

HB382 INTRODUCED



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

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29 than a certain amount, and for the purpose of financial
30 gain, is required to include a disclosure statement for
31 each contract, contract proposal, bid, or grant
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34 Under existing law a disclosure statement must
35 provide certain information about individuals who may
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37 the person submitting the contract, contract proposal,
38 bid, or grant proposal.

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A BILL

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TO BE ENTITLED

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AN ACT

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

50 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

54 "§41-4-161

55 (a) (1) A bona fide prospective bidder or offeror who is
56 aggrieved in connection with the solicitation of a contract



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

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

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

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



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85 issues to be decided.

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

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

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

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

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



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113 necessary to protect the best interests of the state."

114 "§41-4-164

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

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

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

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

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

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

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

136 "§41-16-82

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

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



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141 (2) A ~~er~~-proposed contract ~~at issue exceeds five~~
142 ~~thousand dollars (\$5,000)~~ that meets or exceeds the threshold
143 for bid or other formal solicitations under Title 39, Article
144 5 of Chapter 4 of Title 41, or any other law that requires
145 formal solicitation procedures for awarding public contracts.

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

154 a. Contracts with publicly traded companies.

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

158 c. The award of economic development incentives.

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

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



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169 from which the person has been awarded, contracts, or grants.

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

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

179 "§41-16-83

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

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

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



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197 her employees.

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

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

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

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

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

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

216 "§41-16-85

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



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

230 "§41-16-87

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

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

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

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