House Bill 312 (AS PASSED HOUSE AND SENATE)

By: Representatives Freeman of the 140th, May of the 111th, Roberts of the 154th, Golick of the 34th, Smith of the 129th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Title 50 of the Official Code of Georgia Annotated, relating to state government, and Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees, so as to provide for the substantial revision and transfer of certain powers, duties, and authority of the Department of Administrative Services, the Georgia Technology Authority, the Office of Planning and Budget, the Board of Regents of the University System of Georgia, the Department of Agriculture, the Department of Veterans Service, and the state accounting officer; to change certain provisions regarding the establishment, powers, purchasing authority, procedures, and limitations and vendor qualification of the Georgia Technology Authority; to change certain provisions regarding powers, purchasing personnel, competitive bidding, emergency purchasing, and prohibited practices with respect to the Department of Administrative Services; to provide for additional powers of the Office of Planning and Budget regarding motor vehicles; to change certain provisions regarding the Department of Administrative Services with respect to state vehicles; to change certain provisions regarding automobile purchases by the Department of Agriculture; to change certain provisions regarding automobile purchases by the Department of Veterans Service; to change certain provisions regarding state purchasing of motor vehicles; to change certain provisions regarding certain transporting of campaign literature; to change certain provisions regarding criminal penalties for violations relating to purchase or use of automobiles; to change certain provisions regarding unserviceable property; to change certain provisions regarding surplus equipment and property; to change certain provisions regarding property inventory records; to provide for additional authority of the Department of Administrative Services and the state accounting officer regarding inventory audits; to amend Code Section 32-2-61 of the Official Code of Georgia Annotated, relating to limitations on the power of the Department of Transportation regarding contracts, so as to provide for additional limitations; to provide for related matters; to provide for effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended in Code Section 50-25-1, relating to the establishment of the Georgia Technology Authority, by striking the introductory language of subsection (c) preceding paragraph (1) thereof and inserting in its place the following:

"(c) The purpose of the authority shall be to provide for ~~procurement of technology resources,~~ technology enterprise management~~,~~ and technology portfolio management as defined in this chapter, as well as the centralized marketing, provision, sale, and leasing, or execution of license agreements for access on line or in volume, of certain public information maintained in electronic format to the public, on such terms and conditions as may be determined to be in the best interest of the state in light of the following factors:"

SECTION 2.

Said title is further amended by striking Code Section 50-25-4, relating to powers of the Georgia Technology Authority, and inserting in its place a new Code Section 50-25-4 to read as follows:

"50-25-4.

(a) The authority shall have the following powers:

(1) To have a seal and alter the same at its pleasure;

(2) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created;

(3) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(4) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for any or all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

(5) To contract with state agencies or any local government for the use by the authority of any property, facilities, or services of the state or any such state agency or local government or for the use by any state agency or local government of any facilities or services of the authority; and such state agencies and local governments are authorized to enter into such contracts;

(6) To fix and collect fees and charges for data, media, and incidental services;

(7) To deposit or invest funds held by it in any state depository or in any investment which is authorized for the investment of proceeds of state general obligation bonds; and to use for its corporate purposes or redeposit or reinvest interest earned on such funds;

(8) To establish standards for agencies to submit information technology plans to the authority. Standards shall include without limitation content, format, and frequency of submission;

(9) To provide and approve a technology plan to include strategic planning and direction for technology acquisition, deployment development, and obsolescence management as well as a communications plan to manage costs for voice, video, data, and messaging services for all agencies. The state technology plan shall incorporate plans from agencies and other sources;

(10) To set technology policy for all agencies except those under the authority, direction, or control of the General Assembly or state-wide elected officials other than the Governor;

(11) ~~To prescribe procedures for the procurement of technology resources for agencies~~ To establish and maintain official employee purchase programs for technology resources facilitated by and through the authority for state employees and public school employees of county or independent boards of education;

(12) To provide oversight and program management for all technology resources for projects exceeding a cumulative investment of $1 million to accomplish goals of technology portfolio management;

(13) To require agencies to submit periodic reports at such frequency and with such content as the board shall define;

(14) To prepare fiscal impact statements relating to necessary modifications and development of technology to support policies required by proposed legislation;

(15) To establish architecture for state technology infrastructure to promote efficient use of resources and to promote economic development;

(16) To provide processes and systems for timely and fiscally prudent management of the state´s financial resources to include, without limitation, cash management;

(17) To establish advisory committees from time to time, including, without limitation, a standing advisory committee composed of representatives from agencies which shall make recommendations to the authority concerning such matters as policies, standards, and architecture;

(18) To coordinate with agencies, the legislative and judicial branches of government, and the Board of Regents of the University System of Georgia, regarding technology policy;

(19) To coordinate with local and federal governments to achieve the goals of the authority;

(20) To identify and pursue alternative funding approaches;

(21) To establish technology security standards and services to be used by all agencies;

(22) To conduct technology audits of all agencies;

(23) To facilitate and encourage the conduct of business on the Internet;

(24) To expand and establish policies necessary to ensure the legal authority and integrity of electronic documents;

(25) To provide and approve as part of the state technology plan an implementation plan and subsequent policies and goals designed to increase the use of telecommuting among state employees;

(26) To create a center for innovation to create applications of technology that will yield positive, measurable benefits to the state;

~~(27) To establish benchmarks for contracts requiring approval by the board;~~

~~(28)~~(27) To ~~canvass sources of supply and to~~ contract through the Department of Administrative Services for the lease, rental, purchase, or other acquisition of all technology resource related supplies, materials, services, and equipment required by the state government or any of its agencies and designate such contracts as mandatory sources of supply for agency purchases ~~under competitive bidding~~ or to authorize any agency to purchase or contract for technology;

~~(29)~~(28) To establish and enforce standard specifications which shall apply to all technology and technology resource related supplies, materials, and equipment purchased or to be purchased for the use of the state government or any of its agencies, which specifications shall be based on and consistent with industry accepted open network architecture standards;

~~(30)~~(29) To establish ~~processes,~~ specifications~~,~~ and standards for technology resources ~~procurement~~, which shall apply to all technology to be purchased, licensed, or leased by any agency;

~~(31)~~(30) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority; and

~~(32)~~(31) To do all things necessary or convenient to carry out the powers conferred by this chapter.

