

HB168 INTRODUCED



1 KJ7EUA-1

2 By Representatives Underwood, Pettus, Rigsby, Lomax, Woods

3 RFD: State Government

4 First Read: 21-Mar-23

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SYNOPSIS:

Under existing law, with the exception of contracts for public works, all expenditure of funds of whatever nature for labor, services, work, or for the purchase or lease of materials, equipment, supplies, or other personal property involving \$15,000 or more made by or on behalf of certain state and local public awarding authorities are required to be made by contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.

Also under existing law, before an awarding authority may enter into any contract for a public works involving an amount in excess of \$50,000, the awarding authority is required to advertise the contract and award the contract to the lowest responsible bidder.

This bill would increase various threshold dollar amounts for which competitive bidding is generally required and would authorize those dollar amounts to be further increased based on increases in the Consumer Price Index.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of



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29 local funds from becoming effective with regard to a
30 local governmental entity without enactment by a 2/3
31 vote unless: it comes within one of a number of
32 specified exceptions; it is approved by the affected
33 entity; or the Legislature appropriates funds, or
34 provides a local source of revenue, to the entity for
35 the purpose.

36 The purpose or effect of this bill would be to
37 require a new or increased expenditure of local funds
38 within the meaning of the amendment. However, the bill
39 does not require approval of a local governmental
40 entity or enactment by a 2/3 vote to become effective
41 because it comes within one of the specified exceptions
42 contained in the amendment.

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A BILL

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TO BE ENTITLED

47

AN ACT

48

49 Relating to public contracts; to amend Sections
50 41-16-50, 41-16-51, 41-16-52, 41-16-53, 41-16-54, and
51 41-16-55, Code of Alabama 1975, to increase the threshold
52 dollar amount for which competitive bidding is generally
53 required for certain state and local public awarding
54 authorities, with exceptions; to amend Sections 39-2-2 and
55 39-2-4, Code of Alabama 1975, to increase the threshold dollar
56 amount for which competitive bidding is generally required for



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57 public works contracts; to provide a legislative method for
58 the increase of the threshold dollar amounts; and in
59 connection therewith would have as its purpose or effect the
60 requirement of a new or increased expenditure of local funds
61 within the meaning of Section 111.05 of the Constitution of
62 Alabama of 2022.

63 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

64 Section 1. Sections 41-16-50, 41-16-51, 41-16-52,
65 41-16-53, 41-16-54, and 41-16-55, Code of Alabama 1975, are
66 amended to read as follows:

67 "§41-16-50

68 (a) With the exception of contracts for public works
69 whose competitive bidding requirements are governed
70 exclusively by Title 39, all expenditure of funds ~~of whatever~~
71 ~~nature~~ for labor, services, work, or for the purchase of
72 materials, equipment, supplies, or other personal property
73 involving ~~fifteen thousand dollars (\$15,000)~~ thirty thousand
74 dollars (\$30,000) or more, and the lease of materials,
75 equipment, supplies, or other personal property where the
76 lessee is, or becomes legally and contractually, bound under
77 the terms of the lease, to pay a total amount of ~~fifteen~~
78 ~~thousand dollars (\$15,000)~~ thirty thousand dollars (\$30,000)
79 or more, made by or on behalf of the Alabama Fire College, the
80 district boards of education of independent school districts,
81 the county commissions, the governing bodies of the
82 municipalities of the state, and the governing boards of
83 instrumentalities of counties and municipalities, including
84 waterworks boards, sewer boards, gas boards, and other like



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85 utility boards and commissions, except as ~~hereinafter~~
86 otherwise provided in this article, shall be made under
87 contractual agreement entered into by free and open
88 competitive bidding, on sealed bids, to the lowest responsible
89 and responsive bidder.

90 (b) (1) Prior to advertising for bids for an item of
91 personal property or services, where a county, a municipality,
92 or an instrumentality thereof is the awarding authority, the
93 awarding authority may establish a local preference zone
94 consisting of ~~either~~ any of the following:

95 a. The ~~the~~ legal boundaries or jurisdiction of the
96 awarding authority, ~~or the~~ .

97 b. The boundaries of the county in which the awarding
98 authority is located, ~~or the~~ .

99 c. The boundaries of the Core Based Statistical Area in
100 which the awarding authority is located.

101 (2) If no ~~such~~ action is taken by the awarding authority
102 under subdivision (1), the boundaries of the local preference
103 zone shall be deemed to be the same as the legal boundaries or
104 jurisdiction of the awarding authority.

105 (3) In the event a bid is received for an item of
106 personal property or services to be purchased or contracted
107 for from a person, firm, or corporation deemed to be a
108 responsible bidder, having a place of business within the
109 local preference zone where the county, a municipality, or an
110 instrumentality thereof is the awarding authority, and the bid
111 is no more than five percent greater than the bid of the
112 lowest responsible bidder, the awarding authority may award



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113 the contract to the resident responsible bidder.

