

## SENATE SUBSTITUTE TO HB 134

AS PASSED SENATE

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to  
2 public works bidding, so as to provide definitions; to provide for the advertisement of  
3 contract opportunities; to provide for the specifications of such notices and advertisements;  
4 to change certain provisions relating to cash in lieu of bid bonds and letters of credit; to  
5 change certain provisions relating to acceptable substitutes for bonds; to repeal conflicting  
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

## SECTION 1.

8 Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to public works  
9 bidding, is amended by revising Code Section 36-91-2, relating to definitions, as follows:

10 "36-91-2.

11 As used in this chapter, the term:

12 (1) 'Alternate bids' means the amount stated in the bid or proposal to be added to or  
13 deducted from the amount of the base bid or base proposal if the corresponding change  
14 in project scope or alternate materials or methods of construction is accepted.

15 (2) 'Base bid' or 'base proposal' means the amount of money stated in the bid or proposal  
16 as the sum for which the bidder or proposer offers to perform the work.

17 ~~(1)~~(3) 'Bid bond' means a bond with good and sufficient surety or sureties for the faithful  
18 acceptance of the contract payable to, in favor of, and for the protection of the  
19 governmental entity for which the contract is to be awarded.

20 ~~(2)~~(4) 'Change order' means an alteration, addition, or deduction from the original scope  
21 of work as defined by the contract documents to address changes or unforeseen  
22 conditions necessary for project completion.

23 ~~(3)~~(5) 'Competitive sealed bidding' means a method of soliciting public works  
24 construction contracts whereby the award is based upon the lowest responsive,  
25

1 responsible bid in conformance with the provisions of subsection (b) of Code Section  
2 36-91-21.

3 ~~(4)~~(6) 'Competitive sealed proposals' means a method of soliciting public works  
4 contracts whereby the award is based upon criteria identified in a request for proposals  
5 in conformance with the provisions of subsection (c) of Code Section 36-91-21.

6 ~~(5)~~(7) 'Emergency' means any situation resulting in imminent danger to the public health  
7 or safety or the loss of an essential governmental service.

8 ~~(6)~~(8) 'Governing authority' means the official or group of officials responsible for  
9 governance of a governmental entity.

10 ~~(7)~~(9) 'Governmental entity' means a county, municipal corporation, consolidated  
11 government, authority, board of education, or other public board, body, or commission  
12 but shall not include any authority, board, department, or commission of the state, or a  
13 public transportation agency as defined by Chapter 9 of Title 32.

14 ~~(8)~~(10) 'Payment bond' means a bond with good and sufficient surety or sureties payable  
15 to the governmental entity for which the work is to be done and intended for the use and  
16 protection of all subcontractors and all persons supplying labor, materials, machinery, and  
17 equipment in the prosecution of the work provided for in the public works construction  
18 contract.

19 ~~(9)~~(11) 'Performance bond' means a bond with good and sufficient surety or sureties for  
20 the faithful performance of the contract and to indemnify the governmental entity for any  
21 damages occasioned by a failure to perform the same within the prescribed time. Such  
22 bond shall be payable to, in favor of, and for the protection of the governmental entity for  
23 which the work is to be done.

24 ~~(10)~~(12) 'Public works construction' means the building, altering, repairing, improving,  
25 or demolishing of any public structure or building or other public improvements of any  
26 kind to any public real property other than those projects covered by Chapter 4 of  
27 Title 32. Such term does not include the routine operation, repair, or maintenance of  
28 existing structures, buildings, or real property.

29 ~~(11)~~(13) 'Responsible bidder' or 'responsible offeror' means a person or entity that has  
30 the capability in all respects to perform fully and reliably the contract requirements.

31 ~~(12)~~(14) 'Responsive bidder' or 'responsive offeror' means a person or entity that has  
32 submitted a bid or proposal that conforms in all material respects to the requirements set  
33 forth in the invitation for bids or request for proposals.

34 ~~(13)~~(15) 'Scope of project' means the work required by the original contract documents  
35 and any subsequent change orders required or appropriate to accomplish the intent of the  
36 project as described in the bid documents.

37 ~~(14)~~(16) 'Scope of work' means the work that is required by the contract documents.



1 (B) A statement listing whether all anticipated rights of way and easements required  
 2 for the project have been obtained or an indication of the status as to when each such  
 3 rights of way or easements are expected to be obtained.

4 (5) Contract opportunities that will be awarded by competitive sealed proposals shall be  
 5 publicly advertised with a request for proposals which request shall include conceptual  
 6 program information in the request for proposals describing the requested services in a  
 7 level of detail appropriate to the project delivery method selected for the project.

8 (6) The advertisement shall include such details and specifications as will enable the  
 9 public to know the extent and character of the work to be done.

10 (7) All required notices of advertisement shall also advise of any mandatory  
 11 prequalification requirements or pre-bid conferences as well as any federal requirements  
 12 pursuant to subsection (d) of Code Section 36-91-22. Any advertisement which provides  
 13 notice of a mandatory pre-bid conference or prequalification shall provide reasonable  
 14 advance notice of said conference or for the submittal of such prequalification  
 15 information.

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

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

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

21 shall be awarded on the basis of competitive sealed bidding or competitive sealed  
 22 proposals. Governmental entities shall have the authority to reject ~~any and~~ all bids or  
 23 proposals or any bid or proposal that is nonresponsive or not responsible and to waive  
 24 technicalities and informalities.

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

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

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

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

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

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

9 (4) Any prequalification process must include a procedure for a disqualified bidder to  
10 respond to his or her disqualification to a representative of the governmental entity;  
11 provided, however, that such procedure shall not be construed to require the  
12 governmental entity to provide a formal appeals procedure. A prequalified bidder or  
13 offeror can not be later disqualified without cause."

### 14 SECTION 3.

15 Said chapter is further amended by revising subsection (b) of Code Section 36-91-51, relating  
16 to cash in lieu of bid bonds and letters of credit, as follows:

17 "(b) When the amount of any bid bond required under this article does not exceed  
18 ~~\$300,000.00~~ \$750,000.00, the governmental entity may, in its sole discretion, accept an  
19 irrevocable letter of credit issued by a bank or savings and loan association, as defined in  
20 Code Section 7-1-4, in the amount of and in lieu of the bond otherwise required under Code  
21 Section 36-91-50."

### 22 SECTION 4.

23 Said chapter is further amended by revising Code Section 36-91-71, relating to acceptable  
24 substitutes for bonds, as follows:

25 "36-91-71.

26 When the amount of the performance bond required under this article does not exceed  
27 ~~\$300,000.00~~ \$750,000.00, the governmental entity may, in its sole discretion, accept an  
28 irrevocable letter of credit by a bank or savings and loan association, as defined in Code  
29 Section 7-1-4, in the amount of and in lieu of the bond otherwise required under this  
30 article."

### 31 SECTION 5.

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