(b) The authority shall transfer to the general fund of the state treasury any funds of the authority determined by the authority to be in excess of those needed for the corporate purposes of the authority.″

SECTION 3.

Said title is further amended by striking Code Section 50-25-7.2, relating to contracts for technology resource purchases, and inserting in its place a new Code Section 50-25-7.2 to read as follows:

"50-25-7.2.

~~(a) All agencies shall contract through the authority for any technology resource purchase of such agency exceeding $100,000.00; provided, however, that the provisions of this Code section shall not have application to full-time state personnel tasked with the planning, implementation, and support of technology. The authority shall be authorized to act as the agent of any agency for such purposes. No agency shall divide purchases so as to avoid the thresholds provided for in this Code section and Code Section 50-25-7.3.~~

~~(b) Any agency whose direct or indirect appropriation for technology resources is less than $50,000.00 shall not be required to contract through the authority for the purchase of such technology resources.~~

~~(c)~~ Nothing ~~in this Code section~~ exempting any purchase from the competitive bidding laws set forth in Part 1 of Article 3 of Chapter 5 of this title shall exempt any technology resource purchase from the technical standards and specifications established by the authority unless specifically provided by action of the authority; provided, however, that technical standards established by the authority shall not conflict with mandated federal technical standards or requirements associated with the state administration of federally funded programs. The Department of Administrative Services shall not knowingly issue a procurement pursuant to the provisions of Part 1 of Article 3 of Chapter 5 of this title that does not adhere to the technical standards and specifications established by the authority unless specifically authorized to do so by the authority."

SECTION 4.

Said title is further amended by striking Code Section 50-25-7.3, relating to the procedures to be used by the Georgia Technology Authority for competitive sealed bids and proposals, and inserting in its place a new Code Section 50-25-7.3 to read as follows:

"50-25-7.3.

~~(a) Except as otherwise provided in this chapter, authority contracts shall be awarded by soliciting competitive sealed proposals or competitive sealed bids, as follows:~~

~~(1) Proposals or bids shall be solicited through a request for proposals or bids;~~

~~(2) Adequate public notice of the request for proposals or bids shall be given;~~

~~(3) A register of proposals and bids identifying submitting vendors shall be prepared and made available for public inspection;~~

~~(4) The request for proposals or bids shall describe the evaluation factors to be considered in the award of the contract;~~

~~(5) The terms of the request for proposals or bids may allow for discussions or revisions but shall provide for fair and equal treatment of all vendors. In conducting discussions there shall be no disclosure of any information derived from proposals or bids submitted by competing vendors; and~~

~~(6) The award shall be made to the responsible vendor or vendors complying with the technology and architecture standards and policies of the authority whose proposal or bid was timely and is determined in writing to be the most advantageous to the state, taking into consideration the evaluation factors set forth in the request for proposals or bids. No other factors or criteria shall be used in the evaluation.~~

~~(b) When proposals or bids received pursuant to this Code section are unreasonable or unacceptable, are noncompetitive, or exceed available funds and it is determined in writing by the authority that time or other circumstances will not permit the delay required to resolicit competitive proposals or bids, a contract may be negotiated pursuant to this Code section, provided that each qualified vendor who submitted such a proposal or bid under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate.~~

~~(c) Every proposal or bid solicited pursuant to this Code section, together with the name of the vendor, shall be recorded, and all such records shall, after award or letting of the contract, be subject to public inspection upon request. Sealed proposals or bids shall be opened in public by the authority, which shall canvass the proposals or bids and award the contract according to the terms of this chapter.~~

~~(d) On all sealed proposals or bids received or solicited by the authority the following certificate of independent price determination shall be used:~~

~~'I certify that this proposal (or bid) is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a proposal (or bid) for the same materials, supplies, or equipment and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this proposal (or bid) and certify that I am authorized to sign this proposal (or bid) for the vendor.'~~

~~(e) The authority is authorized to promulgate rules and regulations to implement the procedures of this Code section or by rule and regulation to implement alternative purchasing procedures advantageous to the state. All rules and regulations relating to implementation of purchasing procedures shall be adopted through public publication, notice, and comment pursuant to and subject to Code Sections 50-13-4, 50-13-6, 50-13-7,~~

~~and 50-13-8, and the authority shall be considered an agency for purposes of such Code sections.~~ Reserved."

SECTION 5.

Said title is further amended by striking Code Section 50-25-7.4, relating to prequalification of vendors by the Georgia Technology Authority, and inserting in its place a new Code Section 50-25-7.4 to read as follows:

"50-25-7.4.

~~Prospective suppliers may be prequalified for particular types of supplies, services, goods, materials, and equipment at the discretion of the authority. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, such prequalified suppliers. The award of contracts, however, may be conditioned upon prequalification.~~ Reserved."

SECTION 6.

Said title is further amended by striking Code Section 50-25-7.5, relating to small value noncompetitive purchases for technology resources, and inserting in its place a new Code Section 50-25-7.5 to read as follows:

"50-25-7.5.

~~(a) If the needed supplies, materials, or equipment can reasonably be expected to be acquired for less than $2,500.00 and are not available on state contracts or through statutorily required sources, the purchase may be effectuated without competitive bidding.~~

~~(b) Nothing in this Code section shall apply to or affect the laws, rules, and regulations governing emergency purchases.~~ Reserved."

SECTION 7.

Said title is further amended by striking Code Section 50-25-7.6, relating to emergency purchases of technology resources, and inserting in its place a new Code Section 50-25-7.6 to read as follows:

"50-25-7.6.

