

The Senate Government Oversight Committee offered the following substitute to SB 508:

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 to  
3 general authority, duties, and procedure relative to state purchasing, respectively, so as to  
4 provide for certain requirements as to public advertisements; to provide for certain  
5 contracting and bidding requirements for governmental entities and the Department of  
6 Administrative Services relative to public works construction contracts; to provide for related  
7 matters; to provide an effective date and applicability; to repeal conflicting laws; and for  
8 other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

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

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

16 (1) The governmental entity shall publicly advertise an invitation for bids pursuant to  
17 Code Section 36-91-20;

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

19 (3) The governmental entity shall open the bids publicly and evaluate such bids without  
20 discussions with the bidders; and

21 (4) The contract ~~shall~~ may be awarded to the lowest responsible and responsive bidder  
22 whose bid meets the requirements and criteria set forth in the invitation for bids;  
23 provided, however, that if the bid from the lowest responsible and responsive bidder  
24 exceeds the funds budgeted for the public works construction contract, the governmental  
25 entity may negotiate with such apparent low bidder to obtain a contract price within the

26 budgeted amount. Such negotiations may include changes in the scope of work and other  
 27 bid requirements."

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

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

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

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

## 42 SECTION 2.

43 Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated,  
 44 relating to general authority, duties, and procedure relative to state purchasing, is amended  
 45 by revising Code Section 50-5-72, relating to construction and public works contracts  
 46 conducted by the Department of Administrative Services and exceptions, as follows:

47 "50-5-72.

48 (a) Notwithstanding any other provision of this part or any other law dealing with the  
 49 subject matter contained in this Code section to the contrary, all construction or public  
 50 works contracts, exceeding a total expenditure of \$100,000.00, of any department, board,  
 51 bureau, commission, office, or agency of the state government, except as provided in this  
 52 Code section, shall be conducted and negotiated by the Department of Administrative  
 53 Services in accordance with this part; provided, however, that any expenditure of less than  
 54 \$100,000.00 shall still be subject to review and approval by the Department of  
 55 Administrative Services, which may approve noncompetitive expenditures of up to  
 56 \$100,000.00.

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

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

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

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

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

74 (d) The commissioner of administrative services is authorized and directed to promulgate  
 75 such rules and regulations as shall carry out the additional duties and responsibilities placed  
 76 upon the department by this Code section.

77 (e) Nothing contained in this Code section shall apply to or affect the Department of  
 78 Transportation, the several public authorities of this state, including the Stone Mountain  
 79 Memorial Association and the Board of Regents of the University System of Georgia, or  
 80 the expenditure of money credited to the account of this state in the Unemployment Trust  
 81 Fund by the secretary of the treasury of the United States pursuant to Section 903 of the  
 82 Social Security Act and appropriated as provided in Code Section 34-8-85. No contract  
 83 in existence on March 18, 1964, shall be affected by this Code section, and such contract  
 84 may continue to be utilized."

85 **SECTION 3.**

86 This Act shall become effective on July 1, 2012, and shall apply to all contracts entered into  
 87 on or after such date.

88 **SECTION 4.**

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