

SB178

203738-1

By Senator Gudger

RFD: Fiscal Responsibility and Economic Development

First Read: 13-FEB-20

SYNOPSIS: Under existing law, competitive bid laws require governmental public works contracts to be awarded to the lowest responsible and responsive bidder.

This bill would allow an awarding authority, under certain specified circumstances, to negotiate with the lowest responsible and responsive bidder when all bids received exceed the funding available to the awarding authority for the contract.

A BILL
TO BE ENTITLED
AN ACT

To amend Section 39-2-6, Code of Alabama 1975, relating to competitive bidding on state public works contracts; to allow an awarding authority to negotiate with the lowest responsible and responsive bidder under certain specified circumstances.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 39-2-6 of the Code of Alabama 1975, is amended to read as follows:

"§39-2-6.

"(a) The contract shall be awarded to the lowest responsible and responsive bidder, unless the awarding authority finds that all the bids are unreasonable or that it is not to the interest of the awarding authority to accept any of the bids. A responsible bidder is one who, among other qualities determined necessary for performance, is competent, experienced, and financially able to perform the contract. A responsive bidder is one who submits a bid that complies with the terms and conditions of the invitation for bids. Minor irregularities in the bid shall not defeat responsiveness. The bidder to whom the award is made shall be notified by telegram, confirmed facsimile, or letter at the earliest possible date. If the successful bidder fails or refuses to sign the contract, to make bond as provided in this chapter or to provide evidence of insurance as required by the bid documents, the awarding authority may award the contract to the second lowest responsible and responsive bidder. If the second lowest bidder fails or refuses to sign the contract, make bond as provided in this chapter or to provide evidence of insurance as required by the bid documents, the awarding authority may award the contract to the third lowest responsible and responsive bidder.

"(b) If no bids or only one bid is received at the time stated in the advertisement for bids, the awarding

authority may advertise for and seek other competitive bids, or the awarding authority may direct that the work shall be done by force account under its direction and control or, with the exception of the Department of Transportation, the awarding authority may negotiate for the work through the receipt of informal bids not subject to the requirements of this section. Where only one responsible and responsive bid has been received, any negotiation for the work shall be for a price lower than that bid.

"(c) When two or more bids are received, and all bids exceed available funding for the contract, the awarding authority may negotiate for the work with the lowest responsible and responsive bidder provided that the awarding authority can document the shortage of funding, that time is of the essence, and that the negotiated changes are in the public interest and do not materially alter the scope and nature of the project.

~~"(c)~~ (d) If the awarding authority finds that all bids received are unreasonable or that it is not to the interest of the awarding authority to accept any of the bids, the awarding authority may direct that the work shall be done by force account under its direction and control.

~~"(d)~~ (e) On any construction project on which the awarding authority has prepared plans and specifications, received bids, and has determined to do by force account or by negotiation, the awarding authority shall make available the plans and specifications, an itemized estimate of cost and any

informal bids for review by the Department of Examiners of Public Accounts and, upon completion of the project by an awarding authority, the final total costs together with an itemized list of cost of any and all changes made in the original plans and specifications shall also be made available for review by the Department of Examiners of Public Accounts. Furthermore, the above described information shall be made public by the awarding authority upon request. Upon the approval of the awarding authority, its duly authorized officer or officers may, when proceeding upon the basis of force account, let any subdivision or unit of work by contract on informal bids.

"~~(e)~~ (f) No provision of this section shall be interpreted as precluding the use of convict labor by the awarding authority. This section shall not apply to routine maintenance and repair jobs done by maintenance personnel who are regular employees of the awarding authority, nor shall it apply to road or bridge construction work performed by an awarding authority's regular employees and own equipment.

"~~(f)~~ (g) No contract awarded to the lowest responsible and responsive bidder shall be assignable by the successful bidder without written consent of the awarding authority, and in no event shall a contract be assigned to an unsuccessful bidder whose bid was rejected because he or she was not a responsible or responsive bidder.

"~~(g)~~ (h) Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition to

bid at a fixed price or to refrain from bidding or otherwise shall render the bids void and shall cause the bidders or prospective bidders to be disqualified from submitting further bids to the awarding authority on future lettings. Any bidder or prospective bidder who willfully participates in any agreement or collusion in restraint of freedom of competition shall be guilty of a felony and, on conviction thereof, shall be fined not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000) or, at the discretion of the jury, shall be imprisoned in the penitentiary for not less than one nor more than three years.

"~~(h)~~ (i) Any disclosure in advance of the terms of a bid submitted in response to an advertisement for bids shall render the proceedings void and require advertisement and award anew.

"~~(i)~~ (j) The lowest responsible and responsive bidder on a public works project may be determined to be the bidder offering the lowest life cycle costs. The lowest responsible and responsive bidder shall otherwise meet all of the conditions and specifications contained in the invitation to bid, except that a bidder may still be considered responsive if he or she responds with a bid using different construction materials than those specified in the invitation to bid if the materials' use would result in lower lifecycle costs for the public works project. To utilize this provision to determine the lowest responsible and responsive bidder, the awarding authority must include a notice in the invitation to bid that

the lowest responsible and responsive bidder may be determined by using life cycle costs, and must also include in the invitation to bid the criteria under which it shall evaluate the life cycle costs."

Section 2. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.