

1 SB107
2 125748-1
3 By Senators Coleman, Beasley, Dunn and Marsh
4 RFD: Commerce, Transportation, and Utilities
5 First Read: 01-MAR-11

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8 SYNOPSIS: This bill would allow the awarding authority
9 to issue a secondary award to certain companies
10 owned and operated by certain individuals certified
11 under the federal HUB Zone program or any small
12 business enterprise located within the state not to
13 exceed 20 percent of the original contract value
14 with exceptions.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT

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20 To amend Section 41-16-57 of the Code of Alabama
21 1975, relating to competitive bids on public contracts; to
22 allow the awarding authority to issue a secondary award to
23 certain companies owned and operated by certain individuals
24 certified under the federal HUB Zone program or any small
25 business enterprise located within the state not to exceed 20
26 percent of the original contract value; and to provide for
27 exceptions.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. The Legislature hereby finds and declares
3 that this amendatory act will help foster and develop
4 businesses throughout the state by allowing small businesses
5 to grow incrementally and contribute to the local economy
6 while adding jobs in the marketplace.

7 Section 2. 41-16-57 of the Code of Alabama 1975, is
8 amended to read as follows:

9 "§41-16-57.

10 "(a) When purchases are required to be made through
11 competitive bidding, awards shall be made to the lowest
12 responsible bidder taking into consideration the qualities of
13 the commodities proposed to be supplied, their conformity with
14 specifications, the purposes for which required, the terms of
15 delivery, transportation charges, and the dates of delivery.
16 If at any time after the award has been made the lowest
17 responsible bidder notifies the awarding authority in writing
18 that the bidder will no longer comply with the terms of the
19 award to provide the goods or services to the awarding
20 authority under the terms and conditions of the original
21 award, or the awarding authority documents that the lowest
22 responsible bidder defaults under the terms of the original
23 award, the awarding authority may terminate the award to the
24 defaulting bidder and make an award to the second lowest
25 responsible bidder for the remainder of the award period
26 without rebidding, provided the award to the second lowest
27 responsible bidder is in all respects made under the terms and

1 conditions contained in the original bid specifications and is
2 for the same or a lower price than the bid originally
3 submitted to the awarding authority by the second lowest
4 responsible bidder.

5 "(b) The awarding authority in the purchase of or
6 contract for personal property or contractual services shall
7 give preference, provided there is no sacrifice or loss in
8 price or quality, to commodities produced in Alabama or sold
9 by Alabama persons, firms, or corporations. Notwithstanding
10 the foregoing, no county official, county commission, school
11 board, city council or city councilmen, or other public
12 official, state board, or state agency charged with the
13 letting of contracts or purchase of materials for the
14 construction, modification, alteration, or repair of any
15 publicly owned facility may specify the use of materials or
16 systems by a sole source, unless:

17 "(1) The governmental body can document to the
18 satisfaction of the State of Alabama Building Commission that
19 the sole source product or service is of an indispensable
20 nature, all other viable alternatives have been explored, and
21 it has been determined that only this product or service will
22 fulfill the function for which the product is needed.
23 Frivolous features will not be considered.

24 "(2) The sole source specification has been
25 recommended by the architect or engineer of record and who
26 also documents that there is no other product available and

1 that the use of the requirement is of an indispensable nature
2 and why.

3 "(3) All information substantiating the use of a
4 sole source specification is documented in writing and is
5 filed into the project file.

6 "(c) (1) Beginning January 1, 2009, for purchases of
7 personal property in instances where the awarding authority
8 determines that the total cost of ownership over the expected
9 life of the item or items, including acquisition costs plus
10 sustaining costs or life cycle costs, can be reasonably
11 ascertained from industry recognized and accepted sources, the
12 lowest responsible bid may be determined to be the bid
13 offering the lowest life cycle costs and otherwise meeting all
14 of the conditions and specifications contained in the
15 invitation to bid. To utilize this subdivision to determine
16 the lowest responsible bidder, the awarding authority shall
17 include a notice in the invitation to bid that the lowest
18 responsible bid may be determined by using life cycle costs
19 and identify the industry recognized and accepted sources that
20 will be applicable to such an evaluation.

21 "(2) No later than November 30, 2008, the Department
22 of Examiners of Public Accounts shall establish procedures for
23 the use of life cycle costs, which shall be distributed to all
24 contracting agencies and shall be used in conducting any
25 audits of the purchasing agency.

1 "(d) The awarding authority or requisitioning agency
2 may reject any bid if the price is deemed excessive or quality
3 of product inferior.

4 "(e) Each record, with the successful bid indicated
5 thereon, and with the reasons for the award if not awarded to
6 the lowest bidder, shall, after award of the order or
7 contract, be open to public inspection.

8 "(f) Contracts for the purchase of personal property
9 or contractual services shall be let for periods not greater
10 than three years. Contracts for the leasing of motor vehicles
11 by local governing bodies shall be let for periods not greater
12 than five years. Lease-purchase contracts for capital
13 improvements and repairs to real property shall be let for
14 periods not greater than 10 years and all other lease-purchase
15 contracts shall be let for periods not greater than 10 years.

16 "(g) The awarding authority may issue a secondary
17 award, not to exceed 20 percent of the original contract
18 value, to any company owned and operated by individuals who
19 are socially and economically disadvantaged, business
20 certified under the federal HUB Zone program, or any small
21 business enterprise located within the state provided that the
22 bid is no more than five percent greater than the bid of the
23 lowest responsible bidder."

24 Section 3. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.