

SB277 INTRODUCED



1 SB277
2 E6UP222-1
3 By Senator Kitchens
4 RFD: Finance and Taxation Education
5 First Read: 02-Apr-24



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SYNOPSIS:

Under existing law, a prospective bidder or offeror who is protesting a competitive bid contract must follow certain time periods and deadlines throughout the process.

Under existing law, any person that submits to a contract, a contract proposal, a bid, or a grant proposal to the state for an amount equal to or greater than a certain amount, and for the purpose of financial gain, is required to include a disclosure statement for each contract, contract proposal, bid, or grant proposal that it submits, subject to certain exceptions.

Under existing law a disclosure statement must provide certain information about individuals who may gain financial benefit from their relationships with the person submitting the contract, contract proposal, bid, or grant proposal.

This bill would revise the procedures to protest a contract to be let by competitive bid to the Chief Procurement Officer by providing a certain number of days for filing a notice of intent to protest and an additional number of days to file a formal written protest.

This bill would provide that the protest



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29 procedures are not subject to the Administrative
30 Procedures Act.

31 This bill would increase the minimum amount of a
32 proposed contract for which a disclosure statement is
33 required, allow the use of alternative disclosure
34 statement forms, and allow the submission of a single
35 annual disclosure statement for multiple proposals with
36 the same state agency, department, or division.

37 This bill would allow for an alternative method
38 of certifying the authenticity of a disclosure
39 statement. Under existing law, a prospective bidder or
40 offeror who is protesting a competitive bid contract
41 must follow certain time periods and deadlines
42 throughout the process.

43 Under existing law, any person that submits to a
44 a contract, a contract proposal, a bid, or a grant
45 proposal to the state for an amount equal to or greater
46 than a certain amount, and for the purpose of financial
47 gain, is required to include a disclosure statement for
48 each contract, contract proposal, bid, or grant
49 proposal that it submits, subject to certain
50 exceptions.

51 Under existing law a disclosure statement must
52 provide certain information about individuals who may
53 gain financial benefit from their relationships with
54 the person submitting the contract, contract proposal,
55 bid, or grant proposal.

56 This bill would revise the procedures to protest



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57 a contract to be let by competitive bid to the Chief
58 Procurement Officer by providing a certain number of
59 days for filing a notice of intent to protest and an
60 additional number of days to file a formal written
61 protest.

62 This bill would provide that the protest
63 procedures are not subject to the Administrative
64 Procedures Act.

65 This bill would increase the minimum amount of a
66 proposed contract for which a disclosure statement is
67 required, allow the use of alternative disclosure
68 statement forms, and allow the submission of a single
69 annual disclosure statement for multiple proposals with
70 the same state agency, department, or division.

71 This bill would allow for an alternative method
72 of certifying the authenticity of a disclosure
73 statement.

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A BILL

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TO BE ENTITLED

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AN ACT

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80 To amend Sections 41-4-161, 41-4-164, 41-16-82,
81 41-16-83, 41-16-85, and 41-16-87, Code of Alabama 1975; to
82 provide further for the procedures for protesting certain
83 competitive bid contracts.

84 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:



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85 Section 1. Sections 41-4-161, 41-4-164, 41-16-82,
86 41-16-83, 41-16-85, and 41-16-87, Code of Alabama 1975, are
87 amended to read as follows:

88 "§41-4-161

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

97 (2)a. Except as provided in paragraph b., a bona fide
98 actual bidder or offeror who is aggrieved in connection with
99 the intended award or the award of a contract may file a
100 notice of intent to protest ~~to~~with the Chief Procurement
101 Officer within 14five calendar days ~~of~~ after the earlier of:
102 (i) the date of the award; or (ii) notification ~~of~~
103 intent to award, ~~whichever is earlier,~~ is posted in accordance
104 with this article. Upon filing a notice of intent to protest,
105 a bona fide actual bidder or offeror may submit a formal
106 protest within seven calendar days. The Chief Procurement
107 Officer may make an award if he or she does not receive the
108 notice of intent to protest within five days after it is
109 timely filed.

110 b. A matter that could have been raised under
111 subdivision (1) as a protest of the solicitation may not be
112 raised as a protest of the award or intended award of a



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113 contract.

114 (3) A notice of intent to protest filed under
115 subdivision (1) or (2) shall be in writing, ~~be~~ filed with the
116 Chief Procurement Officer, ~~and~~ set forth the intent to
117 protest, and state the grounds of the protest and the relief
118 requested with enough particularity to give notice of the
119 issues to be decided.

120 (b) The Chief Procurement Officer, or his or her
121 designee, may settle and resolve the protest of a bona fide
122 actual or prospective bidder or offeror concerning the
123 solicitation or award of a contract in accordance with rules
124 adopted under this article.

125 (c) If the protest is not resolved by mutual agreement
126 within 10 days after the protest is filed, the Chief
127 Procurement Officer shall commence an administrative review of
128 the protest and issue a decision in writing within 14 days
129 ~~o~~after the review.

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

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

137 (f) In the event of a timely protest under subsection
138 (a) or an appeal under Section 41-4-164, the state may not
139 proceed further with the solicitation or with the award of the
140 contract until five days after notice of the final decision is



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141 provided to the protestor, ~~;~~ however, a~~except that~~
142 solicitation or award of a protested contract ~~is not stayed~~may
143 proceed without delay if the Chief Procurement Officer, after
144 consultation with the head of the using agency or the head of
145 a purchasing agency, makes a written determination that the
146 solicitation or award of the contract without further delay is
147 necessary to protect the best interests of the state."

