

1 SB72  
2 180586-2  
3 By Senator Allen  
4 RFD: Transportation and Energy  
5 First Read: 07-FEB-17

SYNOPSIS:            This bill would make technical corrections to Act 2016-260, Senate Bill 175, of the 2016 Regular Session. The bill would amend Section 39-2-4 of the Code of Alabama 1975, relating to competitive bids for public improvement contracts by state agencies, to restore the prior limit on bid guarantees required for state agencies other than the Department of Transportation. The bill would add amendatory language that was inadvertently left out of Senate Bill 175 and conform the intent of Senate Bill 175 to the title of the bill.

A BILL  
TO BE ENTITLED  
AN ACT

To amend Section 39-2-4 of the Code of Alabama 1975, as amended by Act 2016-260 of the 2016 Regular Session, relating to the bid guarantees on public improvement contracts

1 by state agencies; to make technical corrections to Act  
2 2016-260 of the 2016 Regular Session, to restore the prior  
3 limit on bid bonds required for state agencies other than the  
4 Department of Transportation; and to provide for retroactive  
5 effect.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Section 39-2-4 of the Code of Alabama  
8 1975, as amended by Act 2016-260 of the 2016 Regular Session,  
9 is amended to read as follows:

10 "§39-2-4.

11 "(a) The bidder shall be required to file with his  
12 or her bid either a cashier's check drawn on an Alabama bank  
13 or a bid bond executed by a surety company duly authorized and  
14 qualified to make such bonds in the State of Alabama, payable  
15 to the awarding authority for an amount not less than five  
16 percent of the awarding authority's estimated cost or of the  
17 contractor's bid, but in no event more than ~~fifty thousand~~  
18 ~~dollars (\$50,000)~~ ten thousand dollars (\$10,000), except if  
19 the awarding authority is the Department of Transportation,  
20 then the bid guarantee shall not be more than fifty thousand  
21 dollars (\$50,000). The bid guaranties as provided in this  
22 section shall constitute all of the qualifications or guaranty  
23 to be required of contractors as prerequisites to bidding for  
24 public works, except as required by the State Licensing Board  
25 for General Contractors and the prequalification as required  
26 by the Department of Transportation, the Building Commission,  
27 or any other awarding authority.

1           "(b) With the exception of the Department of  
2       Transportation which has prequalification procedures and  
3       criteria set forth by statute, any awarding authority that  
4       proposes to prequalify bidders shall establish written  
5       prequalification procedures and criteria that (1) are  
6       published sufficiently in advance of any affected contract so  
7       that a bona fide bidder may seek and obtain prequalification  
8       prior to preparing a bid for that contract, such publication  
9       to be accomplished by the methods specified in subsection (a)  
10      of Section 39-2-2; (2) are related to the purpose of the  
11      contract or contracts affected; (3) are related to contract  
12      requirements or the quality of the product or service in  
13      question; (4) are related to the responsibility, including the  
14      competency, experience, and financial ability, of a bidder;  
15      and (5) will permit reasonable competition at a level that  
16      serves the public interest. The prequalification publication  
17      may run concurrently with the publication required under  
18      subsection (a) of Section 39-2-2, provided it produces the  
19      above required advance notice.

20           "(c) Within the bounds of good faith, the awarding  
21      authority retains the right to determine whether a contractor  
22      has met prequalification procedures and criteria.

23           "(d) Any bidder who has prequalified pursuant to the  
24      requirements in subsection (b) shall be deemed "responsible"  
25      for purposes of award unless the prequalification is revoked  
26      by the awarding authority under the following procedures: (1)  
27      No later than five working days or the next regular meeting

1 after the opening of bids, the awarding authority issues  
2 written notice to the bidder of its intent to revoke  
3 prequalification and the grounds therefor; (2) the bidder is  
4 then provided an opportunity to be heard before the awarding  
5 authority on the intended revocation; (3) the awarding  
6 authority makes a good faith showing of a material inaccuracy  
7 in the prequalification application of a bidder or of a  
8 material change in the responsibility of the bidder since  
9 submitting its prequalification application; and (4) the  
10 revocation of prequalification is determined no later than 10  
11 days after written notice of intent to revoke, unless the  
12 bidder whose qualification is in question agrees in writing to  
13 an extension in time.

14 "(e) Nothing in this section shall preclude the  
15 rejection of a bidder determined not responsible nor the  
16 inclusion of criteria in the bid documents which would limit  
17 contract awards to responsible bidders where no  
18 prequalification procedure is employed by the awarding  
19 authority."

20 Section 2. This act is remedial and curative and  
21 shall be effective retroactively to May 3, 2016.