 23 security deposit for the amount, or the balance thereof, unpaid at the time of the  
 24 commencement of such action and to prosecute such action to final execution and judgment  
 25 for the sum or sums due such person; provided, however, that:

26 (1) Any person having a direct contractual relationship with a subcontractor but no  
 27 contractual relationship, express or implied, with the contractor furnishing such payment  
 28 bond or security deposit on a public works construction project where the contractor has  
 29 not complied with the notice of commencement requirements shall have the right of  
 30 action upon the payment bond or security deposit upon giving written notice to the  
 31 contractor within 90 days from the day on which such person did or performed the last  
 32 of the labor or furnished the last of the material or machinery or equipment for which  
 33 such claim is made, stating with substantial accuracy the amount claimed and the name  
 34 of the party to whom the material was furnished or supplied or for whom the labor was  
 35 performed or done. The notice to the contractor may be served by registered or certified  
 36 mail or statutory overnight delivery, postage prepaid, duly addressed to the contractor,

1 at any place at which the contractor maintains an office or conducts his or her business  
2 or at his or her residence, by depositing such notice in any post office or branch post  
3 office or any letter box under the control of the United States Postal Service;  
4 alternatively, notice may be served in any manner in which the sheriffs of this state are  
5 authorized by law to serve summons or process; and

6 (2) Any person having a direct contractual relationship with a subcontractor but no  
7 contractual relationship, express or implied, with the contractor furnishing such payment  
8 bond or security deposit on a public works construction project where the contractor has  
9 complied with the notice of commencement requirements in accordance with subsection  
10 (a) of Code Section 13-10-62 shall have the right of action on the payment bond or  
11 security deposit, provided that such person shall, within 30 days from the filing of the  
12 notice of commencement or 30 days following the first delivery of labor, material,  
13 machinery, or equipment, whichever is later, give to the contractor a written notice setting  
14 forth:

15 (A) The name, address, and telephone number of the person providing labor, material,  
16 machinery, or equipment;

17 (B) The name and address of each person at whose instance the labor, material,  
18 machinery, or equipment is being furnished;

19 (C) The name and the location of the public works construction site; and

20 (D) A description of the labor, material, machinery, or equipment being provided and,  
21 if known, the contract price or anticipated value of the labor, material, machinery, or  
22 equipment to be provided or the amount claimed to be due, if any.

23 (b) Nothing contained in this Code section shall limit the right of action of a person  
24 entitled to the protection of the payment bond or security deposit required to be given  
25 pursuant to this article to the 90 day period following the day on which such person did or  
26 performed the last of the labor or furnished the last of the material or machinery or  
27 equipment for which such claim is made.

28 (c) Every action instituted under this Code section shall be brought in the name of the  
29 claimant without making the state or the agency or authority of the state for which the work  
30 was done or was to be done a party to such action.

31 13-10-64.

32 The official who has the custody of the bond or security deposit required by this article is  
33 authorized and directed to furnish to any person making application therefor a copy of the  
34 bond or security deposit agreement and the contract for which it was given, certified by the  
35 official who has custody of the bond or security deposit. With his or her application, such  
36 person shall also submit an affidavit that he or she has supplied labor or materials for such

1 work and that payment therefor has not been made or that he or she is being sued on any  
 2 such bond or security deposit. Such copy shall be primary evidence of the bond or security  
 3 deposit and contract and shall be admitted in evidence without further proof. Applicants  
 4 shall pay for such certified copies and such certified statements such fees as the official  
 5 fixes to cover the cost of preparation thereof, provided that in no case shall the fee fixed  
 6 exceed the fees which the clerks of the superior courts are permitted to charge for similar  
 7 copies.

8 13-10-65.

9 No action can be instituted on the payment bonds or security deposits after one year from  
 10 the completion of the contract and the acceptance of the public works construction by the  
 11 proper public authorities. Every action instituted under this article shall be brought in the  
 12 name of the claimant, without the state or the agency or authority of the state for which the  
 13 work was done or was to be done being made a party thereto.

## 14 ARTICLE 2

15 ~~13-10-20.~~ 13-10-80.

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

17 (1) 'Contractor' means a person having a direct contract with the owner.

18 (2) 'Lower tier subcontractor' means a person other than a contractor having a direct  
 19 contract with a subcontractor.

20 (3) 'Owner' means the state, any county, municipal corporation, authority, board of  
 21 education, or other public board, public body, department, agency, instrumentality, or  
 22 political subdivision of the state.

23 (4) 'Owner's authorized contract representative' means the architect or engineer in charge  
 24 of the project for the owner or such other contract representative or officer as designated  
 25 in the contract documents as the party representing the owner's interest regarding  
 26 administration and oversight of the project.

27 (5) 'Subcontractor' means a person other than an owner having a direct contract with the  
 28 contractor.

29 (b) In any public works construction contract for the performance of any construction  
 30 project entered into on or after July 1, 2001, with an owner, as defined in paragraph (3) of  
 31 subsection (a) of this Code section, such contract shall provide for the following:

32 (1) After work has commenced at the construction site, progress payments to be made on  
 33 some periodic basis, and at least monthly, based on the value of work completed as may  
 34 be provided in the contract documents plus the value of materials and equipment suitably

1 stored, insured, and protected at the construction site and at the owner's discretion such  
2 materials and equipment suitably stored, insured, and protected off site at a location  
3 approved by the owner's authorized contract representative when allowed by the contract  
4 documents, less retainage; and

5 (2) (A) Retainage to a maximum of 10 percent of each progress payment; provided,  
6 however, when 50 percent of the contract value including change orders and other  
7 additions to the contract value provided for by the contract documents is due and the  
8 manner of completion of the contract work and its progress are reasonably satisfactory  
9 to the owner's authorized contract representative, the owner shall withhold no more  
10 retainage. At the discretion of the owner and with the approval of the contractor, the  
11 retainage of each subcontractor may be released separately as the subcontractor  
12 completes his or her work.

13 (B) If, after discontinuing the retention, the owner's authorized contract representative  
14 determines that the work is unsatisfactory or has fallen behind schedule, retention may  
15 be resumed at the previous level. If retention is resumed by an owner, the contractor  
16 and subcontractors shall be entitled to resume withholding retainage accordingly.

17 (C) At substantial completion of the work or such other standard of completion as may  
18 be provided in the contract documents and as the owner's authorized contract  
19 representative determines the work to be reasonably satisfactory, the owner shall,  
20 within 30 days after invoice and other appropriate documentation as may be required  
21 by the contract documents are provided, pay the retainage to the contractor. If at that  
22 time there are any remaining incomplete minor items, an amount equal to 200 percent  
23 of the value of each item as determined by the owner's authorized contract  
24 representative shall be withheld until such item or items are completed. The reduced  
25 retainage shall be shared by the contractor and subcontractors as their interests may  
26 appear.

