

## HB168 INTRODUCED



1 KJ7EUA-1  
2 By Representatives Underwood, Pettus, Rigsby, Lomax, Woods  
3 RFD: State Government  
4 First Read: 21-Mar-23  
5



## 4 SYNOPSIS:

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

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

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

26 Section 111.05 of the Constitution of Alabama of  
27 2022, prohibits a general law whose purpose or effect  
28 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.

43  
44  
45 A BILL

46 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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public works contracts; to provide a legislative method for the increase of the threshold dollar amounts; 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 41-16-50, 41-16-51, 41-16-52, 41-16-53, 41-16-54, and 41-16-55, Code of Alabama 1975, are amended to read as follows:

"§41-16-50

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



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

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

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

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

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

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

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



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the contract to the resident responsible bidder.

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

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

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



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

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

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

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



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

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

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





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subsequent expenditure was bid.

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

"§41-16-51

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

(1) The purchase of insurance.

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

(3) Contracts for securing services of attorneys,



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

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

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

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

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

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

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

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

(11) Purchases of computer and word processing hardware when the hardware is the only type that is compatible with 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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those purchased through a lease/purchase agreement, or leased are available as a result of a competitive bid process conducted by a governmental entity and approved by the Alabama Department of Examiners of Public Accounts for each bid.

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

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

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

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



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

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

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

(b) This article shall not apply to:

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

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

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



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

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

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

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

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



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

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

(c) The state trade schools, state junior colleges, state colleges, and universities under the supervision and control of the State Board of Education, the district boards of education of independent school districts, the county commissions, and the governing bodies of the municipalities of the state shall establish and maintain such purchasing facilities and procedures as may be necessary to carry out the intent and purpose of this article by complying with the requirements for competitive bidding in the operation and management of each state trade school, state junior college, state college, or university under the supervision and control of the State Board of Education, the district boards of education of independent school districts, the county commissions, and the governing bodies of the municipalities of the state and the governing boards of instrumentalities of counties and municipalities, including waterworks boards, 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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and commissions by specific reference to this section on any ~~and all~~ purchase orders and purchase commitments executed by the governing boards, bodies, instrumentalities, and commissions; ~~provided, however.~~ However, the option shall not be exercised by any employee, agent, or servant unless done so after having received official prior approval of the respective governing board, body, instrumentality, or commission or unless exercised pursuant to a formal policy adopted by the governing board, body, instrumentality, or commission setting out conditions and restrictions under which the option shall be exercised.

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



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

"§41-16-53

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

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

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

"§41-16-54

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



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

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

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

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

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



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

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

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

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

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

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



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

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

"§41-16-55

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

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

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



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

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

"§39-2-2

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

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

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



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

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

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

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

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

(b) (1) An awarding authority may let contracts for 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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granted approved vendor status for the sale of heating or air conditioning units or systems as a part of a purchasing cooperative, and each of the following occur:

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

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

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

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

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



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

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

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

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

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



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item for which there is no other viable alternative.

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

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

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

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

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



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

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

"§39-2-4

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



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

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



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

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

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

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

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

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

(4) ~~the~~The revocation of prequalification is determined no later than 10 days after written notice of intent to revoke, unless the bidder whose qualification is in question 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.