

Senate Bill 146

By: Senators Seabaugh of the 28th, Shafer of the 48th, Stoner of the 6th, Pearson of the 51st,
Williams of the 19th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to
2 public works bidding, so as to provide definitions; to provide for the advertisement of
3 contract opportunities; to provide for the specifications of such notices and advertisements;
4 to provide for related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to public works
8 bidding, is amended by revising Code Section 36-91-2, relating to definitions, as follows:

9 "36-91-2.

10 As used in this chapter, the term:

11 (1) 'Alternate bids' means the amount stated in the bid or proposal to be added to or
12 deducted from the amount of the base bid or base proposal if the corresponding change
13 in project scope or alternate materials or methods of construction is accepted.

14 (2) 'Base bid' or 'base proposal' means the amount of money stated in the bid or proposal
15 as the sum for which the bidder or proposer offers to perform the work.

16 ~~(1)~~(3) 'Bid bond' means a bond with good and sufficient surety or sureties for the faithful
17 acceptance of the contract payable to, in favor of, and for the protection of the
18 governmental entity for which the contract is to be awarded.

19 ~~(2)~~(4) 'Change order' means an alteration, addition, or deduction from the original scope
20 of work as defined by the contract documents to address changes or unforeseen
21 conditions necessary for project completion.

22 ~~(3)~~(5) 'Competitive sealed bidding' means a method of soliciting public works
23 construction contracts whereby the award is based upon the lowest responsive,
24 responsible bid in conformance with the provisions of subsection (b) of Code Section
25 36-91-21.

1 ~~(4)~~(6) 'Competitive sealed proposals' means a method of soliciting public works
2 contracts whereby the award is based upon criteria identified in a request for proposals
3 in conformance with the provisions of subsection (c) of Code Section 36-91-21.

4 ~~(5)~~(7) 'Emergency' means any situation resulting in imminent danger to the public health
5 or safety or the loss of an essential governmental service.

6 ~~(6)~~(8) 'Governing authority' means the official or group of officials responsible for
7 governance of a governmental entity.

8 ~~(7)~~(9) 'Governmental entity' means a county, municipal corporation, consolidated
9 government, authority, board of education, or other public board, body, or commission
10 but shall not include any authority, board, department, or commission of the state, or a
11 public transportation agency as defined by Chapter 9 of Title 32.

12 ~~(8)~~(10) 'Payment bond' means a bond with good and sufficient surety or sureties payable
13 to the governmental entity for which the work is to be done and intended for the use and
14 protection of all subcontractors and all persons supplying labor, materials, machinery, and
15 equipment in the prosecution of the work provided for in the public works construction
16 contract.

17 ~~(9)~~(11) 'Performance bond' means a bond with good and sufficient surety or sureties for
18 the faithful performance of the contract and to indemnify the governmental entity for any
19 damages occasioned by a failure to perform the same within the prescribed time. Such
20 bond shall be payable to, in favor of, and for the protection of the governmental entity for
21 which the work is to be done.

22 ~~(10)~~(12) 'Public works construction' means the building, altering, repairing, improving,
23 or demolishing of any public structure or building or other public improvements of any
24 kind to any public real property other than those projects covered by Chapter 4 of
25 Title 32. Such term does not include the routine operation, repair, or maintenance of
26 existing structures, buildings, or real property.

27 ~~(11)~~(13) 'Responsible bidder' or 'responsible offeror' means a person or entity that has
28 the capability in all respects to perform fully and reliably the contract requirements.

29 ~~(12)~~(14) 'Responsive bidder' or 'responsive offeror' means a person or entity that has
30 submitted a bid or proposal that conforms in all material respects to the requirements set
31 forth in the invitation for bids or request for proposals.

32 ~~(13)~~(15) 'Scope of project' means the work required by the original contract documents
33 and any subsequent change orders required or appropriate to accomplish the intent of the
34 project as described in the bid documents.

35 ~~(14)~~(16) 'Scope of work' means the work that is required by the contract documents.

1 ~~(15)~~(17) 'Sole source' means those procurements made pursuant to a written
 2 determination by a governing authority that there is only one source for the required
 3 supply, service, or construction item."

4 SECTION 2.

5 Said chapter is further amended by revising Code Section 36-91-20, relating to written
 6 contract required, as follows:

7 "36-91-20.

8 (a) All public works construction contracts subject to this chapter entered into by a
 9 governmental entity with private persons or entities shall be in writing and on file and
 10 available for public inspection at a place designated by such governmental entity.
 11 Municipalities and consolidated governments shall execute and enter into contracts in the
 12 manner provided in applicable local legislation or by ordinance.