27 (D) The contractor shall, within ten days from the contractor's receipt of retainage from  
28 the owner, pass through payments to subcontractors and shall reduce each  
29 subcontractor's retainage in the same manner as the contractor's retainage is reduced  
30 by the owner; provided, however, that the value of each subcontractor's work complete  
31 and in place equals 50 percent of his or her subcontract value, including approved  
32 change orders and other additions to the subcontract value, provided, further, that the  
33 work of the subcontractor is proceeding satisfactorily and the subcontractor has  
34 provided or provides such satisfactory reasonable assurances of continued performance  
35 and financial responsibility to complete his or her work including any warranty work  
36 as the contractor in his or her reasonable discretion may require, including, but not  
37 limited to, a payment and performance bond.

1 (E) The subcontractor shall, within ten days from the subcontractor's receipt of  
 2 retainage from the contractor, pass through payments to lower tier subcontractors and  
 3 shall reduce each lower tier subcontractor's retainage in the same manner as the  
 4 subcontractors retainage is reduced by the contractor; provided, however, that the value  
 5 of each lower tier subcontractor's work complete and in place equals 50 percent of his  
 6 or her subcontract value, including approved change orders and other additions to the  
 7 subcontract value; provided, further, that the work of the lower tier subcontractor is  
 8 proceeding satisfactorily and the lower tier subcontractor has provided or provides such  
 9 satisfactory reasonable assurances of continued performance and financial  
 10 responsibility to complete his or her work including any warranty work as the  
 11 subcontractor in his or her reasonable discretion may require, including, but not limited  
 12 to, a payment and performance bond.

13 (c) This Code section shall not apply to:

14 (1) Any contracts let by the Department of Transportation of this state for the  
 15 construction, improvement, or maintenance of roads or highways in this state or purposes  
 16 incidental thereto; or

17 (2) Any contracts whose value or duration at the time of the award does not exceed  
 18 \$150,000.00 or 45 days in duration.

19 (d) Contract and subcontract provisions inconsistent with the benefits extended to  
 20 contractors, subcontractors, and lower tier subcontractors by this Code section shall be  
 21 unenforceable; provided, however, that nothing in this Code section shall render  
 22 unenforceable any contract or subcontract provisions allowing greater benefits to be  
 23 extended to such contractors, subcontractors, or lower tier subcontractors, the provisions  
 24 and benefits of this Code section being minimal only.

25 (e) Nothing shall preclude a payor under this Code section, prior to making a payment,  
 26 from requiring the payee to submit satisfactory evidence that all payrolls, material bills, and  
 27 other indebtedness connected with the work have been paid.

28 13-10-81.

29 (a) Any department, agency, or instrumentality of the state or any political subdivision of  
 30 the state is authorized to insert in the specifications of all contracts relating to the  
 31 installation, extension, improvement, maintenance, or repair of any water or sewer facility  
 32 a clause providing for the retention of amounts not exceeding 10 percent of the gross value  
 33 of the completed work as may be provided for in the contract; provided, however, that no  
 34 amounts shall be retained on estimates or progress payments submitted after 50 percent of  
 35 the work on the project has been completed if in the opinion of the department, agency, or  
 36 instrumentality of the state or any political subdivision thereof such work is satisfactory

1 and has been completed on schedule. This will not affect the retained amounts on the first  
2 50 percent of the work on the project which may continue to be held to ensure satisfactory  
3 completion of the project. If, after discontinuing the retention, the department, agency, or  
4 instrumentality of the state or any political subdivision thereof determines that the work is  
5 unsatisfactory or has fallen behind schedule, retention may be resumed at the previous  
6 level. Retainage shall be invested at the current market rate and any interest earned on the  
7 retained amount by such department, agency, or instrumentality of the state or any political  
8 subdivision of the state shall be paid to the contractor when the project has been completed  
9 within the time limits specified and for the price specified in the contract, or in any  
10 amendments or change orders approved in accord with the terms of the contract, as  
11 certified pursuant to subsection (b) of this Code section.

12 (b) Final payment of the retained amounts to the contractor under the contract to which the  
13 retained amounts relate shall be made after certification by the engineer in charge of the  
14 project covered by the contract that the work has been satisfactorily completed and is  
15 accepted in accordance with the contract, plans, and specifications. Payment to the  
16 contractor of interest earned on the retained amounts shall be made after certification by  
17 the engineer in charge of the project covered by the contract that the work has been  
18 completed within the time specified and within the price specified in the contract.

19 (c) At substantial completion of the work and as the governmental entity's authorized  
20 contract representative determines the work to be reasonably satisfactory, the governmental  
21 entity shall within 30 days after invoice and other appropriate documentation as may be  
22 required by the contract documents are provided pay the retainage to the contractor. If at  
23 that time there are any remaining incomplete minor items, an amount equal to 200 percent  
24 of the value of each item as determined by the governmental entity's authorized contract  
25 representative shall be withheld until such item or items are completed.

26 ~~13-10-21.~~ 13-10-82.

27 (a) In lieu of the retained amounts provided for in Code ~~Section 13-10-20~~ Section  
28 13-10-81, any department, agency, or instrumentality of the state or any political  
29 subdivision of the state is authorized to insert a clause in the specifications of all contracts  
30 provided for in Code ~~Section 13-10-20~~ Section 13-10-81, providing for an alternate  
31 procedure for the maintenance of an escrow account in an amount at least equal to the  
32 amount authorized to be retained by the contract.