114 (4) If no bids or only one bid is received at the time
115 stated in the advertisement for bids, the awarding authority
116 may advertise for and seek other competitive bids, or the
117 awarding authority may negotiate through the receipt of
118 informal bids not subject to the requirements of this article.
119 Where only one responsible and responsive bid has been
120 received, any negotiation for the work shall be for a price
121 lower than that bid.~~In the event only one bidder responds to~~
122 ~~the invitation to bid, the awarding authority may reject the~~
123 ~~bid and negotiate the purchase or contract, providing the~~
124 ~~negotiated price is lower than the bid price.~~

125 (5) In the event both or all bids exceed the awarding
126 authority's anticipated budget, the awarding authority may
127 negotiate with the lowest responsible and responsive bidder,
128 provided the negotiated price is lower than the bid price.

129 ~~(b)~~ (c) The governing bodies of two or more contracting
130 agencies, as enumerated in subsection (a), or the governing
131 bodies of two or more counties, or the governing bodies of two
132 or more city or county boards of education, may provide, by
133 joint agreement, for the purchase of labor, services, or work,
134 or for the purchase or lease of materials, equipment,
135 supplies, or other personal property for use by their
136 respective agencies. The agreement shall be entered into by
137 similar ordinances, in the case of municipalities, or
138 resolutions, in the case of other contracting agencies,
139 adopted by each of the participating governing bodies, which
140 shall set forth the categories of labor, services, or work, or



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141 for the purchase or lease of materials, equipment, supplies,
142 or other personal property to be purchased, the manner of
143 advertising for bids and the awarding of contracts, the method
144 of payment by each participating contracting agency, and other
145 matters deemed necessary to carry out the purposes of the
146 agreement. Each contracting agency's share of expenditures for
147 purchases under any agreement shall be appropriated and paid
148 in the manner set forth in the agreement and in the same
149 manner as for other expenses of the contracting agency. The
150 contracting agencies entering into a joint agreement, as
151 ~~herein~~ permitted by this section, may designate a joint
152 purchasing or bidding agent, and the agent shall comply with
153 this article. Purchases, contracts, or agreements made
154 pursuant to a joint purchasing or bidding agreement shall be
155 subject to all terms and conditions of this article. _

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

160 ~~(e)~~ (d) The awarding authority may require bidders to
161 furnish a bid bond for a particular bid solicitation if the
162 bonding requirement applies to all bidders, is included in the
163 written bid specifications, and if bonding is available for
164 the services, equipment, or materials.

165 ~~(d)~~ (e) Notwithstanding subsection (a), in the event the
166 lowest bid for an item of personal property or services to be
167 purchased or contracted for is received from a foreign entity,
168 where the county, a municipality, or an instrumentality



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169 thereof is the awarding authority, the awarding authority may
170 award the contract to a responsible bidder whose bid is no
171 more than 10 percent greater than the foreign entity if the
172 bidder has a place of business within the local preference
173 zone or is a responsible bidder from a business within the
174 state that is a woman-owned enterprise, an enterprise of small
175 business, as defined in Section 25-10-3, a minority-owned
176 business enterprise, a veteran-owned business enterprise, or a
177 disadvantaged-owned business enterprise. For the purposes of
178 this subsection, foreign entity means a business entity that
179 does not have a place of business within the state.

180 (f) (1) No expenditure involving thirty thousand dollars
181 (\$30,000) or more may be split into parts involving sums of
182 less than thirty thousand dollars (\$30,000) for the purpose of
183 evading the requirements of this article.

184 (2) If an awarding authority documents its reasonable
185 belief, based on expenditures in previous years, that an
186 expenditure will not meet the dollar threshold and, based upon
187 that reasonable belief, makes the expenditure without bidding,
188 but then circumstances arise that necessitate making a
189 subsequent expenditure of like items or services that would
190 increase the total to or above the dollar threshold, then the
191 subsequent expenditure shall be bid pursuant to this article.
192 The awarding authority shall not be deemed to have violated
193 this article for the prior expenditure that was not bid,
194 provided that the awarding authority documented its reasonable
195 belief, based on expenditures in previous years, that the
196 total amount would be below the dollar threshold and that the



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197 subsequent expenditure was bid.

198 (g) Beginning October 1, 2027, and every three years
199 thereafter, all dollar amounts used in this article shall be
200 subject to a cost adjustment based on the following procedure:
201 The Chief Examiner of the Department of Examiners of Public
202 Accounts may submit to the Chair of the Legislative Council a
203 recommendation that the amount be increased based on the
204 percentage increase in the Consumer Price Index for the
205 immediately preceding three-year period, rounded to the
206 nearest thousand dollars. The recommendation shall be subject
207 to the approval of the Legislative Council. In the event the
208 recommendation is not disapproved by the Legislative Council
209 by the end of April following the submission of the
210 recommendation, the recommendation shall be deemed to be
211 approved. Upon approval, the Department of Examiners of Public
212 Accounts shall notify the public of the adjusted dollar
213 amounts by July 1 before the fiscal year in which the changes
214 will take effect."

