SB277

E6UP222-1

By Senator Kitchens

RFD: Finance and Taxation Education

First Read: 02-Apr-24

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 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

procedures are not subject to the Administrative Procedures Act.

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

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

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

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

contract.

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

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

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

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

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

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

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

"§41-4-164

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

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

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

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

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

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

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

under the Alabama Administrative Procedures Act."

"§41-16-82

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

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

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

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

a. Contracts with publicly traded companies.

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

c. The award of economic development incentives.

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

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

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

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

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

"§41-16-83

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

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

proposal.

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

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

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

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

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

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

(3) The date and place of execution."

"§41-16-85

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

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

"§41-16-87

This article shall not apply to either of the following:

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

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

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