~~In case of any emergency arising from any unforeseen causes, including delay by contractors, delay in transportation, breakdown in machinery, unanticipated volume of work, or upon the declaration of a state of emergency by the Governor, the authority shall have power to purchase in the open market any necessary supplies, materials, or equipment for immediate delivery to any agency. A report on the circumstances of the emergency and the transactions thereunder shall be duly recorded in a book or file to be kept by the authority.~~ Reserved."

SECTION 8.

Said title is further amended by striking Code Section 50-25-7.8, relating to contracts not authorized by the Georgia Technology Authority, and inserting in its place a new Code Section 50-25-7.8 to read as follows:

"50-25-7.8.

~~Whenever any agency required by this chapter and the rules and regulations adopted pursuant to this chapter applying to the purchase of supplies, materials, or equipment through the authority shall contract for the purchase of such supplies, materials, or equipment contrary to this chapter or the rules and regulations made pursuant to this chapter, such contract shall be void and of no effect. If any official of such agency willfully purchases or causes to be purchased any supplies, materials, or equipment contrary to this chapter or the rules and regulations made pursuant to this chapter, such official shall be personally liable for the cost thereof; and, if such supplies, materials, or equipment are so unlawfully purchased and paid for out of the state funds, the amount thereof may be recovered in the name of the state in an appropriate action instituted therefor.~~ Reserved."

SECTION 9.

Said title is further amended by striking Code Section 50-25-7.9, relating to purchasing articles through the Georgia Technology Authority for personal ownership, and inserting in its place a new Code Section 50-25-7.9 to read as follows:

"50-25-7.9.

~~(a) As used in this Code section, the term 'person' includes natural persons, firms, partnerships, corporations, or associations.~~

~~(b) It shall be unlawful for any employee or official of the state or any other person to purchase, directly or indirectly, through the authority any article, material, merchandise, ware, commodity, or other thing of value for the personal or individual ownership of himself or herself or other person or persons. All articles, materials, merchandise, wares, commodities, or other things of value purchased, directly or indirectly, by or through the authority shall be and remain the property of the state until sold or disposed of by the state in accordance with the laws governing the disposition or sale of other state property.~~

~~(c) It shall be unlawful for any person knowingly to sell or deliver any article, material, merchandise, ware, commodity, or other thing of value to any person, directly or indirectly, by or through the authority for the individual and personal ownership of such person or other person or persons except that property of the state may be sold or otherwise disposed of in accordance with the laws governing the sale or other disposition of state property.~~

~~(d) Any person who violates any provision of this Code section shall be guilty of a misdemeanor.~~

~~(e) This Code section shall not apply to any official employee purchase program for personal computing and computer related equipment facilitated by and through the authority for state employees and public school employees of county or independent boards of education.~~ Reserved."

SECTION 10.

Said title is further amended by striking Code Section 50-5-51, relating to the powers and authority of the Department of Administrative Services, and inserting in its place a new Code Section 50-5-51 to read as follows:

"50-5-51.

The Department of Administrative Services shall have the power and authority and it shall be the department´s duty, subject to this part:

(1) To canvass all sources of supply and to contract for the lease, rental, purchase, or other acquisition of all supplies, materials, ~~services other than professional and personal employment services, and~~ equipment, and services other than professional and personal employment services required by the state government or any of its ~~departments, institutions, or agencies~~ offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of this state under competitive bidding in the manner and subject to the conditions provided for in this article;

(2) To establish and enforce standard specifications which shall apply to all supplies, materials, ~~and~~ equipment, and services other than professional and personal employment services purchased or to be purchased for the use of the state government for any of its ~~departments, institutions, or agencies~~ offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state;

(3) To contract for all ~~telephones, telegraph,~~ electric light power, postal, and any and all other contractual purchases and needs of the state government or any of its ~~departments, institutions, or agencies;~~ offices, agencies departments, boards, bureaus, commissions, institutions, or other entities of the state or in lieu of such contract to authorize any ~~department, institution, or agency~~ offices, agencies departments, boards, bureaus, commissions, institutions, or other entities of the state to purchase or contract for any or all such services;

(4) To have general supervision of all storerooms and stores operated by the state government or any of its ~~departments, institutions, or agencies~~ offices, agencies departments, boards, bureaus, commissions, institutions, or other entities of the state; to provide for transfer or exchange to or between all state ~~departments, institutions, and agencies~~ offices, agencies departments, boards, bureaus, commissions, institutions, or other entities of the state or to sell all supplies, materials, and equipment which are

surplus, obsolete, or unused; and to maintain inventories of all fixed property and of all movable equipment, supplies, and materials belonging to the state government or any of its ~~departments, institutions, or agencies~~ offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state;

(5) To make provision for and to contract for all state printing, including all printing, binding, paper stock, and supplies or materials in connection with the same, except as provided in this part. For the purpose of obtaining bids on printing, it shall have the power to divide the printing into various classes and to provide stipulations and specifications therefor and advertise, receive bids, and contract separately for the various classes;

(6) To procure all fidelity bonds covering state officials and employees required by law or administrative directive to give such bonds; and, in order to provide the bonds at a minimum expense to the state, the bonds may be procured under a master policy or policies providing insurance agreements on a group or blanket coverage basis with or without deductibles or excess coverage over the state´s retention as determined by the commissioner. Fidelity bonds covering state officials and employees which are procured pursuant to this paragraph shall expressly provide that all state officials and employees who are required by law to be bonded be named in the fidelity bond as insureds or beneficiaries under the terms of the fidelity bond. Inclusion of any state official, officer, or employee required by law or administrative directive to be specifically bonded in a master fidelity bond under the terms of this part shall satisfy any statutory requirement that the official, officer, or employee be bonded. Fidelity bonds procured pursuant to this paragraph shall also expressly provide for indemnification, out of the proceeds of the fidelity bonds, of all state officials and employees for any liability or expense of any nature resulting from a claim on the state official´s or employee´s bonds which is due to or as a result of an act of a subordinate of the state official or employee. In order to finance the continuing liability established with other agencies of state government, the commissioner is authorized to retain all moneys paid to the department as premiums on policies of insurance, all moneys received as interest, and all moneys received from other sources to set up and maintain a reserve for the payment of such liability and the expenses necessary to administer properly the insurance program. The commissioner shall invest the moneys in the same manner as other such moneys in his or her possession;

