

1 SB289
2 149874-1
3 By Senators Blackwell, Waggoner, Brewbaker and Sanford
4 RFD: Commerce, Transportation, and Utilities
5 First Read: 05-MAR-13

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8 SYNOPSIS: This bill would give public owners new
9 alternative means for procuring design and
10 construction services for public works contracts by
11 making available the construction manager at risk
12 and design-build project delivery methods as
13 additional options when determined by the awarding
14 authority that these alternative project delivery
15 methods potentially offer better value to taxpayers
16 than the traditional design-bid-build method.

17 In addition to any existing design-bid-build
18 project delivery method, this bill would provide
19 awarding authorities the alternatives of selecting
20 a construction manager at risk or a design-builder,
21 would specify that a construction manager at risk
22 or a design-builder assumes the risk for
23 construction, rehabilitation, alteration, or repair
24 of a public works project at the contracted price,
25 and would provide for the selection of all
26 contractors and subcontractors necessary to
27 complete the public works project by the

1 construction manager at risk or design-build
2 process.

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

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

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to public works projects; to designate
2 existing Chapter 2, consisting of Sections 39-2-1 to 39-2-14,
3 inclusive, of Title 39, Code of Alabama 1975, as Article 1 and
4 add Articles 2 and 3, consisting of Sections 39-2-30 to
5 39-2-34 and 39-2-40 to 39-2-43, inclusive, to Chapter 2 of
6 Title 39, Code of Alabama 1975; and amend Sections 39-2-1 and
7 39-2-2, Code of Alabama 1975, to authorize the selection of a
8 construction manager at risk or a design-builder; to specify
9 that a construction manager at risk or a design-builder
10 assumes the risk for construction, rehabilitation, alteration,
11 or repair of a public works project; to provide for the
12 selection of the contractors and subcontractors for the
13 project by the construction manager at risk or a
14 design-builder; to exclude all contracts to be awarded by the
15 Alabama Department of Transportation from Article 2 and
16 Article 3 as created by this act; to provide penalties; and in
17 connection therewith would have as its purpose or effect the
18 requirement of a new or increased expenditure of local funds
19 within the meaning of Amendment 621 of the Constitution of
20 Alabama of 1901, now appearing as Section 111.05 of the
21 Official Recompilation of the Constitution of Alabama of 1901,
22 as amended.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. An article heading is added before
25 Section 39-2-1 of the Code of Alabama 1975, to read as
26 follows:

1 ARTICLE 1. GENERAL; DESIGN-BID-BUILD PUBLIC WORKS
2 CONTRACTS.

3 Section 2. Sections 39-2-1 and 39-2-2 of the Code of
4 Alabama 1975, are amended to read as follows:

5 "§39-2-1.

6 "As used in this title, the following words shall
7 have the meanings ascribed to them as follows:

8 "(1) AWARDING AUTHORITY. Any governmental board,
9 commission, agency, body, authority, instrumentality,
10 department, or subdivision of the state, its counties and
11 municipalities. This term includes, but shall not be limited
12 to, the Department of Transportation, the State Building
13 Commission, the State Board of Education, and any other entity
14 contracting for public works. This term shall exclude the
15 State Docks Department and any entity exempted from the
16 competitive bid laws of the state by statute.

17 "(2) CONSTRUCTION MANAGER AT RISK. A person that
18 provides construction management services for a project,
19 pursuant to Article 2, through the preconstruction and
20 construction phases of the project.

21 "(3) DESIGN-BUILDER. A person that provides
22 design-build services for a project, pursuant to Article 3,
23 through the preconstruction (including the performance or
24 provision of the design of the project by licensed design
25 professionals) and construction phases of the project.

26 "~~(2)~~ (4) FORCE ACCOUNT WORK. Work paid for by
27 reimbursing for the actual costs for labor, materials, and

1 equipment usage incurred in the performance of the work, as
2 directed, including a percentage for overhead and profit,
3 where appropriate.