148 "§41-4-164

149 (a) A party that receives an adverse decision from the
150 Chief Procurement Officer under ~~subsection (e) of~~ Section
151 41-4-161 (c) or ~~subsection (e) of~~ Section 41-4-162 (c) may
152 appeal the decision to the Director of Finance.

153 (b) ~~An~~Any appeal to the Director of Finance shall be
154 made in writing within five days ~~of~~after receipt of the
155 adverse decision ~~from~~by the Chief Procurement Officer.

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

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

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

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

167 (g) The administrative procedures and remedies provided
168 in this division shall not be construed as a contested case



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169 under the Alabama Administrative Procedures Act."

170 "§41-16-82

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

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

175 (2) A ~~or~~ proposed contract ~~at issue exceeds five~~
176 ~~thousand dollars (\$5,000)~~ that meets or exceeds the threshold
177 for bid or other formal solicitations under Title 39, Article
178 5 of Chapter 4 of Title 41, or any other law that requires
179 formal solicitation procedures for awarding public contracts.

180 (b) (1) All persons ~~who~~that, for the purpose of direct
181 financial gain, submit a proposal, bid, contract, or grant
182 proposal to the State of Alabama, shall include a disclosure
183 statement identical to, or provide the same required
184 disclosures as, the disclosure statement developed by the
185 Attorney General and approved by the Legislative Council. The
186 disclosure statement shall not be required for any of the
187 following: ~~contracts-~~

188 a. Contracts with publicly traded companies.

189 b. Contracts for gas, water, and electric services
190 where no competition exists, or where rates are fixed by law
191 or ordinance.

192 c. The award of economic development incentives.

193 (2) In circumstances where a contract is awarded by
194 competitive bid or other formal solicitation procedure, the
195 disclosure statement shall be required only from the person
196 ~~receiving~~ awarded the contract and shall be submitted by that



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197 person within ~~10~~30 days of the award.

198 (c) Notwithstanding any provision of this article to
199 the contrary, a person entering into contracts or receiving
200 multiple grants during the same calendar year with multiple
201 state agencies may submit a single comprehensive annual
202 disclosure statement to each agency, department, or division
203 from which the person has been awarded, contracts, or grants.

204 (d) (1) State agencies, departments, or divisions are
205 authorized to establish electronic systems for submission of
206 annual disclosure statements, and submission to the shared
207 electronic systems shall satisfy the requirements for
208 submitting a disclosure statement to the agency, department,
209 or division.

210 (2) Agencies, departments, and divisions are further
211 authorized to establish shared electronic systems to satisfy
212 the requirements of this article."

213 "§41-16-83

214 (a) The information required on the disclosure
215 statement shall ~~be made under oath and penalty as prescribed~~
216 ~~herein and shall~~ include, but not be limited to, the
217 following:

218 (1) A list of the names and addresses of any public
219 official, ~~and~~ public employee, ~~and~~or family members of the
220 public official ~~and~~or public employee~~7~~ who may have a family
221 relationship with the submitting person or his or her
222 immediate family members~~7~~ or ~~his or her~~ employees~~7~~ and who may
223 directly personally benefit financially from the contract,
224 proposal, request for proposal, invitation to bid, or grant



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225 proposal.

226 (2) A description of any financial benefit that may be
227 knowingly gained by any public official, public employee,
228 ~~and/or~~ family ~~members~~member of the public official ~~and/or~~ public
229 employee that may result ~~either directly or indirectly~~ from
230 the person or his or her immediate family members, or his or
231 her employees.

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

235 (b) The State of Alabama shall not enter into any
236 contract or appropriate any public funds with any person
237 ~~who~~that refuses to provide information required by this
238 section.

239 (c) The information required on the disclosure
240 statement shall be certified by the vendor or the grant
241 recipient. The certification may be performed by electronic
242 methods and must include all of the following:

243 (1) A representation that the individual who signs the
244 document is authorized to sign on behalf of the vendor, if
245 applicable.

246 (2) A declaration that the disclosure statement is
247 given under the penalty of perjury in the jurisdiction in
248 which it is executed.

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

250 "§41-16-85

251 A copy of the disclosure statement shall be filed ~~with~~
252 ~~the awarding entity and~~ as required by this article, retained



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253 as required by the State Records Commission, and made
254 available for review for audit purposes by the Department of
255 Examiners of Public Accounts ~~and if it pertains to a state~~
256 ~~contract,~~ or other auditing authority. If the disclosure
257 pertains to a state contract that must be submitted to the
258 Contract Review Permanent Legislative Oversight Committee
259 pursuant to Article 3 of Chapter 2 of Title 29, a copy
260 ~~shall~~ must be submitted to the ~~Contract Review Permanent~~
261 ~~Legislative Oversight Committee~~ committee. Any disclosure
262 statement filed pursuant to this article shall be a public
263 record."

264 "§41-16-87

265 This article shall not apply to either of the
266 following:

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

269 (b) Any grants or contracts between public procurement
270 units as defined in Section 41-4-170."

271 Section 2. This act shall become effective on June 1,
272 2024.