

1 SB178
2 203738-2
3 By Senator Gudger
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 13-FEB-20

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend Section 39-2-6, Code of Alabama 1975,
12 relating to competitive bidding on state public works
13 contracts; to allow a public two-year or four-year institution
14 of higher education authority to negotiate with the lowest
15 responsible and responsive bidder under certain specified
16 circumstances.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Section 39-2-6 of the Code of Alabama
19 1975, is amended to read as follows:

20 "§39-2-6.

21 "(a) The contract shall be awarded to the lowest
22 responsible and responsive bidder, unless the awarding
23 authority finds that all the bids are unreasonable or that it
24 is not to the interest of the awarding authority to accept any
25 of the bids. A responsible bidder is one who, among other
26 qualities determined necessary for performance, is competent,
27 experienced, and financially able to perform the contract. A

1 responsive bidder is one who submits a bid that complies with
2 the terms and conditions of the invitation for bids. Minor
3 irregularities in the bid shall not defeat responsiveness. The
4 bidder to whom the award is made shall be notified by
5 telegram, confirmed facsimile, or letter at the earliest
6 possible date. If the successful bidder fails or refuses to
7 sign the contract, to make bond as provided in this chapter or
8 to provide evidence of insurance as required by the bid
9 documents, the awarding authority may award the contract to
10 the second lowest responsible and responsive bidder. If the
11 second lowest bidder fails or refuses to sign the contract,
12 make bond as provided in this chapter or to provide evidence
13 of insurance as required by the bid documents, the awarding
14 authority may award the contract to the third lowest
15 responsible and responsive bidder.

16 "(b) If no bids or only one bid is received at the
17 time stated in the advertisement for bids, the awarding
18 authority may advertise for and seek other competitive bids,
19 or the awarding authority may direct that the work shall be
20 done by force account under its direction and control or, with
21 the exception of the Department of Transportation, the
22 awarding authority may negotiate for the work through the
23 receipt of informal bids not subject to the requirements of
24 this section. Where only one responsible and responsive bid
25 has been received, any negotiation for the work shall be for a
26 price lower than that bid.

1 "(c) When two or more bids are received, and all
2 bids exceed available funding for the contract, a public
3 two-year or four-year institution of higher education awarding
4 authority may negotiate for the work with the lowest
5 responsible and responsive bidder provided that a public
6 two-year or four-year institution of higher education awarding
7 authority can document the shortage of funding, that time is
8 of the essence, and that the negotiated changes are in the
9 public interest and do not materially alter the scope and
10 nature of the project.

11 "~~(c)~~(d) If the awarding authority finds that all
12 bids received are unreasonable or that it is not to the
13 interest of the awarding authority to accept any of the bids,
14 the awarding authority may direct that the work shall be done
15 by force account under its direction and control.

16 "~~(d)~~(e) On any construction project on which the
17 awarding authority has prepared plans and specifications,
18 received bids, and has determined to do by force account or by
19 negotiation, the awarding authority shall make available the
20 plans and specifications, an itemized estimate of cost and any
21 informal bids for review by the Department of Examiners of
22 Public Accounts and, upon completion of the project by an
23 awarding authority, the final total costs together with an
24 itemized list of cost of any and all changes made in the
25 original plans and specifications shall also be made available
26 for review by the Department of Examiners of Public Accounts.
27 Furthermore, the above described information shall be made

1 public by the awarding authority upon request. Upon the
2 approval of the awarding authority, its duly authorized
3 officer or officers may, when proceeding upon the basis of
4 force account, let any subdivision or unit of work by contract
5 on informal bids.

6 "~~(e)~~ (f) No provision of this section shall be
7 interpreted as precluding the use of convict labor by the
8 awarding authority. This section shall not apply to routine
9 maintenance and repair jobs done by maintenance personnel who
10 are regular employees of the awarding authority, nor shall it
11 apply to road or bridge construction work performed by an
12 awarding authority's regular employees and own equipment.

13 "~~(f)~~ (g) No contract awarded to the lowest
14 responsible and responsive bidder shall be assignable by the
15 successful bidder without written consent of the awarding
16 authority, and in no event shall a contract be assigned to an
17 unsuccessful bidder whose bid was rejected because he or she
18 was not a responsible or responsive bidder.

19 "~~(g)~~ (h) Any agreement or collusion among bidders or
20 prospective bidders in restraint of freedom of competition to
21 bid at a fixed price or to refrain from bidding or otherwise
22 shall render the bids void and shall cause the bidders or
23 prospective bidders to be disqualified from submitting further
24 bids to the awarding authority on future lettings. Any bidder
25 or prospective bidder who willfully participates in any
26 agreement or collusion in restraint of freedom of competition
27 shall be guilty of a felony and, on conviction thereof, shall

1 be fined not less than five thousand dollars (\$5,000) nor more
2 than fifty thousand dollars (\$50,000) or, at the discretion of
3 the jury, shall be imprisoned in the penitentiary for not less
4 than one nor more than three years.

5 "~~(h)~~ (i) Any disclosure in advance of the terms of a
6 bid submitted in response to an advertisement for bids shall
7 render the proceedings void and require advertisement and
8 award anew.

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

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

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Senate

Read for the first time and referred to
the Senate committee on Fiscal Responsibility and
Economic Development..... 13-FEB-20

Reported from Fiscal Responsibility and
Economic Development as Favorable with 1 amendment
..... 20-FEB-20

Read for the third time and passed as
amended 05-MAR-20

Yeas 31
Nays 0

Patrick Harris,
Secretary.