

**House State Government Reported Substitute for
HB168**



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A BILL
TO BE ENTITLED
AN ACT

Relating to public works contracts; to amend Sections 39-1-1, 39-2-1, 39-2-2, and 39-2-6, Code of Alabama 1975, to increase the threshold dollar amount for which competitive bidding is generally required; to further provide for certain notice procedures; to authorize the publication of notice by electronic means; to authorize the use of electronic sealed bids; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Section 111.05 of the Constitution of Alabama of 2022.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 39-1-1, 39-2-1, 39-2-2, and 39-2-6, Code of Alabama 1975, are amended to read as follows:

"§39-1-1

(a) Any person entering into a contract with an awarding authority in this state for the prosecution of any public works ~~shall~~, before commencing the work, shall execute a performance bond, with penalty equal to 100 percent of the amount of the contract price. In addition, another bond,



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29 payable to the awarding authority letting the contract, shall
30 be executed in an amount not less than 50 percent of the
31 contract price, with the obligation that the contractor or
32 contractors shall promptly make payments to all persons
33 supplying labor, materials, or supplies for or in the
34 prosecution of the work provided in the contract and for the
35 payment of reasonable ~~attorneys'~~attorney fees incurred by
36 successful claimants or plaintiffs in civil actions on the
37 bond.

38 (b) Any person that has furnished labor, materials, or
39 supplies for or in the prosecution of a public work and
40 payment has not been made may institute a civil action upon
41 the payment bond and have their rights and claims adjudicated
42 in a civil action and judgment entered thereon.
43 Notwithstanding the foregoing, a civil action shall not be
44 instituted on the bond until 45 days after written notice to
45 the surety of the amount claimed to be due and the nature of
46 the claim. The civil action shall be commenced not later than
47 one year from the date of final settlement of the contract.
48 The giving of notice by registered or certified mail, postage
49 prepaid, addressed to the surety at any of its places of
50 business or offices shall be deemed sufficient under this
51 section. In the event the surety or contractor fails to pay
52 the claim in full within 45 days from the mailing of the
53 notice, then the person or persons may recover from the
54 contractor and surety, in addition to the amount of the claim,
55 a reasonable ~~attorney's~~attorney fee based on the result,
56 together with interest on the claim from the date of the



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57 notice.

58 (c) Every person having a right of action on the last
59 described bond as provided in this section ~~shall~~, upon written
60 application to the authority under the direction of whom the
61 work has been prosecuted, indicating that labor, material,
62 foodstuffs, or supplies for the work have been supplied and
63 that payment has not been made, shall be promptly furnished a
64 certified copy of the additional bond and contract. The
65 claimant may bring a civil action in the claimant's name on
66 the bond against the contractor and the surety, or either of
67 them, in the county in which the work is to be or has been
68 performed or in any other county where venue is otherwise
69 allowed by law.

70 (d) In the event a civil action is instituted on the
71 payment bond, at any time more than 15 days before the trial
72 begins, any party may serve upon the adverse party an offer to
73 accept judgment in favor of the offeror or to allow judgment
74 to be entered in favor of the offeree for the money or as
75 otherwise specified in the offer. If within 10 days after the
76 service of the offer, the adverse party serves written notice
77 that the offer is accepted, either party may then file the
78 offer and notice of acceptance together with proof of service
79 and the clerk of the court shall enter judgment. An offer not
80 accepted shall be deemed withdrawn and evidence of the offer
81 shall not be admissible. If the judgment finally obtained by
82 the offeree is less favorable than the offer, the offeree
83 shall pay the reasonable ~~attorney's~~attorney fees and costs
84 incurred by the offeror after the making of the offer. An



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85 offer that is made but not accepted does not preclude a
86 subsequent offer. When the liability of one party to another
87 party has been determined by verdict, order, or judgment, but
88 the amount or extent of the liability remains to be determined
89 by further proceedings, any party may make an offer of
90 judgment, which shall have the same effect as an offer made
91 before trial if the offer is made no less than 10 days prior
92 to the commencement of hearings to determine the amount or
93 extent of liability.