(7) To establish and operate the state agency for surplus property for the purpose of distributing surplus properties made available by the federal government under Pub. L. 152, 81st Congress, as amended, to institutions, organizations, agencies, and others as may be eligible to receive such surplus properties pursuant to applicable provisions of federal law. The commissioner may enter into or authorize the aforesaid state agency for

surplus property to enter into cooperative agreements with the federal government for the use of surplus properties by the state agency. The commissioner is authorized to enter into contracts with other state, local, or federal agencies, or with other persons with respect to the construction, operation, maintenance, leasing, or rental of a facility for use by the state agency. Further, the ~~commission~~ commissioner may acquire real or personal property for such purposes. ~~All personnel, personal property, including records, office equipment, supplies, contracts, books, papers, documents, maps, appropriations, accounts within and outside the state treasury, funds, and vehicles; and all other similar property under the control of the State Board of Education and used for the direct support and operation of the state agency for surplus property are transferred to the Department of Administrative Services. Each state officer or employee affected under this paragraph shall be entitled to all rights which he or she possessed as a state officer or employee before July 1, 1978, including all rights of rank or grade, rights to vacation, sick pay and leave, rights under any retirement or personnel plan, and any other rights under law or administrative policy. This paragraph is not intended to create any new rights for any state officer or employee but to continue only those rights in effect before July 1, 1978;~~

(8) To delegate, in the department´s discretion, to medical facilities under the jurisdiction of the Board of Regents for the University System of Georgia the ability to purchase medical equipment and medical supplies necessary for medical teaching purposes; ~~and~~

(9) To enter into or authorize agreements with private nonprofit organizations or other states and their political subdivisions to effectuate the purposes and policies of this chapter;

(10) To collect, retain, and carry over from year to year in a reserve fund any moneys, rebates, or commissions payable to the state that are generated by supply contracts established pursuant to Code Section 50-5-57; and

(11) To conduct the procurement of all technology resource purchases not exempted from competitive bidding requirements in accordance with the technology standards and specifications established by the Georgia Technology Authority.″

SECTION 11.

Said title is further amended by striking Code Section 50-5-52, relating to the auditing of purchasing records, and inserting in its place a new Code Section 50-5-52 to read as follows:

″50-5-52.

The Department of Administrative Services or the state accounting officer shall have power to examine books, records, and papers of any ~~board, department, commission, institution, or~~ office, agency, department, board, bureau, commission, institution, or other entity of the state government relative to purchases and to require those in control thereof to furnish the

department with copies of any and all records pertaining thereto~~; and at the direction of the Governor the department shall report in such detail as may be required any purchase or purchases made by any such branch of the state government~~."

SECTION 12.

Said title is further amended by striking Code Section 50-5-53, relating to the employment of purchasing personnel, and inserting in its place a new Code Section 50-5-53 to read as follows:

"50-5-53.

Subject to applicable rules of the State Merit System of Personnel Administration, the Department of Administrative Services may appoint as many assistants and employees, and fix their salaries, as are essential to the state´s interest in the execution of the terms and provisions of this part. Assignment of an assistant or assistants to any of the departments, institutions, or agencies of the state may be made by the Department of Administrative Services. It shall be unlawful for any other agency of the state to employ any person for the purposes set out in this part unless that person complies with the minimum requirements for purchasing personnel established by the State Merit System of Personnel Administration in conjunction with the Department of Administrative Services."

SECTION 13.

Said title is further amended by striking Code Section 50-5-67, relating to the procedures to be used by the Department of Administrative Services for competitive sealed bids and proposals, and inserting in its place a new Code Section 50-5-67 to read as follows:

"50-5-67.

(a) Except as otherwise provided in this Code section, contracts exceeding $100,000.00 shall be awarded by competitive sealed bidding. If the total requirement of any given commodity will involve an expenditure in excess of $250,000.00, sealed bids shall be solicited by advertisement in the Georgia Procurement Registry established under subsection (b) of Code Section 50-5-69 and in addition may be solicited by advertisement in a newspaper of state-wide circulation at least once and at least 15 calendar days, except for construction projects which shall have 30 calendar days allowed, prior to the date fixed for opening of the bids and awarding of the contract. Other methods of advertisement, however, may be adopted by the Department of Administrative Services when such other methods are deemed more advantageous for the particular item to be purchased. In any event, it shall be the duty of the Department of Administrative Services to solicit sealed bids from reputable owners of supplies in all cases where the total requirement will exceed $100,000.00. When it appears that the use of competitive sealed bidding is either not

~~practicable~~ justified or not advantageous to the state, a contract may be entered into by competitive sealed proposals, subject to the following conditions:

(1) This method of solicitation shall only be used after a written determination by the Department of Administrative Services that the use of competitive sealed bidding is not ~~practicable~~ justified or is not advantageous to the state;

(2) Proposals shall be solicited through a request for proposals;

(3) Adequate public notice of the request for proposals shall be given in the same manner as provided for competitive sealed bidding;

(4) A register of proposals shall be prepared and made available for public inspection;

(5) The request for proposals shall state the relative importance of price and other evaluation factors;

