

1 SB53  
2 95511-1  
3 By Senator Denton  
4 RFD: Fiscal Responsibility and Accountability  
5 First Read: 05-FEB-08  
6 PFD: 01/28/2008

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8 SYNOPSIS: Under the existing competitive bid law  
9 applicable to local governmental and educational  
10 instrumentalities, all bidders are required to  
11 furnish a bid bond to the awarding authority on  
12 contracts exceeding \$10,000 if bonding is  
13 available. Additionally, the awarding authority may  
14 grant a local preference to a local vendor where  
15 the bid from the local vendor is no more than three  
16 percent greater than the bid of the lowest  
17 responsible bidder. Also under existing law, there  
18 is no provision allowing the awarding authority to  
19 award a contract to the second lowest responsible  
20 bidder in the event that the lowest responsible  
21 bidder fails or refuses to comply with the contract  
22 after an award has been made as provided in the  
23 competitive bid law.

24 This bill would provide for the awarding  
25 authority to require a bid bond in its discretion,  
26 would allow the awarding authority to grant the

1 local preference to a local vendor where the bid is  
2 no more than five percent greater than the bid of  
3 the lowest responsible bidder, and would provide  
4 for the awarding authority to award the balance of  
5 a contract entered into pursuant to the competitive  
6 bid law to the second lowest responsible bidder in  
7 the event that the lowest responsible bidder  
8 notifies the awarding authority in writing that the  
9 bidder will not perform or otherwise defaults under  
10 the award.

11  
12 A BILL  
13 TO BE ENTITLED  
14 AN ACT  
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16 To amend Sections 41-16-50 and 41-16-57 of the Code  
17 of Alabama 1975, relating to competitive bidding by local  
18 governmental and educational instrumentalities; to further  
19 provide for the authority of the awarding authority to require  
20 a bid bond; to further authorize a local preference where the  
21 bid from a local vendor is greater than the bid of the lowest  
22 responsible bidder; and to further provide for making an award  
23 to the second lowest responsible bidder in the event that the  
24 lowest responsible bidder defaults under the bid award.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. Sections 41-16-50 and 41-16-57 of the  
2 Code of Alabama 1975, are amended to read as follows:

3           "§41-16-50.

4           "(a) With the exception of contracts for public  
5 works whose competitive bidding requirements are governed  
6 exclusively by Title 39, all expenditure of funds of whatever  
7 nature for labor, services, work, or for the purchase of  
8 materials, equipment, supplies, or other personal property  
9 involving seven thousand five hundred dollars (\$7,500) or  
10 more, and the lease of materials, equipment, supplies, or  
11 other personal property where the lessee is, or becomes  
12 legally and contractually, bound under the terms of the lease,  
13 to pay a total amount of seven thousand five hundred dollars  
14 (\$7,500) or more, made by or on behalf of any state trade  
15 school, state junior college, state college, or university  
16 under the supervision and control of the State Board of  
17 Education, the city and county boards of education, the  
18 district boards of education of independent school districts,  
19 the county commissions, the governing bodies of the  
20 municipalities of the state, and the governing boards of  
21 instrumentalities of counties and municipalities, including  
22 waterworks boards, sewer boards, gas boards, and other like  
23 utility boards and commissions, except as hereinafter  
24 provided, shall be made under contractual agreement entered  
25 into by free and open competitive bidding, on sealed bids, to  
26 the lowest responsible bidder. Prior to advertising for bids

1 for an item of personal property, where the county, a  
2 municipality, or an instrumentality thereof is the awarding  
3 authority, the awarding authority may establish a local  
4 preference zone consisting of either the legal boundaries or  
5 jurisdiction of the awarding authority, or the boundaries of  
6 the county in which the awarding authority is located, or the  
7 boundaries of the Standard Metropolitan Statistical Area  
8 (SMSA) in which the awarding authority is located. If no such  
9 action is taken by the awarding authority, the boundaries of  
10 the local preference zone shall be deemed to be the same as  
11 the legal boundaries or jurisdiction of the awarding  
12 authority. In the event a bid is received for an item of  
13 personal property to be purchased or contracted for from a  
14 person, firm, or corporation deemed to be a responsible  
15 bidder, having a place of business within the local preference  
16 zone where the county, a municipality, or an instrumentality  
17 thereof is the awarding authority, and the bid is no more than  
18 ~~three~~ five percent greater than the bid of the lowest  
19 responsible bidder, the awarding authority may award the  
20 contract to the resident responsible bidder. In no case may  
21 the local preference zone or the five percent preference  
22 established herein be used to qualify an otherwise unqualified  
23 bidder or to allow the awarding of the contract that would  
24 otherwise be prohibited by state law. In the event only one  
25 bidder responds to the invitation to bid, the awarding  
26 authority may reject the bid and negotiate the purchase or

1 contract, providing the negotiated price is lower than the bid  
2 price.

