

Senate Bill 365

By: Senators Clay of the 37th, Mullis of the 53rd, Seabaugh of the 28th, Bulloch of the 11th and Meyer von Bremen of the 12th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 91 of Title 36 of the Official Code of Georgia Annotated,
2 relating to contracting and bidding requirements of local governments, so as to provide for
3 notice in a legal organ or on the Internet; to provide for certain information in a request for
4 proposals; to provide for notice of a pre-bid conference or prequalification; to provide for the
5 public announcement of bids; to provide for related matters; to repeal conflicting laws; and
6 for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 2 of Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to
10 contracting and bidding requirements of local governments, is amended by striking Code
11 Section 36-91-20, relating to contracting requirements for public works construction
12 contracts, and inserting in lieu thereof a new Code Section 36-91-20 to read as follows:

13 "36-91-20.

14 (a) All public works construction contracts subject to this chapter entered into by a
15 governmental entity with private persons or entities shall be in writing and on file and
16 available for public inspection at a place designated by such governmental entity.

17 Municipalities and consolidated governments shall execute and enter into contracts in the
18 manner provided in applicable local legislation or by ordinance.

19 (b) Prior to entering into a public works construction contract other than those exempted
20 by Code Section 36-91-22, a governmental entity shall publicly advertise the contract
21 opportunity. Such notice shall be posted conspicuously in the governing authority's office
22 and shall be advertised in the legal organ of the county or by electronic means on an
23 Internet website of the governmental entity or an Internet website identified by the
24 governmental entity as provided by this Code section:-

1 (1) Contract opportunities that are advertised in the legal organ shall be advertised a
 2 minimum of two times, with the first advertisement occurring at least four weeks prior
 3 to the opening of the sealed bids or proposals. The second advertisement shall follow no
 4 earlier than two weeks from the first advertisement;

5 (2) Contract opportunities that are advertised on the Internet shall be posted continuously
 6 for at least four weeks prior to the opening of sealed bids or proposals. Inadvertent or
 7 unintentional loss of Internet service during the advertisement period shall not require the
 8 contract award or bid or proposal opening to be delayed;

9 (3) Contract opportunities that will be awarded by competitive sealed bids shall have
 10 complete plans Plans and specifications shall be available on the first day of the
 11 advertisement and shall be open to inspection by the public;

12 (4) Contract opportunities that will be awarded by competitive sealed proposals shall be
 13 publicly advertised with a request for proposals, which request shall include conceptual
 14 program information in the request for proposals describing the requested services in a
 15 level of detail appropriate to the project delivery method selected for the project, as well
 16 as the relative importance of the evaluation factors to be considered; and The
 17 advertisement shall include such details and specifications as will enable the public to
 18 know the extent and character of the work to be done.

19 (5) All required notices of advertisement shall also advise of any mandatory
 20 prequalification requirements or pre-bid conferences as well as any federal requirements
 21 pursuant to subsection (d) of Code Section 36-91-22. Any advertisement which provides
 22 notice of a mandatory pre-bid conference or prequalification shall provide reasonable
 23 advance notice of said conference or submittal of such prequalification information.

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

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

28 (2) Require labor or building materials in the execution of the contract

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

32 (d) No governmental entity shall issue or cause to be issued any addenda modifying plans
 33 and specifications within a period of 72 hours prior to the advertised time for the opening
 34 bids or proposals, excluding Saturdays, Sundays, and legal holidays. However, if the
 35 necessity arises to issue an addendum modifying plans and specifications within the 72
 36 hour period prior to the advertised time for the opening of bids or proposals, excluding
 37 Saturdays, Sundays, and legal holidays, then the opening of bids or proposals shall be

1 extended at least 72 hours, excluding Saturdays, Sundays, and legal holidays, from the date
 2 of the original bid or proposal opening without need to readvertise as required by
 3 subsection (b) of this Code section.

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

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

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

12 (2) Criteria for prequalification must be available to any prospective bidder or offeror
 13 requesting such information for each project that requires prequalification;

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

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

20 SECTION 2.

21 Said title is further amended striking Code Section 36-91-21, relating to competitive award
 22 requirements, and inserting in lieu thereof a new Code Section 36-91-21 to read as follows:
 23 "36-91-21.

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

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

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

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

33 (3) The governmental entity shall open the bids publicly, ~~and~~ evaluate such bids without
 34 discussions with the bidders, and announce the results; and

35 (4) The contract shall be awarded to the lowest responsible and responsive bidder whose
 36 bid meets the requirements and criteria set forth in the invitation for bids; provided,

1 however, that if the bid from the lowest responsible and responsive bidder exceeds the
2 funds budgeted for the public works construction contract, the governmental entity may
3 negotiate with such apparent low bidder to obtain a contract price within the budgeted
4 amount. Such negotiations may include changes in the scope of work and other bid
5 requirements.

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

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

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

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

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

28 (d) Whenever a public works construction contract for any governmental entity subject to
29 the requirements of this chapter is to be let out by competitive sealed bid or proposal, no
30 person, by himself or herself or otherwise, shall prevent or attempt to prevent competition
31 in such bidding or proposals by any means whatever. No person who desires to procure
32 such work for himself or herself or for another shall prevent or endeavor to prevent anyone
33 from making a bid or proposal therefor by any means whatever, nor shall such person so
34 desiring the work cause or induce another to withdraw a bid or proposal for the work.

35 (e) Before commencing the work, any person who procures such public work by bidding
36 or proposal shall make an oath in writing that he or she has not directly or indirectly
37 violated subsection (d) of this Code section. The oath shall be filed by the officer whose

1 duty it is to make the payment. If the contractor is a partnership, all of the partners and any
2 officer, agent, or other person who may have represented or acted for them in bidding for
3 or procuring the contract shall also make the oath. If the contractor is a corporation, all
4 officers, agents, or other persons who may have acted for or represented the corporation
5 in bidding for or procuring the contract shall make the oath. If such oath is false, the
6 contract shall be void, and all sums paid by the governmental entity on the contract may
7 be recovered by appropriate action.

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

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

17 **SECTION 3.**

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