4 "~~(3)~~(5) LIFE CYCLE COSTS. The total cost of
5 ownership over the extended life of a public works project,
6 taking into consideration the costs of construction,
7 operation, and maintenance, less any value obtained from
8 salvage and quantifiable environmental benefits, or the sum of
9 all recurring and one-time (non-recurring) costs over the full
10 life span or a specified period of a good, service, structure,
11 or system, including purchase price, installation costs,
12 operating costs, maintenance and upgrade costs, and remaining
13 (residual or salvage) value at the end of ownership or its
14 useful life.

15 "~~(4)~~(6) PERSON. Natural persons, partnerships,
16 limited liability companies, corporations, and other legal
17 entities.

18 "~~(5)~~(7) PUBLIC PROPERTY. Real property which the
19 state, county, municipality, or awarding authority thereof
20 owns or has a contractual right to own or purchase, including
21 easements, rights-of-way, or otherwise.

22 "~~(6)~~(8) PUBLIC WORKS. The construction,
23 installation, repair, renovation, or maintenance of public
24 buildings, structures, sewers, waterworks, roads, curbs,
25 gutters, side walls, bridges, docks, underpasses, and viaducts
26 as well as any other improvement to be constructed, installed,
27 repaired, renovated, or maintained on public property and to

1 be paid, in whole or in part, with public funds or with
2 financing to be retired with public funds in the form of lease
3 payments or otherwise.

4 "§39-2-2.

5 "(a) Before entering into any contract for a public
6 works involving an amount in excess of fifty thousand dollars
7 (\$50,000), the awarding authority shall advertise for sealed
8 bids. If the awarding authority is the state or a county, or
9 an instrumentality thereof, it shall advertise for sealed bids
10 at least once each week for three consecutive weeks in a
11 newspaper of general circulation in the county or counties in
12 which the improvement or some part thereof, is to be made. If
13 the awarding authority is a municipality, or an
14 instrumentality thereof, it shall advertise for sealed bids at
15 least once in a newspaper of general circulation published in
16 the municipality where the awarding authority is located. If
17 no newspaper is published in the municipality, the awarding
18 authority shall advertise by posting notice thereof on a
19 bulletin board maintained outside the purchasing office and in
20 any other manner and for the length of time as may be
21 determined. In addition to bulletin board notice, sealed bids
22 shall also be solicited by sending notice by mail to all
23 persons who have filed a request in writing with the official
24 designated by the awarding authority that they be listed for
25 solicitation on bids for the public works contracts indicated
26 in the request. If any person whose name is listed fails to
27 respond to any solicitation for bids after the receipt of

1 three such solicitations, the listing may be canceled. With
2 the exception of the Department of Transportation, for all
3 public works contracts involving an estimated amount in excess
4 of five hundred thousand dollars (\$500,000), awarding
5 authorities shall also advertise for sealed bids at least once
6 in three newspapers of general circulation throughout the
7 state. The advertisements shall briefly describe the
8 improvement, state that plans and specifications for the
9 improvement are on file for examination in a designated office
10 of the awarding authority, state the procedure for obtaining
11 plans and specifications, state the time and place in which
12 bids shall be received and opened, and identify whether
13 prequalification is required and where all written
14 prequalification information is available for review. All bids
15 shall be opened publicly at the advertised time and place. No
16 public work as defined in this chapter involving a sum in
17 excess of fifty thousand dollars (\$50,000) shall be split into
18 parts involving sums of fifty thousand dollars (\$50,000) or
19 less for the purpose of evading the requirements of this
20 section.

21 "(b) An awarding authority may let contracts for
22 public works involving fifty thousand dollars (\$50,000) or
23 less with or without advertising or sealed bids.

24 "(c) All contracts for public works entered into in
25 violation of this title shall be null, void, and violative of
26 public policy. Anyone who willfully violates this article
27 concerning public works shall be guilty of a Class C felony.