(6) As provided in the request for proposals and under regulations to be developed by the Department of Administrative Services, discussions may be conducted with ~~reasonable~~ qualified offerors who submit proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and ~~revision of proposals; and such~~ clarification of proposals. After such clarifications, revisions may be permitted ~~after submissions and~~ to technical proposals and price proposals prior to award for the purpose of obtaining best and final offers. The Department of Administrative Services is authorized to solicit multiple revisions to price proposals for the purpose of obtaining the most advantageous proposal to the state. In conducting discussions or soliciting any revisions, there shall be no disclosure of any information contained in ~~derived from~~ proposals submitted by competing offerors. However, this prohibition on disclosure of information shall not prohibit the Department of Administrative Services from disclosing to competing offerors any preliminary rankings and scores of competing offerors´ proposals during the course of any negotiations or revisions of proposals other than with respect to the procurement of construction contracts; and

(7) The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

(b) Except as otherwise provided for in this part, all contracts for the purchases of supplies, materials, ~~or~~ equipment, or services other than professional and personal employment services made under this part shall, wherever possible, be based upon competitive bids and shall be awarded to the lowest responsible bidder, taking into consideration the quality of

the articles to be supplied and conformity with the standard specifications which have been established and prescribed, the purposes for which the articles are required, the discount allowed for prompt payment, the transportation charges, and the date or dates of delivery specified in the bid and any other cost affecting the total cost of ownership during the life cycle of the supplies, materials, or equipment as specified in the solicitation document. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the commissioner of administrative services, which rules and regulations shall prescribe, among other things, the manner, time, and places for proper advertisement for the bids, indicating the time and place when the bids will be received; the article for which the bid shall be submitted and the standard specification prescribed for the article; the amount or number of the articles desired and for which the bids are to be made; and the amount, if any, of bonds or certified checks to accompany the bids. Any and all bids so received may be rejected.

(c)(1)(A) When bids received pursuant to this part are unreasonable or unacceptable as to terms and conditions, are noncompetitive, or the ~~low~~ lowest responsible bid exceeds available funds and it is determined in writing by the Department of Administrative Services that time or other circumstances will not permit or justify the delay required to resolicit competitive bids, a contract may be negotiated pursuant to this Code section, provided that each responsible bidder who submitted such a bid under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate. In cases where the bids received are noncompetitive or the ~~low~~ lowest responsible bid exceeds available funds, the negotiated price shall be lower than the lowest rejected bid of any responsible bidder under the original solicitation.

(B) With respect to procurement for construction contracts, if the bid from the lowest responsible and responsive bidder exceeds the funds budgeted for the contract, a contract may be negotiated with such apparent low bidder to obtain a contract price within the budgeted amount. Such negotiations may include changes in the scope of work and other bid requirements.

(2) When proposals received pursuant to this part are unreasonable or unacceptable as to terms and conditions, are noncompetitive, or the lowest responsible proposal exceeds available funds and it is determined in writing by the Department of Administrative Services that time or other circumstances will not permit or justify the delay required to resolicit competitive proposals, a contract may be negotiated pursuant to this Code section, provided that each responsible offeror who submitted such a proposal under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate. In cases where the proposals received are noncompetitive or the lowest responsible proposal exceeds available funds, any contract award made pursuant to this

paragraph shall be made to the offeror whose negotiated proposal is most advantageous to the state according to the evaluation criteria in the request for proposals rather than to the offeror whose negotiated proposal offers the lowest price, provided that the negotiated price of the most advantageous proposal is lower than the price of the rejected responsible proposal with the lowest price under the original solicitation.

(d) Every bid or proposal conforming to the terms of the advertisement provided for in this Code section, together with the name of the bidder, shall be recorded, and all such records with the name of the successful bidder or offeror indicated thereon shall, after award or letting of the contract, be subject to public inspection upon request. The Department of Administrative Services shall also, within ~~five days~~ one day after the award or letting of the contract, publish the name of the successful bidder or offeror on public display in a conspicuous place in the department´s office or on the Georgia Procurement Registry so that it may be easily seen by the public. The public notice on public display shall also show the price or the amount for which the contract was let and the commodities covered by the contract. The Department of Administrative Services shall also, within ~~five days~~ one day after the award or letting of the contract, publish on public display the names of all persons whose bids, offers, or proposals were rejected by it, together with a statement giving the reasons for such rejection. Bids, offers, or proposals shall be opened in public by the Department of Administrative Services, which shall canvass the bids, offers, or proposals and award the contract according to the terms of this part. A proper bond for the faithful performance of any contract shall be required of the successful bidder or offeror in the discretion of the Department of Administrative Services. After the contracts have been awarded, the Department of Administrative Services shall certify to the ~~various departments, institutions, and agencies of the state government~~ offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state the sources of the supplies and the contract price of the various supplies, materials, services, and equipment so contracted for.

(e) On all bids or proposals received or solicited by the Department of Administrative Services, by any ~~department, agency, board, or bureau of the state,~~ office, agency, department, board, bureau, commission, institution, or other entity of the state or by any person in behalf of any ~~department, agency, board, or bureau of the state,~~ office, agency, department, board, bureau, commission, institution, or other entity of the state except in cases provided for in Code Section 50-5-58, the following certificate of independent price determination shall be used:

'I certify that this bid, offer, or proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid, offer, or proposal for the same materials, supplies, services, or equipment and is in all respects fair and

without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid, offer, or proposal and certify that I am authorized to sign this bid, offer, or proposal for the bidder or offeror.'

(f) Notwithstanding any other provision of this article, the commissioner of administrative services is authorized to promulgate rules and regulations to govern auctions conducted by state agencies in which vendors´ prices are made public during the bidding process to enable the state agency or agencies to seek a lower price. This auction bidding process will continue until the lowest price is obtained within the auction´s time limit. This auction bidding process shall not be used to procure construction services or for any contract for goods or services valued at less than $100,000.00.

(g) Any reference in this article to sealed bids or sealed proposals shall not preclude the Department of Administrative Services from receiving bids and proposals by way of the Internet or other electronic means or authorizing state agencies from receiving bids and proposals by way of the Internet or other electronic means; provided, however, any bids or proposals received by any state agency by way of any electronic means must comply with security standards established by the Georgia Technology Authority.″

SECTION 13A.

