

1 HB187  
2 173511-1  
3 By Representative Ledbetter  
4 RFD: Transportation, Utilities and Infrastructure  
5 First Read: 11-FEB-16

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8 SYNOPSIS: Under existing law, a bidder on a public  
9 works project for the Department of Transportation  
10 or other awarding authority is required to file a  
11 bid guarantee in the form of either a cashiers's  
12 check or a bond payable to the awarding authority  
13 but in no event to exceed \$10,000.

14 This bill would increase the amount of the  
15 bid guarantee if the awarding authority is the  
16 Department of Transportation.

17  
18 A BILL  
19 TO BE ENTITLED  
20 AN ACT

21  
22 To amend Sections 23-1-2 and 39-2-4 of the Code of  
23 Alabama, to increase the amount of the bid guarantee required  
24 to be filed under certain conditions by a bidder on public  
25 works project when the Department of Transportation is the  
26 awarding authority.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. Sections 23-1-2 and 39-2-4 of the Code of  
2 Alabama 1975, are amended to read as follows:

3           "§23-1-2.

4           "Any other provisions of the law to the contrary  
5 notwithstanding, bidders for contract projects which contracts  
6 are with the State of Alabama, in behalf of the State  
7 Department of Transportation, to be paid, in whole or in part,  
8 from funds allocated to the State Department of Transportation  
9 from any source whatsoever, or where contracts are with any of  
10 the several counties of the state for a highway, road, street,  
11 or bridge project, to be paid for, in whole or in part, from  
12 funds allocated to the county from any source whatsoever,  
13 shall be required to file with the bid, as a bid guaranty, a  
14 certified check or bid bond payable to the awarding authority  
15 as follows:

16           "(1) A certified check payable to the awarding  
17 authority for an amount not less than five percent of the  
18 contractor's bid, but in no event more than ~~\$10,000.00~~ fifty  
19 thousand dollars (\$50,000); or

20           "(2) A bid bond payable to the awarding authority in  
21 an amount not less than five percent of the bid, but in no  
22 event more than ~~\$10,000.00~~ fifty thousand dollars (\$50,000).

23           "§39-2-4.

24           "(a) The bidder shall be required to file with his  
25 or her bid either a cashier's check drawn on an Alabama bank  
26 or a bid bond executed by a surety company duly authorized and  
27 qualified to make such bonds in the State of Alabama, payable

1 to the awarding authority for an amount not less than five  
2 percent of the awarding authority's estimated cost or of the  
3 contractor's bid, but in no event more than ~~ten thousand~~  
4 ~~dollars (\$10,000)~~ fifty thousand dollars (\$50,000). The bid  
5 guaranties as provided in this section shall constitute all of  
6 the qualifications or guaranty to be required of contractors  
7 as prerequisites to bidding for public works, except as  
8 required by the State Licensing Board for General Contractors  
9 and the prequalification as required by the Department of  
10 Transportation, the Building Commission, or any other awarding  
11 authority.

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

1 may run concurrently with the publication required under  
2 subsection (a) of Section 39-2-2, provided it produces the  
3 above required advance notice.

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

7 "(d) Any bidder who has prequalified pursuant to the  
8 requirements in subsection (b) shall be deemed "responsible"  
9 for purposes of award unless the prequalification is revoked  
10 by the awarding authority under the following procedures: (1)  
11 No later than five working days or the next regular meeting  
12 after the opening of bids, the awarding authority issues  
13 written notice to the bidder of its intent to revoke  
14 prequalification and the grounds therefor; (2) the bidder is  
15 then provided an opportunity to be heard before the awarding  
16 authority on the intended revocation; (3) the awarding  
17 authority makes a good faith showing of a material inaccuracy  
18 in the prequalification application of a bidder or of a  
19 material change in the responsibility of the bidder since  
20 submitting its prequalification application; and (4) the  
21 revocation of prequalification is determined no later than 10  
22 days after written notice of intent to revoke, unless the  
23 bidder whose qualification is in question agrees in writing to  
24 an extension in time.

25 "(e) Nothing in this section shall preclude the  
26 rejection of a bidder determined not responsible nor the  
27 inclusion of criteria in the bid documents which would limit

1 contract awards to responsible bidders where no  
2 prequalification procedure is employed by the awarding  
3 authority."

4 Section 2. This act shall become effective  
5 immediately following its passage and approval by the  
6 Governor, or its otherwise becoming law.