

1 SB109
2 207658-2
3 By Senator Gudger
4 RFD: Governmental Affairs
5 First Read: 02-FEB-21
6 PFD: 01/28/2021

1 SB109

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4 ENROLLED, An Act,

5 To amend Section 39-2-6, Code of Alabama 1975,
6 relating to competitive bidding on state public works
7 contracts; to allow a local board of education or a public
8 two-year or four-year institution of higher education
9 authority to negotiate with the lowest responsible and
10 responsive bidder under certain specified circumstances.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Section 39-2-6 of the Code of Alabama
13 1975, is amended to read as follows:

14 "§39-2-6.

15 "(a) The contract shall be awarded to the lowest
16 responsible and responsive bidder, unless the awarding
17 authority finds that all the bids are unreasonable or that it
18 is not to the interest of the awarding authority to accept any
19 of the bids. A responsible bidder is one who, among other
20 qualities determined necessary for performance, is competent,
21 experienced, and financially able to perform the contract. A
22 responsive bidder is one who submits a bid that complies with
23 the terms and conditions of the invitation for bids. Minor
24 irregularities in the bid shall not defeat responsiveness. The
25 bidder to whom the award is made shall be notified by

1 telegram, confirmed facsimile, or letter at the earliest
2 possible date. If the successful bidder fails or refuses to
3 sign the contract, to make bond as provided in this chapter or
4 to provide evidence of insurance as required by the bid
5 documents, the awarding authority may award the contract to
6 the second lowest responsible and responsive bidder. If the
7 second lowest bidder fails or refuses to sign the contract,
8 make bond as provided in this chapter or to provide evidence
9 of insurance as required by the bid documents, the awarding
10 authority may award the contract to the third lowest
11 responsible and responsive bidder.

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

23 "(c) When two or more bids are received, and all
24 bids exceed available funding for the contract, a local board
25 of education or a public two-year or four-year institution of

1 higher education awarding authority may negotiate for the work
2 with the lowest responsible and responsive bidder provided
3 that the local board of education or public two-year or
4 four-year institution of higher education awarding authority
5 can document the shortage of funding, that time is of the
6 essence, and that the negotiated changes are in the public
7 interest and do not materially alter the scope and nature of
8 the project.

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

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

1 agreement or collusion in restraint of freedom of competition
2 shall be guilty of a felony and, on conviction thereof, shall
3 be fined not less than five thousand dollars (\$5,000) nor more
4 than fifty thousand dollars (\$50,000) or, at the discretion of
5 the jury, shall be imprisoned in the penitentiary for not less
6 than one nor more than three years.

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

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

1 invitation to bid the criteria under which it shall evaluate
2 the life cycle costs."

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB109

Senate 11-FEB-21

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 29-APR-21

By: Senator Gudger