215 "§41-16-51

216 (a) Competitive bids for entities subject to this
217 article shall not be required for utility services, the rates
218 for which are fixed by law, regulation, or ordinance, and the
219 competitive bidding requirements of this article shall not
220 apply to any of the following:

221 (1) The purchase of insurance.

222 (2) The purchase of ballots and supplies for conducting
223 any primary, general, special, or municipal election.

224 (3) Contracts for securing services of attorneys,



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225 physicians, architects, teachers, superintendents of
226 construction, artists, appraisers, engineers, consultants,
227 certified public accountants, public accountants, or other
228 individuals possessing a high degree of professional skill
229 where the personality of the individual plays a decisive part.

230 (4) Contracts of employment in the regular civil
231 service.

232 (5) Contracts for fiscal or financial advice or
233 services.

234 (6) Purchases of products made or manufactured by blind
235 or visually impaired individuals under the direction or
236 supervision of the Alabama Institute for Deaf and Blind in
237 accordance with ~~Sections 21-2-1 to 21-2-4, inclusive~~ [Chapter 2](#)
238 [of Title 21](#).

239 (7) Purchases of maps or photographs from any federal
240 agency.

241 (8) Purchases of manuscripts, books, maps, pamphlets,
242 periodicals, and library/research electronic data bases of
243 manuscripts, books, maps, pamphlets, or periodicals.

244 (9) The selection of paying agents and trustees for any
245 security issued by a public body.

246 (10) Existing contracts up for renewal for sanitation or
247 solid waste collection, recycling, and disposal between
248 municipalities or counties, or both, and those providing the
249 service.

250 (11) Purchases of computer and word processing hardware
251 when the hardware is the only type that is compatible with
252 hardware already owned by the entity taking bids and custom



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253 software.

254 (12) Professional services contracts for codification
255 and publication of the laws and ordinances of municipalities
256 and counties.

257 (13) Contractual services and purchases of commodities
258 for which there is only one vendor or supplier and contractual
259 services and purchases of personal property which by their
260 very nature are impossible to award by competitive bidding.

261 (14) Purchases of dirt, sand, or gravel by a county
262 governing body from in-county property owners in order to
263 supply a county ~~road or bridge~~ project in which the materials
264 will be used. The material shall be delivered to the project
265 site by county employees and equipment used only on ~~projects~~
266 project components conducted exclusively by county employees.

267 (15) Contractual services and purchases of products
268 related to, or having an impact upon, security plans,
269 procedures, assessments, measures, or systems, or the security
270 or safety of persons, structures, facilities, or
271 infrastructures.

272 (16) Subject to the limitations in this subdivision,
273 purchases, leases, or lease/purchases of goods or services,
274 other than voice or data wireless communication services, made
275 as a part of the purchasing cooperative sponsored by the
276 National Association of Counties, its successor organization,
277 or any other national or regional governmental cooperative
278 purchasing program. The purchases, leases, or lease/purchases
279 may only be made if all of the following occur:

280 a. The goods or services being purchased, including



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281 those purchased through a lease/purchase agreement, or leased
282 are available as a result of a competitive bid process
283 conducted by a governmental entity and approved by the Alabama
284 Department of Examiners of Public Accounts for each bid.

285 b. The goods or services are either not at the time
286 available to counties on the state purchasing program or are
287 available at a price equal to or less than that on the state
288 purchasing program.

289 c. The purchase, lease, or lease/purchase is made
290 through a participating Alabama vendor holding an Alabama
291 business license if such a vendor exists.

292 d. The entity purchasing, leasing, or lease/purchasing
293 goods or services under this subdivision has been notified by
294 the Department of Examiners of Public Accounts that the
295 competitive bid process utilized by the cooperative program
296 offering the goods complies with this subdivision. In
297 addition, upon request, a vendor shall provide the entity
298 purchasing, leasing, or lease/purchasing ~~items that exceed~~
299 ~~fifteen thousand dollars (\$15,000)~~ goods or services equaling
300 thirty thousand dollars (\$30,000) or more which are made under
301 this ~~exception~~ subdivision during the previous 12 months a
302 report of the sales, leases, and lease/purchases. ~~which~~
303 ~~includes~~ The report shall include a general description of the
304 goods or services; the number of units sold, leased, and
305 leased/purchased per entity; and the price of units purchased,
306 leased, or leased/purchased.

307 (17) ~~Purchase~~ Purchases of goods or services, other than
308 wireless communication services, whether voice or data, from



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309 vendors that have been awarded a current and valid Government
310 Services Administration contract. Any purchase made pursuant
311 to this subdivision shall be under the same terms and
312 conditions as provided in the Government Services
313 Administration contract. Prices paid for such goods and
314 services, other than wireless communication services, whether
315 voice or data, may not exceed the amount provided in the
316 Government Services Administration contract.

317 (18) Purchases of goods or services from vendors that
318 have been awarded a current and valid statewide contract
319 listed on the Alabama Buys e-procurement system. Any purchase
320 made pursuant to this subdivision shall be under the same
321 terms and conditions as provided in the statewide contract.
322 Prices paid for such goods and services may not exceed the
323 amount provided in the statewide contract.

