

1 HB524
2 211367-1
3 By Representatives Hollis and Givan
4 RFD: State Government
5 First Read: 11-MAR-21

8 SYNOPSIS: Under existing law, contracts for public
9 works involving an amount in excess of \$50,000 are
10 required to be awarded to the lowest responsible
11 and responsive bidder.

12 Under existing law, when awarding public
13 contracts in excess of \$15,000, local awarding
14 authorities are authorized to establish local
15 preference zones to enable the authorities to give
16 preference to responsible bidders having a place of
17 business within the local preference zone. Also
18 under existing law, when the lowest responsible
19 bidder on a public contract in excess of \$15,000 is
20 a foreign entity, local awarding authorities are
21 authorized to give preference to a woman-owned
22 business enterprise, an enterprise of small
23 business, a minority-owned business enterprise, a
24 veteran-owned business enterprise, or a
25 disadvantaged-owned business enterprise.

26 This bill would authorize local awarding
27 authorities, when awarding public works contracts

1 involving an amount in excess of \$50,000, to give
2 the same preferences as authorized for public
3 contracts in excess of \$15,000.

4
5 A BILL
6 TO BE ENTITLED
7 AN ACT

8
9 Relating to the award of public works contracts; to
10 amend Section 39-2-6, Code of Alabama 1975, to authorize
11 certain local awarding authorities to give preference to
12 responsible bidders having a place of business within a local
13 preference zone; and to authorize certain local awarding
14 authorities to give preference to certain categories of
15 responsible bidders under certain conditions.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

19 "§39-2-6.

20 "(a) The contract shall be awarded to the lowest
21 responsible and responsive bidder, unless the awarding
22 authority finds that all the bids are unreasonable or that it
23 is not to the interest of the awarding authority to accept any
24 of the bids. A responsible bidder is one who, among other
25 qualities determined necessary for performance, is competent,
26 experienced, and financially able to perform the contract. A
27 responsive bidder is one who submits a bid that complies with

1 the terms and conditions of the invitation for bids. Minor
2 irregularities in the bid shall not defeat responsiveness. The
3 bidder to whom the award is made shall be notified by
4 telegram, confirmed facsimile, or letter at the earliest
5 possible date. If the successful bidder fails or refuses to
6 sign the contract, to make bond as provided in this chapter,
7 or to provide evidence of insurance as required by the bid
8 documents, the awarding authority may award the contract to
9 the second lowest responsible and responsive bidder. If the
10 second lowest bidder fails or refuses to sign the contract,
11 make bond as provided in this chapter, or to provide evidence
12 of insurance as required by the bid documents, the awarding
13 authority may award the contract to the third lowest
14 responsible and responsive bidder.

15 "(b) If no bids or only one bid is received at the
16 time stated in the advertisement for bids, the awarding
17 authority may advertise for and seek other competitive bids,
18 or the awarding authority may direct that the work shall be
19 done by force account under its direction and control or, with
20 the exception of the Department of Transportation, the
21 awarding authority may negotiate for the work through the
22 receipt of informal bids not subject to the requirements of
23 this section. Where only one responsible and responsive bid
24 has been received, any negotiation for the work shall be for a
25 price lower than that bid.

26 "(c) If the awarding authority finds that all bids
27 received are unreasonable or that it is not ~~to~~ in the interest

1 of the awarding authority to accept any of the bids, the
2 awarding authority may direct that the work shall be done by
3 force account under its direction and control.

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

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

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

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

24 "(i) The lowest responsible and responsive bidder on
25 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 "(j) Prior to advertising for bids for a public
14 works contract, where a county, a municipality, or an
15 instrumentality thereof is the awarding authority, the
16 awarding authority may establish a local preference zone
17 consisting of either the legal boundaries or jurisdiction of
18 the awarding authority, or the boundaries of the county in
19 which the awarding authority is located, or if the awarding
20 authority is located in multiple counties, the municipality in
21 which its headquarters is located, or the boundaries of the
22 Core Based Statistical Area in which the awarding authority is
23 located. If no such action is taken by the awarding authority,
24 the boundaries of the local preference zone shall be deemed to
25 be the same as the legal boundaries or jurisdiction of the
26 awarding authority. In the event a bid is received from a
27 person, firm, or corporation deemed to be a responsible

1 bidder, having a place of business within the local preference
2 zone where the county, a municipality, or an instrumentality
3 thereof is the awarding authority, and the bid is no more than
4 five percent greater than the bid of the lowest responsible
5 bidder, the awarding authority may award the contract to the
6 resident responsible bidder.

7 "(k) Notwithstanding subsection (j), in the event
8 the lowest bid is received from a foreign entity, where the
9 county, a municipality, or an instrumentality thereof is the
10 awarding authority, the awarding authority may award the
11 contract to a responsible bidder whose bid is no more than 10
12 percent greater than the foreign entity if the bidder has a
13 place of business within the local preference zone or is a
14 responsible bidder from a business within the state that is a
15 woman-owned enterprise, an enterprise of small business, as
16 defined in Section 25-10-3, a minority-owned business
17 enterprise, a veteran-owned business enterprise, or a
18 disadvantaged-owned business enterprise. For the purposes of
19 this subsection, foreign entity means a business entity that
20 does not have a place of business within the state."

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