

1 HB349
2 203738-1
3 By Representative Rowe
4 RFD: State Government
5 First Read: 27-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:

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

3 "§39-2-6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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