

1 HB234
2 126347-1
3 By Representatives Moore (B), Merrill, Johnson (K), Nordgren,
4 Henry, Warren, Lee and Chesteen
5 RFD: State Government
6 First Read: 10-MAR-11

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8 SYNOPSIS: This bill would relate to competitive bids
9 and would require awarding authorities with certain
10 exceptions to make provisions for the submission of
11 bids by secure electronic means.

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13 A BILL
14 TO BE ENTITLED
15 AN ACT
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17 To amend Sections 39-2-2 and 41-16-50 of the Code of
18 Alabama 1975, relating to competitive bids, to provide for the
19 submission of bids by secure electronic means with certain
20 exceptions.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 39-2-2 and 41-16-50 of the Code
23 of Alabama 1975, are amended to read as follows:

24 "§39-2-2.

25 "(a) Before entering into any contract for a public
26 works involving an amount in excess of fifty thousand dollars
27 (\$50,000), the awarding authority shall advertise for sealed

1 bids. If the awarding authority is the state or a county, or
2 an instrumentality thereof, it shall advertise for sealed bids
3 at least once each week for three consecutive weeks in a
4 newspaper of general circulation in the county or counties in
5 which the improvement or some part thereof, is to be made. If
6 the awarding authority is a municipality, or an
7 instrumentality thereof, it shall advertise for sealed bids at
8 least once in a newspaper of general circulation published in
9 the municipality where the awarding authority is located. If
10 no newspaper is published in the municipality, the awarding
11 authority shall advertise by posting notice thereof on a
12 bulletin board maintained outside the purchasing office and in
13 any other manner and for the length of time as may be
14 determined. In addition to bulletin board notice, sealed bids
15 shall also be solicited by sending notice by mail to all
16 persons who have filed a request in writing with the official
17 designated by the awarding authority that they be listed for
18 solicitation on bids for the public works contracts indicated
19 in the request. If any person whose name is listed fails to
20 respond to any solicitation for bids after the receipt of
21 three such solicitations, the listing may be canceled. With
22 the exception of the Department of Transportation, for all
23 public works contracts involving an estimated amount in excess
24 of five hundred thousand dollars (\$500,000), awarding
25 authorities shall also advertise for sealed bids at least once
26 in three newspapers of general circulation throughout the
27 state. The advertisements shall briefly describe the

1 improvement, state that plans and specifications for the
2 improvement are on file for examination in a designated office
3 of the awarding authority, state the procedure for obtaining
4 plans and specifications, state the time and place in which
5 bids shall be received and opened, and identify whether
6 prequalification is required and where all written
7 prequalification information is available for review. All bids
8 shall be opened publicly at the advertised time and place.

9 Awarding authorities, except for the Building Commission and
10 State Board of Education, shall make the provisions necessary
11 for bidders to submit electronic bids through a secure,
12 interactive, electronic environment. The submission of a bid
13 electronically shall be at the option of the bidder. A bid
14 submitted electronically shall be submitted with an electronic
15 signature and may not be viewable by the awarding authority or
16 any other person until the date and time of the bid opening.

17 No public work as defined in this chapter involving a sum in
18 excess of fifty thousand dollars (\$50,000) shall be split into
19 parts involving sums of fifty thousand dollars (\$50,000) or
20 less for the purpose of evading the requirements of this
21 section.

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

25 "(c) All contracts for public works entered into in
26 violation of this title shall be null, void, and violative of

1 public policy. Anyone who willfully violates this article
2 concerning public works shall be guilty of a Class C felony.

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

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

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

23 "(1) Except for contracts involving the
24 construction, reconstruction, renovation, or replacement of
25 public roads, bridges, and water and sewer facilities, the
26 awarding authority can document to the satisfaction of the
27 State Building Commission that the sole source product,

1 material, system, or service is of an indispensable nature for
2 the improvement, that there are no other viable alternatives,
3 and that only this particular product, material, system, or
4 service fulfills the function for which it is needed.

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

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

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

25 "§41-16-50.

