

GEORGIA CODE
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*** Current Through the 2013 Regular Session ***

TITLE 32. HIGHWAYS, BRIDGES, AND FERRIES
CHAPTER 2. DEPARTMENT OF TRANSPORTATION
ARTICLE 4. EXERCISE OF POWER TO CONTRACT GENERALLY

O.C.G.A. § 32-2-78 (2013)

§ 32-2-78. Definitions

As used in this Code section and Code Sections 32-2-79 and 32-2-80, the term:

(1) "Participating local governing authority" includes the governing authority of any county or municipality whose geographical jurisdiction includes the project.

(2) "Project" means a project which the department deems appropriate for letting pursuant to the procedures of Code Section 32-2-79 and Code Section 32-2-80.

HISTORY: Code 1981, § 32-2-78, enacted by Ga. L. 2009, p. 976, § 10/SB 200.

O.C.G.A. § 32-2-79 (2013)

§ 32-2-79. Reporting on congestion mitigation; letting of projects

(a) The staff of the department shall jointly identify and report to the board by July 31 of each odd-numbered year those projects on the state-wide transportation improvement program or otherwise identified that afford the greatest gains in congestion mitigation or promotion of economic development.

(b) Any project identified pursuant to subsection (a) of this Code section that will not be initiated within two years of the reporting date or that does not have specific available and complete funding may be let and constructed utilizing the procedures of this Code section and Code Section 32-2-80. All personnel of the department shall cooperate in all respects in the letting, construction, maintenance, and operation of such projects, including without limitation providing such access and control of portions of the state highway system as may be requested or required from time to time for such purposes.

(c) Projects wholly or partly in a metropolitan planning area shall be included in a fiscally constrained transportation improvement program.

HISTORY: Code 1981, § 32-2-79, enacted by Ga. L. 2009, p. 976, § 10/SB 200.

O.C.G.A. § 32-2-80 (2013)

§ 32-2-80. Evaluation of participation in financing projects; public comments; funding; no delegation of eminent domain; performance and payment security

(a) (1) The department shall evaluate a project to determine, in the judgment of the department, appropriate or desirable levels of state, local, and private participation in financing such project. In making such determination, the department shall be authorized and encouraged to seek the advice and input of the affected local governing authorities, applicable metropolitan planning organizations, and the private financial and construction sectors.

(1.1) No constitutional officer or member of the State Transportation Board shall serve as an agent, lobbyist, or board member for any entity directly or indirectly under contract with or negotiating a contract with the department under this Code section for one year after leaving his or her position as a constitutional officer or member of the State Transportation Board.

(2) For projects that are funded or financed in part or in whole by private sources, the department shall be authorized to issue a written request for proposal indicating in general terms the scope of the project, the proposed financial participations in the project, and the factors that will be used in evaluating the proposal and containing or incorporating by reference other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor. Public notice of such request for proposal shall be made at least 90 days prior to the date set for receipt of proposals by posting the legal notice on a single website that shall be procured and maintained for such purposes by the Department of Administrative Services or in substantially the same manner utilized by the department to solicit requests for proposals.

(3) Upon receipt of a proposal or proposals responsive to the request for proposals, the department shall accept written public comment, solicited in the same manner as provided for notice of proposals, for a period of 30 days beginning at least ten days after the date set for receipt of proposals. In addition, the department shall hold at least one public hearing on such proposals not later than the conclusion of the period for public comment.

(4) The department shall engage in individual discussions with two or more respondents deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence and ability to meet the level of private financial participation called for by the department. Repetitive informal interviews shall be permissible. In the event that any local governing authority has agreed to consider financial participation in the project, a representative of such local governing authority, appointed by such local governing authority, may participate in such discussions and interviews. At the discussion stage, the department may discuss estimates of total project costs, including, but not limited to, life cycle costing and nonbinding estimates of price for services. Proprietary information from competing respondents shall not be disclosed to the public or to competitors. At the conclusion of such discussions, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process, the department, with the input of any participating local governing authority, shall select in the order of preference two or more respondents whose qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted with two or more respondents and with the participation of the designated representative of any participating

local governing authority. Upon approval by the department, the commissioner shall select the respondent for project implementation based upon contract terms that are the most satisfactory and advantageous to the state and to the department based upon a thorough assessment of value and the ability of the final project's characteristics to meet state strategic goals and investment policies as provided for by paragraphs (1) through (10) of subsection (a) of Code Section 32-2-41.1. Before making such selection, the commissioner shall consult with any participating local governing authority or authorities. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the request for proposal, the department may award contracts to more than one respondent. Should the department determine in writing and in its sole discretion that only one respondent is fully qualified, or that one respondent is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that respondent.

(5) Nothing in this Code section shall require the department to continue negotiations or discussions arising out of any request for proposal.

(6) The department shall be authorized to promulgate reasonable rules or regulations to assist in its evaluation of the proposal and to implement the purposes of this Code section. The department shall report the content of such rules or regulations to the Transportation Committees of the Senate and House of Representatives for their approval by majority vote prior to the promulgation thereof and shall make quarterly reports to the same chairpersons of all of its activities undertaken pursuant to the provisions of this Code section.

(b) Any contracts entered into pursuant to this Code section may authorize funding to include tolls, fares, or other user fees and tax increments for use of the project that is the subject of the proposal. Such funding may be distributed by contract among the participants in the project as may be provided for by contract. The department may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this Code section and may enter into any contracts required to receive such assistance. The department may determine that it serves the public purpose of this Code section for all or any portion of the costs of a qualifying project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the federal, state, or local government or any instrumentality thereof. The department may agree to make grants or loans to the operator from time to time from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

(c) The commissioner shall be authorized to delegate such duties and responsibilities under this Code section as he or she deems appropriate from time to time; provided, however, that the final approval of contracts provided for in this Code section shall be by action of the State Transportation Board.

(d) The power of eminent domain shall not be delegated to any private entity with respect to any project commenced or proposed pursuant to this Code section.

(e) Any contract for a public-private partnership shall require the private partner or each of its prime contractors to provide performance and payment security. Notwithstanding any other provision of law, the penal sum or amount of such security may be less than the price of the contract involved, based upon the department's determination on a project-by-project basis of what sum may be required to adequately protect the department, the state, and the contracting and subcontracting parties.

HISTORY: Code 1981, § 32-2-80, enacted by Ga. L. 2009, p. 976, § 10/SB 200.