

1 SB394
2 199861-1
3 By Senator Singleton
4 RFD: Governmental Affairs
5 First Read: 09-MAY-19

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8 SYNOPSIS: Under existing law, all expenditures of
9 public funds for labor, services, work, or for the
10 purchase of materials, equipment, supplies, or
11 other personal property involving \$15,000 or more
12 and the lease of such materials, equipment,
13 supplies, or other personal property are required
14 to be made under contractual agreement entered into
15 by free and open competitive bidding, on sealed
16 bids, to the lowest responsible bidder.

17 This bill would increase the minimum
18 threshold to require competitive bidding on such
19 contracts involving \$25,000 or more.

20 Also under existing law, when an awarding
21 authority is a county, municipality, or an
22 instrumentality of a county or municipality, the
23 awarding authority may establish a local preference
24 zone for the awarding of contracts under the
25 competitive bid law.

26 This bill would provide that if such an
27 awarding authority is located in multiple counties,

1 the awarding authority may establish a local
2 preference zone in the municipality in which the
3 awarding authority's headquarters is located.

4 Amendment 621 of the Constitution of Alabama
5 of 1901, now appearing as Section 111.05 of the
6 Official Recompilation of the Constitution of
7 Alabama of 1901, as amended, prohibits a general
8 law whose purpose or effect would be to require a
9 new or increased expenditure of local funds from
10 becoming effective with regard to a local
11 governmental entity without enactment by a 2/3 vote
12 unless: it comes within one of a number of
13 specified exceptions; it is approved by the
14 affected entity; or the Legislature appropriates
15 funds, or provides a local source of revenue, to
16 the entity for the purpose.

17 The purpose or effect of this bill would be
18 to require a new or increased expenditure of local
19 funds within the meaning of the amendment. However,
20 the bill does not require approval of a local
21 governmental entity or enactment by a 2/3 vote to
22 become effective because it comes within one of the
23 specified exceptions contained in the amendment.

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25 A BILL
26 TO BE ENTITLED
27 AN ACT

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2 Relating to public contracts; to amend Section
3 41-16-50, Code of Alabama 1975, to further provide for the
4 total amount of funds the expenditure of which requires
5 competitive bidding; to further provide for the location of
6 local preference zones for certain awarding authorities
7 located in multiple counties; and in connection therewith
8 would have as its purpose or effect the requirement of a new
9 or increased expenditure of local funds within the meaning of
10 Amendment 621 of the Constitution of Alabama of 1901, now
11 appearing as Section 111.05 of the Official Recompilation of
12 the Constitution of Alabama of 1901, as amended.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Section 41-16-50, Code of Alabama 1975,
15 is amended to read as follows:

16 "§41-16-50.

17 "(a) With the exception of contracts for public
18 works whose competitive bidding requirements are governed
19 exclusively by Title 39, all expenditure of funds of whatever
20 nature for labor, services, work, or for the purchase of
21 materials, equipment, supplies, or other personal property
22 involving ~~fifteen thousand dollars (\$15,000)~~ twenty-five
23 thousand dollars (\$25,000) or more, and the lease of
24 materials, equipment, supplies, or other personal property
25 where the lessee is, or becomes legally and contractually,
26 bound under the terms of the lease, to pay a total amount of
27 ~~fifteen thousand dollars (\$15,000)~~ twenty-five thousand