1 "(d) (1) Excluded from the operation of this title
2 shall be contracts with persons who shall perform only
3 architectural, engineering, construction management as agent,
4 program management, or project management services in support
5 of the public works and who shall not engage in actual
6 construction, repair, renovation, or maintenance of the public
7 works with their own forces, by contract, subcontract,
8 purchase order, lease, or otherwise.

9 "(2) Except as otherwise provided in Article 2, this
10 article does not apply to a contract for a public works
11 project that is let using the construction manager at risk
12 method provided in Article 2 or using the design-build method
13 provided in Article 3. Except as otherwise provided in Article
14 2 and Article 3, the remaining provisions of this article
15 shall apply to these methods, as well as the design-bid-build
16 method in this article.

17 "(e) In case of an emergency affecting public
18 health, safety, or convenience, as declared in writing by the
19 awarding authority, setting forth the nature of the danger to
20 the public health, safety, or convenience which would result
21 from delay, contracts may be let to the extent necessary to
22 meet the emergency without public advertisement. The action
23 and the reasons for the action taken shall immediately be made
24 public by the awarding authority upon request.

25 "(f) No awarding authority may specify in the plans
26 and specifications for the improvement the use of materials,

1 products, systems, or services by a sole source unless all of
2 the following requirements are met:

3 "(1) Except for contracts involving the
4 construction, reconstruction, renovation, or replacement of
5 public roads, bridges, and water and sewer facilities, the
6 awarding authority can document to the satisfaction of the
7 State Building Commission that the sole source product,
8 material, system, or service is of an indispensable nature for
9 the improvement, that there are no other viable alternatives,
10 and that only this particular product, material, system, or
11 service fulfills the function for which it is needed.

12 "(2) The sole source specification has been
13 recommended by the architect or engineer of record as an
14 indispensable item for which there is no other viable
15 alternative.

16 "(3) All information substantiating the use of a
17 sole source specification, including the recommendation of the
18 architect or engineer of record, shall be documented and made
19 available for examination in the office of the awarding
20 authority at the time of advertisement for sealed bids.

21 "(g) In the event of a proposed public works
22 project, acknowledged in writing by the Alabama Homeland
23 Security Department as (1) having a direct impact on the
24 security or safety of persons or facilities and (2) requiring
25 confidential handling for the protection of such persons or
26 facilities, contracts may be let without public advertisement
27 but with the taking of informal bids otherwise consistent with

1 the requirements of this title and the requirements of
2 maintaining confidentiality. Records of bidding and award
3 shall not be disclosed to the public, and shall remain
4 confidential."

5 Section 3. Article 2, consisting of Sections 39-2-30
6 to 39-2-34, inclusive, is added to Chapter 2 of Title 39, Code
7 of Alabama 1975, to read as follows:

8 ARTICLE 2. CONSTRUCTION MANAGER AT RISK PUBLIC WORKS
9 CONTRACTS.

10 §39-2-30.

11 In addition to the methods provided in Article 1 and
12 Article 3 for awarding a public works contract, a contract may
13 be let by an awarding authority pursuant to the construction
14 manager at risk method set forth in this article; provided,
15 however, no contract for public works to be awarded by the
16 Department of Transportation may be let pursuant to the
17 construction manager at risk method.

18 §39-2-31.

19 For the purposes of this article, the following
20 terms shall have the following meanings:

21 (1) CONSTRUCTION MANAGEMENT AT RISK SERVICES.

22 Services provided by a person that:

23 a. Provides construction management services for a
24 specific, single project throughout the preconstruction and
25 construction phases or for any portion thereof. For the
26 purposes of this article, a specific, single project is a

1 project that is constructed at a single location, at a common
2 location, or for a common purpose.

3 b. During the construction phase, acts as a general
4 contractor in accordance with the construction manager at risk
5 contract.

6 c. Performs or provides for the performance of the
7 work on the project and guarantees the maximum cost of the
8 project.

9 (2) CONSTRUCTION MANAGEMENT SERVICES. Services
10 provided by a construction manager, which may include, but are
11 not necessarily limited to, design/constructability review,
12 preparation and coordination of bid packages, scheduling, cost
13 control, value engineering, preconstruction services, and
14 construction administration.

