Senate Bill 179
By: Senators Hill of the 6th and Dugan of the 30th

AS PASSED

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 10 of Title 13, Chapter 91 of Title 36, and Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to contracts for public works, public works bidding, and general authority, duties, and procedure relative to state purchasing, respectively, so as to provide that, if a sealed competitive proposal is requested and price or project cost is not a selection or evaluation factor, no bid bond shall be required; to provide for an exception; to provide for certain contracting and bidding requirements for governmental entities and the Department of Administrative Services relative to public works construction contracts; to correct statutory references; to authorize incentives in contracts for early project completion by contractors; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"13-10-3.
(a) For the purpose of determining residency under this Code section, a Georgia resident business shall include any business that regularly maintains a place from which business is physically conducted in Georgia for at least one year prior to any bid or proposal submitted pursuant to this Code section or a new business that is domiciled in Georgia which regularly maintains a place from which business is physically conducted in Georgia; provided, however, that a place of business shall not include a post office box, site trailer, or temporary structure.
(b) Whenever the state contracts for the doing of a public work, materialmen, contractors, builders, architects, engineers, and laborers resident in the State of Georgia are to be
granted the same preference over materialmen, contractors, builders, architects, engineers, and laborers resident in another state in the same manner, on the same basis, and to the same extent that preference is granted in awarding bids for the same goods or services by such other state to materialmen, contractors, builders, architects, engineers, and laborers resident in such other state over materialmen, contractors, builders, architects, engineers, and laborers resident in the State of Georgia. However, these requirements shall in no way impair the ability of the state to compare the quality of materials proposed for purchase and to compare the qualifications, character, responsibility, and fitness of materialmen, contractors, builders, architects, engineers, and laborers proposed for employment in its consideration of the purchase of materials or employment of persons. This subsection shall not apply to transportation projects for which federal aid funds are available.

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

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

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

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

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

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

**SECTION 2.**

Said chapter is further amended in Code Section 13-10-20, relating to large public works contracts, requirements for bid bonds, and withdrawal of bid, by adding a new subsection to read as follows:

"(e) When the state invites competitive sealed proposals for a public works construction project and the request for proposals for such project states that price or project cost will not be a selection or evaluation factor, no bid bond shall be required unless the state provides for a bid bond in the request for proposals and specifies the amount of such bond."

**SECTION 3.**

Said chapter is further amended by revising subsection (b) of Code Section 13-10-62, relating to notice of commencement, as follows:

"(b) The failure to file a notice of commencement shall render the notice to the contractor requirements of paragraph (1)(2) of subsection (a) of Code Section 13-10-63 inapplicable."

**SECTION 4.**

Said chapter is further amended in Article 1, relating to general provisions, by adding a new part to read as follows:

"Part 5

13-10-70.

Public works construction contracts may include both liquidated damages provisions for late construction project completion and incentive provisions for early construction project completion when the project schedule is deemed to have value. The terms of the liquidated damages provisions and the incentive provisions shall be established in advance as a part of the construction contract and included within the terms of the bid or proposal."

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SECTION 5.

Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to public works bidding, is amended in Code Section 36-91-21, relating to competitive award requirements, by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and by adding a new subsection to read as follows:

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

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

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

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

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

SECTION 6.

Said chapter is further amended in Article 2, relating to contracting and bidding requirements, by adding a new Code section to read as follows:

"36-91-23. Public works construction contracts may include both liquidated damages provisions for late construction project completion and incentive provisions for early construction project completion when the project schedule is deemed to have value. The terms of the liquidated
damages provisions and the incentive provisions shall be established in advance as a part of the construction contract and included within the terms of the bid or proposal."

SECTION 7.

Said chapter is further amended in Part 1 of Article 3, relating to general provisions regarding bonds, by adding a new Code section to read as follows:

"36-91-41. When a governmental entity invites competitive sealed proposals for a public works construction project and the request for proposals for such project states that price or project cost will not be a selection or evaluation factor, no bid bond shall be required unless the governmental entity provides for a bid bond in the request for proposals and specifies the amount of such bond."

SECTION 8.

Said chapter is further amended by revising subsection (b) of Code Section 36-91-92, relating to notice of commencement, as follows:

"(b) The failure to file a notice of commencement shall render the notice to contractor requirements of paragraph (1) and (2) of subsection (a) of Code Section 36-91-93 inapplicable."

SECTION 9.

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

"50-5-72. (a) Notwithstanding any other provision of this part or any other law dealing with the subject matter contained in this Code section to the contrary, all construction or public works contracts, exceeding a total expenditure of $100,000.00, of any department, board, bureau, commission, office, or agency of the state government, except as provided in this Code section, shall be conducted and negotiated by the Department of Administrative Services in accordance with this part; provided, however, that any expenditure of less than $100,000.00 shall still be subject to review and approval by the Department of Administrative Services, which may approve noncompetitive expenditures of up to $100,000.00.

(b) All advertising costs incurred in connection with such contracts shall be borne by and paid from the funds appropriated to and available to the department, board, bureau, commission, office, or agency of the state government for which the contract is negotiated.
(c)(1) Notwithstanding subsections (a) and (b) of this Code section and to the extent permitted by law, the Department of Administrative Services shall not in its bid documents, specifications, project agreements, or other controlling documents for a public works construction contract:

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

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

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

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

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

(e) Nothing contained in this Code section shall apply to or affect the Department of Transportation, the several public authorities of this state, including the Stone Mountain Memorial Association and the Board of Regents of the University System of Georgia, or the expenditure of money credited to the account of this state in the Unemployment Trust Fund by the secretary of the treasury of the United States pursuant to Section 903 of the Social Security Act and appropriated as provided in Code Section 34-8-85. No contract in existence on March 18, 1964, shall be affected by this Code section, and such contract may continue to be utilized."
SECTION 10.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 11.

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