94 (e) This section shall not require the taking of a bond
95 to secure contracts in an amount less than ~~fifty thousand~~
96 ~~dollars (\$50,000)~~ one hundred thousand dollars (\$100,000).

97 (f) (1) The contractor ~~shall~~, immediately after the
98 completion of the contract, shall give notice of the
99 completion by ~~an advertisement in a newspaper of general~~
100 ~~circulation published within the city or county in which the~~
101 ~~work has been done, for a period of four successive~~
102 ~~weeks.~~ publishing the notice for a minimum of three weeks using
103 one or more of the following methods:

104 a. In a newspaper of general circulation in the county
105 or counties in which the work, or some portion thereof, has
106 been done.

107 b. On a website that is maintained by a newspaper of
108 general circulation in the county or counties in which the
109 work, or some portion thereof, has been done.

110 c. On a website utilized by the awarding authority for
111 publishing notices.

112 (2) If no newspaper is published in the county in which



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113 the work was done, and if the awarding authority does not
114 utilize a website for the purpose of publishing notices, the
115 notice may be given by posting at the courthouse for 30 days,
116 and proof of the posting of the notice shall be given by the
117 awarding authority and the contractor.

118 (3) A final settlement shall not be made upon the
119 contract until the expiration of 30 days after the completion
120 of the notice. Proof of publication of the notice shall be
121 made by the contractor to the authority by whom the contract
122 was made by affidavit of the publisher or website owner and a
123 printed copy of the notice published. ~~If no newspaper is~~
124 ~~published in the county in which the work is done, the notice~~
125 ~~may be given by posting at the courthouse for 30 days, and~~
126 ~~proof of same shall be made by the judge of probate, sheriff,~~
127 ~~and the contractor.~~

128 (4) For contracts for road resurfacing materials that
129 are awarded on an annual basis, where the bid specifications
130 include options such as a unit price for materials, a unit
131 price for the delivery of materials, or a unit price for
132 materials to be laid in place by the bidder, notice of
133 completion pursuant to this subsection may be given on an
134 annual basis upon completion of the project as a whole, rather
135 than at the completion of each proceed order.

136 (g) Subsection (f) shall not apply to contractors
137 performing contracts of less than ~~fifty thousand dollars~~
138 ~~(\$50,000)~~ one hundred thousand dollars (\$100,000) in amount. ~~In~~
139 ~~such cases, the governing body of the contracting agency, to~~
140 ~~expedite final payment, shall cause notice of final completion~~



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141 ~~of the contract to be published one time in a newspaper of~~
142 ~~general circulation, published in the county of the~~
143 ~~contracting agency and shall post notice of final completion~~
144 ~~on the agency's bulletin board for one week, and shall require~~
145 ~~the contractor to certify under oath that all bills have been~~
146 ~~paid in full. Final settlement with the contractor may be made~~
147 ~~at any time after the notice has been posted for one entire~~
148 ~~week."~~

149 "§39-2-1

150 As used in this title, the following words shall have
151 the meanings ascribed to them as follows:

152 (1) AWARDING AUTHORITY. Any governmental board,
153 commission, agency, body, authority, instrumentality,
154 department, or subdivision of the state, its counties and
155 municipalities. This term includes, but shall not be limited
156 to, the Department of Transportation, ~~the State Building~~
157 ~~Commission~~ the Division of Real Property Management of the
158 Department of Finance, the State Board of Education, and any
159 other entity contracting for public works. This term shall
160 exclude the State Docks Department and any entity exempted
161 from the competitive bid laws of the state by statute.

162 (2) FORCE ACCOUNT WORK. Work paid for by reimbursing
163 for the actual costs for labor, materials, and equipment usage
164 incurred in the performance of the work, as directed,
165 including a percentage for overhead and profit, where
166 appropriate.

167 (3) LIFE CYCLE COSTS. The total cost of ownership over
168 the extended life of a public works project, taking into



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169 consideration the costs of construction, operation, and
170 maintenance, less any value obtained from salvage and
171 quantifiable environmental benefits, or the sum of all
172 recurring and one-time (non-recurring) costs over the full
173 life span or a specified period of a good, service, structure,
174 or system, including purchase price, installation costs,
175 operating costs, maintenance and upgrade costs, and remaining
176 (residual or salvage) value at the end of ownership or its
177 useful life.

