

1 HB40
2 173221-1
3 By Representative Hill
4 RFD: State Government
5 First Read: 07-FEB-17
6 PFD: 01/11/2017

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8 SYNOPSIS: Under existing law, a contract for a public
9 works project must be awarded to the lowest
10 responsible and responsive bidder.

11 This bill would allow a public works
12 contract to be awarded by a county or municipality
13 to a contractor whose principal place of business
14 is within the county where the public works project
15 is located if the contractor is a responsible and
16 responsive bidder and the bid is not more than five
17 percent greater than the lowest responsible bid.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
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23 Relating to public works projects; to amend Section
24 39-2-6, Code of Alabama 1975; by allowing a public works
25 contract to be awarded by a county or municipality to a
26 contractor whose principal place of business is within the
27 county where the public works project is located if the

1 contractor is a responsible and responsive bidder and the bid
2 is not more than five percent greater than the lowest
3 responsible bid.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

7 "§39-2-6.

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

1 of insurance as required by the bid documents, the awarding
2 authority may award the contract to the third lowest
3 responsible and responsive bidder.

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

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

20 "(d) On any construction project on which the
21 awarding authority has prepared plans and specifications,
22 received bids, and has determined to do by force account or by
23 negotiation, the awarding authority shall make available the
24 plans and specifications, an itemized estimate of cost and any
25 informal bids for review by the Department of Examiners of
26 Public Accounts and, upon completion of the project by an
27 awarding authority, the final total costs together with an

1 itemized list of cost of any and all changes made in the
2 original plans and specifications shall also be made available
3 for review by the Department of Examiners of Public Accounts.
4 Furthermore, the above described information shall be made
5 public by the awarding authority upon request. Upon the
6 approval of the awarding authority, its duly authorized
7 officer or officers may, when proceeding upon the basis of
8 force account, let any subdivision or unit of work by contract
9 on informal bids.

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

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

23 "(g) Any agreement or collusion among bidders or
24 prospective bidders in restraint of freedom of competition to
25 bid at a fixed price or to refrain from bidding or otherwise
26 shall render the bids void and shall cause the bidders or
27 prospective bidders to be disqualified from submitting further

1 bids to the awarding authority on future lettings. Any bidder
2 or prospective bidder who willfully participates in any
3 agreement or collusion in restraint of freedom of competition
4 shall be guilty of a felony and, on conviction thereof, shall
5 be fined not less than five thousand dollars (\$5,000) nor more
6 than fifty thousand dollars (\$50,000) or, at the discretion of
7 the jury, shall be imprisoned in the penitentiary for not less
8 than one nor more than three years.

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

13 "(i) The lowest responsible and responsive bidder on
14 a public works project may be determined to be the bidder
15 offering the lowest life cycle costs. The lowest responsible
16 and responsive bidder shall otherwise meet all of the
17 conditions and specifications contained in the invitation to
18 bid, except that a bidder may still be considered responsive
19 if he or she responds with a bid using different construction
20 materials than those specified in the invitation to bid if the
21 materials' use would result in lower lifecycle costs for the
22 public works project. To utilize this provision to determine
23 the lowest responsible and responsive bidder, the awarding
24 authority must include a notice in the invitation to bid that
25 the lowest responsible and responsive bidder may be determined
26 by using life cycle costs, and must also include in the

1 invitation to bid the criteria under which it shall evaluate
2 the life cycle costs.

3 "(j) Notwithstanding subsection (a), an awarding
4 authority that is a county, municipality, or an
5 instrumentality of either, may award the contract to a person
6 that has its principal place of business within the county
7 where the public works project is located and is deemed to be
8 a responsible and responsive bidder, if the bid is no more
9 than five percent greater than the bid of the lowest
10 responsible and responsive bidder."

11 Section 2. 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.