SYNOPSIS: Under existing law, a contract for a public works project must be awarded to the lowest responsible and responsive bidder.

This bill would allow a public works contract to be awarded by a county or municipality to a contractor whose principal place of business is within the county where the public works project is located if the contractor is a responsible and responsive bidder and the bid is not more than five percent greater than the lowest responsible bid.

A BILL TO BE ENTITLED
AN ACT

Relating to public works projects; to amend Section 39-2-6, Code of Alabama 1975; by allowing a public works contract to be awarded by a county or municipality to a contractor whose principal place of business is within the county where the public works project is located if the
contractor is a responsible and responsive bidder and the bid
is not more than five percent greater than the lowest
responsible bid.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§39-2-6.

"(a) The Except as provided is subsection (j), the
contract shall be awarded to the lowest responsible and
responsive bidder, unless the awarding authority finds that
all the bids are unreasonable or that it is not to the
interest of the awarding authority to accept any of the bids.
A responsible bidder is one who, among other qualities
determined necessary for performance, is competent,
experienced, and financially able to perform the contract. A
responsive bidder is one who submits a bid that complies with
the terms and conditions of the invitation for bids. Minor
irregularities in the bid shall not defeat responsiveness. The
bidder to whom the award is made shall be notified by
telegram, confirmed facsimile, or letter at the earliest
possible date. If the successful bidder fails or refuses to
sign the contract, to make bond as provided in this chapter or
to provide evidence of insurance as required by the bid
documents, the awarding authority may award the contract to
the second lowest responsible and responsive bidder. If the
second lowest bidder fails or refuses to sign the contract,
make bond as provided in this chapter or to provide evidence
of insurance as required by the bid documents, the awarding
authority may award the contract to the third lowest
responsible and responsive bidder.

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

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

"(d) On any construction project on which the
awarding authority has prepared plans and specifications,
received bids, and has determined to do by force account or by
negotiation, the awarding authority shall make available the
plans and specifications, an itemized estimate of cost and any
informal bids for review by the Department of Examiners of
Public Accounts and, upon completion of the project by an
awarding authority, the final total costs together with an
itemized list of cost of any and all changes made in the
original plans and specifications shall also be made available
for review by the Department of Examiners of Public Accounts.
Furthermore, the above described information shall be made
public by the awarding authority upon request. Upon the
approval of the awarding authority, its duly authorized
officer or officers may, when proceeding upon the basis of
force account, let any subdivision or unit of work by contract
on informal bids.

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

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

"(g) Any agreement or collusion among bidders or
prospective bidders in restraint of freedom of competition to
bid at a fixed price or to refrain from bidding or otherwise
shall render the bids void and shall cause the bidders or
prospective bidders to be disqualified from submitting further
bids to the awarding authority on future lettings. Any bidder or prospective bidder who willfully participates in any agreement or collusion in restraint of freedom of competition shall be guilty of a felony and, on conviction thereof, shall be fined not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000) or, at the discretion of the jury, shall be imprisoned in the penitentiary for not less than one nor more than three years.

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

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

"(j) Notwithstanding subsection (a), an awarding 
authority that is a county, municipality, or an 
instrumentality of either, may award the contract to a person 
that has its principal place of business within the county 
where the public works project is located and is deemed to be 
a responsible and responsive bidder, if the bid is no more 
than five percent greater than the bid of the lowest 
responsible and responsive bidder."

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