178 (4) PERSON. Natural persons, partnerships, limited
179 liability companies, corporations, and other legal entities.

180 (5) PUBLIC PROPERTY. Real property which the state,
181 county, municipality, or awarding authority thereof owns or
182 has a contractual right to own or purchase, including
183 easements, rights-of-way, or otherwise.

184 (6) PUBLIC WORKS. The construction, installation,
185 repair, renovation, or maintenance of public buildings,
186 structures, sewers, waterworks, roads, curbs, gutters, side
187 walls, bridges, docks, underpasses, and viaducts as well as
188 any other improvement to be constructed, installed, repaired,
189 renovated, or maintained on public property and to be paid, in
190 whole or in part, with public funds or with financing to be
191 retired with public funds in the form of lease payments or
192 otherwise."

193 "§39-2-2

194 (a) (1) Before entering into any contract for a public
195 works involving an amount in excess of ~~fifty thousand dollars~~
196 ~~(\$50,000)~~ one hundred thousand dollars (\$100,000), the



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197 awarding authority shall advertise for sealed bids, except as
198 provided in subsection (j).

199 (2)a. If the awarding authority is the state, ~~or a~~
200 county, or an instrumentality thereof, it shall advertise for
201 sealed bids at least once each week for three consecutive
202 weeks in a newspaper of general circulation in the county or
203 counties in which the improvement, or some part thereof, is to
204 be made.

205 b. If the awarding authority is a municipality, or an
206 instrumentality thereof, it shall advertise for sealed bids at
207 least once in a newspaper of general circulation published in
208 the municipality where the awarding authority is located. If
209 no newspaper is published in the municipality, the awarding
210 authority shall advertise by posting notice thereof on a
211 bulletin board maintained outside the purchasing office and in
212 any other manner and for the length of time as may be
213 determined. In addition to bulletin board notice, sealed bids
214 shall also be solicited by sending notice by mail to all
215 persons who have filed a request in writing with the official
216 designated by the awarding authority that they be listed for
217 solicitation on bids for the public works contracts indicated
218 in the request. If any person whose name is listed fails to
219 respond to any solicitation for bids after the receipt of
220 three such solicitations, the listing may be canceled.

221 ~~(3) With the exception of the Department of~~
222 ~~Transportation, for all public works contracts involving an~~
223 ~~estimated amount in excess of five hundred thousand dollars~~
224 ~~(\$500,000), awarding authorities shall also advertise for~~



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225 ~~sealed bids at least once in three newspapers of general~~
226 ~~circulation throughout the state.~~

227 ~~(4)~~ (3) The advertisements shall briefly describe the
228 improvement, state that plans and specifications for the
229 improvement are on file for examination in a designated office
230 of the awarding authority, state the procedure for obtaining
231 plans and specifications, state the time and place in which
232 bids shall be received and opened, and identify whether
233 prequalification is required and where all written
234 prequalification information is available for review.

235 ~~(5)~~ (4) All bids shall be opened publicly at the
236 advertised time and place.

237 ~~(6)~~ (5) No public work, as defined in this chapter,
238 involving a sum in excess of ~~fifty thousand dollars (\$50,000)~~
239 one hundred thousand dollars (\$100,000) shall be split into
240 parts involving sums of ~~fifty thousand dollars (\$50,000)~~ one
241 hundred thousand dollars (\$100,000) or less for the purpose of
242 evading the requirements of this section.

243 (b) (1) An awarding authority may let contracts for
244 public works involving ~~fifty thousand dollars (\$50,000)~~ one
245 hundred thousand dollars (\$100,000) or less with or without
246 advertising or sealed bids.

247 (2) An awarding authority may enter into a contract for
248 public works if an advertisement for sealed bids for the
249 contract was submitted by the awarding authority to a
250 newspaper and the newspaper only published the advertisement
251 for two weeks if the authority can provide proof that it, in
252 good faith, submitted the advertisement to the newspaper with



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253 instructions to publish the notice in accordance with the
254 provisions of this section.

