

House Bill 362

By: Representatives Lindsey of the 54th, Hamilton of the 24th, and Fleming of the 121st

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 1 of Chapter 10 of Title 13, Code Section 36-91-21, and Part 1
2 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to
3 bonds for public works contracts, competitive award requirements, and general authority,
4 duties, and procedure relative to state purchasing, respectively, so as 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 for 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 style="text-align:center">**SECTION 1.**

11 Part 1 of Article 1 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated,
12 relating to bonds for public works contracts, is amended by revising Code Section 13-10-3,
13 relating to determining Georgia residency for business, preferences, and adherence to
14 policies and procedures of State Construction Manual, as follows:

15 "13-10-3.

16 (a) For the purpose of determining residency under this Code section, a Georgia resident
17 business shall include any business that regularly maintains a place from which business
18 is physically conducted in Georgia for at least one year prior to any bid or proposal
19 submitted pursuant to this Code section or a new business that is domiciled in Georgia
20 which regularly maintains a place from which business is physically conducted in Georgia;
21 provided, however, that a place of business shall not include a post office box, site trailer,
22 or temporary structure.

23 (b) Whenever the state contracts for the doing of a public work, materialmen, contractors,
24 builders, architects, engineers, and laborers resident in the State of Georgia are to be
25 granted the same preference over materialmen, contractors, builders, architects, engineers,
26 and laborers resident in another state in the same manner, on the same basis, and to the

27 same extent that preference is granted in awarding bids for the same goods or services by
28 such other state to materialmen, contractors, builders, architects, engineers, and laborers
29 resident in such other state over materialmen, contractors, builders, architects, engineers,
30 and laborers resident in the State of Georgia. However, these requirements shall in no way
31 impair the ability of the state to compare the quality of materials proposed for purchase and
32 to compare the qualifications, character, responsibility, and fitness of materialmen,
33 contractors, builders, architects, engineers, and laborers proposed for employment in its
34 consideration of the purchase of materials or employment of persons. This subsection shall
35 not apply to transportation projects for which federal aid funds are available.

36 (c) All state agencies, authorities, departments, commissions, boards, and similar entities
37 shall adhere to the policies and procedures contained in the State Construction Manual for
38 project management and procurement of, and contracting for, design, construction, and
39 other project related professional services for all state owned buildings in Georgia funded
40 by state bonds or other state revenue. The State Construction Manual shall be jointly
41 edited and posted on a state website by the Georgia State Financing and Investment
42 Commission and the Board of Regents of the University System of Georgia and shall be
43 updated on a periodic basis to reflect evolving owner needs and industry best practices after
44 consultation with other state agency and industry stakeholders.

45 (d)(1) To the extent permitted by law, no state agency, authority, department,
46 commission, board, or similar entity that contracts for public works construction shall,
47 in its bid documents, specifications, project agreements, or other controlling documents
48 for a public works construction contract:

49 (A) Require or prohibit bidders, offerors, contractors, subcontractors, or material
50 suppliers to enter into or adhere to prehire agreements, project labor agreements,
51 collective bargaining agreements, or any other agreement with one or more labor
52 organizations on the same or other related construction projects; or

53 (B) Discriminate against, or treat differently, bidders, offerors, contractors,
54 subcontractors, or material suppliers for becoming or refusing to become or remain
55 signatories or otherwise to adhere to agreements with one or more labor organizations
56 on the same or other related construction projects.

57 (2) Nothing in this subsection shall prohibit bidders, offerors, contractors,
58 subcontractors, or material suppliers from voluntarily entering into agreements described
59 in paragraph (1) of this subsection.

60 (3) The head of a governmental entity may exempt a particular public works construction
61 contract from the requirements of any or all of the provisions of paragraph (1) of this
62 subsection if the governmental entity finds, after public notice and a hearing, that special
63 circumstances require an exemption to avert an imminent threat to public health or safety.

64 A finding of special circumstance under this paragraph shall not be based on the
 65 possibility or presence of a labor dispute concerning the use of contractors or
 66 subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with
 67 one or more labor organizations or concerning employees on the particular project who
 68 are not members of or affiliated with a labor organization."

