

1 HB97
2 196681-1
3 By Representative Hall
4 RFD: State Government
5 First Read: 05-MAR-19

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8 SYNOPSIS: Under existing law, state contracts for
9 goods and services in excess of \$15,000 are
10 generally required to be let to the lowest
11 responsible bidder, although a state agency may
12 award a contract to a preferred vendor, as defined,
13 if the bid is not more than five percent greater
14 than that of the lowest responsible bidder who is
15 not a preferred vendor.

16 This bill would establish a preference for
17 bidders on state contracts which are geographically
18 disadvantaged business enterprises and would
19 require state contracts for goods or services to be
20 let to geographically disadvantaged business
21 enterprises if the bid is within three percent of
22 the lowest responsible bid.

23 This bill would require the Department of
24 Finance to promulgate rules to achieve the
25 objectives of the bill.

26
27 A BILL

1 TO BE ENTITLED

2 AN ACT

3
4 Relating to the awarding of public contracts; to
5 provide that in the letting of public contracts in which any
6 state, county, or municipal funds are utilized, except those
7 contracts funded in whole or in part with funds received from
8 a federal agency, preference shall be given to the lowest
9 responsive and responsible bidder who is a geographically
10 disadvantaged business enterprise and whose bid is within
11 three percent of the lowest responsible bid; to require the
12 Department of Finance to adopt policies and procedures with
13 the objective of increasing contracts for goods or services
14 with geographically disadvantaged business enterprises; and to
15 provide for awarding contracts to geographically disadvantaged
16 business enterprises.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. As used in this act, the following words
19 shall have the following meanings:

20 (1) DEPARTMENT. The Department of Finance.

21 (2) DIRECTOR. The Director of the Department of
22 Finance.

23 (3) EXPENDITURE. A payment under a contract for
24 goods or services where the department, or a department or
25 agency exercising procurement authority delegated by the
26 department, acts as the sole or primary contracting entity and

1 has selective discretion as to the supplier, vendor, or
2 contractor under the contract.

3 (4) GEOGRAPHICALLY DISADVANTAGED BUSINESS
4 ENTERPRISE. A person or entity that satisfies one or more of
5 the following:

6 a. Is certified as a HUBZone Small Business Concern
7 by the United States Small Business Administration.

8 b. Has a principal place of business located within
9 a qualified opportunity zone within Alabama.

10 c. More than half of its employees have a principal
11 residence located within a qualified opportunity zone as
12 defined by 26 U.S.C. §1400Z-1 within Alabama or work at a
13 location within a qualified opportunity zone, or both.

14 (5) JOINT VENTURE. An agreement that combines two or
15 more businesses for specified purposes involving one or more
16 geographically disadvantaged business enterprises and one or
17 more businesses other than a geographically disadvantaged
18 business enterprise.

19 (6) SUBCONTRACT. An agreement to share a primary
20 contract between a primary contractor that is not a
21 geographically disadvantaged business enterprise and a
22 geographically disadvantaged business enterprise.

23 Section 2. Notwithstanding any provision of law, in
24 the letting of public contracts in which any state, county, or
25 municipal funds are utilized, except those contracts funded in
26 whole or in part with funds received from a federal agency,
27 preference shall be given to the lowest responsible bidder who

1 is a geographically disadvantaged business enterprise and
2 whose bid is within three percent of the lowest responsible
3 bid of a bidder who is a geographically disadvantaged business
4 enterprise.

5 Section 3. The department shall be responsible for
6 all of the following:

7 (1) Identifying eligible geographically
8 disadvantaged business enterprises in cooperation with other
9 state departments and agencies and organizations representing
10 small businesses and reducing or eliminating barriers to
11 participating in state procurement by geographically
12 disadvantaged business enterprises.

13 (2) Adopting a procurement policy for the
14 department, and for each department or agency exercising
15 procurement authority, that establishes a goal that by the
16 2022-2023 fiscal year three percent or more of expenditures in
17 each fiscal year shall be made to geographically disadvantaged
18 business enterprises.

19 (3) Assisting in achieving the goal under
20 subdivision (2) by requiring that contracts include provisions
21 to accommodate subcontracts and joint ventures with
22 geographically disadvantaged business enterprises. The
23 provisions shall require a bidder to indicate the extent of
24 geographically disadvantaged business enterprise
25 participation. Only the portion of a contract that a
26 geographically disadvantaged business enterprise participates

1 in shall be considered in meeting the goal outlined in this
2 section.

3 Section 4. (a) A person or entity seeking
4 certification by the department as a geographically
5 disadvantaged business enterprise shall complete a sworn
6 affidavit in a form determined by the department that includes
7 both of the following:

8 (1) A statement that the person or entity is a
9 geographically disadvantaged business enterprise and is
10 prepared to bid on state contracts.

11 (2) The basis on which the person or entity
12 qualifies as a geographically disadvantaged business
13 enterprise.

14 (b) The affidavit shall be filed with the director
15 of the department or an individual within the department
16 designated by the director.

17 (c) A geographically disadvantaged business
18 enterprise shall comply with the same requirements applicable
19 to other bidders, including any applicable requirements for
20 insurance.

21 Section 5. A geographically disadvantaged business
22 enterprise shall notify the department if it no longer
23 qualifies as a geographically disadvantaged business
24 enterprise.

25 Section 6. (a) The director shall adopt and enforce
26 rules to implement this act.

1 (b) The director shall monitor compliance with this
2 act and shall report a violation to the Attorney General who
3 shall take action to enforce the requirements of this act.

4 Section 7. The director shall report to the Governor
5 annually on the results of the policy required by this act,
6 including details regarding specific contracts awarded by each
7 department or agency and the type of business engaged in by
8 the geographically disadvantaged business enterprise awarded
9 the contract. The department shall make the annual report
10 available to the public on its website.

11 Section 8. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.