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

259 (d) (1) Excluded from the operation of this title shall
260 be contracts with persons who shall perform only
261 architectural, engineering, construction management, program
262 management, or project management services in support of the
263 public works and who shall not engage in actual construction,
264 repair, renovation, or maintenance of the public works with
265 their own forces, by contract, subcontract, purchase order,
266 lease, or otherwise.

267 (2) Excluded from operation of the bidding requirements
268 in this title are contracts for the purchase of any heating or
269 air conditioning units or systems by any awarding authority
270 subject to Chapter 13B of Title 16, or Article 3, commencing
271 with Section 41-16-50, of Chapter 16 of Title 41, or Article
272 5, commencing with Section 41-4-110, of Chapter 4 of Title 41,
273 provided the contract is entered into with an Alabama vendor
274 who has been granted approved vendor status for the sale of
275 heating or air conditioning units or systems as a part of a
276 purchasing cooperative, and each of the following occur:

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



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281 b. The purchase of the heating or air conditioning unit
282 or system is not available on the state purchasing program at
283 the time or the purchase under the purchasing cooperative is
284 available at a price that is equal to or less than that
285 available through the state purchasing program.

286 c. The entity entering into the contract for the
287 purchase of the heating or air conditioning unit or system has
288 been notified by the Department of Examiners of Public
289 Accounts that the competitive bid process utilized by the
290 cooperative program offering the goods complies with this
291 subdivision.

292 d. Upon request, the vendor has provided the purchasing
293 entity with a report of sales made under this subdivision
294 during the previous 12-month period, to include a general
295 description of the heating or air conditioning units and
296 systems sold, the number of units sold per entity, and the
297 purchase price of the units.

298 e. The exemption from the requirement to utilize sealed
299 bids for the purchase of heating or air conditioning units or
300 systems authorized by this section shall not serve to exempt
301 any public works project from the remaining provisions of this
302 article, including, but not limited to, design, installation,
303 and review requirements, compliance with all applicable codes,
304 laws, specifications, and standards, and the compensation of
305 engineers, architects, or others as mandated by state law or
306 rule.

307 (e) ~~(1) In case of an emergency affecting public health,~~
308 ~~safety, or convenience, as declared in writing by the awarding~~



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309 ~~authority, setting forth the nature of the danger to the~~
310 ~~public health, safety, or convenience which would result from~~
311 ~~delay, contracts may be let to the extent necessary to meet~~
312 ~~the emergency without public advertisement. The action and the~~
313 ~~reasons for the action taken shall immediately be made public~~
314 ~~by the awarding authority upon request.~~ In case of an
315 emergency for which a delay in remedying would cause immediate
316 harm to a person or public property, contracts may be let to
317 the extent necessary to meet the emergency without public
318 advertisement or bidding.

319 (2) In case of an emergency affecting public health,
320 safety, or convenience, as declared in writing by the awarding
321 authority, setting forth the nature of the danger to the
322 public health, safety, or convenience which would result from
323 delay, contracts may be let to the extent necessary to meet
324 the emergency without public advertisement.

325 (3) Any action taken under subdivision (1) or (2), and
326 the reasons for the action taken, shall immediately be made
327 public by the awarding authority and published in writing.

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

332 (1) Except for contracts involving the construction,
333 reconstruction, renovation, or replacement of public roads,
334 bridges, and water and sewer facilities, the awarding
335 authority can document to the satisfaction of the ~~Division of~~
336 ~~Construction Management~~ Division of Real Property Management



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337 of the Department of Finance, or in the case of an educational
338 institution or state educational institution as provided
339 pursuant to Sections 41-4-353 and 41-4-400, to the
340 satisfaction of its governing board, that the sole source
341 product, material, system, or service is of an indispensable
342 nature for the improvement, that there are no other viable
343 alternatives, and that only this particular product, material,
344 system, or service fulfills the function for which it is
345 needed.

346 (2) The sole source specification has been recommended
347 by the architect or engineer of record as an indispensable
348 item for which there is no other viable alternative.