15 (3) FIRST TIER SUBCONTRACTOR. A subcontractor who
16 contracts directly with the construction manager at risk and
17 whose contract is expected to exceed fifty thousand dollars
18 (\$50,000).

19 §39-2-32.

20 (a) A construction manager at risk shall be selected
21 after prequalification conducted by the awarding authority or
22 its agent in accordance with the procedure provided in Section
23 39-2-4. Those who prequalify shall then submit competitive
24 proposals to the awarding authority or its agent. The final
25 selection of those construction managers at risk who are
26 eligible to submit competitive proposals shall be based upon
27 the awarding authority's written findings and conclusions

1 regarding the construction manager's qualifications and
2 responsibility including, without limitation, specific
3 findings regarding the demonstrated competence, experience,
4 past performance, safety record, proposed personnel and
5 methodology, and other appropriate factors that demonstrate
6 the capability of the construction manager at risk. If the
7 awarding authority contracts with an agent to conduct the
8 prequalification or the receipt and review of competitive
9 proposals, the agent is not eligible to perform the
10 construction manager at risk work on the project. Sufficiently
11 in advance of the submission of competitive proposals for all
12 prequalified persons to respond, the awarding authority shall
13 publish the criteria upon which the competitive proposals
14 shall be scored. Each criterion shall be assigned a percentage
15 of the total score so that those submitting competitive
16 proposals know how each criterion shall be weighted. The
17 competitive proposals shall respond to the criteria upon which
18 the awarding authority's selection shall be based, they shall
19 be scored under a qualifications based analysis, and they
20 shall include, at a minimum, the construction manager at
21 risk's proposed price for preconstruction services, general
22 conditions and fee, proposed schedule and proposed management
23 personnel for the project (including their experience and
24 qualifications). Based on the competitive proposals, the
25 awarding authority shall rank the proposals from first to last
26 and shall publish the ranking together with the score for each
27 competitive proposal received indicating the score each

1 criterion received and a written narrative describing the
2 basis for the selection, the analysis of best value, and the
3 ranking. The awarding authority shall then enter into
4 negotiations with the construction manager at risk having the
5 highest ranked proposal.

6 (b) Pursuant to a construction manager at risk
7 contract, the person providing construction manager at risk
8 services may self-perform portions of a project provided the
9 aggregate total cost of all the work the construction manager
10 at risk plans to self-perform, not including the general
11 conditions items, does not exceed 10 percent of the guaranteed
12 maximum price (at the time the final contract is awarded). For
13 purposes of determining the aggregate total cost of
14 self-performed work, the total cost shall include all costs
15 reasonably necessary for the proper performance of the
16 self-performed work including, without limitation, the total
17 sum of all labor, materials, tools, equipment, trade
18 supervision, layout, taxes, and bond and insurance premium
19 (when and if required). In addition, for purposes of
20 compliance with the 10 percent limitation, work subcontracted
21 to a separate entity in which the construction manager at risk
22 has any ownership interest shall be considered self-performed
23 work. Notwithstanding the foregoing 10 percent limitation, the
24 construction manager at risk may self-perform additional work
25 on the project in the event a subcontractor or subcontractors
26 are terminated for default, deemed by the construction manager
27 at risk to be non-performing or underperforming some portion

1 of the subcontract scope of work, or otherwise not materially
2 complying with the subcontract requirements such as to require
3 the construction manager at risk to supplement the
4 subcontractor's work by self-performing some portion of the
5 subcontractor's scope of work, or if there are no
6 subcontractors who bid or submit proposals for some portion of
7 the work. If all bids received for a particular scope of work
8 to be subcontracted exceed the proposed budget for that work,
9 the construction manager at risk shall negotiate with the
10 lowest bidder to attempt to obtain a price at or below the
11 proposed budget amount. If the construction manager at risk is
12 unable to negotiate a price within the proposed budget amount,
13 then the construction manager at risk may, at its option and
14 discretion, perform that scope of work itself or apply savings
15 or contingency amounts from another line item in the proposed
16 budget sufficient to bring the work within the proposed budget
17 amount.