324 (19) Purchases of goods or services between governmental
325 entities of the state, as authorized by Section 11-1-10.

326 (b) This article shall not apply to:

327 (1) Any purchases of products where the price of the
328 products is already regulated and established by state law.

329 (2) Purchases made by individual schools of the county
330 or municipal public school systems from monies other than
331 those raised by taxation or received through appropriations
332 from state or county sources.

333 (3) The purchase, lease, sale, construction,
334 installation, acquisition, improvement, enlargement, or
335 expansion of any building or structure or other facility
336 designed or intended for lease or sale by a medical clinic



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337 board organized under ~~Sections 11-58-1 to 11-58-14, inclusive~~
338 Chapter 58 of Title 11.

339 (4) The purchase, lease, or other acquisition of
340 machinery, equipment, supplies, and other personal property or
341 services by a medical clinic board organized under ~~Sections~~
342 ~~11-58-1 to 11-58-14, inclusive~~ Chapter 58 of Title 11.

343 (5) Purchases for public hospitals and nursing homes
344 operated by the governing boards of instrumentalities of the
345 state, counties, and municipalities.

346 (6) Contracts for the purchase, lease, sale,
347 construction, installation, acquisition, improvement,
348 enlargement, or extension of any plant, building, structure,
349 or other facility or any machinery, equipment, furniture, or
350 furnishings therefor designed or intended for lease or sale
351 for industrial development, other than public utilities, under
352 ~~Sections 11-54-80 to 11-54-99, inclusive~~ Division 1 of Article
353 4 of Chapter 54 of Title 11, or ~~Sections 11-54-20 to 11-54-28,~~
354 ~~inclusive~~ Article 2 of Chapter 54 of Title 11, or any other
355 law or amendment to the Constitution of Alabama of 2022
356 authorizing the construction of plants or other facilities for
357 industrial development or for the construction and equipment
358 of buildings for public building authorities under ~~Sections~~
359 ~~11-56-1 to 11-56-22, inclusive~~ Chapter 56 of Title 11.

360 (7) The purchase of equipment, supplies, or materials
361 needed, used, and consumed in the normal and routine operation
362 of any waterworks system, sanitary sewer system, gas system,
363 or electric system, or any two or more thereof, that are owned
364 by municipalities, counties, or public corporations, boards,



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365 or authorities that are agencies, departments, or
366 instrumentalities of municipalities or counties and no part of
367 the operating expenses of which system or systems, during the
368 then current fiscal year, have been paid from revenues derived
369 from taxes or from appropriations of the state, a county, or a
370 municipality.

371 (8) Purchases made by local housing authorities,
372 organized and existing under Chapter 1 of Title 24, from
373 monies other than those raised by state, county, or city
374 taxation or received through appropriations from state,
375 county, or city sources.

376 (c) The state trade schools, state junior colleges,
377 state colleges, and universities under the supervision and
378 control of the State Board of Education, the district boards
379 of education of independent school districts, the county
380 commissions, and the governing bodies of the municipalities of
381 the state shall establish and maintain such purchasing
382 facilities and procedures as may be necessary to carry out the
383 intent and purpose of this article by complying with the
384 requirements for competitive bidding in the operation and
385 management of each state trade school, state junior college,
386 state college, or university under the supervision and control
387 of the State Board of Education, the district boards of
388 education of independent school districts, the county
389 commissions, and the governing bodies of the municipalities of
390 the state and the governing boards of instrumentalities of
391 counties and municipalities, including waterworks boards,
392 sewer boards, gas boards, and other like utility boards and



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393 commissions.

394 (d) Contracts entered into in violation of this article
395 shall be void and any person who violates the provisions of
396 this article shall be guilty of a Class C felony."

397 "§41-16-52

398 (a) All expenditures of funds ~~of whatever nature~~ for
399 repair parts and the repair of heavy duty off-highway
400 construction equipment or of any vehicles with a gross vehicle
401 weight rating of 25,000 pounds or greater, including machinery
402 used for grading, drainage, road construction, and compaction
403 for the exclusive use of county and municipal highway, street,
404 and sanitation departments, involving not more than ~~twenty-two~~
405 ~~thousand five hundred dollars (\$22,500)~~ forty thousand dollars
406 (\$40,000) made by or on behalf of any county commissions and
407 the governing bodies of the municipalities of the state, and
408 the governing bodies of instrumentalities, including
409 waterworks boards, sewer boards, gas boards, and other like
410 utility boards and commissions, shall be made, at the option
411 of the governing boards, bodies, instrumentalities, and
412 commissions, without regard to this article. The foregoing
413 exemption from this article shall apply to each incident of
414 repair as to any repair parts, equipment, vehicles, or
415 machinery. The amount of the exempted expenditure shall not be
416 construed to be an aggregate of all the expenditures per
417 fiscal year as to any individual vehicle or piece of equipment
418 or machinery.

