

1 HB339
2 89080-2
3 By Representatives Warren, McCampbell, McClammy, England and
4 Salaam
5 RFD: Government Operations
6 First Read: 13-MAR-07

1
2 ENROLLED, An Act,

3 To amend Section 41-16-50, as amended by Act
4 2006-621, 2006 Regular Session (Acts 2006, p. 1702), and
5 Section 41-16-57 of the Code of Alabama 1975, relating to
6 competitive bidding by local governmental and educational
7 instrumentalities; to further provide for the authority of the
8 awarding authority to require a bid bond; to further authorize
9 a local preference where the bid from a local vendor is
10 greater than the bid of the lowest responsible bidder; and to
11 further provide for making an award to the second lowest
12 responsible bidder in the event that the lowest responsible
13 bidder defaults under the bid award.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Section 41-16-50, as amended by Act
16 2006-621, 2006 Regular Session (Acts 2006, p. 1702), and
17 Section 41-16-57 of the Code of Alabama 1975, are amended to
18 read as follows:

19 "§41-16-50.

20 "(a) With the exception of contracts for public
21 works whose competitive bidding requirements are governed
22 exclusively by Title 39, all expenditure of funds of whatever
23 nature for labor, services, work, or for the purchase of
24 materials, equipment, supplies, or other personal property
25 involving seven thousand five hundred dollars (\$7,500) or

1 more, and the lease of materials, equipment, supplies, or
2 other personal property where the lessee is, or becomes
3 legally and contractually, bound under the terms of the lease,
4 to pay a total amount of seven thousand five hundred dollars
5 (\$7,500) or more, made by or on behalf of any state trade
6 school, state junior college, state college, or university
7 under the supervision and control of the State Board of
8 Education, the city and county boards of education, the
9 district boards of education of independent school districts,
10 the county commissions, the governing bodies of the
11 municipalities of the state, and the governing boards of
12 instrumentalities of counties and municipalities, including
13 waterworks boards, sewer boards, gas boards, and other like
14 utility boards and commissions, except as hereinafter
15 provided, shall be made under contractual agreement entered
16 into by free and open competitive bidding, on sealed bids, to
17 the lowest responsible bidder. Prior to advertising for bids
18 for an item of personal property, where the county, a
19 municipality, or an instrumentality thereof is the awarding
20 authority, the awarding authority may establish a local
21 preference zone consisting of either the legal boundaries or
22 jurisdiction of the awarding authority, or the boundaries of
23 the county in which the awarding authority is located, or the
24 boundaries of the Standard Metropolitan Statistical Area
25 (SMSA) in which the awarding authority is located. If no such

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

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

1 ordinances, in the case of municipalities, or resolutions, in
2 the case of other contracting agencies, adopted by each of the
3 participating governing bodies, which shall set forth the
4 categories of labor, services, or work, or for the purchase or
5 lease of materials, equipment, supplies, or other personal
6 property to be purchased, the manner of advertising for bids
7 and the awarding of contracts, the method of payment by each
8 participating contracting agency, and other matters deemed
9 necessary to carry out the purposes of the agreement. Each
10 contracting agency's share of expenditures for purchases under
11 any agreement shall be appropriated and paid in the manner set
12 forth in the agreement and in the same manner as for other
13 expenses of the contracting agency. The contracting agencies
14 entering into a joint agreement, as herein permitted, may
15 designate a joint purchasing agent, and the agent shall have
16 the responsibility to comply with this article. Purchases,
17 contracts, or agreements made pursuant to a joint purchasing
18 agreement shall be subject to all terms and conditions of this
19 article.

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

24 "(c) ~~All~~ The awarding authority may require bidders
25 ~~shall to~~ furnish a bid bond on any contract exceeding ten

1 ~~thousand dollars (\$10,000)~~ if bonding is available for the
2 services, equipment, or materials.

3 "§41-16-57.

4 "(a) When purchases are required to be made through
5 competitive bidding, awards shall be made to the lowest
6 responsible bidder taking into consideration the qualities of
7 the commodities proposed to be supplied, their conformity with
8 specifications, the purposes for which required, the terms of
9 delivery, transportation charges, and the dates of delivery.
10 If at any time after the award has been made, the lowest
11 responsible bidder notifies the awarding authority in writing
12 that the bidder will no longer comply with the terms of the
13 award to provide the goods or services to the awarding
14 authority under the terms and conditions of the original award
15 or the awarding authority documents that the lowest
16 responsible bidder defaults under the terms of the original
17 award, the awarding authority may terminate the award to the
18 defaulting bidder and make an award to the second lowest
19 responsible bidder for the remainder of the award period
20 without rebidding, provided the award to the second lowest
21 responsible bidder is in all respects made under the terms and
22 conditions contained in the original bid specifications and is
23 for the same or a lower price than the bid originally
24 submitted to the awarding authority by the second lowest
25 responsible bidder.

1 "(b) The awarding authority in the purchase of or
2 contract for personal property or contractual services shall
3 give preference, provided there is no sacrifice or loss in
4 price or quality, to commodities produced in Alabama or sold
5 by Alabama persons, firms, or corporations. Notwithstanding
6 the foregoing, no county official, county commission, school
7 board, city council or city councilmen, or other public
8 official, state board, or state agency charged with the
9 letting of contracts or purchase of materials for the
10 construction, modification, alteration, or repair of any
11 publicly owned facility may specify the use of materials or
12 systems by a sole source, unless:

13 "(1) The governmental body can document to the
14 satisfaction of the State of Alabama Building Commission that
15 the "sole source" product or service is of an "indispensable"
16 nature, all other viable alternatives have been explored, and
17 it has been determined that only this product or service will
18 fulfill the function for which the product is needed.
19 Frivolous features will not be considered.

20 "(2) The sole source specification has been
21 recommended by the architect or engineer of record and who
22 also documents that there is no other product available and
23 that the use of the requirement is of an indispensable nature
24 and why.

1 "(3) All information substantiating the use of a
2 sole source specification is documented in writing and is
3 filed into the project file.

4 "(c) The awarding authority or requisitioning agency
5 may reject any bid if the price is deemed excessive or quality
6 of product inferior.

7 "(d) Each record, with the successful bid indicated
8 thereon, and with the reasons for the award if not awarded to
9 the lowest bidder, shall, after award of the order or
10 contract, be open to public inspection.

11 "(e) Contracts for the purchase of personal property
12 or contractual services shall be let for periods not greater
13 than three years. "Lease-purchase" contracts for capital
14 improvements and repairs to real property shall be let for
15 periods not greater than 10 years and all other lease-purchase
16 contracts shall be let for periods not greater than 10 years."

17 Section 2. This act shall become effective
18 immediately following its passage and approval by the
19 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 05-APR-07.

Greg Pappas
Clerk

Senate

29-MAY-07

Passed