



Brian P. Kemp
Governor

J. Alexander Atwood
Commissioner

October 1, 2020

MEMORANDUM

To: Georgia State Procurement Professionals and Suppliers

From: Lisa Eason *LE*
Deputy Commissioner - State Purchasing Division (SPD)
Department of Administrative Services (DOAS)

Subject: Implementation of House Bill (HB) 953 to be Effective January 1, 2021

As you may be aware, HB 953 was passed by the General Assembly during the 2020 Legislative Session and will become effective on January 1, 2021. A copy of the Act may be found at the following link:

<http://www.legis.ga.gov/Legislation/20192020/195305.pdf>.

HB 953 amends the State Purchasing Act as follows effective **January 1, 2021**:

- **Expands SPD's authority** to contract with and authorize state entities to contract with **cooperative purchasing entities**. Beginning January 1, 2021, SPD may authorize the use of cooperative purchasing entities that are for-profit, non-profit or governmental entities consistent with the Georgia Procurement Manual.
- Identifies **certain terms that may not be included in state contracts** and, if included, shall be **void and unenforceable**. Section 2 of the bill identifies the prohibited terms.
- Establishes that **bids, offers or proposals** shall be available for **public inspection** in accordance with the Georgia Open Records Act.

Please be advised that SPD is currently in the process of preparing for the implementation of HB 953 by creating a website and training resources specifically tailored to state procurement professionals and, as applicable, suppliers interested in doing business with the State of Georgia.

If you would like to sign up to receive future communications directly from SPD regarding the implementation of HB 953, please email purchasing@doas.ga.gov.

AN ACT

To amend Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to the Department of Administrative Services, so as to provide new authority for the department to enter into or authorize agreements with cooperative purchasing organizations; to provide that certain terms in particular types of state contracts shall be void and unenforceable and should not be included in such agreements; to require the Department of Administrative Services to provide such information on its website; to specify that bids, offers, or proposals and registers thereof shall be subject to the public disclosure provisions of Article 4 of Chapter 18 of Title 50, relating to open records; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to the Department of Administrative Services, is amended in Code Section 50-5-51, relating to power, authority, and duty of department, by revising paragraph (9) as follows:

"(9) To enter into or authorize agreements with cooperative purchasing organizations or other states and their political subdivisions to effectuate the purposes and policies of this chapter;"

SECTION 2.

Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to the general authority, duties, and procedure of state purchasing, is amended by adding a new Code section to read as follows:

"50-5-64.1.

(a) A contract entered into pursuant to this part shall not contain a term that:

(1) Requires the state or any agency, authority, board, bureau, commission, department, institution, or any other entity thereof to:

(A) Defend, indemnify, or hold harmless another person; or

(B) Be bound by terms and conditions that are unknown at the time of signing such contract or which may be unilaterally changed by the other party;

(2) Provides for:

- (A) A person other than the Attorney General to serve as legal counsel for the state or for any agency, authority, board, bureau, commission, department, institution, or any other entity thereof;
 - (B) A venue for any action or dispute other than the Superior Court of Fulton County, Georgia, as provided in Code Section 50-21-1;
 - (C) The contract to be construed in accordance with the laws of a state other than the State of Georgia;
 - (D) Binding arbitration; or
 - (E) An automatic renewal such that state funds are or would be obligated in subsequent fiscal years; or
- (3) Is inconsistent with the provisions of Article 4 of Chapter 18 of this title, relating to open records.
- (b) If a contract entered into pursuant to this part contains a term prohibited under subsection (a) of this Code section, such term shall be void, and the contract shall be otherwise enforceable as if it did not contain such term.
- (c) The Department of Administrative Services shall maintain a copy of this Code section on its website."

SECTION 3.

Said part is further amended by revising paragraph (4) of subsection (d) of Code Section 50-5-67, relating to the competitive bidding procedure, method of soliciting bids, required conditions for competitive sealed proposals, clarification, contract awards, negotiation of contracts, certificate of independent price determination, and receiving electronic bids, as follows:

"(4) The Department of Administrative Services shall canvass the bids, offers, or proposals and award the contract according to the terms of this part. The Department of Administrative Services shall prepare a register of bids, offers, or proposals which shall become available for public inspection, in accordance with Article 4 of Chapter 18 of this title, relating to open records, after the issuance of the department's public notice of intent to award to the successful bidder or offeror. The bids, offers, or proposals shall not be subject to public disclosure, in accordance with Article 4 of Chapter 18 of this title, relating to open records, until after the issuance of the public notice of intent to award a contract to the successful bidder or offeror except that audited financial statements not otherwise publicly available but required to be submitted in the bid, offer, or proposal shall not be subject to such public disclosure."

SECTION 4.

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