349 (3) All information substantiating the use of a sole
350 source specification, including the recommendation of the
351 architect or engineer of record, shall be documented and made
352 available for examination in the office of the awarding
353 authority at the time of advertisement for sealed bids.

354 (g) In the event of a proposed public works project,
355 acknowledged in writing by the Alabama Homeland Security
356 Department as: (1) having a direct impact on the security or
357 safety of persons or facilities; and (2) requiring
358 confidential handling for the protection of such persons or
359 facilities, contracts may be let without public advertisement
360 but with the taking of informal bids otherwise consistent with
361 the requirements of this title and the requirements of
362 maintaining confidentiality. Records of bidding and award
363 shall not be disclosed to the public and shall remain
364 confidential.



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

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

373 (j) Notwithstanding subsection (a), the Department of
374 Transportation may enter into contracts for road construction
375 or road maintenance projects that do not involve more than two
376 hundred fifty thousand dollars (\$250,000) without advertising
377 for sealed bids, provided the project is listed on the
378 department website for at least seven calendar days before
379 entering into the contract. The total cost of all projects not
380 subject to advertising and sealed bids pursuant to this
381 subsection may not exceed one million dollars (\$1,000,000) in
382 the aggregate per year.

383 (k) For the purposes of this chapter, sealed bids may
384 also be solicited and submitted through electronic means
385 including, but not limited to, electrical, digital, magnetic,
386 optical, electromagnetic, or any other similar technology,
387 provided that the awarding authority adopts rules and policies
388 to ensure that all electronic submissions are transmitted
389 securely and bids remained sealed until bid opening.

390 (l) (1) Notwithstanding any other provision of law, any
391 entity subject to this chapter that is an awarding authority
392 of a contract for public works, by resolution or board action,



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393 may purchase materials or equipment pursuant to subdivisions
394 (14), (16), 17), (18), or (19) of Section 41-16-51(a), even
395 when those materials or equipment are otherwise part of the
396 contract for public works subject to the requirements of this
397 title.

398 (2) Except for those materials or equipment described
399 in subdivision (1), the remaining portion of the public works
400 project shall be subject to the requirements of this title,
401 even if the remaining portion would involve an amount less
402 than one hundred thousand dollars (\$100,000) as a result of
403 the exclusion of the purchase of the materials or equipment as
404 described in subdivision (1)."

405 "§39-2-6

406 (a) The contract shall be awarded to the lowest
407 responsible and responsive bidder, unless the awarding
408 authority finds that all the bids are unreasonable or that it
409 is not ~~to~~in the interest of the awarding authority to accept
410 any of the bids. A responsible bidder is one who, among other
411 qualities determined necessary for performance, is competent,
412 experienced, and financially able to perform the contract. A
413 responsive bidder is one who submits a bid that complies with
414 the terms and conditions of the invitation for bids. Minor
415 irregularities in the bid shall not defeat responsiveness. The
416 bidder to whom the award is made shall be notified by
417 ~~telegram,~~ confirmed facsimile, electronic mail, or letter at
418 the earliest possible date. If the successful bidder fails or
419 refuses to sign the contract, to make bond as provided in this
420 chapter, or to provide evidence of insurance as required by



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421 the bid documents, the awarding authority may award the
422 contract to the second lowest responsible and responsive
423 bidder. If the second lowest bidder fails or refuses to sign
424 the contract, make bond as provided in this chapter, or to
425 provide evidence of insurance as required by the bid
426 documents, the awarding authority may award the contract to
427 the third lowest responsible and responsive bidder.

428 (b) If no bids or only one bid is received at the time
429 stated in the advertisement for bids, the awarding authority
430 may advertise for and seek other competitive bids, or the
431 awarding authority may direct that the work shall be done by
432 force account under its direction and control or, with the
433 exception of the Department of Transportation, the awarding
434 authority may negotiate for the work through the receipt of
435 informal bids not subject to the requirements of this section.
436 Where only one responsible and responsive bid has been
437 received, any negotiation for the work shall be for a price
438 lower than that bid.

