HB65 ENGROSSED



- 1 XQ607E-2
- 2 By Representative Collins
- 3 RFD: Ways and Means Education
- 4 First Read: 07-Mar-23
- 5 PFD: 06-Mar-23



1	
2	
3	
4	
5	A BILL
6	TO BE ENTITLED
7	AN ACT
8	
9	To amend Sections 16-13B-1, 16-13B-4, and 16-13B-5,
10	Code of Alabama 1975, relating to competitive bidding on
11	contracts of city and county boards of education; to increase
12	the minimum amount for contracts subject to competitive bid
13	from \$15,000 to \$40,000; to provide a legislative process for
14	increasing the threshold dollar amount in the future based on
15	increases in the Consumer Price Index; and in connection
16	therewith would have as its purpose or effect the requirement
17	of a new or increased expenditure of local funds within the
18	meaning of Section 111.05 of the Constitution of Alabama of
19	2022.
20	BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
21	Section 1. Sections 16-13B-1, 16-13B-4, and 16-13B-5 of
22	the Code of Alabama 1975, are amended to read as follows:
23	"§16-13B-1
24	(a) $\underline{(1)}$ This chapter shall apply to county boards of
25	education and city boards of education, or any combination of
26	city and county boards of education as herein provided for the
27	competitive bidding of certain contracts. With the exception
28	of contracts for public works whose competitive bidding

THE OF ALABORATION OF THE POPULATION OF T

HB65 Engrossed

29 requirements are governed exclusively by Title 39, all 30 expenditure of funds of whatever nature for labor, services, 31 work, or for the purchase of materials, equipment, supplies, 32 or other personal property involving fifteen thousand dollars 33 (\$15,000) forty thousand dollars (\$40,000) or more, and the lease of materials, equipment, supplies, or other personal 34 35 property where the lessee is, or becomes legally and 36 contractually, bound under the terms of the lease, to pay a total amount of fifteen thousand dollars (\$15,000) forty 37 thousand dollars (\$40,000) or more, made by or on behalf of 38 39 any city or county board of education, except as hereinafter provided, shall be made under contractual agreement entered 40 into by free and open competitive bidding, on sealed bids, to 41 42 the lowest responsible bidder. 43 (2) Beginning October 1, 2027, and every three years thereafter, all minimum dollar amounts used in this chapter 44 45 shall be subject to a cost adjustment based on the following 46 procedure: The Chief Examiner of the Department of Examiners 47 of Public Accounts may submit to the Chair of the Legislative 48 Council a recommendation that the amount be increased based on 49 the percentage increase in the Consumer Price Index for the 50 immediately preceding three-year period, rounded down to the 51 nearest thousand dollars. The recommendation shall be subject 52 to the approval of the Legislative Council. In the event the 53 recommendation is not disapproved by the Legislative Council 54 by the end of April following the submission of the recommendation, the recommendation shall be deemed to be 55 56 approved. Upon approval, the Chief Examiner shall notify the



57 public of the adjusted dollar amounts by July 1 before the 58 fiscal year in which the changes are to take effect. The 59 increase may not exceed three percent.

60

61

62

63

64

65

66

67

68

69

70

71

72

73

74

75

76

77

78

79

80

81

82

83

84

- (b) Prior to advertising for bids for an item of personal property, where a city or county board of education, 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 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 a city or county board of education, thereof is the awarding authority, and the bid is no more than three 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.
- (c) The governing bodies of two or more city or county boards of education, or any combination of two or more city or

Programme Progra

HB65 Engrossed

85	county boards of education, counties, municipalities, or
86	instrumentalities thereof, may provide, by joint agreement,
87	for the purchase of labor, services, or work, or for the
88	purchase or lease of materials, equipment, supplies, or other
89	personal property for use by their respective agencies. The
90	agreement shall be entered into by official actions of the
91	contracting agencies adopted by each of the participating
92	governing bodies which shall set forth the categories of
93	labor, services, or work, or for the purchase or lease of
94	materials, equipment, supplies, or other personal property to
95	be purchased, the manner of advertising for bids and the
96	awarding of contracts, the method of payment by each
97	participating contracting agency, and other matters deemed
98	necessary to carry out the purposes of the agreement. Each
99	contracting agency's share of expenditures for purchases under
100	any agreement shall be appropriated and paid in the manner set
101	forth in the agreement and in the same manner as for other
102	expenses of the contracting agency. The contracting agencies
103	entering into a joint agreement, as herein permitted, may
104	designate a joint purchasing or bidding agent, and the agent
105	shall comply with this chapter. Purchases, contracts, or
106	agreements made pursuant to a joint purchasing or bidding
107	agreement shall be subject to all terms and conditions of this
108	chapter. Any participation by counties and municipalities
109	authorized in this section shall be subject to the provisions
110	of subsection (b) of Section 41-16-50. In the event that
111	utility services are no longer exempt from competitive bidding
112	under this chapter, non-adjoining boards of education may not



- purchase utility services by joint agreement under authority granted by this subsection.
 - (d) The awarding authority may require bidders to 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."

