

HB382 ENGROSSED



1 HB382
2 DJSEHTT-2
3 By Representative Paramore
4 RFD: State Government
5 First Read: 21-Mar-24



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A BILL
TO BE ENTITLED
AN ACT

To amend Sections 41-4-161, 41-4-164, 41-16-82, 41-16-83, 41-16-85, and 41-16-87, Code of Alabama 1975; to provide further for the procedures for protesting certain competitive bid contracts.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 41-4-161, 41-4-164, 41-16-82, 41-16-83, 41-16-85, and 41-16-87, Code of Alabama 1975, are amended to read as follows:

"§41-4-161

(a) (1) A bona fide prospective bidder or offeror who is aggrieved in connection with the solicitation of a contract may file a notice of intent to protest to ~~with~~ the Chief Procurement Officer within 14 ~~five~~ calendar ~~of the date of~~ days ~~issuance of~~ after the date the solicitation, or any amendment to it, is issued, if the amendment is at issue. Upon filing the notice, a bona fide prospective bidder or offeror shall have seven calendar days to submit a formal written protest.

(2)a. Except as provided in paragraph b., a bona fide actual bidder or offeror who is aggrieved in connection with



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29 the intended award or the award of a contract may file a
30 notice of intent to protest ~~to~~with the Chief Procurement
31 Officer within ~~14~~five calendar days ~~o~~after the earlier of:
32 (i) the date of the award; or (ii) notification of
33 intent to award, ~~whichever is earlier,~~ is posted in accordance
34 with this article. Upon filing a notice of intent to protest,
35 a bona fide actual bidder or offeror may submit a formal
36 protest within seven calendar days. The Chief Procurement
37 Officer may make an award if he or she does not receive the
38 notice of intent to protest within five days after it is
39 timely filed.

40 b. A matter that could have been raised under
41 subdivision (1) as a protest of the solicitation may not be
42 raised as a protest of the award or intended award of a
43 contract.

44 (3) A notice of intent to protest filed under
45 subdivision (1) or (2) shall be in writing, ~~be~~ filed with the
46 Chief Procurement Officer, ~~and~~ set forth the intent to
47 protest, and state the grounds of the protest and the relief
48 requested with enough particularity to give notice of the
49 issues to be decided.

50 (b) The Chief Procurement Officer, or his or her
51 designee, may settle and resolve the protest of a bona fide
52 actual or prospective bidder or offeror concerning the
53 solicitation or award of a contract in accordance with rules
54 adopted under this article.

55 (c) If the protest is not resolved by mutual agreement
56 within 10 days after the protest is filed, the Chief



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57 Procurement Officer shall commence an administrative review of
58 the protest and issue a decision in writing within 14 days
59 ~~o~~after the review.

60 (d) A copy of the decision under subsection (c) shall
61 be mailed or otherwise furnished immediately to the protestor
62 and any other party intervening.

63 (e) A decision under subsection (c) shall be final and
64 conclusive, unless fraudulent, or unless a party adversely
65 affected by the decision appeals administratively to the
66 Director of Finance in accordance with Section 41-4-164.

67 (f) In the event of a timely protest under subsection
68 (a) or an appeal under Section 41-4-164, the state may not
69 proceed further with the solicitation or with the award of the
70 contract until five days after notice of the final decision is
71 provided to the protestor; however, a, ~~except that~~
72 solicitation or award of a protested contract ~~is not stayed~~may
73 proceed without delay if the Chief Procurement Officer, after
74 consultation with the head of the using agency or the head of
75 a purchasing agency, makes a written determination that the
76 solicitation or award of the contract without further delay is
77 necessary to protect the best interests of the state."

78 "§41-4-164

79 (a) A party that receives an adverse decision from the
80 Chief Procurement Officer under ~~subsection (c) of~~ Section
81 41-4-161 (c) or ~~subsection (c) of~~ Section 41-4-162 (c) may
82 appeal the decision to the Director of Finance.

83 (b) ~~An~~Any appeal to the Director of Finance shall be
84 made in writing within five days ~~o~~after receipt of the



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85 adverse decision ~~from~~by the Chief Procurement Officer.

86 (c) The Director of Finance shall hold unlawful and set
87 aside any decision issued by the Chief Procurement Officer
88 that the director finds to be arbitrary, capricious, an abuse
89 of discretion, or otherwise ~~not in accordance~~inconsistent with
90 law.

91 (d) The Director of Finance shall issue a written
92 decision within 14 days ~~of~~after receipt of the appeal.

93 (e) A copy of the decision under subsection (d) shall
94 be mailed or otherwise furnished immediately to the parties.

95 (f) A decision under subsection (d) shall be final and
96 conclusive unless fraudulent.

97 (g) The administrative procedures and remedies provided
98 in this division shall not be construed as a contested case
99 under the Alabama Administrative Procedures Act."

100 "§41-16-82

101 (a) This article shall only apply ~~in cases where the~~to
102 either of the following:

103 (1) A proposed grant that exceeds twenty-five thousand
104 dollars (\$25,000).