33 (b) Any such escrow agreement entered into pursuant to this Code section must contain  
34 as a minimum the following provisions:

- 35 (1) Only state or national banks chartered within the State of Georgia may serve as an  
36 escrow agent;

1 (2) The escrow agent must limit the investment of funds of the contractor held in escrow  
2 in lieu of retained amounts provided for in Code ~~Section 13-10-20~~ Section 13-10-81 to  
3 negotiable certificates of deposits issued by any state or national bank in the State of  
4 Georgia (including, but not limited to, certificates of deposit issued by the bank acting as  
5 escrow agent) registered in the name of the escrow agent as such under escrow agreement  
6 with the contractor;

7 (3) As interest on certificates of ~~deposits~~ deposit held in escrow becomes due, it shall be  
8 collected by the escrow agent and paid to the contractor;

9 (4) The escrow agent shall promptly acknowledge to the appropriate fiscal officer the  
10 amount and value of the escrow account held by the escrow agent, and any additions to  
11 the escrow account shall be reported immediately. Withdrawals from the escrow account  
12 shall only be made subject to the written approval of the fiscal officer of the department,  
13 agency, or instrumentality of the state or any political subdivision entering into the  
14 contract;

15 (5) Upon default or overpayment of any contract subject to the procedure provided for  
16 in this Code section and upon the written demand of the fiscal officer provided for in  
17 paragraph (4) of this subsection, the escrow agent shall within ten days deliver a certified  
18 check to the appropriate fiscal officer in the amount of the escrow account balance  
19 relating to the contract in default;

20 (6) The escrow account may be terminated upon completion and acceptance of the  
21 contract as provided for in Code ~~Section 13-10-20~~ Section 13-10-81;

22 (7) All fees and expenses of the escrow agent shall be paid by the contractor to the  
23 escrow agent and, if not paid, shall constitute a lien on the interest accruing to the escrow  
24 account and shall be paid therefrom;

25 (8) The escrow account shall constitute a specific pledge to the state or any political  
26 subdivision and the contractor shall not, except to his or her surety, otherwise assign,  
27 pledge, discount, sell, or transfer his or her interest in said escrow account, the funds ~~in~~  
28 of which shall not be subject to levy, garnishment, attachment, or any other process  
29 whatsoever; and

30 (9) The form of the escrow agreement and provisions thereof in compliance with this  
31 Code section, as well as such other provisions as the appropriate fiscal officer shall from  
32 time to time prescribe, shall be subject to written approval of the fiscal officer. The  
33 approval of the escrow agreement by the appropriate fiscal officer shall authorize the  
34 escrow agent to accept appointment in such capacity.

35 (c) The department, agency, or instrumentality of the state or political subdivision of this  
36 state shall not be liable to the contractor or his or her surety for the failure of the escrow

1 agent to perform under the escrow agreement or for the failure of any bank to honor  
2 certificates of deposit issued by it which are held in the escrow account.

3  
4 ~~13-10-22.~~ 13-10-83.

5 Nothing in this article shall be construed or deemed to affect any contract covered by the  
6 provisions of Code Sections 32-2-75 through 32-2-77."

## 7 SECTION 2.

8 Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries,  
9 is amended by striking in its entirety Code Section 32-2-70, relating to bonds of successful  
10 bidders on certain state contracts, and inserting in lieu thereof the following:

11 "32-2-70.

12 Where the contract price exceeds \$5,000.00, no department construction contract shall be  
13 valid unless the contractor first ~~shall give~~ gives:

14 (1) The performance and payment bonds in accordance with Chapter 10 of Title 13  
15 required by Code Section 36-82-101; and

16 (2) Such other bonds or insurance policies required by the department in its proposal  
17 forms, including but not limited to public liability and property damage insurance bonds  
18 or policies."

## 19 SECTION 3.

20 Said title is further amended by striking in its entirety Code Section 32-2-72, relating to oaths  
21 by successful bidders on certain contracts, and inserting in lieu thereof the following:

22 "32-2-72.

23 A successful bidder, before commencing the work, shall execute a written oath, as required  
24 by subsection (e) of Code Section 36-91-40 36-91-21, stating that he or she has not violated  
25 such Code section which makes it unlawful to restrict competitive bidding."

## 26 SECTION 4.

27 Said title is further amended by striking in its entirety Code Section 32-4-69, relating to  
28 bonds of successful bidder generally, and inserting in lieu thereof the following:

29 "32-4-69.

30 Notwithstanding any provision of ~~Code Section 36-91-22~~ Chapter 91 of Title 36 to the  
31 contrary, when the price of a contract let to bid is \$5,000.00 or more, no contract of a  
32 county shall be valid unless the contractor first ~~shall give~~ gives:

33 (1) A performance bond that meets the requirements established in Parts 1 and 3 of Article  
34 3 of Chapter 91 of Title 36 in the amount of the bid, with one good and solvent ~~security~~

1 surety, for the faithful performance of the contract and to indemnify the county for any  
 2 damages occasioned by a failure to perform the same within the prescribed time;  
 3 (2) ~~The~~ A payment bond that meets the requirements established in Parts 1 and 4 of Article  
 4 3 of Chapter 91 of Title 36 required by subsection (g) of Code Section 36-91-21; and  
 5 (3) Such other bonds required by the county in its advertisement for bids, including but not  
 6 limited to public liability and property damage insurance bonds."

7 **SECTION 5.**

8 Said title is further amended by striking in its entirety subsection (a) of Code Section  
 9 32-4-71, relating to failure to take bonds and liability of counties, and inserting in lieu thereof  
 10 the following:

11 "(a) If the payment bond required by paragraph (2) of Code Section 32-4-69 is not taken,  
 12 the county shall be liable to subcontractors, laborers, materialmen, and other persons, as  
 13 provided in ~~Code Section 36-91-22~~ Part 4 of Article 3 of Chapter 91 of Title 36, for losses  
 14 to them resulting from failure to take such bond."

15 **SECTION 6.**

16 Said title is further amended by striking in its entirety Code Section 32-4-73, relating to oaths  
 17 by successful bidders on certain contracts, and inserting in lieu thereof the following:

18 "32-4-73.

19 A successful bidder, before commencing the work, shall execute a written oath, as required  
 20 by subsection (e) of Code Section 36-91-40 36-91-21, stating that he or she has not violated  
 21 such Code section, which makes it unlawful to restrict competitive bidding."

22 **SECTION 7.**

23 Said title is further amended by striking in its entirety Code Section 32-4-74, relating to the  
 24 applicability of other laws to this Part 2 of Article 3 of Chapter 4 of such title, and inserting  
 25 in lieu thereof the following:

26 "32-4-74.

27 Except as indicated to the contrary in this part, Chapter 91 of Title 36 shall not apply to this  
 28 part; ~~and the term "public works," as used in Chapter 91 of Title 36, shall be construed to~~  
 29 ~~include public roads, as defined in Code Section 32-1-3."~~

30 **SECTION 8.**

31 Said title is further amended by striking in its entirety Code Section 32-4-119, relating to  
 32 bonds of successful bidders on certain contracts, and inserting in lieu thereof the following:

1 "32-4-119.

