

House Bill 558

By: Representatives Spencer of the 180th, Holt of the 112th, Lane of the 167th, Atwood of the 179th, Mitchell of the 88th, and others

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, so as to authorize local governments to
3 apply, by local ordinance or resolution, a preference for local resident businesses in
4 considering bids for local public works projects; to provide for related matters; to repeal
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 2 of Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to
9 contracting and bidding requirements, is amended by revising subsections (b) and (c) of Code
10 Section 36-91-21, relating to competitive award requirements, as follows:

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

- 12 (1) The governmental entity shall publicly advertise an invitation for bids;
13 (2) Bidders shall submit sealed bids based on the criteria set forth in such invitation;
14 (3) The governmental entity shall open the bids publicly and evaluate such bids without
15 discussions with the bidders; and
16 (4) ~~The~~ Except as provided in Code Section 36-91-21.1, the contract shall be awarded
17 to the lowest responsible and responsive bidder whose bid meets the requirements and
18 criteria set forth in the invitation for bids; provided, however, that if the bid from the
19 lowest responsible and responsive bidder exceeds the funds budgeted for the public works
20 construction contract, the governmental entity may negotiate with such apparent low
21 bidder to obtain a contract price within the budgeted amount. Such negotiations may
22 include changes in the scope of work and other bid requirements.

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

- 24 (A) Publicly advertise a request for proposals, which request shall include conceptual
25 program information in the request for proposals describing the requested services in

26 a level of detail appropriate to the project delivery method selected for the project, as
 27 well as the relative importance of the evaluation factors;

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

31 (C) Make an award to the responsible and responsive offeror whose proposal is
 32 determined in writing to be the most advantageous to the governmental entity, taking
 33 into consideration the evaluation factors set forth in the request for proposals and any
 34 preferences pursuant to Code Section 36-91-21.1. The evaluation factors shall be the
 35 basis on which the award decision is made. The contract file shall indicate the basis on
 36 which the award is made.

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

46 **SECTION 2.**

47 Said article is further amended by adding a new Code section to read as follows:

48 "36-91-21.1.

49 (a) For the purpose of determining residency under this Code section, a local resident
 50 business shall include:

51 (1) In the case of a county bid, any business that regularly maintains a place from which
 52 business is physically conducted in the county for at least one year prior to any bid or
 53 proposal submitted pursuant to this Code section or a new business that is domiciled in
 54 the county which regularly maintains a place from which business is physically
 55 conducted in the county; provided, however, that a place of business shall not include a
 56 post office box, site trailer, or temporary structure; or

57 (2) In the case of a municipal bid, any business that regularly maintains a place from
 58 which business is physically conducted in the county in which the municipality is located
 59 for at least one year prior to any bid or proposal submitted pursuant to this Code section
 60 or a new business that is domiciled in the county in which the municipality is located
 61 which regularly maintains a place from which business is physically conducted in the

62 county; provided, however, that a place of business shall not include a post office box,
63 site trailer, or temporary structure.

64 (b) A county or municipality, in accepting bids or proposals under this article, may, upon
65 the adoption of an appropriate ordinance or resolution, give preference to local resident
66 businesses. Such preference shall deem a bid by a local resident business to be equivalent
67 to a bid received from a nonlocal resident business if such bid does not exceed the bid of
68 such nonlocal resident business by a percentage set in the ordinance or resolution, not to
69 exceed 5 percent, of the bid amount.

70 (c) Such preferences shall in no way impair the ability of the county or municipality to
71 compare the quality of materials proposed for a project and to compare the qualifications,
72 character, responsibility, and fitness of materialmen, contractors, builders, architects,
73 engineers, and laborers proposed for employment in its consideration of a bid or proposal."

74

SECTION 3.

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