69 **SECTION 2.**

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

73 "(f)(1) Unless otherwise required by law, no governmental entity that contracts for public
 74 works construction shall in its bid documents, specifications, project agreements, or other
 75 controlling documents for a public works construction contract:

76 (A) Require or prohibit bidders, offerors, contractors, subcontractors, or material
 77 suppliers to enter into or adhere to prehire agreements, project labor agreements,
 78 collective bargaining agreements, or any other agreement with one or more labor
 79 organizations on the same or other related construction projects; or

80 (B) Discriminate against, or treat differently, bidders, offerors, contractors,
 81 subcontractors, or material suppliers for becoming or refusing to become or remain
 82 signatories or otherwise to adhere to agreements with one or more labor organizations
 83 on the same or other related construction projects.

84 (2) Nothing in this subsection shall prohibit bidders, offerors, contractors,
 85 subcontractors, or material suppliers from voluntarily entering into agreements described
 86 in paragraph (1) of this subsection.

87 (3) The head of a governmental entity may exempt a particular public works construction
 88 contract from the requirements of any or all of the provisions of paragraph (1) of this
 89 subsection if the governmental entity finds, after public notice and a hearing, that special
 90 circumstances require an exemption to avert an imminent threat to public health or safety.

91 A finding of special circumstance under this paragraph shall not be based on the
 92 possibility or presence of a labor dispute concerning the use of contractors or
 93 subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with
 94 one or more labor organizations or concerning employees on the particular project who
 95 are not members of or affiliated with a labor organization."

96 **SECTION 3.**

97 Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated,
 98 relating to general authority, duties, and procedure relative to state purchasing, is amended

99 by revising Code Section 50-5-72, relating to construction and public works contracts
100 conducted by the Department of Administrative Services and exceptions, as follows:

101 "50-5-72.

102 (a) Notwithstanding any other provision of this part or any other law dealing with the
103 subject matter contained in this Code section to the contrary, all construction or public
104 works contracts, exceeding a total expenditure of \$100,000.00, of any department, board,
105 bureau, commission, office, or agency of the state government, except as provided in this
106 Code section, shall be conducted and negotiated by the Department of Administrative
107 Services in accordance with this part; provided, however, that any expenditure of less than
108 \$100,000.00 shall still be subject to review and approval by the Department of
109 Administrative Services, which may approve noncompetitive expenditures of up to
110 \$100,000.00.

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

114 (c)(1) Notwithstanding subsections (a) and (b) of this Code section and to the extent
115 permitted by law, the Department of Administrative Services shall not in its bid
116 documents, specifications, project agreements, or other controlling documents for a
117 public works construction contract:

118 (A) Require or prohibit bidders, offerors, contractors, subcontractors, or material
119 suppliers to enter into or adhere to prehire agreements, project labor agreements,
120 collective bargaining agreements, or any other agreement with one or more labor
121 organizations on the same or other related construction projects; or

122 (B) Discriminate against, or treat differently, bidders, offerors, contractors,
123 subcontractors, or material suppliers for becoming or refusing to become or remain
124 signatories or otherwise to adhere to agreements with one or more labor organizations
125 on the same or other related construction projects.

126 (2) Nothing in this subsection shall prohibit bidders, offerors, contractors,
127 subcontractors, or material suppliers from voluntarily entering into agreements described
128 in paragraph (1) of this subsection.

129 (3) The head of a governmental entity may exempt a particular public works construction
130 contract from the requirements of any or all of the provisions of paragraph (1) of this
131 subsection if the governmental entity finds, after public notice and a hearing, that special
132 circumstances require an exemption to avert an imminent threat to public health or safety.
133 A finding of special circumstance under this paragraph shall not be based on the
134 possibility or presence of a labor dispute concerning the use of contractors or
135 subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with

136 one or more labor organizations or concerning employees on the particular project who
137 are not members of or affiliated with a labor organization.

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

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

149 **SECTION 4.**

150 This Act shall become effective on July 1, 2013, and shall apply to all contracts entered into
151 on or after such date.

152 **SECTION 5.**

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