Said title is further amended by striking subsection (a) of Code Section 50-5-69, relating to purchases without competitive bidding, and inserting in its place a new subsection (a) to read as follows:

″(a) If the needed supplies, materials, ~~or~~ equipment, or service can reasonably be expected to be acquired for less than $5,000.00 and is not available on state contracts or through statutorily required sources, the purchase may be effectuated without competitive bidding. The commissioner of administrative services may by rule and regulation authorize the various ~~state departments, agencies, and instrumentalities~~ offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf ~~which do not exceed $100,000.00~~ and may provide the circumstances and conditions under which such purchases may be effected. In order to assist and advise the commissioner of administrative services in making determinations to allow offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf, there is created a Purchasing Advisory Council consisting of the executive director of the Georgia Technology Authority or his or her designee; the director of the Office of Planning and Budget or his or her designee; the chancellor of the University System of Georgia or his or her designee; the commissioner of technical and adult education or his or her designee;

the commissioner of transportation or his or her designee; the Secretary of State or his or her designee; the commissioner of human resources or his or her designee; the commissioner of community health or his or her designee; and one member to be appointed by the Governor. The commissioner of administrative services shall promulgate the necessary rules and regulations governing meetings of such council and the method and manner in which such council will assist and advise the commissioner of administrative services."

SECTION 14.

Said title is further amended by striking Code Section 50-5-71, relating to emergency purchases, and inserting in its place a new Code Section 50-5-71 to read as follows:

"50-5-71.

In case of any emergency arising from any unforeseen causes, including delay by contractors, delay in transportation, breakdown in machinery, unanticipated volume of work, or upon the declaration of a state of emergency by the Governor, the Department of Administrative Services or any other ~~department, institution, or agency of~~ office, agency, department, board, bureau, commission, institution, or other entity of the state ~~government~~ to which emergency purchasing powers have been granted by the Department of Administrative Services shall have power to purchase in the open market any necessary supplies, materials, services, or equipment for immediate delivery to any office, agency, department, board, bureau, commission, institution, or ~~agency~~ other entity of the state ~~government~~. A report on the circumstances of the emergency and the transactions thereunder shall be duly recorded in a book or file to be kept by the Department of Administrative Services."

SECTION 15.

Said title is further amended by striking Code Section 50-5-80, relating to the purchase of items through the Department of Administrative Services for personal ownership, and inserting in its place a new Code Section 50-5-80 to read as follows:

"50-5-80.

(a) As used in this Code section, the term 'person' includes natural persons, firms, partnerships, corporations, or associations.

(b) It shall be unlawful for any employee or official of the state or any other person to purchase, directly or indirectly, through the Department of Administrative Services, or through any ~~agency, department, board, or bureau~~ office, agency, department, board, bureau, commission, institution, authority, or other entity of the state, any article, material, merchandise, ware, commodity, or other thing of value for the personal or individual

ownership of himself or herself or other person or persons. All articles, materials, merchandise, wares, commodities, or other things of value purchased, directly or indirectly, by or through the Department of Administrative Services or by or through any ~~agency, department, board, or bureau~~ office, agency, department, board, bureau, commission, institution, authority or other entity of the state shall be and remain the property of the state until sold or disposed of by the state in accordance with the laws governing the disposition or sale of other state property.

(c) It shall be unlawful for any person knowingly to sell or deliver any article, material, merchandise, ware, commodity, or other thing of value to any person, directly or indirectly, by or through the Department of Administrative Services or by or through any ~~department, agency, board, or bureau~~ office, agency, department, board, bureau, commission, institution, authority, or other entity of the state for the individual and personal ownership of such person or other person or persons except that property of the state may be sold or otherwise disposed of in accordance with the laws governing the sale or other disposition of state property.

(d) Any person who violates any provision of this Code section shall be guilty of a misdemeanor.

(e) This Code section shall not apply to any official employee purchase program for technology resources facilitated by and through the Georgia Technology Authority for state employees and public school employees of county or independent boards of education."

SECTION 16.

Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees, is amended in Code Section 45-12-73, relating to the powers and duties of the Office of Planning and Budget, by striking "and" at the end of paragraph (10); by striking the period at the end of paragraph (11) and inserting in its place "; and"; and by adding a new paragraph immediately following paragraph (11), to be designated paragraph (12), to read as follows:

"(12) Promulgate rules and regulations governing:

(A) The use of passenger-carrying automobiles purchased or leased by any office, agency, department, board, bureau, commission, institution, authority, or other entity of the state;

(B) The rental of passenger-carrying automobiles by officials, officers, and employees of the state and for reimbursement of rental expense;

(C) A system of billings for motor vehicle service including the provision of fuel, maintenance, and repair costs for vehicles which are owned or leased by any office, agency, department, board, bureau, commission, institution, authority, or other entity of the state; and

(D) Acquisition, utilization, preventive maintenance, repair, and replacement of all other motor vehicles, exclusive of the off-the-road and highly specialized motor vehicle equipment as defined by the Office of Planning and Budget, owned or leased by any office, agency, department, board, bureau, commission, institution, authority, or other entity of the state."

SECTION 17.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by striking Code Section 50-19-1, relating to the authority of the Department of Administrative Services to issue rules governing the use of state vehicles and to establish a motor pool, and inserting in its place a new Code Section 50-19-1 to read as follows:

"50-19-1.