419 (b) The option provided by subsection (a) may be
420 exercised by the governing boards, bodies, instrumentalities,



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421 and commissions by specific reference to this section on any
422 ~~and all~~ purchase orders and purchase commitments executed by
423 the governing boards, bodies, instrumentalities, and
424 commissions; ~~provided, however.~~ However, the option shall not
425 be exercised by any employee, agent, or servant unless done so
426 after having received official prior approval of the
427 respective governing board, body, instrumentality, or
428 commission or unless exercised pursuant to a formal policy
429 adopted by the governing board, body, instrumentality, or
430 commission setting out conditions and restrictions under which
431 the option shall be exercised.

432 (c) All expenditures of funds ~~of whatever nature~~ for the
433 leasing of heavy duty off-highway construction equipment and
434 all vehicles with a gross vehicle weight rating of 25,000
435 pounds or greater, including machinery for grading, drainage,
436 road construction, and compaction for exclusive use of county
437 and municipal highway, street, and sanitation departments,
438 involving a monthly rental of not more than ~~five thousand~~
439 ~~dollars (\$5,000)~~ ten thousand dollars (\$10,000) per month per
440 vehicle or piece of equipment or machinery but not to exceed
441 ~~fifteen thousand dollars (\$15,000)~~ thirty thousand dollars
442 (\$30,000) per month for all such vehicles and pieces of
443 equipment made by or on behalf of any county commissions and
444 the governing boards of municipalities of the state and the
445 governing bodies of instrumentalities, including waterworks
446 boards, sewer boards, gas boards, and other like utility
447 boards and commissions shall be made, at the option of the
448 governing boards, bodies, instrumentalities, and commissions,



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449 without regard to ~~the provisions of~~ this article."

450 "§41-16-53

451 ~~In case of emergency affecting public health, safety or~~
452 ~~convenience, so declared in writing by the awarding authority,~~
453 ~~setting forth the nature of the danger to public health,~~
454 ~~safety or convenience involved in delay, contracts may be let~~
455 ~~to the extent necessary to meet the emergency without public~~
456 ~~advertisement. Such action and the reasons therefor shall~~
457 ~~immediately be made public by the awarding~~
458 ~~authority.~~ Notwithstanding any law to the contrary, in the
459 event circumstances arise for which a delay in remedying or
460 otherwise addressing would likely cause harm to an individual
461 or public property, a contract may be let to the extent
462 necessary to mitigate the harm without regard to the
463 requirements of this article, provided the awarding authority
464 does both of the following:

465 (1) Documents two or more price quotations or price
466 estimates before letting the contract.

467 (2) Adopts a resolution declaring the nature of the
468 circumstances, the action to be taken, and the reasons for
469 taking the action."

470 "§41-16-54

471 (a) (1) All proposed purchases in excess of ~~fifteen~~
472 ~~thousand dollars (\$15,000)~~ thirty thousand dollars (\$30,000)
473 shall be advertised by posting notice thereof on a bulletin
474 board maintained outside the purchasing office and in any
475 other manner and for any length of time as may be determined.
476 Sealed bids or bids to be submitted by a reverse auction



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477 procedure shall also be solicited by sending notice by mail or
478 other electronic means to all persons, firms, or corporations
479 who have filed a request in writing that they be listed for
480 solicitation on bids for the particular items that are set
481 forth in the request. If any person, firm, or corporation
482 whose name is listed fails to respond to any solicitation for
483 bids after the receipt of three solicitations, the listing may
484 be cancelled.

485 (2) If a governing body mandates that advertisement for
486 bids shall be published in a newspaper, the contract for
487 purchase shall be awarded if the newspaper to which the
488 advertisement was submitted did not publish the advertisement
489 if the governing body can provide proof that it in good faith
490 submitted the advertisement to the newspaper with instructions
491 to publish the notice in accordance with this section.

492 (b) Except as provided in subsection (d), all bids shall
493 be sealed when received and shall be opened in public at the
494 hour stated in the notice.

495 (c) If the purchase or contract will involve an amount
496 of ~~fifteen thousand dollars (\$15,000) or less~~ less than thirty
497 thousand dollars (\$30,000), the purchases or contracts may be
498 made upon the basis of sealed bids, a joint purchasing
499 agreement, a reverse auction procedure, or in the open market.

500 (d) Beginning January 1, 2009, the awarding authority
501 may make purchases or contracts involving an amount of ~~fifteen~~
502 ~~thousand dollars (\$15,000)~~ thirty thousand dollars (\$30,000)
503 or more through a reverse auction procedure; ~~provided,~~
504 ~~however, that.~~ However, a reverse auction shall only be



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505 allowed where the item to be purchased at a reverse auction is
506 either not at the time available on the state purchasing
507 program under the same terms and conditions or, if available,
508 the lowest price offered in the reverse auction is equal to or
509 less than the price for which the item is available on the
510 state purchasing program under the same terms and conditions.

511 All of the purchases shall be subject to audit by the
512 Examiners of Public Accounts. For purposes of this article, a
513 reverse auction procedure includes either of the following:

514 (1) A real-time bidding process usually lasting less
515 than one hour and taking place at a previously scheduled time
516 and Internet location, in which multiple anonymous suppliers
517 submit bids to provide the designated goods or services.