18 (c) A person providing construction manager at risk
19 services is subject to all licensing, insurance, and bonding
20 requirements for public works projects in Alabama.

21 §39-2-33.

22 (a) After ranking the competitive proposals, the
23 awarding authority shall then enter into negotiations with the
24 construction manager at risk having the highest ranked
25 competitive proposal for the purpose of entering into a
26 construction manager at risk contract. A letter of intent to
27 award the project describing services to be performed and the

1 compensation provided shall be issued by the awarding
2 authority.

3 (b) The construction manager at risk shall
4 prequalify all first tier subcontractors using the
5 prequalification procedures in Section 39-2-4 for those
6 portions of the project the construction manager at risk
7 chooses not to self-perform. The list of prequalified first
8 tier subcontractors shall be submitted to the awarding
9 authority by the construction manager at risk. The awarding
10 authority may influence the selection of first tier
11 subcontractors based upon a past experience or current legal
12 dispute the awarding authority may have with a subcontractor;
13 provided, however, the construction manager at risk shall have
14 the final discretion regarding prequalification and final
15 selection of first tier subcontractors. The construction
16 manager at risk shall then receive competitive proposals from
17 the first tier subcontractors who have prequalified. Prior to
18 the submission of competitive proposals, the construction
19 manager at risk shall establish the criteria upon which the
20 competitive proposals shall be scored. Each criterion shall be
21 assigned a percentage of the total score so that those first
22 tier subcontractors submitting competitive proposals know how
23 each criterion shall be weighted. The criteria shall then be
24 submitted to the awarding authority for approval. The
25 construction manager at risk shall publish the approved
26 criteria. The competitive proposals shall respond to the
27 criteria upon which the construction manager's selection shall

1 be based. The construction manager at risk shall rank the
2 proposals received from first to last and shall publish the
3 ranking together with the score for each competitive proposal
4 indicating the score each criterion received and a written
5 narrative describing the basis for the selection, the analysis
6 of best value, and the ranking. The competitive proposals
7 shall include, at a minimum, the subcontractor's lump sum bid,
8 guaranteed maximum price, or proposed general conditions and
9 fee as well as the subcontractor's proposed schedule, plan for
10 the work, and team of management personnel. Based on the
11 competitive proposals ranking, the construction manager at
12 risk shall select the first tier subcontractors with whom it
13 intends to perform the project. The construction manager at
14 risk shall not be required to base its selection of first tier
15 subcontractors on price alone. For the selection of
16 subcontractors whose contract is not expected to exceed fifty
17 thousand dollars (\$50,000) in amount, the construction manager
18 at risk shall have sole discretion in the manner, method, and
19 conditions of selection.

20 (c) During negotiations with the awarding authority,
21 the construction manager at risk shall present to the awarding
22 authority a proposed contract specifying a date by which the
23 guaranteed maximum price shall be agreed upon together with
24 staffing fees for the construction manager at risk, other
25 proposed general conditions costs, and the fee for
26 construction manager at risk services. The awarding authority

1 may accept, reject, or continue to negotiate with the
2 construction manager at risk to reach a contract agreement.

3 (d) If the awarding authority is unable to negotiate
4 a satisfactory contract with the initially selected
5 construction manager at risk, the awarding authority shall
6 terminate negotiations with the construction manager at risk
7 and pay the construction manager at risk for any
8 preconstruction services satisfactorily performed prior to the
9 termination of negotiations by the awarding authority. If the
10 awarding authority decides to proceed with the public works
11 project, the awarding authority may begin negotiations with
12 the next highest ranked construction manager at risk until an
13 acceptable agreement on contract terms is reached. This
14 process may proceed with respect to each prequalified
15 construction manager at risk in the order in which the
16 construction manager at risk was ranked by the awarding
17 authority. Alternatively, if at any point the awarding
18 authority decides it is in the project's or the public's best
19 interest, it may choose to let a contract for the project in
20 accordance with Article 1.