1 dollars (\$25,000) or more, made by or on behalf of any state
2 trade school, state junior college, state college, or
3 university under the supervision and control of the Alabama
4 Community College System, the Alabama Fire College, the
5 district boards of education of independent school districts,
6 the county commissions, the governing bodies of the
7 municipalities of the state, and the governing boards of
8 instrumentalities of counties and municipalities, including
9 waterworks boards, sewer boards, gas boards, and other like
10 utility boards and commissions, except as hereinafter
11 provided, shall be made under contractual agreement entered
12 into by free and open competitive bidding, on sealed bids, to
13 the lowest responsible bidder. Prior to advertising for bids
14 for an item of personal property or services, where a county,
15 a municipality, or an instrumentality thereof is the awarding
16 authority, the awarding authority may establish a local
17 preference zone consisting of either the legal boundaries or
18 jurisdiction of the awarding authority, or the boundaries of
19 the county in which the awarding authority is located, or if
20 the awarding authority is located in multiple counties, the
21 municipality in which the awarding authority's headquarters is
22 located, or the boundaries of the Core Based Statistical Area
23 in which the awarding authority is located. If no such action
24 is taken by the awarding authority, the boundaries of the
25 local preference zone shall be deemed to be the same as the
26 legal boundaries or jurisdiction of the awarding authority. In
27 the event a bid is received for an item of personal property

1 or services to be purchased or contracted for from a person,
2 firm, or corporation deemed to be a responsible bidder, having
3 a place of business within the local preference zone where the
4 county, a municipality, or an instrumentality thereof is the
5 awarding authority, and the bid is no more than five percent
6 greater than the bid of the lowest responsible bidder, the
7 awarding authority may award the contract to the resident
8 responsible bidder. In the event only one bidder responds to
9 the invitation to bid, the awarding authority may reject the
10 bid and negotiate the purchase or contract, providing the
11 negotiated price is lower than the bid price.

12 "(b) The governing bodies of two or more contracting
13 agencies, as enumerated in subsection (a), or the governing
14 bodies of two or more counties, or the governing bodies of two
15 or more city or county boards of education, may provide, by
16 joint agreement, for the purchase of labor, services, or work,
17 or for the purchase or lease of materials, equipment,
18 supplies, or other personal property for use by their
19 respective agencies. The agreement shall be entered into by
20 similar ordinances, in the case of municipalities, or
21 resolutions, in the case of other contracting agencies,
22 adopted by each of the participating governing bodies, which
23 shall set forth the categories of labor, services, or work, or
24 for the purchase or lease of materials, equipment, supplies,
25 or other personal property to be purchased, the manner of
26 advertising for bids and the awarding of contracts, the method
27 of payment by each participating contracting agency, and other

1 matters deemed necessary to carry out the purposes of the
2 agreement. Each contracting agency's share of expenditures for
3 purchases under any agreement shall be appropriated and paid
4 in the manner set forth in the agreement and in the same
5 manner as for other expenses of the contracting agency. The
6 contracting agencies entering into a joint agreement, as
7 herein permitted, may designate a joint purchasing or bidding
8 agent, and the agent shall comply with this article.

9 Purchases, contracts, or agreements made pursuant to a joint
10 purchasing or bidding agreement shall be subject to all terms
11 and conditions of this article.

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

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

21 "(d) Notwithstanding subsection (a), in the event
22 the lowest bid for an item of personal property or services to
23 be purchased or contracted for is received from a foreign
24 entity, where the county, a municipality, or an
25 instrumentality thereof is the awarding authority, the
26 awarding authority may award the contract to a responsible
27 bidder whose bid is no more than 10 percent greater than the

1 foreign entity if the bidder has a place of business within
2 the local preference zone or is a responsible bidder from a
3 business within the state that is a woman-owned enterprise, an
4 enterprise of small business, as defined in Section 25-10-3, a
5 minority-owned business enterprise, a veteran-owned business
6 enterprise, or a disadvantaged-owned business enterprise. For
7 the purposes of this subsection, foreign entity means a
8 business entity that does not have a place of business within
9 the state."

10 Section 2. Although this bill would have as its
11 purpose or effect the requirement of a new or increased
12 expenditure of local funds, the bill is excluded from further
13 requirements and application under Amendment 621, now
14 appearing as Section 111.05 of the Official Recompilation of
15 the Constitution of Alabama of 1901, as amended, because the
16 bill defines a new crime or amends the definition of an
17 existing crime.

18 Section 3. This act shall become effective on the
19 first day of the third month following its passage and
20 approval by the Governor, or its otherwise becoming law.