2 ~~Where~~ Notwithstanding any provision of Chapter 91 of Title 36 to the contrary, where the  
 3 contract price is \$5,000.00 or more, no construction contract of a municipality shall be  
 4 valid unless the contractor first ~~shall give~~ gives:

5 (1) ~~The~~ A performance and payment ~~bonds~~ bond which meets the requirements of Parts  
 6 1, 3, and 4 of Article 3 of Chapter 91 of Title 36, required by Code Section 36-82-101;  
 7 and

8 (2) Such other bonds or insurance policies required by the municipality in its proposal  
 9 forms, including but not limited to public liability and property damage insurance bonds  
 10 or policies and bonds to maintain in good condition such completed construction for a  
 11 period of not less than five years."

12 **SECTION 9.**

13 Said title is further amended by striking in its entirety Code Section 32-4-120, relating to the  
 14 failure to take bonds and the liability of municipalities, and inserting in lieu thereof the  
 15 following:

16 "32-4-120.

17 If the payment bond required by Code Section 32-4-119 is not taken, the municipality then  
 18 shall be liable to subcontractors, laborers, materialmen, and other persons, as provided in  
 19 ~~Code Section 36-91-22~~ Part 4 of Article 3 of Chapter 91 of Title 36, for losses to them  
 20 resulting from failure to take such bond."

21 **SECTION 10.**

22 Said title is further amended by striking in its entirety Code Section 32-4-123, relating to the  
 23 applicability of other laws to Part 2 of Article 4 of Chapter 4 of such title, and inserting in  
 24 lieu thereof the following:

25 "32-4-123.

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

28 **SECTION 11.**

29 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended  
 30 by striking in its entirety Code Section 36-39-8, relating to a resolution letting contract for  
 31 certain improvements following the time for protests or filing of petition, and inserting in lieu  
 32 thereof the following:

1 "36-39-8.  
 2 After the expiration of the time for objection or protest on the part of the property owners,  
 3 if no sufficient protest is filed, or on receipt of a petition for an improvement signed by the  
 4 owners of a majority of the frontage of the land to be assessed, if the petition is found to  
 5 be in proper form and properly executed, the governing body shall adopt a resolution  
 6 reciting that no protest has been filed or that a petition was filed, as the case may be, and  
 7 expressing the determination of the governing body to proceed with the improvement. The  
 8 resolution shall state the kind of improvement, define the extent and character of the same,  
 9 and specify such other matters as may be necessary to instruct the engineer employed by  
 10 the municipal corporation in the performance of his or her duties in preparing for such  
 11 improvement the necessary plans, plats, profiles, specifications, and estimates. The  
 12 resolution shall set forth any and all such reasonable terms and conditions as the governing  
 13 body deems proper to impose with reference to the letting of the contract and the provisions  
 14 thereof. The governing body, by such resolution, shall provide that the contractor shall  
 15 execute to the municipal corporation a good and sufficient bond, as provided in ~~Code~~  
 16 ~~Section 36-91-22~~ Part 3 of Article 3 of Chapter 91 of this title, and may also require a bond  
 17 in an amount to be stated in the resolution for the maintenance of the good condition of the  
 18 improvements for a period of not less than five years from the time of completion, in the  
 19 discretion of the governing body. The resolution shall also direct the clerk of the municipal  
 20 corporation to advertise for sealed proposals for furnishing the materials and performing  
 21 the work necessary in making such improvements."

22 **SECTION 12.**

23 Said title is further amended by striking in its entirety Chapter 91, relating to public works  
 24 bidding, and inserting in lieu thereof the following:

25 "CHAPTER 91

26 Article 1

27 36-91-1.

28 This chapter shall be known and may be cited as the 'Georgia Local Government Public  
 29 Works Construction Law.'

30 36-91-2.

31 As used in this chapter, the term:

32 (1) 'Bid bond' means a bond with good and sufficient surety or sureties for the faithful  
 33 acceptance of the contract payable to, in favor of, and for the protection of the  
 34 governmental entity for which the contract is to be awarded.

1 (2) 'Change order' means an alteration, addition, or deduction from the original scope of  
2 work as defined by the contract documents to address changes or unforeseen conditions  
3 necessary for project completion.

4 (3) 'Competitive sealed bidding' means a method of soliciting public works construction  
5 contracts whereby the award is based upon the lowest responsive, responsible bid in  
6 conformance with the provisions of subsection (b) of Code Section 36-91-21.

7 (4) 'Competitive sealed proposals' means a method of soliciting public works contracts  
8 whereby the award is based upon criteria identified in a request for proposals in  
9 conformance with the provisions of subsection (c) of Code Section 36-91-21.

10 (5) 'Emergency' means any situation resulting in imminent danger to the public health or  
11 safety or the loss of an essential governmental service.

12 (6) 'Governing authority' means the official or group of officials responsible for  
13 governance of a governmental entity.

14 (7) 'Governmental entity' means a county, municipal corporation, consolidated  
15 government, authority, board of education, or other public board, body, or commission  
16 but shall not include any authority, board, department, or commission of the state, or a  
17 public transportation agency as defined by Chapter 9 of Title 32.

18 (8) 'Payment bond' means a bond with good and sufficient surety or sureties payable to  
19 the governmental entity for which the work is to be done and intended for the use and  
20 protection of all subcontractors and all persons supplying labor, materials, machinery, and  
21 equipment in the prosecution of the work provided for in the public works construction  
22 contract.

23 (9) 'Performance bond' means a bond with good and sufficient surety or sureties for the  
24 faithful performance of the contract and to indemnify the governmental entity for any  
25 damages occasioned by a failure to perform the same within the prescribed time. Such  
26 bond shall be payable to, in favor of, and for the protection of the governmental entity for  
27 which the work is to be done.

28 (10) 'Public works construction' means the building, altering, repairing, improving, or  
29 demolishing of any public structure or building or other public improvements of any kind  
30 to any public real property other than those projects covered by Chapter 4 of Title 32.  
31 Such term does not include the routine operation, repair, or maintenance of existing  
32 structures, buildings, or real property.

33 (11) 'Responsible bidder' or 'responsible offeror' means a person or entity that has the  
34 capability in all respects to perform fully and reliably the contract requirements.

35 (12) 'Responsive bidder' or 'responsive offeror' means a person or entity that has  
36 submitted a bid or proposal that conforms in all material respects to the requirements set  
37 forth in the invitation for bids or request for proposals.

1 (13) 'Scope of project' means the work required by the original contract documents and  
 2 any subsequent change orders required or appropriate to accomplish the intent of the  
 3 project as described in the bid documents.

4 (14) 'Scope of work' means the work that is required by the contract documents.

5 (15) 'Sole source' means those procurements made pursuant to a written determination  
 6 by a governing authority that there is only one source for the required supply, service, or  
 7 construction item.

