

Senate Bill 111

By: Senator James of the 35th

AS PASSED**A BILL TO BE ENTITLED****AN ACT**

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"50-5-67.

(a) Except as otherwise provided in this Code section, contracts exceeding \$100,000.00 shall be awarded by competitive sealed bidding. If the total requirement of any given commodity will involve an expenditure in excess of \$250,000.00, sealed bids shall be solicited by advertisement in the Georgia Procurement Registry established under subsection (b) of Code Section 50-5-69 and in addition may be solicited by advertisement in a newspaper of state-wide circulation at least once and at least 15 calendar days, except for construction projects which shall have 30 calendar days allowed, prior to the date fixed for opening of the bids and awarding of the contract. Other methods of advertisement, however, may be adopted by the Department of Administrative Services when such other methods are deemed more advantageous for the particular item to be purchased. In any event, it shall be the duty of the Department of Administrative Services to solicit sealed bids from reputable owners of supplies in all cases where the total requirement will exceed \$100,000.00. When it appears that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals, subject to the following conditions:

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

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

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

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

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

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

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

(b) Except as otherwise provided for in this part, all contracts for the purchases of supplies, materials, or equipment made under this part shall, wherever possible, be based upon competitive bids and shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied and conformity with the standard specifications which have been established and prescribed, the purposes for which the articles are required, the discount allowed for prompt payment, the transportation charges, and the date or dates of delivery specified in the bid. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the commissioner of administrative services, which rules and regulations shall prescribe, among other things, the manner, time, and places for proper advertisement for the bids, indicating the time and place when the bids will be received; the article for which the bid shall be submitted and the standard specification prescribed for the article; the amount or number of the articles desired and for which the bids are to be made; and the amount, if

1 any, of bonds or certified checks to accompany the bids. Any and all bids so received may
2 be rejected.

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

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

34 (e) On all ~~sealed~~ bids or proposals received or solicited by the Department of
35 Administrative Services, by any department, agency, board, or bureau of the state, or by
36 any person in behalf of any department, agency, board, or bureau of the state, except in

cases provided for in Code Section 50-5-58, the following certificate of independent price determination shall be used:

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

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

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

SECTION 2.

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

"50-5-69.

(a) If the needed supplies, materials, or equipment can reasonably be expected to be acquired for less than ~~\$2,500.00~~ \$5,000.00 and ~~are~~ is not available on state contracts or through statutorily required sources, the purchase may be effectuated without competitive bidding. The commissioner of administrative services may by rule and regulation authorize the various state departments, agencies, and instrumentalities to make purchases in their behalf which do not exceed \$100,000.00 and may provide the circumstances and conditions under which such purchases may be effected.

(b) The department shall establish a central bid registry to advertise the various procurement and bid opportunities of state government. Such central bid registry shall be entitled the Georgia Procurement Registry and shall operate in accordance with appropriate

1 rules and regulations applicable to the department's responsibility to manage the state's
2 procurement system. It shall be the responsibility of each agency, department, board,
3 commission, authority, and council to report to the department its bid opportunities in a
4 manner prescribed by the Department of Administrative Services. The commissioner of
5 administrative services is authorized and directed to promulgate rules and regulations to
6 carry out this responsibility and shall determine the most economical method to conduct
7 public notification of such bid opportunities.

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

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

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

21 **SECTION 3.**

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