518 (2) a. A bidding process usually lasting less than two
519 weeks and taking place during a previously scheduled period
520 and at a previously scheduled Internet location, in which
521 multiple anonymous suppliers submit bids to provide the
522 designated goods or services.

523 b. No later than November 30, 2008, the Department of
524 Examiners of Public Accounts shall establish procedures for
525 the use of reverse auction, which shall be distributed to all
526 contracting agencies and shall be used in conducting any
527 audits of the purchasing agency.

528 (e) All original bids together with all documents
529 pertaining to the award of the contract shall be retained in
530 accordance with a retention period of at least seven years
531 established by the Local Government Records Commission and
532 shall be open to public inspection.



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533 (f) No purchase or contract involving professional
534 services shall be subject to the requirements of this article
535 ~~and no purchase or contract involving an amount in excess of~~
536 ~~fifteen thousand dollars (\$15,000) shall be divided into parts~~
537 ~~involving amounts of fifteen thousand dollars (\$15,000) or~~
538 ~~less for the purpose of avoiding the requirements of this~~
539 ~~article. All such partial contracts involving fifteen thousand~~
540 ~~dollars (\$15,000) or less shall be void.~~

541 (g) This section shall be applicable to education
542 purchases made pursuant to Chapter 13B of Title 16."

543 "§41-16-55

544 (a) Any agreement or collusion among bidders or
545 prospective bidders in restraint of freedom of competition, by
546 agreement, to bid at a fixed price or to refrain from bidding
547 or otherwise shall render the bids of ~~such~~ the bidders void
548 and shall cause ~~such~~ the bidders to be disqualified from
549 submitting further bids to the awarding authority on future
550 purchases.

551 (b) Whoever knowingly participates in a collusive
552 agreement in violation of this section involving a bid or bids
553 of ~~fifteen thousand dollars (\$15,000)~~ less than thirty
554 thousand dollars (\$30,000) ~~and under~~ shall be guilty of a
555 Class A misdemeanor and, upon conviction, shall be punished as
556 prescribed by law.

557 (c) Whoever knowingly and intentionally participates in
558 a collusive agreement in violation of this section involving a
559 bid or bids of ~~over fifteen thousand dollars (\$15,000)~~ thirty
560 thousand dollars (\$30,000) or more shall be guilty of a Class



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561 C felony, and upon conviction shall be punished as prescribed
562 by law."

563 Section 2. Sections 39-2-2 and 39-2-4, Code of Alabama
564 1975, are amended to read as follows:

565 "§39-2-2

566 (a) (1) Before entering into any contract for a public
567 works involving an amount in excess of ~~fifty thousand dollars~~
568 ~~(\$50,000)~~ one hundred thousand dollars (\$100,000), the
569 awarding authority shall advertise for sealed bids, except as
570 provided in subsection (j).

571 (2)a. If the awarding authority is the state or a
572 county, or an instrumentality thereof, it shall advertise for
573 sealed bids at least once each week for three consecutive
574 weeks in a newspaper of general circulation in the county or
575 counties in which the improvement, or some part thereof, is to
576 be made.

577 b. If the awarding authority is a municipality, or an
578 instrumentality thereof, it shall advertise for sealed bids at
579 least once in a newspaper of general circulation published in
580 the municipality where the awarding authority is located. If
581 no newspaper is published in the municipality, the awarding
582 authority shall advertise by posting notice thereof on a
583 bulletin board maintained outside the purchasing office and in
584 any other manner and for the length of time as may be
585 determined. In addition to bulletin board notice, sealed bids
586 shall also be solicited by sending notice by mail to all
587 persons who have filed a request in writing with the official
588 designated by the awarding authority that they be listed for



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589 solicitation on bids for the public works contracts indicated
590 in the request. If any person whose name is listed fails to
591 respond to any solicitation for bids after the receipt of
592 three such solicitations, the listing may be canceled.

593 (3) With the exception of the Department of
594 Transportation, for all public works contracts involving an
595 estimated amount in excess of five hundred thousand dollars
596 (\$500,000), awarding authorities shall also advertise for
597 sealed bids at least once in three newspapers of general
598 circulation throughout the state.

599 (4) The advertisements shall briefly describe the
600 improvement, state that plans and specifications for the
601 improvement are on file for examination in a designated office
602 of the awarding authority, state the procedure for obtaining
603 plans and specifications, state the time and place in which
604 bids shall be received and opened, and identify whether
605 prequalification is required and where all written
606 prequalification information is available for review.

607 (5) All bids shall be opened publicly at the advertised
608 time and place.

609 (6) No public work, as defined in this chapter,
610 involving a sum in excess of ~~fifty thousand dollars (\$50,000)~~
611 one hundred thousand dollars (\$100,000) shall be split into
612 parts involving sums of ~~fifty thousand dollars (\$50,000)~~ one
613 hundred thousand dollars (\$100,000) or less for the purpose of
614 evading the requirements of this section.

