

Senate Bill 492

By: Senator Mullis of the 53rd

AS PASSED SENATE

**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
5 requirements for the procurement of services; to provide for related matters; to provide an
6 effective date and applicability; to repeal conflicting laws; and 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."

26

SECTION 1.1.

27 Chapter 4 of Title 50 of the Official Code of Georgia Annotated, relating to organization of
28 the executive branch generally, is amended by adding a new Code section to read as follows:

29 "50-4-8.

30 No contract between a state agency and a private provider or vendor for the provision of
31 all or part of any governmental services provided by the agency or for the provision of any
32 services to the agency shall be entered into on or after July 1, 2012, if any such services
33 will be performed outside the boundaries of the United States, except for those limited
34 circumstances where the nature of the service being performed is unique to that location
35 and cannot be performed within the boundaries of the United States. If at any time during
36 the performance of a contract the private contracting party uses any services which are
37 performed outside the boundaries of the United States, such private contracting party shall
38 be liable to the state agency for damages in an amount equal to the contract value of such
39 services. Each such contract entered into on or after July 1, 2012, shall contain a provision
40 requiring compliance with the provisions of this Code section and providing that a breach
41 of such provision, at the election of the agency, shall constitute a breach of the contract.
42 In the event an agency brings an action in any court to enforce such provisions, it shall be
43 entitled to reasonable attorney's fees in addition to any other damages."

44

45

SECTION 2.

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

50 "(b)(1) Except as otherwise provided for in this part, all contracts for the purchases of
51 supplies, materials, equipment, or services other than professional and personal
52 employment services made under this part shall, wherever possible, be based upon
53 competitive bids and shall be awarded to the lowest responsible bidder, taking into
54 consideration the quality of the articles to be supplied and conformity with the
55 specifications which have been established and prescribed, the purposes for which the
56 articles are required, the discount allowed for prompt payment, the transportation charges,
57 and the date or dates of delivery specified in the bid and any other cost affecting the total
58 cost of ownership during the life cycle of the supplies, materials, equipment, or services
59 as specified in the solicitation document. Competitive bids on such contracts shall be
60 received in accordance with rules and regulations to be adopted by the commissioner of
61 administrative services, which rules and regulations shall prescribe, among other things,

62 the manner, time, and places for proper advertisement for the bids, indicating the time
 63 and place when the bids will be received; the article for which the bid shall be submitted
 64 and the specification prescribed for the article; the amount or number of the articles
 65 desired and for which the bids are to be made; and the amount, if any, of bonds or
 66 certified checks to accompany the bids. Any and all bids so received may be rejected.

67 (2)(A) In addition to the provisions of paragraph (1) of this subsection, any contract for
 68 the purchase of heavy equipment awarded by the state or any of its departments or
 69 divisions, including but not limited to the Department of Administrative Services, shall
 70 provide to the agency, department, municipality, or county which will be the end user
 71 of the heavy equipment the option to purchase such heavy equipment from a dealer
 72 which:

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

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

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

86 **SECTION 3.**

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

90 "50-5-72.

91 (a) Notwithstanding any other provision of this part or any other law dealing with the
 92 subject matter contained in this Code section to the contrary, all construction or public
 93 works contracts, exceeding a total expenditure of \$100,000.00, of any department, board,
 94 bureau, commission, office, or agency of the state government, except as provided in this
 95 Code section, shall be conducted and negotiated by the Department of Administrative
 96 Services in accordance with this part; provided, however, that any expenditure of less than
 97 \$100,000.00 shall still be subject to review and approval by the Department of

98 Administrative Services, which may approve noncompetitive expenditures of up to
99 \$100,000.00.

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

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

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

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

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

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

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

128 **SECTION 4.**

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

131 **SECTION 5.**

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