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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 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



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.

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A BILL

44

TO BE ENTITLED

45

AN ACT

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47 To amend Sections 41-4-161, 41-4-164, 41-16-82,
48 41-16-83, 41-16-85, and 41-16-87, Code of Alabama 1975; to
49 provide further for the procedures for protesting certain
50 competitive bid contracts.

51 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

52 Section 1. Sections 41-4-161, 41-4-164, 41-16-82,
53 41-16-83, 41-16-85, and 41-16-87, Code of Alabama 1975, are
54 amended to read as follows:

55 "§41-4-161

56 (a) (1) A bona fide prospective bidder or offeror who is



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

64 (2)a. Except as provided in paragraph b., a bona fide
65 actual bidder or offeror who is aggrieved in connection with
66 the intended award or the award of a contract may file a
67 notice of intent to protest ~~to~~with the Chief Procurement
68 Officer within ~~14~~five calendar days ~~of~~after the earlier of:
69 (i) the date of the award; or (ii) notice~~notification~~ of
70 intent to award, ~~whichever is earlier,~~ is posted in accordance
71 with this article. Upon filing a notice of intent to protest,
72 a bona fide actual bidder or offeror may submit a formal
73 protest within seven calendar days. The Chief Procurement
74 Officer may make an award if he or she does not receive the
75 notice of intent to protest within five days after it is
76 timely filed.

77 b. A matter that could have been raised under
78 subdivision (1) as a protest of the solicitation may not be
79 raised as a protest of the award or intended award of a
80 contract.

81 (3) A notice of intent to protest filed under
82 subdivision (1) or (2) shall be in writing, ~~be~~ filed with the
83 Chief Procurement Officer, ~~and~~ set forth the intent to
84 protest, and state the grounds of the protest and the relief



85 requested with enough particularity to give notice of the
86 issues to be decided.

87 (b) The Chief Procurement Officer, or his or her
88 designee, may settle and resolve the protest of a bona fide
89 actual or prospective bidder or offeror concerning the
90 solicitation or award of a contract in accordance with rules
91 adopted under this article.

92 (c) If the protest is not resolved by mutual agreement
93 within 10 days after the protest is filed, the Chief
94 Procurement Officer shall commence an administrative review of
95 the protest and issue a decision in writing within 14 days
96 ~~of~~after the review.

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

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

104 (f) In the event of a timely protest under subsection
105 (a) or an appeal under Section 41-4-164, the state may not
106 proceed further with the solicitation or with the award of the
107 contract until five days after notice of the final decision is
108 provided to the protestor; however, a, ~~except that~~
109 solicitation or award of a protested contract ~~is not stayed~~may
110 proceed without delay if the Chief Procurement Officer, after
111 consultation with the head of the using agency or the head of
112 a purchasing agency, makes a written determination that the



113 solicitation or award of the contract without further delay is
114 necessary to protect the best interests of the state."

115 "§41-4-164

116 (a) A party that receives an adverse decision from the
117 Chief Procurement Officer under ~~subsection (e) of~~ Section
118 41-4-161 (c) or ~~subsection (e) of~~ Section 41-4-162 (c) may
119 appeal the decision to the Director of Finance.

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

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

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

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

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

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

137 "§41-16-82

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

140 (1) A proposed grant that exceeds twenty-five thousand



141 dollars (\$25,000).

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

147 (b) (1) All persons ~~who~~that, for the purpose of direct
148 financial gain, submit a proposal, bid, contract, or grant
149 proposal to the State of Alabama, shall include a disclosure
150 statement identical to, or provide the same required
151 disclosures as, the disclosure statement developed by the
152 Attorney General and approved by the Legislative Council. The
153 disclosure statement shall not be required for ~~contracts~~any of
154 the following:

155 a. Contracts with publicly traded companies.

156 b. Contracts for gas, water, and electric services
157 where no competition exists, or where rates are fixed by law
158 or ordinance.

159 c. The award of economic development incentives.

160 (2) In circumstances where a contract is awarded by
161 competitive bid or other formal solicitation procedure, the
162 disclosure statement shall be required only from the person
163 ~~receiving~~awarded the contract and shall be submitted by that
164 person within ~~10~~30 days of the award.

165 (c) Notwithstanding any provision of this article to
166 the contrary, a person entering into contracts or receiving
167 multiple grants during the same calendar year with multiple
168 state agencies may submit a single comprehensive annual



169 disclosure statement to each agency, department, or division
170 from which the person has been awarded contracts or grants.

171 (d) (1) State agencies, departments, or divisions are
172 authorized to establish electronic systems for submission of
173 annual disclosure statements, and submission to the shared
174 electronic systems shall satisfy the requirements for
175 submitting a disclosure statement to the agency, department,
176 or division.

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

180 "§41-16-83

181 (a) The information required on the disclosure
182 statement shall ~~be made under oath and penalty as prescribed~~
183 ~~herein and shall~~ include, but not be limited to, the
184 following:

185 (1) A list of the names and addresses of any public
186 official, ~~and~~ public employee, ~~and~~or family members of the
187 public official ~~and~~or public employee, who may have a family
188 relationship with the submitting person or his or her
189 immediate family members, ~~or his or her employees,~~ and who may
190 directly personally benefit financially from the contract,
191 proposal, request for proposal, invitation to bid, or grant
192 proposal.

193 (2) A description of any financial benefit that may be
194 knowingly gained by any public official, public employee,
195 ~~and~~or family ~~members~~member of the public official ~~and~~or public
196 employee that may result ~~either directly or indirectly~~ from



197 the person or his or her immediate family members, or his or
198 her employees.

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

202 (b) The State of Alabama shall not enter into any
203 contract or appropriate any public funds with any person
204 ~~who~~that refuses to provide information required by this
205 section.

206 (c) The information required on the disclosure
207 statement shall be certified by the vendor or the grant
208 recipient. The certification may be performed by electronic
209 methods and must include all of the following:

210 (1) A representation that the individual who signs the
211 document is authorized to sign on behalf of the vendor, if
212 applicable.

213 (2) A declaration that the disclosure statement is
214 given under the penalty of perjury in the jurisdiction in
215 which it is executed.

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

217 "§41-16-85

218 A copy of the disclosure statement shall be filed ~~with~~
219 ~~the awarding entity and~~as required by this article, retained
220 as required by the State Records Commission, and made
221 available for review for audit purposes by the Department of
222 Examiners of Public Accounts ~~and if it pertains to a state~~
223 ~~contract,~~or other auditing authority. If the disclosure
224 pertains to a state contract that must be submitted to the



225 Contract Review Permanent Legislative Oversight Committee
226 pursuant to Article 3 of Chapter 2 of Title 29, a copy
227 ~~shall~~must be submitted to the ~~Contract Review Permanent~~
228 ~~Legislative Oversight Committee~~committee. Any disclosure
229 statement filed pursuant to this article shall be a public
230 record."

231 "§41-16-87

232 This article shall not apply to either of the
233 following:

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

236 (b) Any grants or contracts between public procurement
237 units."

238 Section 2. This act shall become effective on June 1,
239 2024.