120 "\$16-13B-4

115

116

117

118

119

138

139

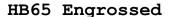
140

- 121 (a) All proposed purchases in excess of fifteen thousand dollars (\$15,000) forty thousand dollars (\$40,000) 122 123 shall be advertised by posting notice thereof on a bulletin board maintained outside the purchasing office and in any 124 other manner and for any length of time as may be determined. 125 126 Sealed bids or bids to be submitted by a reverse auction 127 procedure shall also be solicited by sending notice by mail or 128 other electronic means to all persons, firms, or corporations 129 who have filed a request in writing that they be listed for 130 solicitation on bids for the particular items that are set 131 forth in the request. If any person, firm, or corporation 132 whose name is listed fails to respond to any solicitation for 133 bids after the receipt of three solicitations, the listing may 134 be cancelled.
- 135 (b) Except as provided in subsection (c), all bids
 136 shall be sealed when received and shall be opened in public at
 137 the hour stated in the notice.
 - (c) The awarding authority may make purchases or contracts through a reverse auction procedure; provided, however, that a reverse auction shall only be allowed where



the item to be purchased at a reverse auction is either not at the time available on the state purchasing program under the same terms and conditions or, if available, the lowest price offered in the reverse auction is equal to or less than the price for which the item is available on the state purchasing program under the same terms and conditions. All of the purchases shall be subject to audit by the Department of Examiners of Public Accounts. For purposes of this chapter, a reverse auction procedure includes either of the following:

- (1) A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple anonymous suppliers submit bids to provide the designated goods or services.
- (2) a. A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple anonymous suppliers submit bids to provide the designated goods or services.
- b. The Department of Examiners of Public Accounts shall establish procedures for the use of reverse auction, which shall be distributed to all contracting agencies and shall be used in conducting any audits of the purchasing agency.
- (d) All original bids together with all documents pertaining to the award of the contract shall be retained in accordance with a retention period of at least seven years established by the Local Government Records Commission and shall be open to public inspection.
 - (e) No purchase or contract involving professional





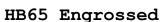
services shall be subject to the requirements of this chapter and no purchase or contract involving an amount in excess of fifteen thousand dollars (\$15,000) forty thousand dollars
(\$40,000) shall be divided into parts involving amounts of fifteen thousand dollars (\$15,000) forty thousand dollars
(\$40,000) or less for the purpose of avoiding the requirements of this chapter. All such partial contracts involving fifteen thousand dollars (\$15,000) forty thousand dollars (\$40,000) or less shall be void."

"\$16-13B-5

- (a) Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition, by agreement, to bid at a fixed price or to refrain from bidding or otherwise shall render the bids of such bidders void and shall cause such bidders to be disqualified from submitting further bids to the awarding authority on future purchases.
- (b) Whoever knowingly participates in a collusive agreement in violation of this section involving a bid or bids of fifteen thousand dollars (\$15,000) forty thousand dollars (\$40,000) and under shall be guilty of a Class A misdemeanor and, upon conviction, shall be punished as prescribed by law.
- (c) Whoever knowingly and intentionally participates in a collusive agreement in violation of this section involving a bid or bids of over <u>fifteen thousand dollars (\$15,000)</u> <u>forty thousand dollars (\$40,000)</u> shall be guilty of a Class C felony, and upon conviction shall be punished as prescribed by law."
 - Section 2. Although this bill would have as its purpose



197	or effect the requirement of a new or increased expenditure of
198	local funds, the bill is excluded from further requirements
199	and application under Section 111.05 of the Constitution of
200	Alabama of 2022, because the bill defines a new crime or
201	amends the definition of an existing crime.
202	Section 3. This act shall become effective on the first
203	day of the third month following its passage and approval by
204	the Governor, or its otherwise becoming law.





205 206 207 House of Representatives 208 Read for the first time and referred06-Mar-23 209 to the House of Representatives 210 committee on Ways and Means 211 Education 212 213 Read for the second time and placed22-Mar-23 on the calendar: 214 215 0 amendments 216 217 Read for the third time and passed11-Apr-23 218 as amended Yeas 101 219 220 Nays 0 Abstains 2 221 222 223 224 John Treadwell Clerk 225 226