439 (c) ~~When~~ With the exception of the Department of
440 Transportation, when two or more bids are received, and all
441 bids exceed available funding for the contract, ~~a local board~~
442 ~~of education or a public two-year or four-year institution of~~
443 ~~higher education~~ the awarding authority may negotiate for the
444 work with the lowest responsible and responsive bidder,
445 provided that the ~~local board of education or public two-year~~
446 ~~or four-year institution of higher education~~ awarding
447 authority can document the shortage of funding, that time is
448 of the essence, and that the negotiated changes are in the



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449 public interest and do not materially alter the scope and
450 nature of the project.

451 (d) If the awarding authority finds that all bids
452 received are unreasonable or that it is not to the interest of
453 the awarding authority to accept any of the bids, the awarding
454 authority may direct that the work shall be done by force
455 account under its direction and control.

456 (e) On any construction project on which the awarding
457 authority has prepared plans and specifications, has received
458 bids, and has determined to do by force account or by
459 negotiation, the awarding authority shall make available the
460 plans and specifications, an itemized estimate of cost, and
461 any informal bids for review by the Department of Examiners of
462 Public Accounts and, upon completion of the project by an
463 awarding authority, the final total costs together with an
464 itemized list of cost of any and all changes made in the
465 original plans and specifications shall also be made available
466 for review by the Department of Examiners of Public Accounts.
467 Furthermore, the above described information shall be made
468 public by the awarding authority upon request. Upon the
469 approval of the awarding authority, its duly authorized
470 officer or officers, when proceeding upon the basis of force
471 account, may let any subdivision or unit of work by contract
472 on informal bids.

473 (f) No provision of this section shall be interpreted
474 as precluding the use of convict labor by the awarding
475 authority. This section shall not apply to routine maintenance
476 and repair jobs done by maintenance personnel who are regular



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477 employees of the awarding authority, nor shall it apply to
478 road or bridge construction work performed by an awarding
479 authority's regular employees and own equipment.

480 (g) No contract awarded to the lowest responsible and
481 responsive bidder shall be assignable by the successful bidder
482 without written consent of the awarding authority, and in no
483 event shall a contract be assigned to an unsuccessful bidder
484 whose bid was rejected because he or she was not a responsible
485 or responsive bidder.

486 (h) Any agreement or collusion among bidders or
487 prospective bidders in restraint of freedom of competition to
488 bid at a fixed price or to refrain from bidding or otherwise
489 shall render the bids void and shall cause the bidders or
490 prospective bidders to be disqualified from submitting further
491 bids to the awarding authority on future lettings. Any bidder
492 or prospective bidder who willfully participates in any
493 agreement or collusion in restraint of freedom of competition
494 shall be guilty of a felony and, on conviction thereof, shall
495 be fined not less than five thousand dollars (\$5,000) nor more
496 than fifty thousand dollars (\$50,000) or, at the discretion of
497 the jury, shall be imprisoned in the penitentiary for not less
498 than one nor more than three years.

499 (i) Any disclosure in advance of the terms of a bid
500 submitted in response to an advertisement for bids shall
501 render the proceedings void and require advertisement and
502 award anew.

503 (j) The lowest responsible and responsive bidder on a
504 public works project may be determined to be the bidder



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505 offering the lowest life cycle costs. The lowest responsible
506 and responsive bidder shall otherwise meet all of the
507 conditions and specifications contained in the invitation to
508 bid, except that a bidder may still be considered responsive
509 if he or she responds with a bid using different construction
510 materials than those specified in the invitation to bid if the
511 materials' use would result in lower life cycle costs for the
512 public works project. To utilize this provision to determine
513 the lowest responsible and responsive bidder, the awarding
514 authority must include a notice in the invitation to bid that
515 the lowest responsible and responsive bidder may be determined
516 by using life cycle costs, and must also include in the
517 invitation to bid the criteria under which it shall evaluate
518 the life cycle costs."

519 Section 2. Although this bill would have as its purpose
520 or effect the requirement of a new or increased expenditure of
521 local funds, the bill is excluded from further requirements
522 and application under Section 111.05 of the Constitution of
523 Alabama of 2022, because the bill defines a new crime or
524 amends the definition of an existing crime.

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