21 (e) Once the awarding authority reaches an agreement
22 on contract terms with the construction manager at risk
23 selected, the awarding authority and construction manager at
24 risk shall enter a written contract for general construction
25 management at risk construction services for the specific,
26 single project advertised and negotiated.

1 (f) All contracts for public works entered into in
2 violation of this title shall be null, void, and violative of
3 public policy. Anyone who willfully violates this article
4 concerning public works shall be guilty of a Class C felony.

5 (g) The awarding authority shall compile and make
6 public all proceedings, records, proposals, negotiations,
7 contracts, and other documents relating to the contracting for
8 public works under this article. Upon request of an interested
9 citizen, the awarding authority shall make available for
10 inspection any and all such documents so compiled.

11 Section 4. Article 3, consisting of Sections 39-2-40
12 to 39-2-43, inclusive, is added to Chapter 2 of Title 39, Code
13 of Alabama 1975, to read as follows:

14 ARTICLE 3. DESIGN BUILD PUBLIC WORKS CONTRACTS.

15 §39-2-40.

16 In addition to the methods provided in Articles 1
17 and 2 for awarding a public works contract, a contract may be
18 let pursuant to the design-build method set forth in this
19 article; provided, however, no contract for public works to be
20 awarded by the Department of Transportation may be let
21 pursuant to the design-build method.

22 §39-2-41.

23 For the purposes of this article, the following
24 terms shall have the following meanings:

25 (1) DESIGN-BUILD SERVICES. Services provided by a
26 design-builder shall include the preparation or provision of
27 the project design which must be performed by licensed design

1 professionals. Services may also include, without limitation,
2 scheduling, cost control, value engineering, evaluation,
3 preconstruction services, construction administration, and
4 construction services. The design-builder shall also perform
5 or provide for the performance of both the design and
6 construction work on the project either for a lump sum or for
7 a guaranteed maximum cost for the project.

8 (2) FIRST TIER SUBCONTRACTOR. A subcontractor who
9 contracts directly with the design-builder.

10 §39-2-42.

11 (a) A design-builder shall be selected after
12 prequalification by the awarding authority or its agent. If
13 the awarding authority contracts with an agent to conduct or
14 assist in conducting the design-builder selection process, the
15 agent is not eligible to perform or provide the design-build
16 work on the project, including performing work as a
17 subcontractor or subconsultant, at any tier, to the
18 design-builder. An awarding authority wishing to undertake a
19 design-build project shall publish a request for
20 qualifications from potential design-builders. At a minimum,
21 the request for qualifications shall be published in
22 accordance with the advertising requirements set forth in
23 subsection (a) of Section 39-2-2. The request for
24 qualifications shall describe in as specific terms as possible
25 the nature of the project and shall set forth a detailed
26 explanation of the criteria by which potential design-builders
27 shall be deemed to be prequalified. In addition, the request

1 for qualifications shall state the stipulated proposal fee
2 which the awarding authority shall pay to each of the
3 design-builders who prequalify and submit competitive
4 proposals. The prequalification criteria shall (1) be related
5 to the purpose of the contract or contracts affected; (2) be
6 related to the contract requirements or the quality of the
7 product or service in question; (3) require the name and
8 qualifications of the design professionals who shall perform
9 the design and the builder who shall perform the construction;
10 and (4) be related to the responsibility, competency,
11 experience, safety record, technical expertise, proposed
12 personnel, methodology, and financial ability of the
13 design-builder. From the prequalification data submitted, the
14 awarding authority shall then rank the potential design
15 builders' submissions. From the highest ranking submissions,
16 in descending order, the awarding authority shall identify up
17 to five potential design-builders from whom to request
18 competitive proposals. While the awarding authority may
19 prequalify fewer than five potential design-builders, it is
20 preferred that at least three be prequalified from whom to
21 request competitive proposals. The awarding authority shall
22 publish written findings and conclusions regarding the
23 awarding authority's assessment of the qualifications of each
24 design-builder who responds to the request for qualifications.