~~(a)~~ The Department of Administrative Services is authorized and empowered:

(1) To establish and operate an interagency motor pool near the state capitol and to establish and operate motor pools at such other locations as may be desirable to promote efficient and economical use of passenger-carrying automobiles by officers, officials, or employees of the state and of the various ~~departments, institutions, boards, bureaus, or agencies~~ offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state~~. Further, the Department of Administrative Services is authorized to provide for the operation, maintenance, and repair of such passenger-carrying automobiles from funds appropriated for this purpose by law, including the establishment of maintenance and repair centers; and~~;

(2) To purchase passenger-carrying automobiles for the use of officers, officials, or employees of the state and of the various offices, agencies, departments, ~~institutions,~~ boards, bureaus, commissions, institutions, authorities, or other entities ~~or agencies~~ of the state who are required to travel by automobile in performance of their official duties~~.~~; and

~~(b) The commissioner of administrative services is authorized and empowered:~~

~~(1) To promulgate rules and regulations governing the use of passenger-carrying automobiles purchased by any department, institution, board, bureau, or agency of the state from funds appropriated by law;~~

~~(2) To promulgate rules and regulations governing the rental of passenger-carrying automobiles by officials, officers, and employees of the state and to provide for reimbursement of rental expense;~~

(3) To provide ~~rules and regulations, including~~ a system of billings for ~~motor vehicle service (including the provision of fuel), maintenance, and repair costs, governing the maintenance, repair, service, and sale of fuel for motor vehicles which are:~~ the use of motor vehicles in any motor pool operated by the Department of Administrative Services

and to collect, retain, and carry over from year to year in a reserve fund any moneys collected for the use of such motor vehicles.

~~(A) Owned by any department, institution, board, bureau, or agency of the state;~~

~~(B) Owned by any other governmental entity; or~~

~~(C) Purchased with state grant funds for use under contract to any department, institution, board, bureau, or agency of the state in order to allow said department, institution, board, bureau, or agency to carry out its duties;~~

~~(4) To provide policies and regulations governing acquisition, utilization, preventive maintenance, repair, and replacement of all motor vehicles, exclusive of the off-the-road and highly specialized motor vehicle equipment, owned by any department, institution, board, bureau, or agency of the state; and~~

~~(5) To promulgate rules and regulations authorizing and governing the rental of interagency motor pool vehicles by officials, officers, and employees of local political subdivisions of the state when, in the sole discretion of the commissioner of administrative services, it is in the best interests of the state to allow such rentals.~~″

SECTION 18.

Said title is further amended by striking Code Section 50-19-3, relating to an exception for the Department of Agriculture to purchase vehicles, and inserting in its place a new Code Section 50-19-3 to read as follows:

″50-19-3.

~~The Department of Agriculture is authorized to purchase passenger-carrying automobiles through the Department of Administrative Services for the use of Department of Agriculture employees in the performance of their official duties; and the Department of Agriculture is expressly authorized and empowered to purchase and maintain such passenger-carrying automobiles for such purposes. The number of such automobiles and regulations governing their use, utilization, and replacement shall be determined by the Department of Agriculture, subject to any budgetary or other restrictions enacted by the General Assembly. The Department of Agriculture is authorized to contract with the Department of Administrative Services for any automobile or motor vehicle services provided for in this article.~~ Reserved.″

SECTION 19.

Said title is further amended by striking Code Section 50-19-4, relating to the acceptance of vehicles by units of the university system, and inserting in its place a new Code Section 50-19-4 to read as follows:

″50-19-4.

~~Where passenger-carrying automobiles or other motor vehicles may be donated or where the use of such motor vehicles may be donated to units of the university system for the more effective performance of their educational, research, or other duties, such unit is authorized to take title to or possession of such vehicles and to pay such costs as are reasonable and necessary for their maintenance, protection, and operation.~~ Reserved.″

SECTION 20.

Said title is further amended by striking Code Section 50-19-5, relating to an exception for the Department of Veterans Service to purchase certain vehicles, and inserting in its place a new Code Section 50-19-5 to read as follows:

″50-19-5.

~~The Department of Veterans Service is authorized and empowered to purchase, through the Department of Administrative Services as other state purchases are made, an ambulance for use in transporting Georgia veterans to and from United States Department of Veterans Affairs hospitals and other hospitals and to, from, and between facilities operated by the State Board of Veterans Service for the care and treatment of veterans. Such purchase shall not fall within the restrictions relating to purchase, use, and furnishing of automobiles as provided in this article.~~ Reserved.″

SECTION 21.

Said title is further amended by striking Code Section 50-19-6, relating to the authority of state institutions to purchase vehicles, and inserting in its place a new Code Section 50-19-6 to read as follows:

″50-19-6.

The various ~~departments, institutions, boards, bureaus, or agencies~~ offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state~~, except for the Department of Agriculture, which is provided for in Code Section 50-19-3,~~ are authorized, subject to the ~~appropriation of funds for such purposes~~ approval of the Office of Planning and Budget consistent with legislative appropriations, to purchase, lease, or accept as donations passenger-carrying automobiles and other motor vehicles for the use of officers, officials, and employees in the performance of their official duties. The operation, use, maintenance, service, and repair of passenger-carrying automobiles shall be governed by the rules and regulations promulgated by the ~~Department of Administrative Services pursuant to Code Section 50-19-1, except as otherwise provided by law~~ Office of Planning and Budget pursuant to Code Section 45-12-73.″

SECTION 22.

Said title is further amended by striking Code Section 50-19-8, relating to the transportation of campaign literature at state expense, and inserting in its place a new Code Section 50-19-8 to read as follows:

"50-19-8.

It shall be unlawful for any officer of this state or any employee of any ~~department, bureau, agency, board, or institution~~ office, agency, department, board, bureau, commission, institution, authority, or other entity of the state while traveling in vehicles upon which the state is paying transportation mileage to transport any political campaign literature or matter~~,~~ or to engage in soliciting votes~~,~~ or to transport any person or persons soliciting votes in any election or primary."

SECTION 23.

Said title is further amended by striking Code Section 50-19-9, relating to penalties for violations of rules and regulations governing the purchase or use of vehicles, and inserting in its place a new Code Section 50-19-9 to read as follows:

"50-19-9.

