

The Senate Transportation Committee offered the following substitute to SB 492:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 36-91-21 and Part 1 of Article 3 of Chapter 5 of Title 50 of the
2 Official Code of Georgia Annotated, relating to competitive award requirements and general
3 authority, duties, and procedure relative to state purchasing, respectively, so as to require that
4 state contract awards for heavy equipment follow certain specific procedures; to provide for
5 related matters; to provide an effective date and applicability; to repeal conflicting laws; and
6 for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

9 Code Section 36-91-21 of the Official Code of Georgia Annotated, relating to competitive
10 award requirements, is amended by redesignating existing subsections (f) and (g) as
11 subsections (g) and (h), respectively, and by adding a new subsection (f) to read as follows:

12 "(f) Unless otherwise required by law, no governmental entity that contracts for public
13 works construction shall in its bid documents, specifications, project agreements, or other
14 controlling documents for a public works construction contract:

15 (1) Require or prohibit bidders, offerors, contractors, subcontractors, or material
16 suppliers to enter into or adhere to prehire agreements, project labor agreements,
17 collective bargaining agreements, or any other agreement with one or more labor
18 organizations on the same or other related construction projects; or

19 (2) Discriminate against, or treat differently, bidders, offerors, contractors,
20 subcontractors, or material suppliers for becoming or refusing to become or remain
21 signatories or otherwise to adhere to agreements with one or more labor organizations on
22 the same or other related construction projects.

23 Nothing in this subsection shall prohibit bidders, offerors, contractors, subcontractors, or
24 material suppliers from voluntarily entering into agreements described in paragraph (1) of
25 this subsection."

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SECTION 2.

Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to general authority, duties, and procedure relative to state purchasing, is amended by revising subsection (b) of Code Section 50-5-67, relating to state purchasing through competitive bidding, as follows:

"(b)(1) Except as otherwise provided for in this part, all contracts for the purchases of supplies, materials, equipment, or services other than professional and personal employment services 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 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 and any other cost affecting the total cost of ownership during the life cycle of the supplies, materials, equipment, or services as specified in the solicitation document. 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 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 any, of bonds or certified checks to accompany the bids. Any and all bids so received may be rejected.

(2)(A) Any contract for the purchase of heavy equipment awarded by the state or any of its departments or divisions, including but not limited to the Department of Administrative Services, shall provide to the agency, department, municipality, or county which will be the end user of the heavy equipment the option to purchase such heavy equipment, so long as the dealer:

- (i) Is the exclusive dealer of heavy equipment for a manufacturer with an established manufacturing facility for the production of heavy equipment in this state; and
- (ii) Submitted a complete responsive bid as provided for under paragraph (1) of this subsection; provided, however, that such dealers shall have the option to provide either a fixed dollar price or a guaranteed minimum discount off of the manufacturer's suggested consumer list price for heavy equipment.

(B) As used in this paragraph, the term 'heavy equipment' means self-propelled, self-powered, or pull-type equipment and machinery, including diesel engines, weighing 5,000 pounds or more and primarily employed for construction, industrial, maritime, mining, or forestry use. The term shall not include:

- 63 (i) Motor vehicles requiring registration and a certificate of title;
 64 (ii) Farm machinery, equipment, or implements; or
 65 (iii) Equipment that is considered consumer goods, as that term is defined in Code
 66 Section 11-9-102."

67 **SECTION 3.**

68 Said part is further amended by revising Code Section 50-5-72, relating to construction and
 69 public works contracts conducted by the Department of Administrative Services and
 70 exceptions, as follows:

71 "50-5-72.

72 (a) Notwithstanding any other provision of this part or any other law dealing with the
 73 subject matter contained in this Code section to the contrary, all construction or public
 74 works contracts, exceeding a total expenditure of \$100,000.00, of any department, board,
 75 bureau, commission, office, or agency of the state government, except as provided in this
 76 Code section, shall be conducted and negotiated by the Department of Administrative
 77 Services in accordance with this part; provided, however, that any expenditure of less than
 78 \$100,000.00 shall still be subject to review and approval by the Department of
 79 Administrative Services, which may approve noncompetitive expenditures of up to
 80 \$100,000.00.

81 (b) All advertising costs incurred in connection with such contracts shall be borne by and
 82 paid from the funds appropriated to and available to the department, board, bureau,
 83 commission, office, or agency of the state government for which the contract is negotiated.

84 (c) Unless otherwise required by law, the Department of Administrative Services shall not
 85 in its bid documents, specifications, project agreements, or other controlling documents for
 86 a public works construction contract:

87 (1) Require or prohibit bidders, offerors, contractors, subcontractors, or material
 88 suppliers to enter into or adhere to prehire agreements, project labor agreements,
 89 collective bargaining agreements, or any other agreement with one or more labor
 90 organizations on the same or other related construction projects; or

91 (2) Discriminate against, or treat differently, bidders, offerors, contractors,
 92 subcontractors, or material suppliers for becoming or refusing to become or remain
 93 signatories or otherwise to adhere to agreements with one or more labor organizations on
 94 the same or other related construction projects.

95 Nothing in this subsection shall prohibit bidders, offerors, contractors, subcontractors, or
 96 material suppliers from voluntarily entering into agreements described in paragraph (1) of
 97 this subsection.

