

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

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

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

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

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

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

27 **SECTION 2.**

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

32 "(b)(1) Except as otherwise provided for in this part, all contracts for the purchases of  
 33 supplies, materials, equipment, or services other than professional and personal  
 34 employment services made under this part shall, wherever possible, be based upon  
 35 competitive bids and shall be awarded to the lowest responsible bidder, taking into  
 36 consideration the quality of the articles to be supplied and conformity with the  
 37 specifications which have been established and prescribed, the purposes for which the  
 38 articles are required, the discount allowed for prompt payment, the transportation charges,  
 39 and the date or dates of delivery specified in the bid and any other cost affecting the total  
 40 cost of ownership during the life cycle of the supplies, materials, equipment, or services  
 41 as specified in the solicitation document. Competitive bids on such contracts shall be  
 42 received in accordance with rules and regulations to be adopted by the commissioner of  
 43 administrative services; which ~~rules and regulations~~ shall prescribe, among other things,  
 44 the manner, time, and places for proper advertisement for the bids, indicating the time  
 45 and place when the bids will be received; the article for which the bid shall be submitted  
 46 and the specification prescribed for the article; the amount or number of the articles  
 47 desired and for which the bids are to be made; and the amount, if any, of bonds or  
 48 certified checks to accompany the bids. Any and all bids so received may be rejected.

49 (2)(A) As used in this paragraph, the term:

50 (i) 'Commercial use applications' means self-propelled, self-powered, or pull-type  
 51 equipment and machinery including diesel engines. The term shall not include motor  
 52 vehicles requiring registration and certificate of title or equipment that is considered  
 53 consumer goods, as that term is defined in Code Section 11-9-102.

54 (ii) 'Multiple award schedule contract' means a contract that allows multiple vendors  
 55 to be awarded a state contract for goods or services by providing catalogues of  
 56 equipment and attachments to eligible purchasers including state agencies,  
 57 departments, institutions, public school districts, and political subdivisions. Multiple  
 58 award schedule contract bids shall be evaluated based upon a variety of factors,  
 59 including but not limited to discounts, total life costs, service, warranty, machine

60 performance and durability, resale value, product support, and past vendor  
 61 performance. Multiple award schedule contracts shall allow multiple vendors to bid  
 62 and be awarded a contract based upon the value of their products and demonstrated  
 63 results in competitive pricing, product updates, transparency, administrative savings,  
 64 expedited procurement, and flexibility for state purchasers.

65 (B) When the commissioner of administrative services determines it to be in the best  
 66 interest of the state, a multiple award schedule contract may be let for the purchase of  
 67 equipment used for commercial use applications. All bidders for contracts for the  
 68 purchase of equipment for commercial use applications shall be required to submit a  
 69 complete bid package and be the authorized dealer or vendor for a leading manufacturer  
 70 of equipment used for commercial use applications. Bidders may add additional  
 71 equipment with a guaranteed minimum discount off the manufacturer's suggested  
 72 consumer list price in the bid in order to increase the options available to the state.

73 (C) Nothing in this paragraph shall limit multiple award schedule contracts to  
 74 commercial use applications."

### 75 **SECTION 3.**

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

79 "50-5-72.

80 (a) Notwithstanding any other provision of this part or any other law dealing with the  
 81 subject matter contained in this Code section to the contrary, all construction or public  
 82 works contracts, exceeding a total expenditure of \$100,000.00, of any department, board,  
 83 bureau, commission, office, or agency of the state government, except as provided in this  
 84 Code section, shall be conducted and negotiated by the Department of Administrative  
 85 Services in accordance with this part; provided, however, that any expenditure of less than  
 86 \$100,000.00 shall still be subject to review and approval by the Department of  
 87 Administrative Services, which may approve noncompetitive expenditures of up to  
 88 \$100,000.00.

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

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

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

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

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

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

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

117 **SECTION 4.**

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

120 **SECTION 5.**

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