The Senate Transportation Committee offered the following substitute to HB 513:

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

To amend Title 13 of the Official Code of Georgia Annotated, relating to contracts, so as to define a certain term; to provide for the approval and filing of bonds for certain public works contracts; to provide bonding requirements for certain public works contracts; to provide for bid bonds; to provide for cash in lieu of bonds; to provide for the withdrawal of bids; to provide for affiliated corporations bidding on the same project; to provide for actions on bid bonds; to provide for performance bonds; to provide for acceptable substitutes for performance bonds; to provide for actions on performance bonds; to provide for payment bonds; to provide for the liability of the contracting party to subcontractors; to provide for notice of commencement of work; to provide for the rights of persons protected by payment bonds; to provide that the state shall not be a party to any related action; to provide for the availability of copies of payment bonds and security deposit agreements; to provide a time limitation for certain actions; to provide that certain requirements relating to public works contracts shall not apply to hospital authorities except in certain circumstances; to amend Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries, so as to change certain references contained therein to comply with the changes wrought by this Act; to amend Title 36 of the Official Code of Georgia Annotated, relating to local government, so as to change certain references contain therein; to reorganize the structure of certain portions of such title; to provide that certain requirements relating to public works contracts shall not apply to hospital authorities except in certain circumstances; to amend Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public disclosure is not required and the disclosure of exempting legal authority, so as to change certain references to other Code sections; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 13 of the Official Code of Georgia Annotated, relating to contracts, is amended by striking in its entirety Chapter 10, relating to contracts for public works, and inserting in lieu 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;~~

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

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

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

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

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

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

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

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

~~(B) In lieu of the payment bond provided for in subparagraph (A) of this paragraph, the state or any public board or body thereof may accept a cashier´s check, certified check, or cash in the amount of at least the total amount payable by the terms of the contract 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.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13-10-1.

As used in this article, the term 'state' means the state of Georgia, any agency of the state, 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 2

13-10-20.

(a) Bid bonds shall be required for all state public works construction contracts 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

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

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

(d) If the state requires a bid bond for any public works construction contract, no bid or proposal for a contract with the state shall be valid for any purpose unless the contractor gives a bid bond with good and sufficient surety or sureties approved by the state. 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 or proposal shall be considered if a proper bid bond or other security authorized in Code Section 13-10-21 has not been submitted. The provisions of this subsection shall not apply to any bid or proposal for a contract that is required by law to be accompanied by a proposal guaranty and shall not apply to any bid or proposal for a contract 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.

13-10-21.

(a) In lieu of the bid bond provided for in Code Section 13-10-20, the state 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.

(b) When the amount of any bid bond required under this article does not exceed $300,000.00, the state 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 Code Section 13-10-20.

13-10-22.

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

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

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

(2) Such error 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;

(3) The bidder serves written notice upon the state or the agency or authority of the state 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, Sundays, and legal holidays;

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

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

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

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

13-10-23.

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

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

(A) As a parent corporation;

(B) As a subsidiary corporation;

(C) As a sister corporation;

(D) By common ownership or control; or

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

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

(b) 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 article of each affiliated corporation rescinding or revoking its bid shall be forfeited.

13-10-24.

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

Part 3

13-10-40.

Except as otherwise provided in Title 32, performance 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 performance bond for public works construction contracts that are estimated at $100,000.00 or less. No public works construction contract requiring a performance bond shall be valid for any purpose unless the contractor gives such performance bond. The performance bond shall be in the amount of at least the total amount payable by the terms of the contract and shall be increased as the contract amount is increased.

13-10-41.

When the amount of the performance bond required under this article does not exceed $300,000.00, the state may, in its sole discretion, accept an irrevocable letter of credit 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 this article.

13-10-42.

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

Part 4

13-10-60.

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;

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

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

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

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

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

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

13-10-63.

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

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

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

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

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

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

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

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

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

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

13-10-64.

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

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

13-10-65.

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

ARTICLE 2

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

(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.

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

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

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

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

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

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

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

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

(c) This Code section shall not apply to:

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

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

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

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

13-10-81.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~13-10-22.~~ 13-10-83.

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

SECTION 2.

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

″32-2-70.

Where the contract price exceeds ~~$5,000.00~~ $50,000.00, no department construction contract shall be valid unless the contractor first ~~shall give~~ gives:

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

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

SECTION 3.

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

″32-2-72.

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

SECTION 4.

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

″32-4-69.

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

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

surety, for the faithful performance of the contract and to indemnify the county for any damages occasioned by a failure to perform the same within the prescribed time;

(2) ~~The~~ A payment bond that meets the requirements established in Parts 1 and 4 of Article 3 of Chapter 91 of Title 36 ~~required by subsection (g) of Code Section 36-91-21~~; and

(3) Such other bonds required by the county in its advertisement for bids, including but not limited to public liability and property damage insurance bonds.″

SECTION 5.

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

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

SECTION 6.

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

″32-4-73.

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

SECTION 7.

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

″32-4-74.

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

SECTION 8.

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

"32-4-119.

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

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

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

SECTION 9.

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

"32-4-120.

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

SECTION 10.

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

"32-4-123.

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

SECTION 11.

