

1 SB106
2 124585-2
3 By Senators Coleman, Beasley, Dunn and Marsh
4 RFD: Commerce, Transportation, and Utilities
5 First Read: 01-MAR-11

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8 SYNOPSIS: This bill would require an awarded
9 contractor to utilize certain subcontractors
10 certified under the federal HUBZone Program or any
11 small business enterprise located within the state
12 to fulfill no less than 20 percent of the original
13 contract award.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

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19 To amend Section 39-2-2 of the Code of Alabama 1975,
20 relating to advertisement for sealed bids for public works
21 contracts; to require the awarded contractor to utilize
22 certain subcontractors certified under the federal HUBZone
23 Program or any small business enterprise located within the
24 state to fulfill no less than 20 percent of the original
25 contract award.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. The Legislature of Alabama hereby finds
2 and declares that this amendatory act will help foster and
3 develop businesses throughout the state by allowing small
4 businesses to grow incrementally and contribute to the local
5 economy while adding jobs in the marketplace.

6 Section 2. Section 39-2-2 of the Code of Alabama
7 1975, is amended to read as follows:

8 "§39-2-2.

9 "(a) Before entering into any contract for a public
10 works involving an amount in excess of fifty thousand dollars
11 (\$50,000), the awarding authority shall advertise for sealed
12 bids. If the awarding authority is the state or a county, or
13 an instrumentality thereof, it shall advertise for sealed bids
14 at least once each week for three consecutive weeks in a
15 newspaper of general circulation in the county or counties in
16 which the improvement or some part thereof, is to be made. If
17 the awarding authority is a municipality, or an
18 instrumentality thereof, it shall advertise for sealed bids at
19 least once in a newspaper of general circulation published in
20 the municipality where the awarding authority is located. If
21 no newspaper is published in the municipality, the awarding
22 authority shall advertise by posting notice thereof on a
23 bulletin board maintained outside the purchasing office and in
24 any other manner and for the length of time as may be
25 determined. In addition to bulletin board notice, sealed bids
26 shall also be solicited by sending notice by mail to all
27 persons who have filed a request in writing with the official

1 designated by the awarding authority that they be listed for
2 solicitation on bids for the public works contracts indicated
3 in the request. If any person whose name is listed fails to
4 respond to any solicitation for bids after the receipt of
5 three such solicitations, the listing may be canceled. With
6 the exception of the Department of Transportation, for all
7 public works contracts involving an estimated amount in excess
8 of five hundred thousand dollars (\$500,000), awarding
9 authorities shall also advertise for sealed bids at least once
10 in three newspapers of general circulation throughout the
11 state. The advertisements shall briefly describe the
12 improvement, state that plans and specifications for the
13 improvement are on file for examination in a designated office
14 of the awarding authority, state the procedure for obtaining
15 plans and specifications, state the time and place in which
16 bids shall be received and opened, and identify whether
17 prequalification is required and where all written
18 prequalification information is available for review. All
19 bids shall be opened publicly at the advertised time and
20 place. No public work as defined in this chapter involving a
21 sum in excess of fifty thousand dollars (\$50,000) shall be
22 split into parts involving sums of fifty thousand dollars
23 (\$50,000) or less for the purpose of evading the requirements
24 of this section.

25 "(b) An awarding authority may let contracts for
26 public works involving fifty thousand dollars (\$50,000) or
27 less with or without advertising or sealed bids.

1 "(c) All contracts for public works entered into in
2 violation of this title shall be null, void, and violative of
3 public policy. Anyone who willfully violates this article
4 concerning public works shall be guilty of a Class C felony.

5 "(d) Excluded from the operation of this title shall
6 be contracts with persons who shall perform only
7 architectural, engineering, construction management, program
8 management, or project management services in support of the
9 public works and who shall not engage in actual construction,
10 repair, renovation, or maintenance of the public works with
11 their own forces, by contract, subcontract, purchase order,
12 lease, or otherwise.

13 "(e) In case of an emergency affecting public
14 health, safety, or convenience, as declared in writing by the
15 awarding authority, setting forth the nature of the danger to
16 the public health, safety, or convenience which would result
17 from delay, contracts may be let to the extent necessary to
18 meet the emergency without public advertisement. The action
19 and the reasons for the action taken shall immediately be made
20 public by the awarding authority upon request.

21 "(f) No awarding authority may specify in the plans
22 and specifications for the improvement the use of materials,
23 products, systems, or services by a sole source unless all of
24 the following requirements are met:

25 "(1) Except for contracts involving the
26 construction, reconstruction, renovation, or replacement of
27 public roads, bridges, and water and sewer facilities, the

1 awarding authority can document to the satisfaction of the
2 State Building Commission that the sole source product,
3 material, system, or service is of an indispensable nature for
4 the improvement, that there are no other viable alternatives,
5 and that only this particular product, material, system, or
6 service fulfills the function for which it is needed.

7 "(2) The sole source specification has been
8 recommended by the architect or engineer of record as an
9 indispensable item for which there is no other viable
10 alternative.

11 "(3) All information substantiating the use of a
12 sole source specification, including the recommendation of the
13 architect or engineer of record, shall be documented and made
14 available for examination in the office of the awarding
15 authority at the time of advertisement for sealed bids.

16 "(g) In the event of a proposed public works
17 project, acknowledged in writing by the Alabama Homeland
18 Security Department as (1) having a direct impact on the
19 security or safety of persons or facilities and (2) requiring
20 confidential handling for the protection of such persons or
21 facilities, contracts may be let without public advertisement
22 but with the taking of informal bids otherwise consistent with
23 the requirements of this title and the requirements of
24 maintaining confidentiality. Records of bidding and award
25 shall not be disclosed to the public, and shall remain
26 confidential.

1 "(h) The awarded contractor shall utilize
2 subcontractors owned and operated by individuals who are
3 socially and economically disadvantaged, business certified
4 under the federal HubZone Program, or any small business
5 enterprise located within the state to fulfill no less than 20
6 percent of the original contract award."

7 Section 3. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.