Local Preference under Alabama’s Bid Law

Act 2015-293

Act 2015-293 amends *Ala. Code § 41-16-50* to make small changes to Alabama’s Competitive Bid Law that could provide significant benefits to county government and their local businesses. The changes took effect on August 1, 2015.

**Preference for Local Businesses**

Currently, counties can apply a “local preference” for a local business whose bid comes within three percent (3%) of the lowest responsible bidder on items of personal property. Act 2015-293 amends this current provision of law in two ways:

* It increases the preference to five percent (5%)
* It adds services to the list of items for which local preference can be granted

***The local preference continues to be optional and granted only at the discretion of the county commission.***

**Preferences when Lowest Bidder is “Foreign Entity”**

Act 2015-293 also provides several “in-state” preferences when the lowest responsible bidder is a “foreign entity”, meaning that the company does not have a place of business within the state.

1. The county may award the contract to a local business responsible bidder if his or her bid is within ten percent (10%) of the foreign entity’s bid.

2. The county may also award the contract to any of the following in-state responsible bidders that are within ten percent of the foreign entity lowest bidder

* A woman-owned enterprise
* A small business enterprise
* A minority-owned business enterprise
* A veteran-owned business enterprise
* A disadvantaged-owned business enterprise

As with the other local preference, this new preference applies to purchases of personal property ***and*** services. And the preference is granted at the option of the county commission.

A copy of Ala. Code § 41-16-50, as amended, is attached with changes highlighted.**Ala. Code §41-16-50.**

(a) With the exception of contracts for public4 works whose competitive bidding requirements are governed exclusively by Title 39, all expenditure of funds of whatever nature for labor, services, work, or for the purchase of materials, equipment, supplies, or other personal property involving fifteen thousand dollars ($15,000) or more, and the lease of materials, equipment, supplies, or other personal property where the lessee is, or becomes legally and contractually, bound under the terms of the lease, to pay a total amount of fifteen thousand dollars ($15,000) or more, made by or on behalf of any state trade school, state junior college, state college, or university under the supervision and control of the State Board of Education, the district boards of education of independent school districts, the county commissions, the governing bodies of the municipalities of the state, and the governing boards of instrumentalities of counties and municipalities, including waterworks boards, sewer boards, gas boards, and other like utility boards and commissions, except as hereinafter provided, shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder. Prior to advertising for bids for an item of personal property or services, where a county, a municipality, or an instrumentality thereof is the awarding authority, the awarding authority may establish a local preference zone consisting of either the legal boundaries or jurisdiction of the awarding authority, or the boundaries of the county in which the awarding authority is located, or the boundaries of the Core Based Statistical Area (CBSA) in which the awarding authority is located. If no such action is taken by the awarding authority, the boundaries of the local preference zone shall be deemed to be the same as the legal boundaries or jurisdiction of the awarding authority. In the event a bid is received for an item of personal property or services to be purchased or contracted for from a person, firm, or corporation deemed to be a responsible bidder, having a place of business within the local preference zone where the county, a municipality, or an instrumentality thereof is the awarding authority, and the bid is no more than five percent greater than the bid of the lowest responsible bidder, the awarding authority may award the contract to the resident responsible bidder. In the event only one bidder responds to the invitation to bid, the awarding authority may reject the bid and negotiate the purchase or contract, providing the negotiated price is lower than the bid price.

(b) The governing bodies of two or more contracting agencies, as enumerated in subsection (a), or the governing bodies of two or more counties, or the governing bodies of two or more city or county boards of education, may provide, by joint agreement, for the purchase of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property for use by their respective agencies. The agreement shall be entered into by similar ordinances, in the case of municipalities, or resolutions, in the case of other contracting agencies, adopted by each of the participating governing bodies, which shall set forth the categories of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property to be purchased, the manner of advertising for bids and the awarding of contracts, the method of payment by each participating contracting agency, and other matters deemed necessary to carry out the purposes of the agreement. Each contracting agency's share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency. The contracting agencies entering into a joint agreement, as herein permitted, may designate a joint purchasing or bidding agent, and the agent shall comply with this article. Purchases, contracts, or agreements made pursuant to a joint purchasing or bidding agreement shall be subject to all terms and conditions of this article.

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

(c) The awarding authority may require bidders to5 furnish a bid bond for a particular bid solicitation if the bonding requirement applies to all bidders, is included in the written bid specifications, and if bonding is available for the services, equipment, or materials.

(d) Notwithstanding subsection (a), in the event the lowest bid for an item of personal property or services to be purchased or contracted for is received from a foreign entity, where the county, a municipality, or an instrumentality thereof is the awarding authority, the awarding authority may award the contract to responsible bidder whose bid is no more than 10 percent greater than the foreign entity if the bidder has a place of business within the local preference zone or is a responsible bidder from a business within the state that is a woman-owned enterprise, an enterprise of small business, as defined in Section 25-10-3, a minority-owned business enterprise, a veteran-owned business enterprise, or a disadvantaged-owned business enterprise. For the purposes of this subsection, "foreign entity" means a business entity that does not have a place of business within the state.