25 (b) The awarding authority shall then solicit
26 competitive proposals from those design-builders who have
27 prequalified. The competitive proposals shall include, at a

1 minimum, the design-builder's proposed lump sum price or
2 guaranteed maximum price, proposed schedule, and any other
3 additional criteria requested by the awarding authority as
4 part of the competitive proposals. Prior to receipt of
5 competitive proposals, the awarding authority shall publish
6 the detailed criteria by which the competitive proposals shall
7 be reviewed and scored. Each criterion shall be assigned a
8 percentage of the total score so that those submitting
9 competitive proposals may know how each criterion shall be
10 weighted. Upon receipt and review of the competitive
11 proposals, the awarding authority shall rank them according to
12 compliance with the criteria and then enter into negotiations
13 with the highest ranked design-builder.

14 (c) A person, corporation, or entity providing
15 design-build services is subject to all licensing, insurance,
16 and bonding requirements for public works projects in Alabama.

17 §39-2-43.

18 (a) The awarding authority, upon reaching an
19 agreement with a design-builder on compensation and contract
20 terms for design-build services, shall enter a written
21 design-build contract with the design-builder for design-build
22 services.

23 (b) If the awarding authority is unable to negotiate
24 a satisfactory contract with the initially selected
25 design-builder, the awarding authority shall terminate
26 negotiations with the design-builder. If the awarding
27 authority decides to proceed with the public works project,

1 the awarding authority may begin negotiations with the next
2 highest ranked design-builder until a satisfactory agreement
3 on contract terms is reached. The awarding authority may
4 continue in such fashion with each prequalified design-builder
5 in the order in which the competitive proposals were ranked.
6 Alternatively, the awarding authority may let the contract for
7 the project pursuant to Article 1.

8 (c) Within 90 days after the awarding authority
9 publishes the rankings of the competitive proposals, each
10 prequalified design-builder who submitted a responsive,
11 competitive proposal shall be paid a stipulated proposal fee.
12 The amount of the stipulated fee shall be set forth in the
13 request for qualifications. The amount of the fee shall be
14 equal to a percentage of the project's projected cost as set
15 forth in the highest ranked competitive proposal and shall not
16 be less than two tenths of one percent of the cost. In
17 consideration for paying the stipulated fee, the awarding
18 authority may use any ideas, information, or any other content
19 contained in the competitive proposal submitted by any
20 design-builder which accepts the fee. However, any
21 design-builder may elect to waive the fee in which case the
22 awarding authority may not use any of the ideas, information,
23 or other content in the competitive proposal submitted by a
24 design-builder who waives the fee offered except that this
25 restriction shall not prevent the awarding authority from
26 using any ideas, information, or content that is otherwise in
27 the public domain even if also included in a competitive

1 proposal or if the idea, information, or other content is also
2 included in the competitive proposal of another design-builder
3 who does accept payment of the fee.

4 (d) All contracts for public works entered into in
5 violation of this article shall be null, void, and violative
6 of public policy. Anyone who willfully violates this article
7 concerning public works shall be guilty of a Class C felony.

8 (e) The awarding authority shall compile and make
9 public all proceedings, records, proposals, negotiations,
10 contracts, and other documents relating to the contracting for
11 public works under this article. Upon request of an interested
12 citizen, the awarding authority shall make available for
13 inspection any and all such documents so compiled.

14 Section 5. Although this bill would have as its
15 purpose or effect the requirement of a new or increased
16 expenditure of local funds, the bill is excluded from further
17 requirements and application under Amendment 621, now
18 appearing as Section 111.05 of the Official Recompilation of
19 the Constitution of Alabama of 1901, as amended, because the
20 bill defines a new crime or amends the definition of an
21 existing crime.

22 Section 6. This act shall become effective on
23 January 1, 2014, immediately following its passage and
24 approval by the Governor, or its otherwise becoming law.