105 (2) A ~~or~~ proposed contract at issue exceeds five
106 thousand dollars (\$5,000) that meets or exceeds the threshold
107 for bid or other formal solicitations under Article 5 of
108 Chapter 4 of Title 41 or any other law that requires formal
109 solicitation procedures for awarding public contracts.

110 (b) (1) All persons ~~who~~that, for the purpose of direct
111 financial gain, submit a proposal, bid, contract, or grant
112 proposal to the State of Alabama, shall include a disclosure



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113 statement identical to, or provide the same required
114 disclosures as, the disclosure statement developed by the
115 Attorney General and approved by the Legislative Council. The
116 disclosure statement shall not be required for ~~contracts~~any of
117 the following:

118 a. Contracts with publicly traded companies.

119 b. Contracts for gas, water, and electric services
120 where no competition exists, or where rates are fixed by law
121 or ordinance.

122 c. The award of economic development incentives.

123 (2) In circumstances where a contract is awarded by
124 competitive bid or other formal solicitation procedure, the
125 disclosure statement shall be required only from the person
126 ~~receiving~~awarded the contract and shall be submitted by that
127 person within 1030 days of the award.

128 ~~(c) Notwithstanding any provision of this article to~~
129 ~~the contrary, a person entering into contracts or receiving~~
130 ~~multiple grants during the same calendar year with multiple~~
131 ~~state agencies may submit a single comprehensive annual~~
132 ~~disclosure statement to each agency, department, or division~~
133 ~~from which the person has been awarded contracts or grants.~~

134 ~~(d) (1)~~ (c) (1) State agencies, departments, or divisions
135 are authorized to establish electronic systems for submission
136 of annual disclosure statements, and submission to the shared
137 electronic systems shall satisfy the requirements for
138 submitting a disclosure statement to the agency, department,
139 or division.

140 (2) Agencies, departments, and divisions are further



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141 authorized to establish shared electronic systems to satisfy
142 the requirements of this article."

143 "§41-16-83

144 (a) The information required on the disclosure
145 statement shall ~~be made under oath and penalty as prescribed~~
146 ~~herein and shall include~~, but not be limited to, the
147 following:

148 (1) A list of the names and addresses of any public
149 official, ~~and~~ public employee, ~~and~~ or family members of the
150 public official ~~and~~ or public employee, ~~7~~ who may have a family
151 relationship with the submitting person or his or her
152 immediate family members, ~~7~~ or ~~his or her~~ employees, ~~7~~ and who may
153 directly personally benefit financially from the contract,
154 proposal, request for proposal, invitation to bid, or grant
155 proposal.

156 (2) A description of any financial benefit that may be
157 knowingly gained by any public official, public employee,
158 ~~and~~ or family ~~members~~ member of the public official ~~and~~ or public
159 employee that may result ~~either directly or indirectly~~ from
160 the person or his or her immediate family members, or his or
161 her employees.

162 (3) The names and addresses of any paid consultant or
163 lobbyist for the contract, proposal, request for proposal,
164 invitation to bid, or grant proposal.

165 (b) The State of Alabama shall not enter into any
166 contract or appropriate any public funds with any person
167 ~~who~~ that refuses to provide information required by this
168 section.



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169 (c) The information required on the disclosure
170 statement shall be certified by the vendor or the grant
171 recipient. The certification may be performed by electronic
172 methods and must include all of the following:

173 (1) A representation that the individual who signs the
174 document is authorized to sign on behalf of the vendor, if
175 applicable.

176 (2) A declaration that the disclosure statement is
177 given under the penalty of perjury in the jurisdiction in
178 which it is executed.

179 (3) The date and place of execution."

180 "§41-16-85

181 A copy of the disclosure statement shall be filed ~~with~~
182 ~~the awarding entity and~~ as required by this article, retained
183 as required by the State Records Commission, and made
184 available for review for audit purposes by the Department of
185 Examiners of Public Accounts ~~and if it pertains to a state~~
186 ~~contract, or~~ other auditing authority. If the disclosure
187 pertains to a state contract that must be submitted to the
188 Contract Review Permanent Legislative Oversight Committee
189 pursuant to Article 3 of Chapter 2 of Title 29, a copy
190 ~~shall~~ must be submitted to the ~~Contract Review Permanent~~
191 ~~Legislative Oversight Committee~~ committee. Any disclosure
192 statement filed pursuant to this article shall be a public
193 record."

194 "§41-16-87

195 This article shall not apply to either of the
196 following:



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197 (a) Any person who ~~any entity which~~ does not receive
198 state funds under a grant or a contract.

199 (b) Any grants or contracts between public procurement
200 units."

201 Section 2. This act shall become effective on June 1,
202 2024.



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House of Representatives

206 Read for the first time and referred21-Mar-24
207 to the House of Representatives
208 committee on State Government
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210 Read for the second time and placed11-Apr-24
211 on the calendar:
212 0 amendments
213
214 Read for the third time and passed16-Apr-24
215 as amended
216 Yeas 102
217 Nays 0
218 Abstains 1
219
220

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John Treadwell
Clerk