26 "(a) With the exception of contracts for public
27 works whose competitive bidding requirements are governed

1 exclusively by Title 39, all expenditure of funds of whatever
2 nature for labor, services, work, or for the purchase of
3 materials, equipment, supplies, or other personal property
4 involving fifteen thousand dollars (\$15,000) or more, and the
5 lease of materials, equipment, supplies, or other personal
6 property where the lessee is, or becomes legally and
7 contractually, bound under the terms of the lease, to pay a
8 total amount of fifteen thousand dollars (\$15,000) or more,
9 made by or on behalf of any state trade school, state junior
10 college, state college, or university under the supervision
11 and control of the State Board of Education, the district
12 boards of education of independent school districts, the
13 county commissions, the governing bodies of the municipalities
14 of the state, and the governing boards of instrumentalities of
15 counties and municipalities, including waterworks boards,
16 sewer boards, gas boards, and other like utility boards and
17 commissions, except as hereinafter provided, shall be made
18 under contractual agreement entered into by free and open
19 competitive bidding, on sealed bids, to the lowest responsible
20 bidder. Prior to advertising for bids for an item of personal
21 property, where a county, a municipality, or an
22 instrumentality thereof is the awarding authority, the
23 awarding authority may establish a local preference zone
24 consisting of either the legal boundaries or jurisdiction of
25 the awarding authority, or the boundaries of the county in
26 which the awarding authority is located, or the boundaries of
27 the Core Based Statistical Area (CBSA) in which the awarding

1 authority is located. If no such action is taken by the
2 awarding authority, the boundaries of the local preference
3 zone shall be deemed to be the same as the legal boundaries or
4 jurisdiction of the awarding authority. In the event a bid is
5 received for an item of personal property to be purchased or
6 contracted for from a person, firm, or corporation deemed to
7 be a responsible bidder, having a place of business within the
8 local preference zone where the county, a municipality, or an
9 instrumentality thereof is the awarding authority, and the bid
10 is no more than three percent greater than the bid of the
11 lowest responsible bidder, the awarding authority may award
12 the contract to the resident responsible bidder. In the event
13 only one bidder responds to the invitation to bid, the
14 awarding authority may reject the bid and negotiate the
15 purchase or contract, providing the negotiated price is lower
16 than the bid price.

17 "(b) The governing bodies of two or more contracting
18 agencies, as enumerated in subsection (a), or the governing
19 bodies of two or more counties, or the governing bodies of two
20 or more city or county boards of education, may provide, by
21 joint agreement, for the purchase of labor, services, or work,
22 or for the purchase or lease of materials, equipment,
23 supplies, or other personal property for use by their
24 respective agencies. The agreement shall be entered into by
25 similar ordinances, in the case of municipalities, or
26 resolutions, in the case of other contracting agencies,
27 adopted by each of the participating governing bodies, which

1 shall set forth the categories of labor, services, or work, or
2 for the purchase or lease of materials, equipment, supplies,
3 or other personal property to be purchased, the manner of
4 advertising for bids and the awarding of contracts, the method
5 of payment by each participating contracting agency, and other
6 matters deemed necessary to carry out the purposes of the
7 agreement. Each contracting agency's share of expenditures for
8 purchases under any agreement shall be appropriated and paid
9 in the manner set forth in the agreement and in the same
10 manner as for other expenses of the contracting agency. The
11 contracting agencies entering into a joint agreement, as
12 herein permitted, may designate a joint purchasing or bidding
13 agent, and the agent shall comply with this article.

14 Purchases, contracts, or agreements made pursuant to a joint
15 purchasing or bidding agreement shall be subject to all terms
16 and conditions of this article.

17 "In the event that utility services are no longer
18 exempt from competitive bidding under this article,
19 non-adjointing counties may not purchase utility services by
20 joint agreement under authority granted by this subsection.

21 "(c) The awarding authority may require bidders to
22 furnish a bid bond for a particular bid solicitation if the
23 bonding requirement applies to all bidders, is included in the
24 written bid specifications, and if bonding is available for
25 the services, equipment, or materials.

26 "(d) (1) Except as provided herein, an awarding
27 authority shall make the provisions necessary for bidders to

1 submit electronic bids through a secure, interactive,
2 electronic environment. The submission of a bid electronically
3 shall be at the option of the bidder. A bid submitted
4 electronically shall be submitted with an electronic signature
5 and may not be viewable by the awarding authority or any other
6 person until the date and time of the bid opening.

7 "(2) This subsection shall not apply to an awarding
8 authority that does not have available high speed Internet
9 access or to purchases made by an awarding authority pursuant
10 to separate statutory provisions.

11 Section 2. This act shall become effective October
12 1, 2011.