

# Code of Alabama

## Section: 39-2-11

**Catchline:** Proceedings Upon Failure of Successful Bidders to Execute Contracts and Furnish Bonds, Etc.; Death of a Low Bidder; Effect of Failure of Awarding Authorities to Complete Execution of Contracts and Issue Proceed Orders; Withdrawal of Low Bid Upon Discovery of Mistake.

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(a) Should the successful bidder or bidders to whom a contract is awarded fail to execute a contract and furnish acceptable contract securities and evidence of insurance as required by law within the period as set forth in Section 39-2-8, the awarding authority shall retain from the proposal guaranty, if it is a cashier's check, or recover from the principal or the sureties, if the guaranty is a bid bond, the difference between the amount of the contract as awarded and the amount of the proposal of the next lowest bidder. If no other bids are received, the full amount of the proposal guaranty shall be so retained or recovered as liquidated damages for such default. Any sums so retained or recovered shall be the property of the awarding authority.

(b) In the event of the death of a low bidder between the date of the opening of bids and the 15 days following the date of award of contract as allowed in Section 39-2-8 for furnishing of contract securities and evidence of insurance, the awarding authority shall return the proposal guaranty intact to the estate of the deceased low bidder.

(c) Failure by the awarding authority to complete the execution of a contract and to issue a proceed order as required in Sections 39-2-9 and 39-2-10 shall be just cause, unless both parties agree in writing to a stipulated extension in time for issuance of a proceed order, for the withdrawal of the contractor's bid and contract without forfeiture of the certified check or bond.

(d) Except for contracts let by the Department of Transportation, if the low bidder discovers a mistake in its bid rendering a price substantially out of proportion to that of other bidders, the low bidder may seek withdrawal of its bid without forfeiture upon written notice to the awarding authority within three working days after the opening of bids whether or not award has been made. If the low bidder offers clear and convincing documentary evidence as soon as possible, but no later than three working days after the opening of bids, that it made such a mistake due to calculation or clerical error, an inadvertent omission, or a typographical error, the

awarding authority shall permit withdrawal without forfeiture. The decision of the awarding authority shall be made within 10 days after receipt of the low bidder's evidence or by the next regular meeting of the awarding authority. In no event shall a mistake of law, judgment, or opinion constitute a valid ground for the withdrawal of a bid without forfeiture. Upon withdrawal of bid without forfeiture, the low bidder shall be prohibited from (1) doing any work on the contract, either as a subcontractor or in any other capacity, and (2) bidding on the same project if it is readvertised for letting.

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**History:** (Acts 1947, No. 492, p. 338, &sect;10; Acts 1997, No. 97-225, p. 348, &sect;1.)