8  
 9 ARTICLE 2

10 36-91-20.

11 (a) All public works construction contracts subject to this chapter entered into by a  
 12 governmental entity with private persons or entities shall be in writing and on file and  
 13 available for public inspection at a place designated by such governmental entity.  
 14 Municipalities and consolidated governments shall execute and enter into contracts in the  
 15 manner provided in applicable local legislation or by ordinance.

16 (b) Prior to entering into a public works construction contract other than those exempted  
 17 by Code Section 36-91-22, a governmental entity shall publicly advertise the contract  
 18 opportunity. Such notice shall be posted conspicuously in the governing authority's office  
 19 and shall be advertised in the legal organ of the county or by electronic means on an  
 20 Internet website of the governmental entity or an Internet website identified by the  
 21 governmental entity. Contract opportunities shall be advertised a minimum of two times,  
 22 with the first advertisement occurring at least four weeks prior to the opening of the sealed  
 23 bids or proposals. The second advertisement shall follow no earlier than two weeks from  
 24 the first advertisement. Plans and specifications shall be available on the first day of the  
 25 advertisement and shall be open to inspection by the public. The advertisement shall  
 26 include such details and specifications as will enable the public to know the extent and  
 27 character of the work to be done. All required notices of advertisement shall also advise of  
 28 any mandatory prequalification requirements or pre-bid conferences as well as any federal  
 29 requirements pursuant to subsection (d) of Code Section 36-91-22.

30 (c) Governmental entities are authorized to utilize any construction delivery method,  
 31 provided that all public works construction contracts subject to the requirements of this  
 32 chapter that:

33 ~~(1) place~~ Place the bidder or offeror at risk for construction; and

34 ~~(2) require~~ Require labor ~~and or~~ building materials in the execution of the contract  
 35 shall be awarded on the basis of competitive sealed bidding or competitive sealed  
 36 proposals. Governmental entities shall have the authority to reject any and all bids or  
 37 proposals and to waive technicalities and informalities.

1 (d) No governmental entity shall issue or cause to be issued any addenda modifying plans  
2 and specifications within a period of 72 hours prior to the advertised time for the opening  
3 bids or proposals, excluding Saturdays, Sundays, and legal holidays. However, if the  
4 necessity arises to issue an addendum modifying plans and specifications within the 72  
5 hour period prior to the advertised time for the opening of bids or proposals, excluding  
6 Saturdays, Sundays, and legal holidays, then the opening of bids or proposals shall be  
7 extended at least 72 hours, excluding Saturdays, Sundays, and legal holidays, from the date  
8 of the original bid or proposal opening without need to readvertise as required by  
9 subsection (b) of this Code section.

10 (e) Bid and contract documents may contain provisions authorizing the issuance of change  
11 orders, without the necessity of additional requests for bids or proposals, within the scope  
12 of the project when appropriate or necessary in the performance of the contract. Change  
13 orders may not be used to evade the purposes of this article.

14 (f) Any governmental entity may, in its discretion, adopt a process for mandatory  
15 prequalification of prospective bidders or offerors; provided, however, that:

16 (1) Criteria for prequalification must be reasonably related to the project or the quality  
17 of work;

18 (2) Criteria for prequalification must be available to any prospective bidder or offeror  
19 requesting such information;

20 (3) Any prequalification process must include a method of notifying prospective bidders  
21 or offerors of the criteria for prequalification; and

22 (4) Any prequalification process must include a procedure for a disqualified bidder to  
23 respond to his or her disqualification to a representative of the governmental entity;  
24 provided, however, that such procedure shall not be construed to require the  
25 governmental entity to provide a formal appeals procedure.

26  
27 36-91-21.

28 (a) It shall be unlawful to let out any public works construction contracts subject to the  
29 requirements of this chapter without complying with the competitive award requirements  
30 contained in this Code section. Any contractor who performs any work of the kind in any  
31 other manner and who knows that the public works construction contract was let out  
32 without complying with the notice and competitive award requirements of this chapter shall  
33 not be entitled to receive any payment for such work.

34 (b) Any competitive sealed bidding process shall comply with the following requirements:

35 (1) The governmental entity shall publicly advertise an invitation for bids;

36 (2) Bidders shall submit sealed bids based on the criteria set forth in such invitation;

1 (3) The governmental entity shall open the bids publicly and evaluate such bids without  
2 discussions with the bidders; and

3 (4) The contract shall be awarded to the lowest responsible and responsive bidder whose  
4 bid meets the requirements and criteria set forth in the invitation for bids; provided,  
5 however, that if the bid from the lowest responsible and responsive bidder exceeds the  
6 funds budgeted for the public works construction contract, the governmental entity may  
7 negotiate with such apparent low bidder to obtain a contract price within the budgeted  
8 amount. Such negotiations may include changes in the scope of work and other bid  
9 requirements.

10 (c) (1) In making any competitive sealed proposal, a governmental entity shall:

11 (A) Publicly advertise a request for proposals, which request shall include conceptual  
12 program information in the request for proposals describing the requested services in  
13 a level of detail appropriate to the project delivery method selected for the project, as  
14 well as the relative importance of the evaluation factors;

15 (B) Open all proposals received at the time and place designated in the request for  
16 proposals so as to avoid disclosure of contents to competing offerors during the process  
17 of negotiations; and

18 (C) Make an award to the responsible and responsive offeror whose proposal is  
19 determined in writing to be the most advantageous to the governmental entity, taking  
20 into consideration the evaluation factors set forth in the request for proposals. The  
21 evaluation factors shall be the basis on which the award decision is made. The contract  
22 file shall indicate the basis on which the award is made.

23 (2) As set forth in the request for proposals, offerors submitting proposals may be  
24 afforded an opportunity for discussion, negotiation, and revision of proposals.  
25 Discussions, negotiations, and revisions may be permitted after submission of proposals  
26 and prior to award for the purpose of obtaining best and final offers. In accordance with  
27 the request for proposals, all responsible offerors found by the governmental entity to  
28 have submitted proposals reasonably susceptible of being selected for award shall be  
29 given an opportunity to participate in such discussions, negotiations, and revisions.  
30 During the process of discussion, negotiation, and revision, the governmental entity shall  
31 not disclose the contents of proposals to competing offerors.

32 (d) Whenever a public works construction contract for any governmental entity subject to  
33 the requirements of this chapter is to be let out by competitive sealed bid or proposal, no  
34 person, by himself or herself or otherwise, shall prevent or attempt to prevent competition  
35 in such bidding or proposals by any means whatever. No person who desires to procure  
36 such work for himself or herself or for another shall prevent or endeavor to prevent anyone

1 from making a bid or proposal therefor by any means whatever, nor shall such person so  
2 desiring the work cause or induce another to withdraw a bid or proposal for the work.