615 (b) (1) An awarding authority may let contracts for
616 public works involving ~~fifty thousand dollars (\$50,000)~~ one



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617 hundred thousand dollars (\$100,000) or less with or without
618 advertising or sealed bids.

619 (2) An awarding authority may enter into a contract for
620 public works if an advertisement for sealed bids for the
621 contract was submitted by the awarding authority to a
622 newspaper and the newspaper only published the advertisement
623 for two weeks if the authority can provide proof that it, in
624 good faith, submitted the advertisement to the newspaper with
625 instructions to publish the notice in accordance with the
626 provisions of this section.

627 (c) All contracts for public works entered into in
628 violation of this title shall be void and violative of public
629 policy. Anyone who willfully violates this article concerning
630 public works shall be guilty of a Class C felony.

631 (d) (1) Excluded from the operation of this title shall
632 be contracts with persons who shall perform only
633 architectural, engineering, construction management, program
634 management, or project management services in support of the
635 public works and who shall not engage in actual construction,
636 repair, renovation, or maintenance of the public works with
637 their own forces, by contract, subcontract, purchase order,
638 lease, or otherwise.

639 (2) Excluded from operation of the bidding requirements
640 in this title are contracts for the purchase of any heating or
641 air conditioning units or systems by any awarding authority
642 subject to Chapter 13B of Title 16, or Article 3, commencing
643 with Section 41-16-50, of Chapter 16 of Title 41, provided the
644 contract is entered into with an Alabama vendor who has been



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645 granted approved vendor status for the sale of heating or air
646 conditioning units or systems as a part of a purchasing
647 cooperative, and each of the following occur:

648 a. The heating or air conditioning unit or system being
649 purchased is available as a result of a competitive bid
650 process conducted by a governmental entity which has been
651 approved by the Department of Examiners of Public Accounts.

652 b. The purchase of the heating or air conditioning unit
653 or system is not available on the state purchasing program at
654 the time or the purchase under the purchasing cooperative is
655 available at a price that is equal to or less than that
656 available through the state purchasing program.

657 c. The entity entering into the contract for the
658 purchase of the heating or air conditioning unit or system has
659 been notified by the Department of Examiners of Public
660 Accounts that the competitive bid process utilized by the
661 cooperative program offering the goods complies with this
662 subdivision.

663 d. Upon request, the vendor has provided the purchasing
664 entity with a report of sales made under this subdivision
665 during the previous 12-month period, to include a general
666 description of the heating or air conditioning units and
667 systems sold, the number of units sold per entity, and the
668 purchase price of the units.

669 e. The exemption from the requirement to utilize sealed
670 bids for the purchase of heating or air conditioning units or
671 systems authorized by this section shall not serve to exempt
672 any public works project from the remaining provisions of this



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673 article, including, but not limited to, design, installation,
674 and review requirements, compliance with all applicable codes,
675 laws, specifications, and standards, and the compensation of
676 engineers, architects, or others as mandated by state law or
677 rule.

678 (e) In case of an emergency affecting public health,
679 safety, or convenience, as declared in writing by the awarding
680 authority, setting forth the nature of the danger to the
681 public health, safety, or convenience which would result from
682 delay, contracts may be let to the extent necessary to meet
683 the emergency without public advertisement. The action and the
684 reasons for the action taken shall immediately be made public
685 by the awarding authority upon request.

686 (f) No awarding authority may specify in the plans and
687 specifications for the improvement the use of materials,
688 products, systems, or services by a sole source unless all of
689 the following requirements are met:

690 (1) Except for contracts involving the construction,
691 reconstruction, renovation, or replacement of public roads,
692 bridges, and water and sewer facilities, the awarding
693 authority can document to the satisfaction of the Division of
694 Construction Management that the sole source product,
695 material, system, or service is of an indispensable nature for
696 the improvement, that there are no other viable alternatives,
697 and that only this particular product, material, system, or
698 service fulfills the function for which it is needed.

699 (2) The sole source specification has been recommended
700 by the architect or engineer of record as an indispensable



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701 item for which there is no other viable alternative.

702 (3) All information substantiating the use of a sole
703 source specification, including the recommendation of the
704 architect or engineer of record, shall be documented and made
705 available for examination in the office of the awarding
706 authority at the time of advertisement for sealed bids.

707 (g) In the event of a proposed public works project,
708 acknowledged in writing by the Alabama Homeland Security
709 Department as: (1) having a direct impact on the security or
710 safety of persons or facilities; and (2) requiring
711 confidential handling for the protection of such persons or
712 facilities, contracts may be let without public advertisement
713 but with the taking of informal bids otherwise consistent with
714 the requirements of this title and the requirements of
715 maintaining confidentiality. Records of bidding and award
716 shall not be disclosed to the public and shall remain
717 confidential.

718 (h) If a pre-bid meeting is held, the pre-bid meeting
719 shall be held at least seven days prior to the bid opening
720 except when the project has been declared an emergency in
721 accordance with subsection (e).

722 (i) The awarding authority may not offer a contract for
723 bidding unless confirmation of any applicable grant has been
724 received and any required matching funds have been secured by
725 or are available to the awarding authority.

