

1 SB72
2 180586-2
3 By Senator Allen
4 RFD: Transportation and Energy
5 First Read: 07-FEB-17

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8 SYNOPSIS: This bill would make technical corrections
9 to Act 2016-260, Senate Bill 175, of the 2016
10 Regular Session. The bill would amend Section
11 39-2-4 of the Code of Alabama 1975, relating to
12 competitive bids for public improvement contracts
13 by state agencies, to restore the prior limit on
14 bid guarantees required for state agencies other
15 than the Department of Transportation. The bill
16 would add amendatory language that was
17 inadvertently left out of Senate Bill 175 and
18 conform the intent of Senate Bill 175 to the title
19 of the bill.

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21 A BILL
22 TO BE ENTITLED
23 AN ACT

24
25 To amend Section 39-2-4 of the Code of Alabama 1975,
26 as amended by Act 2016-260 of the 2016 Regular Session,
27 relating to the bid guarantees on public improvement contracts

1 by state agencies; to make technical corrections to Act
2 2016-260 of the 2016 Regular Session, to restore the prior
3 limit on bid bonds required for state agencies other than the
4 Department of Transportation; and to provide for retroactive
5 effect.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Section 39-2-4 of the Code of Alabama
8 1975, as amended by Act 2016-260 of the 2016 Regular Session,
9 is amended to read as follows:

10 "§39-2-4.

11 "(a) The bidder shall be required to file with his
12 or her bid either a cashier's check drawn on an Alabama bank
13 or a bid bond executed by a surety company duly authorized and
14 qualified to make such bonds in the State of Alabama, payable
15 to the awarding authority for an amount not less than five
16 percent of the awarding authority's estimated cost or of the
17 contractor's bid, but in no event more than ~~fifty thousand~~
18 ~~dollars (\$50,000)~~ ten thousand dollars (\$10,000), except if
19 the awarding authority is the Department of Transportation,
20 then the bid guarantee shall not be more than fifty thousand
21 dollars (\$50,000). The bid guaranties as provided in this
22 section shall constitute all of the qualifications or guaranty
23 to be required of contractors as prerequisites to bidding for
24 public works, except as required by the State Licensing Board
25 for General Contractors and the prequalification as required
26 by the Department of Transportation, the Building Commission,
27 or any other awarding authority.

1 "(b) With the exception of the Department of
2 Transportation which has prequalification procedures and
3 criteria set forth by statute, any awarding authority that
4 proposes to prequalify bidders shall establish written
5 prequalification procedures and criteria that (1) are
6 published sufficiently in advance of any affected contract so
7 that a bona fide bidder may seek and obtain prequalification
8 prior to preparing a bid for that contract, such publication
9 to be accomplished by the methods specified in subsection (a)
10 of Section 39-2-2; (2) are related to the purpose of the
11 contract or contracts affected; (3) are related to contract
12 requirements or the quality of the product or service in
13 question; (4) are related to the responsibility, including the
14 competency, experience, and financial ability, of a bidder;
15 and (5) will permit reasonable competition at a level that
16 serves the public interest. The prequalification publication
17 may run concurrently with the publication required under
18 subsection (a) of Section 39-2-2, provided it produces the
19 above required advance notice.

20 "(c) Within the bounds of good faith, the awarding
21 authority retains the right to determine whether a contractor
22 has met prequalification procedures and criteria.

23 "(d) Any bidder who has prequalified pursuant to the
24 requirements in subsection (b) shall be deemed "responsible"
25 for purposes of award unless the prequalification is revoked
26 by the awarding authority under the following procedures: (1)
27 No later than five working days or the next regular meeting

1 after the opening of bids, the awarding authority issues
2 written notice to the bidder of its intent to revoke
3 prequalification and the grounds therefor; (2) the bidder is
4 then provided an opportunity to be heard before the awarding
5 authority on the intended revocation; (3) the awarding
6 authority makes a good faith showing of a material inaccuracy
7 in the prequalification application of a bidder or of a
8 material change in the responsibility of the bidder since
9 submitting its prequalification application; and (4) the
10 revocation of prequalification is determined no later than 10
11 days after written notice of intent to revoke, unless the
12 bidder whose qualification is in question agrees in writing to
13 an extension in time.

14 "(e) Nothing in this section shall preclude the
15 rejection of a bidder determined not responsible nor the
16 inclusion of criteria in the bid documents which would limit
17 contract awards to responsible bidders where no
18 prequalification procedure is employed by the awarding
19 authority."

20 Section 2. This act is remedial and curative and
21 shall be effective retroactively to May 3, 2016.