3 (e) Before commencing the work, any person who procures such public work by bidding  
4 or proposal shall make an oath in writing that he or she has not directly or indirectly  
5 violated subsection (d) of this Code section. The oath shall be filed by the officer whose  
6 duty it is to make the payment. If the contractor is a partnership, all of the partners and any  
7 officer, agent, or other person who may have represented or acted for them in bidding for  
8 or procuring the contract shall also make the oath. If the contractor is a corporation, all  
9 officers, agents, or other persons who may have acted for or represented the corporation  
10 in bidding for or procuring the contract shall make the oath. If such oath is false, the  
11 contract shall be void, and all sums paid by the governmental entity on the contract may  
12 be recovered by appropriate action.

13 (f) If any member of a governmental entity lets out any public works construction contract  
14 subject to the requirements of this article and receives, takes, or contracts to receive or take,  
15 either directly or indirectly, any part of the pay or profit arising out of any such contract,  
16 he or she shall be guilty of a misdemeanor.

17 (g) No public works construction contract with a governing authority shall be valid for any  
18 purpose unless the contractor shall comply with all bonding requirements of this chapter.  
19 No such contract shall be valid if any governmental entity lets out any public works  
20 construction contract subject to the requirements of this chapter without complying with  
21 the requirements of this chapter.

22  
23 36-91-22.

24 (a) The requirements of this chapter shall not apply to public works construction projects,  
25 when the same can be performed at a cost of less than \$100,000.00. Public works  
26 construction projects shall not be subdivided in an effort to evade the provisions of this  
27 chapter.

28 (b) Any governmental entity having a correctional institution shall have the power and  
29 authority to purchase material for and use inmate labor in performing public works  
30 construction projects; and in such cases, this chapter shall not apply. Any governmental  
31 entity may contract with a governmental entity having a correctional institution for the use  
32 of inmate labor from such institution and use the inmates in the performance of any public  
33 works construction project; and in such cases, this chapter shall not apply.

34 (c) In the event that the labor used or to be used in a public works construction project is  
35 furnished at no expense by the state or federal government or any agency thereof, the  
36 governing authority shall have the power and authority to purchase material for such public

1 works construction project and use the labor furnished free to the governmental entity; and  
 2 in such case, this chapter shall not apply.

3 (d) Where a public works construction contract involves the expenditure of federal  
 4 assistance or funds, the receipt of which is conditioned upon compliance with federal laws  
 5 or regulations regarding the procedures for awarding public works construction contracts,  
 6 a governmental entity shall comply with such federal requirements and shall not be  
 7 required to comply with the provisions of this chapter that differ from the federal  
 8 requirements. The governmental entity shall provide notice that federal procedures exist  
 9 for the award of such contracts in the advertisement required by subsection (b) of Code  
 10 Section 36-91-20. The availability and location of such federal requirements shall be  
 11 provided to any person requesting such information.

12 (e) The requirements of this chapter shall not apply to public works construction projects  
 13 necessitated by an emergency; provided, however, that the nature of the emergency shall  
 14 be described in the minutes of the governing authority. Any contract let by a county  
 15 pursuant to this subsection shall be ratified, as soon as practicable, on the minutes of the  
 16 governing authority, and the nature of the emergency shall be described therein.

17 (f) The Except as otherwise provided in Chapter 4 of Title 32, the requirements of this  
 18 chapter shall not apply to public works construction projects subject to the requirements  
 19 of Chapter 4 of Title 32.

20 (g) The requirements of this chapter shall not apply to public works construction projects  
 21 or any portion of a public works construction project self-performed by a governmental  
 22 entity. If the governmental entity contracts with a private person or entity for a portion of  
 23 such project, the provisions of this chapter shall apply to any such contract estimated to  
 24 exceed \$100,000.00.

25 (h) The requirements of this chapter shall not apply to sole source public works  
 26 construction contracts.

27 (i) The requirements of this chapter shall not apply to hospital authorities; provided,  
 28 however, that a public works construction contract entered into by a hospital authority shall  
 29 be subject to the requirements of this chapter if, in connection with such contract, the  
 30 hospital authority either:

31 (1) Incurs indebtedness and secures such indebtedness by pledging amounts to be  
 32 received by such authority from one or more counties or municipalities through an  
 33 intergovernmental contract entered into in accordance with Code Section 31-7-85; or

34 (2) Receives funds from the state or one or more counties or municipalities for the  
 35 purpose of financing a public works construction project, which moneys are not for  
 36 reimbursement of health services provided.

## ARTICLE 3

Part 1

36-91-40.

(a) (1) Any bid bond, performance bond, payment bond, or security deposit required for a public works construction contract shall be approved and filed with the treasurer or the person performing the duties usually performed by a treasurer of the obligee named therein. At the option of the governmental entity, if the surety named in the bond is other than a surety company authorized by law to do business in this state pursuant to a current certificate of authority to transact surety business by the Commissioner of Insurance, such bond shall not be approved and filed unless such surety is on the United States Department of Treasury's list of approved bond sureties.

(2) Any bid bond, performance bond, or payment bond required by this Code section shall be approved as to form and as to the solvency of the surety by an officer of the governmental entity negotiating the contract on behalf of the governmental entity. In the case of a bid bond, such approval shall be obtained prior to acceptance of the bid or proposal. In the case of payment bonds and performance bonds, such approval shall be obtained prior to the execution of the contract.

(b) Whenever, in the judgment of the obligee:

(1) Any surety on a bid, performance, or payment bond has become insolvent;

(2) Any corporate surety is no longer certified or approved by the Commissioner of Insurance to do business in the state; or

(3) For any cause there are no longer proper or sufficient sureties on any or all of the bonds,

the obligee may require the contractor to strengthen any or all of the bonds or to furnish a new or additional bond or bonds within ten days. Thereupon, if so ordered by the obligee, all work on the contract shall cease unless such new or additional bond or bonds are furnished. If such bond or bonds are not furnished within such time, the obligee may terminate the contract and complete the same as the agent of and at the expense of the contractor and his or her sureties.

Part 2

~~36-91-41.~~ 36-91-50.

(a) Bid bonds shall be required for all public works construction contracts subject to the requirements of this article with estimated bids or proposals over \$100,000.00; provided,

1 however, that a governmental entity may require a bid bond for projects with estimated  
2 bids or proposals of \$100,000.00 or less.