3 "(b) The governing bodies of two or more contracting  
4 agencies, as enumerated in subsection (a) within the same  
5 county or adjoining counties, or the governing bodies of two  
6 or more counties, or the governing bodies of two or more city  
7 or county boards of education, may provide, by joint  
8 agreement, for the purchase of labor, services, or work, or  
9 for the purchase or lease of materials, equipment, supplies,  
10 or other personal property for use by their respective  
11 agencies. The agreement shall be entered into by similar  
12 ordinances, in the case of municipalities, or resolutions, in  
13 the case of other contracting agencies, adopted by each of the  
14 participating governing bodies, which shall set forth the  
15 categories of labor, services, or work, or for the purchase or  
16 lease of materials, equipment, supplies, or other personal  
17 property to be purchased, the manner of advertising for bids  
18 and the awarding of contracts, the method of payment by each  
19 participating contracting agency, and other matters deemed  
20 necessary to carry out the purposes of the agreement. Each  
21 contracting agency's share of expenditures for purchases under  
22 any agreement shall be appropriated and paid in the manner set  
23 forth in the agreement and in the same manner as for other  
24 expenses of the contracting agency. The contracting agencies  
25 entering into a joint agreement, as herein permitted, may  
26 designate a joint purchasing agent, and the agent shall have

1 the responsibility to comply with this article. Purchases,  
2 contracts, or agreements made pursuant to a joint purchasing  
3 agreement shall be subject to all terms and conditions of this  
4 article.

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

9 "~~(c) All~~ The awarding authority may require bidders  
10 ~~shall to~~ furnish a bid bond on any contract ~~exceeding ten~~  
11 ~~thousand dollars (\$10,000)~~ if bonding is available for the  
12 services, equipment, or materials.

13 "§41-16-57.

14 "(a) When purchases are required to be made through  
15 competitive bidding, awards shall be made to the lowest  
16 responsible bidder taking into consideration the qualities of  
17 the commodities proposed to be supplied, their conformity with  
18 specifications, the purposes for which required, the terms of  
19 delivery, transportation charges, and the dates of delivery.  
20 If at any time after the award has been made, the lowest  
21 responsible bidder notifies the awarding authority in writing  
22 that the bidder will no longer comply with the terms of the  
23 award to provide the goods or services to the awarding  
24 authority under the terms and conditions of the original award  
25 or the awarding authority documents that the lowest  
26 responsible bidder defaults under the terms of the original

1 award, the awarding authority may terminate the award to the  
2 defaulting bidder and make an award to the second lowest  
3 responsible bidder for the remainder of the award period  
4 without rebidding, provided the award to the second lowest  
5 responsible bidder is in all respects made under the terms and  
6 conditions contained in the original bid specifications and is  
7 for the same or a lower price than the bid originally  
8 submitted to the awarding authority by the second lowest  
9 responsible bidder.

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

22           "(1) The governmental body can document to the  
23 satisfaction of the State of Alabama Building Commission that  
24 the "sole source" product or service is of an "indispensable"  
25 nature, all other viable alternatives have been explored, and  
26 it has been determined that only this product or service will

1 fulfill the function for which the product is needed.

2 Frivolous features will not be considered.

3 "(2) The sole source specification has been  
4 recommended by the architect or engineer of record and who  
5 also documents that there is no other product available and  
6 that the use of the requirement is of an indispensable nature  
7 and why.

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

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

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

18 "(e) Contracts for the purchase of personal property  
19 or contractual services shall be let for periods not greater  
20 than three years. "Lease-purchase" contracts for capital  
21 improvements and repairs to real property shall be let for  
22 periods not greater than 10 years and all other lease-purchase  
23 contracts shall be let for periods not greater than 10 years."

24 Section 2. This act shall become effective  
25 immediately following its passage and approval by the  
26 Governor, or its otherwise becoming law.