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

″36-39-8.

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

SECTION 12.

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

″CHAPTER 91

Article 1

36-91-1.

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

36-91-2.

As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2

36-91-20.

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

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

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

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

(2) ~~require~~ Require labor ~~and~~ or building materials in the execution of the contract

shall be awarded on the basis of competitive sealed bidding or competitive sealed proposals. Governmental entities shall have the authority to reject any and all bids or proposals and to waive technicalities and informalities.

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

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

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

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

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

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

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

36-91-21.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36-91-22.

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

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

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

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

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

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

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

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

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

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

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

(2) Receives funds from the state or one or more counties or municipalities for the purpose of financing a public works construction project, which moneys are not for 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,

however, that a governmental entity 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 ~~36-91-43~~ 36-91-52 and ~~36-91-44~~ 36-91-53, a bid may not be revoked or withdrawn until 60 days after the time set by the governmental entity for opening of bids. Upon expiration of this time period, the bid will cease to be valid, unless the bidder provides written notice to the governmental entity prior to the scheduled expiration date that the bid will be extended for a time period specified by the governmental entity.

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

(d) If a governmental entity requires a bid bond for any public works construction contract, no bid or proposal for a contract with the governmental entity 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. 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 or proposal shall be ~~read aloud or~~ considered if a proper bid bond or other security authorized in Code Section ~~36-91-42~~ 36-91-51 has not been submitted. The provisions of this subsection shall not apply to any bid or proposal for a contract that is required by law to be accompanied by a proposal guaranty and shall not apply to any bid or proposal for a contract 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.

~~36-91-42.~~ 36-91-51.

(a) In lieu of the bid bond provided for in Code Section ~~36-91-41~~ 36-91-50, the governmental entity 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 governmental entity for which the contract is to be awarded.

(b) When the amount of any bid bond required under this article does not exceed $300,000.00, the governmental entity 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 Code Section ~~36-91-41~~ 36-91-50.

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

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

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

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

(2) Such error 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;

(3) The bidder serves written notice upon the governmental 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, Sundays, and legal holidays;

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

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

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

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

~~36-91-44.~~ 36-91-53.

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

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

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

~~(2)~~ (B) As a subsidiary corporation;

~~(3)~~ (C) As a sister corporation;

~~(4)~~ (D) By common ownership or control; or

~~(5)~~ (E) By control of one corporation by the other.

(2) The term 'bid' includes proposals.

(b) 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 article of each affiliated corporation rescinding or revoking its bid shall be forfeited.

~~36-91-45.~~ 36-91-54.

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

~~ARTICLE 4~~

Part 3

~~36-91-50.~~ 36-91-70.

Performance bonds shall be required for all public works construction contracts subject to the requirements of this chapter with an estimated contract amount greater than $100,000.00; provided, however, that a governmental entity may require a performance bond for ~~a~~ public works construction contracts that are estimated at $100,000.00 or less. No public works construction contract requiring a performance bond shall be valid for any purpose unless the contractor shall give such performance bond. The performance bond shall be in the amount of at least the total amount payable by the terms of the contract and shall be increased as the ~~total amount payable due to the contract is increased~~ contract amount is increased.

~~36-91-51.~~ 36-91-71.

When the amount of the performance bond required under this article does not exceed $300,000.00 the governmental entity may, in its sole discretion, accept an irrevocable letter

of credit 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 this article.

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

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

~~ARTICLE 5~~

Part 4

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

Payment bonds shall be required for all public works construction contracts subject to the requirements of this chapter with an estimated contract amount greater than $100,000.00; provided, however, that a governmental entity 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 shall give such payment bond; provided, however, that, in lieu of such payment bond, the governmental entity, in its discretion, may accept a cashier´s check, certified check, or cash ~~in an amount not less than the total amount payable by the terms of the contract~~ 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 governmental entity as the contract amount is increased.

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

If a payment bond or security deposit~~, together with an affidavit, when necessary,~~ 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 furnishing labor, skill, tools, machinery, or materials 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.

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

(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 the subcontractor, materialman, or person shall render the provisions of paragraph (1) of subsection (a) of Code Section ~~36-91-73~~ 36-91-93 inapplicable to the subcontractor, materialman, or person making the request. The notice of commencement shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 13.

Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public disclosure is not required and the disclosure of exempting legal authority, is amended by striking in its entirety paragraph (6) of subsection (a) and inserting in lieu thereof the following:

″(6)(A) Real estate appraisals, engineering or feasibility estimates, or other records made for or by the state or a local agency relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned; and ~~engineers'~~

(B) Engineers´ cost estimates and pending, rejected, or deferred ~~bid~~ bids or proposals until such time as the final award of the contract is made, ~~either~~ or the project is terminated or abandoned. The provisions of this subparagraph shall apply whether the bid or proposal is received or prepared by the Department of Transportation pursuant to Article 4 of Chapter 2 of Title 32, by a county pursuant to Article 3 of Chapter 4 of Title 32, ~~or~~ by a municipality pursuant to Article 4 of Chapter 4 of Title 32, or by a governmental entity pursuant to Article 2 of Chapter 91 of Title 36;″

SECTION 14.

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