3 (b) In the case of competitive sealed bids, except as provided in Code Sections ~~36-91-43~~  
4 36-91-52 and ~~36-91-44~~ 36-91-53, a bid may not be revoked or withdrawn until 60 days  
5 after the time set by the governmental entity for opening of bids. Upon expiration of this  
6 time period, the bid will cease to be valid, unless the bidder provides written notice to the  
7 governmental entity prior to the scheduled expiration date that the bid will be extended for  
8 a time period specified by the governmental entity.

9 (c) In the case of competitive sealed proposals, the governmental entity shall advise  
10 offerors in the request for proposals of the number of days that offerors will be required to  
11 honor their proposals; provided, however, that if an offeror is not selected within 60 days  
12 of opening the proposals, any offeror that is determined by the governmental entity to be  
13 unlikely of being selected for contract award shall be released from his or her proposal.

14 (d) If a governmental entity requires a bid bond for any public works construction contract,  
15 no bid or proposal for a contract with the governmental entity shall be valid for any  
16 purpose unless the contractor shall give a bid bond with good and sufficient surety or  
17 sureties approved by the governing authority. The bid bond shall be in the amount of not  
18 less than 5 percent of the total amount payable by the terms of the contract. No bid or  
19 proposal shall be ~~read aloud or~~ considered if a proper bid bond or other security authorized  
20 in Code Section ~~36-91-42~~ 36-91-51 has not been submitted. The provisions of this  
21 subsection shall not apply to any bid or proposal for a contract that is required by law to  
22 be accompanied by a proposal guaranty and shall not apply to any bid or proposal for a  
23 contract with any public agency or body which receives funding from the United States  
24 Department of Transportation and which is primarily engaged in the business of public  
25 transportation.

26  
27 ~~36-91-42:~~ 36-91-51.

28 (a) In lieu of the bid bond provided for in Code Section ~~36-91-41~~ 36-91-50, the  
29 governmental entity may accept a cashier's check, certified check, or cash in the amount  
30 of not less than 5 percent of the total amount payable by the terms of the contract payable  
31 to and for the protection of the governmental entity for which the contract is to be awarded.

32 (b) When the amount of any bid bond required under this article does not exceed  
33 \$300,000.00, the governmental entity may, in its sole discretion, accept an irrevocable  
34 letter of credit issued by a bank or savings and loan association, as defined in Code Section  
35 7-1-4, in the amount of and in lieu of the bond otherwise required under Code Section  
36 ~~36-91-41~~ 36-91-50.

1 ~~36-91-43.~~ 36-91-52.

2 (a) As used in this Code section, the term 'bid' includes proposal and the term 'bidder'  
3 includes offeror.

4 ~~(a)~~ (b) Any governmental entity receiving bids subject to this article shall permit a bidder  
5 to withdraw a bid from consideration after the bid opening without forfeiture of the bid  
6 security if the bidder has made an appreciable error in the calculation of his or her bid and  
7 if:

8 (1) Such error in the calculation of his or her bid can be documented by clear and  
9 convincing written evidence;

10 (2) Such error can be clearly shown by objective evidence drawn from inspection of the  
11 original work papers, documents, or materials used in the preparation of the bid sought  
12 to be withdrawn;

13 (3) The bidder serves written notice upon the governmental entity which invited  
14 proposals for the work prior to the award of the contract and not later than 48 hours after  
15 the opening of bids, excluding Saturdays, Sundays, and legal holidays;

16 (4) The bid was submitted in good faith and the mistake was due to a calculation or  
17 clerical error, an inadvertent omission, or a typographical error as opposed to an error in  
18 judgment; and

19 (5) The withdrawal of the bid will not result in undue prejudice to the governmental  
20 entity or other bidders by placing them in a materially worse position than they would  
21 have occupied if the bid had never been submitted.

22 ~~(b)~~ (c) In the event that an apparent successful bidder has withdrawn his or her bid as  
23 provided in subsection (a) of this Code section, action on the remaining bids should be  
24 considered as though the withdrawn bid had not been received. In the event the project is  
25 relet for bids, under no circumstances shall a bidder who has filed a request to withdraw  
26 a bid be permitted to resubmit a bid for the work.

27 ~~(c)~~ (d) No bidder who is permitted to withdraw a bid pursuant to subsection (a) of this  
28 Code section shall for compensation supply any material or labor to, or perform any  
29 subcontract or other work agreement for, the person or firm to whom the contract is  
30 awarded or otherwise benefit, directly or indirectly, from the performance of the project  
31 for which the withdrawn bid was submitted.

32  
33 ~~36-91-44.~~ 36-91-53.

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

35 (1) 'corporation' 'Corporation' means, with respect to any corporation, any other  
36 corporation related thereto:

37 ~~(1)~~ (A) As a parent corporation;



1 of credit by a bank or savings and loan association, as defined in Code Section 7-1-4, in the  
2 amount of and in lieu of the bond otherwise required under this article.

3 ~~36-91-52.~~ 36-91-72.

4 The obligee in any performance bond required to be given in accordance with this article  
5 shall be entitled to maintain an action thereon at any time upon any breach of such bond;  
6 provided, however, no action can be instituted on the bonds or security deposits after one  
7 year from the completion of the contract and the acceptance of the public work by the  
8 governmental entity.

9 **ARTICLE 5**

10 Part 4

11 ~~36-91-70.~~ 36-91-90.

12 Payment bonds shall be required for all public works construction contracts subject to the  
13 requirements of this chapter with an estimated contract amount greater than \$100,000.00;  
14 provided, however, that a governmental entity may require a payment bond for public  
15 works construction contracts that are estimated at \$100,000.00 or less. No public works  
16 construction contract requiring a payment bond shall be valid for any purpose, unless the  
17 contractor shall give such payment bond; provided, however, that, in lieu of such payment  
18 bond, the governmental entity, in its discretion, may accept a cashier's check, certified  
19 check, or cash ~~in an amount not less than the total amount payable by the terms of the~~  
20 ~~contract~~ for the use and protection of all subcontractors and all persons supplying labor,  
21 materials, machinery, and equipment in the prosecution of work provided in the contract.  
22 The payment bond or other security accepted in lieu of a payment bond shall be in the  
23 amount of at least the total amount payable by the terms of the initial contract and shall be  
24 increased if requested by the governmental entity as the contract amount is increased.

25 ~~36-91-71.~~ 36-91-91.