726 (j) Notwithstanding subsection (a), the Department of
727 Transportation may enter into contracts for road construction
728 or road maintenance projects that do not involve more than two



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729 hundred fifty thousand dollars (\$250,000) without advertising
730 for sealed bids, provided the project is listed on the
731 department website for at least seven calendar days before
732 entering into the contract. The total cost of all projects not
733 subject to advertising and sealed bids pursuant to this
734 subsection may not exceed one million dollars (\$1,000,000) in
735 the aggregate per year.

736 (k) Beginning October 1, 2027, and every three years
737 thereafter, all dollar amounts used in this section shall be
738 subject to a cost adjustment based on the following procedure:
739 The Chief Examiner of the Department of Examiners of Public
740 Accounts may submit to the Chair of the Legislative Council a
741 recommendation that the amount be increased based on the
742 percentage increase in the Consumer Price Index for the
743 immediately preceding three-year period, rounded to the
744 nearest thousand dollars. The recommendation shall be subject
745 to the approval of the Legislative Council. In the event the
746 recommendation is not disapproved by the Legislative Council
747 by the end of April following the submission of the
748 recommendation, the recommendation shall be deemed to be
749 approved. Upon approval, the Department of Examiners of Public
750 Accounts shall notify the public of the adjusted dollar
751 amounts by July 1 before the fiscal year in which the changes
752 will take effect."

753 "§39-2-4

754 (a) The bidder shall be required to file with his or
755 her bid either a cashier's check drawn on an Alabama bank or a
756 bid bond executed by a surety company duly authorized and



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757 qualified to make such bonds in the State of Alabama, payable
758 to the awarding authority for an amount not less than five
759 percent of the awarding authority's estimated cost or of the
760 contractor's bid, but in no event more than ~~ten thousand~~
761 ~~dollars (\$10,000)~~ twenty thousand dollars (\$20,000), except if
762 the awarding authority is the Department of Transportation,
763 then the bid guarantee shall not be more than fifty thousand
764 dollars (\$50,000). The bid guaranties as provided in this
765 section shall constitute all of the qualifications or guaranty
766 to be required of contractors as prerequisites to bidding for
767 public works, except as required by the State Licensing Board
768 for General Contractors and the prequalification as required
769 by the Department of Transportation, the Building Commission,
770 or any other awarding authority.

771 (b) With the exception of the Department of
772 Transportation which has prequalification procedures and
773 criteria set forth by statute, any awarding authority that
774 proposes to prequalify bidders shall establish written
775 prequalification procedures and criteria that: (1) are
776 published sufficiently in advance of any affected contract so
777 that a bona fide bidder may seek and obtain prequalification
778 prior to preparing a bid for that contract, such publication
779 to be accomplished by the methods specified in subsection (a)
780 of Section 39-2-2; (2) are related to the purpose of the
781 contract or contracts affected; (3) are related to contract
782 requirements or the quality of the product or service in
783 question; (4) are related to the responsibility, including the
784 competency, experience, and financial ability, of a bidder;



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785 and (5) will permit reasonable competition at a level that
786 serves the public interest. The prequalification publication
787 may run concurrently with the publication required under
788 subsection (a) of Section 39-2-2, provided it produces the
789 above required advance notice.

790 (c) Within the bounds of good faith, the awarding
791 authority retains the right to determine whether a contractor
792 has met prequalification procedures and criteria.

793 (d) Any bidder who has prequalified pursuant to the
794 requirements in subsection (b) shall be deemed responsible for
795 purposes of award unless the prequalification is revoked by
796 the awarding authority under the following procedures:

797 (1) No later than five working days or the next regular
798 meeting after the opening of bids, the awarding authority
799 issues written notice to the bidder of its intent to revoke
800 prequalification and the grounds therefor~~;~~.

801 (2) ~~the~~The bidder is ~~then~~ provided an opportunity to be
802 heard before the awarding authority on the intended
803 revocation~~;~~.

804 (3) ~~the~~The awarding authority makes a good faith
805 showing of a material inaccuracy in the prequalification
806 application of a bidder or of a material change in the
807 responsibility of the bidder since submitting its
808 prequalification application~~;~~and.

809 (4) ~~the~~The revocation of prequalification is determined
810 no later than 10 days after written notice of intent to
811 revoke, unless the bidder whose qualification is in question
812 agrees in writing to an extension in time.



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813 (e) Nothing in this section shall preclude the
814 rejection of a bidder determined not responsible nor the
815 inclusion of criteria in the bid documents which would limit
816 contract awards to responsible bidders where no
817 prequalification procedure is employed by the awarding
818 authority."

819 Section 3. Although this bill would have as its purpose
820 or effect the requirement of a new or increased expenditure of
821 local funds, the bill is excluded from further requirements
822 and application under Section 111.05 of the Constitution of
823 Alabama of 2022, because the bill defines a new crime or
824 amends the definition of an existing crime.

825 Section 4. This act shall become effective on the first
826 day of the third month following its passage and approval by
827 the Governor, or its otherwise becoming law.