

The House Committee on State Planning and Community Affairs offered the following substitute to SB 111:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated,
2 relating to state purchasing, so as to increase the amount for contracts which are required
3 to be awarded by sealed bidding; to authorize temporarily the Department of
4 Administrative Services to use reverse auctions as an alternative to sealed bidding; to
5 authorize the use of electronic means for the state to receive bids and proposals; to
6 increase the dollar limit for noncompetitive purchases from \$2,500.00 to \$5,000.00; to
7 repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

9 Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to
10 state purchasing, is amended by striking in its entirety Code Section 50-5-67, relating to
11 competitive bidding procedure, and inserting in lieu thereof the following:
12

13 "50-5-67.

14 (a) Except as otherwise provided in this Code section, contracts exceeding \$100,000.00
15 shall be awarded by competitive sealed bidding. If the total requirement of any given
16 commodity will involve an expenditure in excess of \$250,000.00, sealed bids shall be
17 solicited by advertisement in the Georgia Procurement Registry established under
18 subsection (b) of Code Section 50-5-69 and in addition may be solicited by
19 advertisement in a newspaper of state-wide circulation at least once and at least 15
20 calendar days, except for construction projects which shall have 30 calendar days
21 allowed, prior to the date fixed for opening of the bids and awarding of the contract.
22 Other methods of advertisement, however, may be adopted by the Department of
23 Administrative Services when such other methods are deemed more advantageous for
24 the particular item to be purchased. In any event, it shall be the duty of the Department
25 of Administrative Services to solicit sealed bids from reputable owners of supplies in all
26 cases where the total requirement will exceed \$100,000.00. When it appears that the

1 use of competitive sealed bidding is either not practicable or not advantageous to the
2 state, a contract may be entered into by competitive sealed proposals, subject to the
3 following conditions:

4 (1) This method of solicitation shall only be used after a written determination by the
5 Department of Administrative Services that the use of competitive sealed bidding is
6 not practicable or is not advantageous to the state;

7 (2) Proposals shall be solicited through a request for proposals;

8 (3) Adequate public notice of the request for proposals shall be given in the same
9 manner as provided for competitive sealed bidding;

10 ~~(4) Proposals shall be opened in the same manner as competitive sealed bids.~~ A
11 register of proposals shall be prepared and made available for public inspection;

12 (5) The request for proposals shall state the relative importance of price and other
13 evaluation factors;

14 (6) As provided in the request for proposals and under regulations to be developed by
15 the Department of Administrative Services, discussions may be conducted with
16 reasonable offerors who submit proposals determined to be reasonably susceptible of
17 being selected for award, for the purpose of clarification to assure full understanding
18 of and responsiveness to the solicitation requirements. Offerors shall be accorded fair
19 and equal treatment with respect to any opportunity for discussion and revision of
20 proposals; and such revisions may be permitted after submissions and prior to award
21 for the purpose of obtaining best and final offers. In conducting discussions there
22 shall be no disclosure of any information derived from proposals submitted by
23 competing offerors; and

24 (7) The award shall be made to the responsible offeror whose proposal is determined
25 in writing to be the most advantageous to the state, taking into consideration price and
26 the evaluation factors set forth in the request for proposals. No other factors or criteria
27 shall be used in the evaluation. The contract file shall contain the basis on which the
28 award is made.

29 (b) Except as otherwise provided for in this part, all contracts for the purchases of
30 supplies, materials, or equipment made under this part shall, wherever possible, be
31 based upon competitive bids and shall be awarded to the lowest responsible bidder,
32 taking into consideration the quality of the articles to be supplied and conformity with
33 the standard specifications which have been established and prescribed, the purposes for
34 which the articles are required, the discount allowed for prompt payment, the
35 transportation charges, and the date or dates of delivery specified in the bid.
36 Competitive bids on such contracts shall be received in accordance with rules and
37 regulations to be adopted by the commissioner of administrative services, which rules

1 and regulations shall prescribe, among other things, the manner, time, and places for
2 proper advertisement for the bids, indicating the time and place when the bids will be
3 received; the article for which the bid shall be submitted and the standard specification
4 prescribed for the article; the amount or number of the articles desired and for which the
5 bids are to be made; and the amount, if any, of bonds or certified checks to accompany
6 the bids. Any and all bids so received may be rejected.

7 (c) When bids received pursuant to this part are unreasonable or unacceptable as to
8 terms and conditions, are noncompetitive, or the low bid exceeds available funds and it
9 is determined in writing by the Department of Administrative Services that time or
10 other circumstances will not permit the delay required to resolicit competitive bids, a
11 contract may be negotiated pursuant to this Code section, provided that each responsible
12 bidder who submitted such a bid under the original solicitation is notified of the
13 determination and is given a reasonable opportunity to negotiate. In cases where the
14 bids received are noncompetitive or the low bid exceeds available funds, the negotiated
15 price shall be lower than the lowest rejected bid of any responsible bidder under the
16 original solicitation.