26 If a payment bond or security deposit, ~~together with an affidavit, when necessary,~~ is not  
27 taken in the manner and form required in this article, the corporation or body for which  
28 work is done under the contract shall be liable to all subcontractors and to all persons  
29 furnishing labor, skill, tools, machinery, or materials to the contractor or subcontractor  
30 thereunder for any loss resulting to them from such failure. No agreement, modification,  
31 or change in the contract, change in the work covered by the contract, or extension of time  
32 for the completion of the contract shall release the sureties of such payment bond.

1 ~~36-91-72.~~ 36-91-92.

2 (a) The contractor furnishing the payment bond or security deposit shall post on the public  
3 works construction site and file with the clerk of the superior court in the county in which  
4 the site is located a notice of commencement no later than 15 days after the contractor  
5 physically commences work on the project and supply a copy of the notice of  
6 commencement to any subcontractor, materialman, or person who makes a written request  
7 of the contractor. Failure to supply a copy of the notice of commencement within ten  
8 calendar days of receipt of the written request from the subcontractor, materialman, or  
9 person shall render the provisions of paragraph (1) of subsection (a) of Code Section  
10 ~~36-91-73~~ 36-91-93 inapplicable to the subcontractor, materialman, or person making the  
11 request. The notice of commencement shall include:

12 (1) The name, address, and telephone number of the contractor;

13 (2) The name and location of the public work being constructed or a general description  
14 of the improvement;

15 (3) The name and address of the governmental entity that is contracting for the public  
16 works construction;

17 (4) The name and address of the surety for the performance and payment bonds, if any;  
18 and

19 (5) The name and address of the holder of the security deposit provided, if any.

20 (b) The failure to file a notice of commencement shall render the notice to contractor  
21 requirements of paragraph (1) of subsection (a) of Code Section ~~36-91-73~~ 36-91-93  
22 inapplicable.

23 (c) The clerk of the superior court shall file the notice of commencement within the  
24 records of that office and maintain an index separate from other real estate records or an  
25 index with the preliminary notices specified in subsection (a) of Code Section 44-14-361.3.  
26 Each such notice of commencement shall be indexed under the name of the governmental  
27 entity and the name of the contractor as contained in the notice of commencement.

28 ~~36-91-73.~~ 36-91-93.

29 (a) Every person entitled to the protection of the payment bond or security deposit required  
30 to be given who has not been paid in full for labor or material furnished in the prosecution  
31 of the work referred to in such bond or security deposit before the expiration of a period  
32 of 90 days after the day on which the last of the labor was done or performed by such  
33 person or the material or equipment or machinery was furnished or supplied by such person  
34 for which such claim is made, or when he or she has completed his or her subcontract for  
35 which claim is made, shall have the right to bring an action on such payment bond or  
36 security deposit for the amount, or the balance thereof, unpaid at the time of the

1 commencement of such action and to prosecute such action to final execution and judgment  
2 for the sum or sums due such person; provided, however, that:

3 (1) Any person having a direct contractual relationship with a subcontractor but no  
4 contractual relationship, express or implied, with the contractor furnishing such payment  
5 bond or security deposit on a public works construction project where the contractor has  
6 not complied with the notice of commencement requirements shall have the right of  
7 action upon the payment bond or security deposit upon giving written notice to the  
8 contractor within 90 days from the day on which such person did or performed the last  
9 of the labor or furnished the last of the material or machinery or equipment for which  
10 such claim is made, stating with substantial accuracy the amount claimed and the name  
11 of the party to whom the material was furnished or supplied or for whom the labor was  
12 performed or done. The notice to the contractor may be served by registered or certified  
13 mail, postage prepaid, or statutory overnight delivery, duly addressed to the contractor,  
14 at any place at which the contractor maintains an office or conducts his or her business  
15 or at his or her residence, by depositing such notice in any post office or branch post  
16 office or any letter box under the control of the United States Postal Service;  
17 alternatively, notice may be served in any manner in which the sheriffs of this state are  
18 authorized by law to serve summons or process; and

19 (2) Any person having a direct contractual relationship with a subcontractor but no  
20 contractual relationship, express or implied, with the contractor furnishing such payment  
21 bond or security deposit on a public works construction project where the contractor has  
22 complied with the notice of commencement requirements in accordance with subsection  
23 (a) of Code Section ~~36-91-72~~ 36-91-92 shall have the right of action on the payment bond  
24 or security deposit, provided that such person shall, within 30 days from the filing of the  
25 notice of commencement or 30 days following the first delivery of labor, material,  
26 machinery, or equipment, whichever is later, give to the contractor a written notice setting  
27 forth:

28 (A) The name, address, and telephone number of the person providing labor, material,  
29 machinery, or equipment;

30 (B) The name and address of each person at whose instance the labor, material,  
31 machinery, or equipment is being furnished;

32 (C) The name and the location of the public works construction site; and

33 (D) A description of the labor, material, machinery, or equipment being provided and,  
34 if known, the contract price or anticipated value of the labor, material, machinery, or  
35 equipment to be provided or the amount claimed to be due, if any.

36 (b) Nothing contained in this Code section shall limit the right of action of a person  
37 entitled to the protection of the payment bond or security deposit required to be given

1 pursuant to this article to the 90 day period following the day on which such person did or  
2 performed the last of the labor or furnished the last of the material or machinery or  
3 equipment for which such claim is made.

4 (c) Every action instituted under this Code section shall be brought in the name of the  
5 claimant without making the governmental entity for which the work was done or was to  
6 be done a party to such action.

7 ~~36-91-74.~~ 36-91-94.

8 The official who has the custody of the bond or security deposit required by this article is  
9 authorized and directed to furnish to any person making application therefor a copy of the  
10 bond or security deposit agreement and the contract for which it was given, certified by the  
11 official who has custody of the bond or security deposit. With his or her application, such  
12 person shall also submit an affidavit that he or she has supplied labor or materials for such  
13 work and that payment therefor has not been made or that he or she is being sued on any  
14 such bond or security deposit. Such copy shall be primary evidence of the bond or security  
15 deposit and contract and shall be admitted in evidence without further proof. Applicants  
16 shall pay for such certified copies and such certified statements such fees as the official  
17 fixes to cover the cost of preparation thereof, provided that in no case shall the fee fixed  
18 exceed the fees which the clerks of the superior courts are permitted to charge for similar  
19 copies.

20 ~~36-91-75.~~ 36-91-95.

21 No action can be instituted on the payment bonds or security deposits after one year from  
22 the completion of the contract and the acceptance of the public works construction by the  
23 proper public authorities. Every action instituted under this article shall be brought in the  
24 name of the claimant, without the governmental entity for which the work was done or was  
25 to be done being made a party thereto."

### 26 **SECTION 13.**

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