13 (b)(1) Prior to entering into a public works construction contract other than those
 14 exempted by Code Section 36-91-22, a governmental entity shall publicly advertise the
 15 contract opportunity. Such notice shall be posted conspicuously in the governing
 16 authority's office and shall be advertised in the legal organ of the county or by electronic
 17 means on an Internet website of the governmental entity or an Internet website identified
 18 by the governmental entity which may include the Georgia Procurement Registry as
 19 provided by Code Section 50-5-69.

20 (2) Contract opportunities that are advertised in the legal organ shall be advertised a
 21 minimum of two times, with the first advertisement occurring at least four weeks prior
 22 to the opening of the sealed bids or proposals. The second advertisement shall follow no
 23 earlier than two weeks from the first advertisement.

24 (3) Contract opportunities that are advertised solely on the Internet shall be posted
 25 continuously for at least four weeks prior to the opening of sealed bids or proposals.
 26 Inadvertent or unintentional loss of Internet service during the advertisement period shall
 27 not require the contract award or bid or proposal opening to be delayed.

28 (4) Contract opportunities that will be awarded by competitive sealed bids shall have
 29 Plans plans and specifications ~~shall be~~ available on the first day of the advertisement and
 30 shall be open to inspection by the public. The plans and specifications shall indicate if
 31 the project will be awarded by base bid or base bid plus alternates and:

32 (A) A statement listing whether all anticipated federal, state, or local permits required
 33 for the project have been obtained or an indication of the status of the application for
 34 each such permit including when it is expected to be obtained; and

1 (B) A statement listing whether all anticipated rights of way and easements required
 2 for the project have been obtained or an indication of the status as to when each such
 3 rights of way or easements are expected to be obtained.

4 (5) Contract opportunities that will be awarded by competitive sealed proposals shall
 5 be publicly advertised with a request for proposals which request shall include
 6 conceptual program information in the request for proposals describing the requested
 7 services in a level of detail appropriate to the project delivery method selected for the
 8 project.

9 (6) The advertisement shall include such details and specifications as will enable the
 10 public to know the extent and character of the work to be done.

11 (7) All required notices of advertisement shall also advise of any mandatory
 12 prequalification requirements or pre-bid conferences as well as any federal
 13 requirements pursuant to subsection (d) of Code Section 36-91-22. Any advertisement
 14 which provides notice of a mandatory pre-bid conference or prequalification shall
 15 provide reasonable advance notice of said conference or for the submittal of such
 16 prequalification information.

17 (c) Governmental entities are authorized to utilize any construction delivery method,
 18 provided that all public works construction contracts subject to the requirements of this
 19 chapter that:

20 (1) Place the bidder or offeror at risk for construction; and

21 (2) Require labor or building materials in the execution of the contract

22 shall be awarded on the basis of competitive sealed bidding or competitive sealed
 23 proposals. Governmental entities shall have the authority to reject ~~any and~~ all bids or
 24 proposals or any bid or proposal that is nonresponsive and to waive technicalities and
 25 informalities.

26 (d) No governmental entity shall issue or cause to be issued any addenda modifying plans
 27 and specifications within a period of 72 hours prior to the advertised time for the opening
 28 bids or proposals, excluding Saturdays, Sundays, and legal holidays. However, if the
 29 necessity arises to issue an addendum modifying plans and specifications within the 72
 30 hour period prior to the advertised time for the opening of bids or proposals, excluding
 31 Saturdays, Sundays, and legal holidays, then the opening of bids or proposals shall be
 32 extended at least 72 hours, excluding Saturdays, Sundays, and legal holidays, from the date
 33 of the original bid or proposal opening without need to readvertise as required by
 34 subsection (b) of this Code section.

35 (e) Bid and contract documents may contain provisions authorizing the issuance of change
 36 orders, without the necessity of additional requests for bids or proposals, within the scope

1 of the project when appropriate or necessary in the performance of the contract. Change
2 orders may not be used to evade the purposes of this article.

3 (f) Any governmental entity may, in its discretion, adopt a process for mandatory
4 prequalification of prospective bidders or offerors; provided, however, that:

5 (1) Criteria for prequalification must be reasonably related to the project or the quality
6 of work;

7 (2) Criteria for prequalification must be available to any prospective bidder or offeror
8 requesting such information for each project that requires prequalification;

9 (3) Any prequalification process must include a method of notifying prospective bidders
10 or offerors of the criteria for or limitations to prequalification; and

11 (4) Any prequalification process must include a procedure for a disqualified bidder to
12 respond to his or her disqualification to a representative of the governmental entity;
13 provided, however, that such procedure shall not be construed to require the
14 governmental entity to provide a formal appeals procedure. A prequalified bidder or
15 offeror can not be later disqualified without cause."

16 **SECTION 3.**

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