17 (d) Every bid conforming to the terms of the advertisement provided for in this Code
18 section, together with the name of the bidder, shall be recorded, and all such records
19 with the name of the successful bidder indicated thereon shall, after award or letting of
20 the contract, be subject to public inspection upon request. The Department of
21 Administrative Services shall also, within five days after the award or letting of the
22 contract, publish the name of the successful bidder on public display in a conspicuous
23 place in the department's office so that it may be easily seen by the public. The public
24 notice on public display shall also show the price or the amount for which the contract
25 was let and the commodities covered by the contract. The Department of
26 Administrative Services shall also, within five days after the award or letting of the
27 contract, publish on public display the names of all persons whose bids were rejected by
28 it, together with a statement giving the reasons for such rejection. ~~All the information
29 required to be placed on public display in a conspicuous place at the office of the
30 Department of Administrative Services shall also be recorded in a permanent book to be
31 kept by the Department of Administrative Services, which record shall always be
32 subject to public inspection upon request.~~ Bids shall be opened in public by the
33 Department of Administrative Services, which shall canvass the bids and award the
34 contract according to the terms of this part. A proper bond for the faithful performance
35 of any contract shall be required of the successful bidder in the discretion of the
36 Department of Administrative Services. After the contracts have been awarded, the
37 Department of Administrative Services shall certify to the various departments,

1 institutions, and agencies of the state government the sources of the supplies and the
2 contract price of the various supplies, materials, and equipment so contracted for.

3 (e) On all ~~sealed~~ bids or proposals received or solicited by the Department of
4 Administrative Services, by any department, agency, board, or bureau of the state, or by
5 any person in behalf of any department, agency, board, or bureau of the state, except in
6 cases provided for in Code Section 50-5-58, the following certificate of independent
7 price determination shall be used:

8 I certify that this bid is made without prior understanding, agreement, or connection
9 with any corporation, firm, or person submitting a bid for the same materials, supplies,
10 or equipment and is in all respects fair and without collusion or fraud. I understand
11 collusive bidding is a violation of state and federal law and can result in fines, prison
12 sentences, and civil damage awards. I agree to abide by all conditions of this bid and
13 certify that I am authorized to sign this bid for the bidder.'

14 (f) Notwithstanding any other provision of this article, the commissioner of
15 administrative services is authorized to promulgate rules and regulations to govern
16 auctions conducted by state agencies in which vendors' prices are made public during
17 the bidding process to enable the state agency or agencies to seek a lower price. This
18 auction bidding process will continue until the lowest price is obtained within the
19 auction's time limit. This auction bidding process shall not be used to procure
20 construction services or for any contract for goods or services valued at less than
21 \$100,000.00. This subsection shall stand repealed in its entirety on July 1, 2003.

22 (g) Any reference in this article to sealed bids or sealed proposals shall not preclude the
23 Department of Administrative Services from receiving bids and proposals by way of the
24 Internet or other electronic means or authorizing state agencies from receiving bids and
25 proposals by way of the Internet or other electronic means; provided, however, any bids
26 or proposals received by any state agency by way of any electronic means must comply
27 with security standards established by the Georgia Technology Authority."

28 SECTION 2.

29 Said article is further amended by striking in its entirety Code Section 50-5-69, relating to
30 purchases without competitive bidding, and inserting in lieu thereof the following:

31 "50-5-69.

32 (a) If the needed supplies, materials, or equipment can reasonably be expected to be
33 acquired for less than ~~\$2,500.00~~ \$5,000.00 and ~~are~~ is not available on state contracts or
34 through statutorily required sources, the purchase may be effectuated without
35 competitive bidding. The commissioner of administrative services may by rule and
36 regulation authorize the various state departments, agencies, and instrumentalities to

1 make purchases in their behalf which do not exceed \$100,000.00 and may provide the
2 circumstances and conditions under which such purchases may be effected.

3 (b) The department shall establish a central bid registry to advertise the various
4 procurement and bid opportunities of state government. Such central bid registry shall
5 be entitled the Georgia Procurement Registry and shall operate in accordance with
6 appropriate rules and regulations applicable to the department's responsibility to
7 manage the state's procurement system. It shall be the responsibility of each agency,
8 department, board, commission, authority, and council to report to the department its
9 bid opportunities in a manner prescribed by the Department of Administrative Services.
10 The commissioner of administrative services is authorized and directed to promulgate
11 rules and regulations to carry out this responsibility and shall determine the most
12 economical method to conduct public notification of such bid opportunities.

13 (c) The Department of Administrative Services is authorized to permit departments,
14 institutions, and agencies of state government to utilize a procurement card that will
15 electronically pay and monitor payments by state institutions pursuant to subsection (a)
16 of this Code section subject to approval of the State Depository Board pursuant to the
17 State Depository Board's authority to prescribe cash management policies and
18 procedures for state agencies under Code Section 50-17-51. All purchases made
19 through procurement card shall be included on a monthly summary report to be
20 prepared by each state department, institution, and agency in a form to be approved by
21 the Department of Administrative Services.

22 (d) The commissioner of administrative services shall promulgate rules and regulations
23 necessary to carry out the intent of this Code section.

24 (e) Nothing in this Code section shall apply to or affect the laws, rules, and regulations
25 governing emergency purchases."

26 SECTION 3.

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