Any person violating any provision of this article or any other general law relating to purchase of automobiles with state funds ~~and~~ or use of automobiles by state officers or employees shall be guilty of a misdemeanor and, upon conviction thereof, also shall be removed from office."

SECTION 24.

Said title is further amended by striking Code Section 50-16-144, relating to the disposition of unserviceable property, and inserting in its place a new Code Section 50-16-144 to read as follows:

"50-16-144.

~~When any public property becomes unserviceable, it may be sold or otherwise disposed of by order of the proper authority, and an entry of the same shall be made in the inventory book; and the money received therefrom shall be paid into the treasury.~~ Reserved."

SECTION 25.

Said title is further amended by striking Code Section 50-5-17, relating to revenue from the sale of surplus state equipment, and inserting in its place a new Code Section 50-5-17 to read as follows:

″50-5-17.

~~In order to ensure continuity of service from year to year, the~~ The Department of Administrative Services is authorized to retain in a reserve fund moneys ~~paid into it~~ generated from the sale of ~~its~~ any surplus ~~equipment and to apply such funds to the purchase of new equipment~~ personal property pursuant to Article 4 of this chapter. Such funds may be used to cover any cost associated with disposing of the state´s surplus personal property or such funds may, subject to the approval of the Office of Planning and Budget, be used to purchase personal property for the Department of Administrative Services or for any offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state government.″

SECTION 26.

Said title is further amended by striking Code Section 50-16-160, relating to the duty of the Department of Administrative Services to maintain inventory records of personal property owned by state institutions, and inserting in its place a new Code Section 50-16-160 to read as follows:

″50-16-160.

(a) It shall be the duty of the Department of Administrative Services to establish and maintain an accurate central inventory of movable personal property owned by the state and any ~~office, department, board, bureau, commission, institution, or other agency~~ offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state; and it shall be the duty of each officer and employee thereof to furnish the Department of Administrative Services full information for such inventory and otherwise assist it in establishing and maintaining the inventory.

(b) The inventory shall be maintained on a current basis; and state officers and employees shall furnish the Department of Administrative Services such information as may be required by it to keep the inventory current.

(c) The inventory records shall be available for inspection at all times during normal working hours; and copies of the inventory records or any part thereof shall be provided to the Governor and the General Assembly, or committees thereof, upon request.″

SECTION 27.

Said title is further amended by striking Code Section 50-16-161, relating to inclusion or exclusion of personal property from inventory records, and inserting in its place a new Code Section 50-16-161 to read as follows:

"50-16-161.

~~(a) This part shall apply to movable personal property for all state agencies, authorities, and entities except for those agencies, authorities, and entities provided for in subsection (a) of Code Section 50-16-161.1, which shall be defined as any item which meets the following criteria:~~

~~(1) Any item which is basically nonconsumable and nonexpendable in nature, such as motor vehicles, mechanized and nonmechanized equipment, office equipment, appliances, etc.;~~

~~(2) Any item with an estimated usable life expectancy of three or more years and an item acquisition cost of $1,000.00 or more; or~~

~~(3) Any item or items which an agency feels should be included in its personal property inventory even though it fails to meet the criteria outlined above.~~

~~(b) The Department of Administrative Services shall be authorized to include or exclude items from the inventory as it deems necessary; and the determination shall be binding upon the various departments, boards, bureaus, commissions, institutions, and other agencies of the state government.~~ Reserved."

SECTION 28.

Said title is further amended by striking Code Section 50-16-161, relating to inclusion or exclusion of personal property from inventory records, and inserting in its place a new Code Section 50-16-161 to read as follows:

"50-16-161.

~~(a) This part shall apply to movable personal property, which shall be defined as any item which meets the following criteria:~~

~~(1) Any item which is basically nonconsumable and nonexpendable in nature, such as motor vehicles, mechanized and nonmechanized equipment, office equipment, appliances, etc.;~~

~~(2) Any item with an estimated usable life expectancy of three or more years and an item acquisition cost of $1,000.00 or more; or~~

~~(3) Any item or items which an agency feels should be included in its personal property inventory even though it fails to meet the criteria outlined above.~~

~~(b) The Department of Administrative Services shall be authorized to include or exclude items from the inventory as it deems necessary; and the determination shall be binding upon the various departments, boards, bureaus, commissions, institutions, and other agencies of the state government.~~ Reserved."

SECTION 29.

Said title is further amended by striking Code Section 50-16-162, relating to rules and regulations governing the inventory of personal property, and inserting in its place a new Code Section 50-16-162 to read as follows:

"50-16-162.

The ~~commissioner of administrative services~~ state accounting officer is authorized and directed to adopt and promulgate such rules and regulations establishing those items of personal property required to be kept on the inventory records of all offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state as may be necessary to carry out this part."

SECTION 30.

Said title is further amended by adding a new Code section immediately following Code Section 50-16-162, to be designated Code Section 50-16-163, to read as follows:

"50-16-163.

The Department of Administrative Services or the state accounting officer shall have the power to examine books, records, papers, or personal property of offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entity of the state for the purposes of ensuring compliance with this part."

SECTION 30A.

Code Section 32-2-61 of the Official Code of Georgia Annotated, relating to limitations on the power of the Department of Transportation regarding contracts, is amended by striking subsection (c) and inserting in its place a new subsection (c) to read as follows:

"(c) Except as authorized by Article 3 of Chapter 5 of Title 50, the ~~The~~ department is prohibited from entering into any contract for the purchase of supplies, materials, ~~and~~ equipment, ~~except as authorized by Article 3 of Chapter 5 of Title 50~~ or services, except those services ancillary to the construction and maintenance of a public road."

SECTION 31.

(a) Except as otherwise provided in subsection (b) of this section, this Act shall become effective on July 1, 2005.

(b) Section 28 of this Act shall become effective on June 30, 2006.

SECTION 32.

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