

1 SB109
2 207658-1
3 By Senator Gudger
4 RFD: Governmental Affairs
5 First Read: 02-FEB-21
6 PFD: 01/28/2021

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

12 This bill would allow a local board of
13 education or a public two-year or four-year
14 institution of higher education authority, under
15 certain specified circumstances, to negotiate with
16 the lowest responsible and responsive bidder when
17 all bids received exceed the funding available to
18 the awarding authority for the contract.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT

23
24 To amend Section 39-2-6, Code of Alabama 1975,
25 relating to competitive bidding on state public works
26 contracts; to allow a local board of education or a public
27 two-year or four-year institution of higher education

1 authority to negotiate with the lowest responsible and
2 responsive bidder under certain specified circumstances.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 39-2-6 of the Code of Alabama
5 1975, is amended to read as follows:

6 "§39-2-6.

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

1 authority may award the contract to the third lowest
2 responsible and responsive bidder.

3 "(b) If no bids or only one bid is received at the
4 time stated in the advertisement for bids, the awarding
5 authority may advertise for and seek other competitive bids,
6 or the awarding authority may direct that the work shall be
7 done by force account under its direction and control or, with
8 the exception of the Department of Transportation, the
9 awarding authority may negotiate for the work through the
10 receipt of informal bids not subject to the requirements of
11 this section. Where only one responsible and responsive bid
12 has been received, any negotiation for the work shall be for a
13 price lower than that bid.

14 "(c) When two or more bids are received, and all
15 bids exceed available funding for the contract, a local board
16 of education or a public two-year or four-year institution of
17 higher education awarding authority may negotiate for the work
18 with the lowest responsible and responsive bidder provided
19 that the local board of education or public two-year or
20 four-year institution of higher education awarding authority
21 can document the shortage of funding, that time is of the
22 essence, and that the negotiated changes are in the public
23 interest and do not materially alter the scope and nature of
24 the project.

25 "~~(c)~~(d) If the awarding authority finds that all
26 bids received are unreasonable or that it is not to the
27 interest of the awarding authority to accept any of the bids,

1 the awarding authority may direct that the work shall be done
2 by force account under its direction and control.

3 ~~"(d)~~ (e) On any construction project on which the
4 awarding authority has prepared plans and specifications,
5 received bids, and has determined to do by force account or by
6 negotiation, the awarding authority shall make available the
7 plans and specifications, an itemized estimate of cost and any
8 informal bids for review by the Department of Examiners of
9 Public Accounts and, upon completion of the project by an
10 awarding authority, the final total costs together with an
11 itemized list of cost of any and all changes made in the
12 original plans and specifications shall also be made available
13 for review by the Department of Examiners of Public Accounts.
14 Furthermore, the above described information shall be made
15 public by the awarding authority upon request. Upon the
16 approval of the awarding authority, its duly authorized
17 officer or officers may, when proceeding upon the basis of
18 force account, let any subdivision or unit of work by contract
19 on informal bids.

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

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

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

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

24 "~~(i)~~ (j) The lowest responsible and responsive bidder
25 on a public works project may be determined to be the bidder
26 offering the lowest life cycle costs. The lowest responsible
27 and responsive bidder shall otherwise meet all of the

1 conditions and specifications contained in the invitation to
2 bid, except that a bidder may still be considered responsive
3 if he or she responds with a bid using different construction
4 materials than those specified in the invitation to bid if the
5 materials' use would result in lower lifecycle costs for the
6 public works project. To utilize this provision to determine
7 the lowest responsible and responsive bidder, the awarding
8 authority must include a notice in the invitation to bid that
9 the lowest responsible and responsive bidder may be determined
10 by using life cycle costs, and must also include in the
11 invitation to bid the criteria under which it shall evaluate
12 the life cycle costs."

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