

HB65 ENGROSSED



1 XQ607E-2
2 By Representative Collins
3 RFD: Ways and Means Education
4 First Read: 07-Mar-23
5 PFD: 06-Mar-23



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A BILL
TO BE ENTITLED
AN ACT

To amend Sections 16-13B-1, 16-13B-4, and 16-13B-5, Code of Alabama 1975, relating to competitive bidding on contracts of city and county boards of education; to increase the minimum amount for contracts subject to competitive bid from \$15,000 to \$40,000; to provide a legislative process for increasing the threshold dollar amount in the future based on increases in the Consumer Price Index; 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 16-13B-1, 16-13B-4, and 16-13B-5 of the Code of Alabama 1975, are amended to read as follows:

"§16-13B-1

(a) (1) This chapter shall apply to county boards of education and city boards of education, or any combination of city and county boards of education as herein provided for the competitive bidding of certain contracts. With the exception of contracts for public works whose competitive bidding



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29 requirements are governed exclusively by Title 39, all
30 expenditure of funds of whatever nature for labor, services,
31 work, or for the purchase of materials, equipment, supplies,
32 or other personal property involving ~~fifteen thousand dollars~~
33 ~~(\$15,000)~~ forty thousand dollars (\$40,000) or more, and the
34 lease of materials, equipment, supplies, or other personal
35 property where the lessee is, or becomes legally and
36 contractually, bound under the terms of the lease, to pay a
37 total amount of ~~fifteen thousand dollars (\$15,000)~~ forty
38 thousand dollars (\$40,000) or more, made by or on behalf of
39 any city or county board of education, except as hereinafter
40 provided, shall be made under contractual agreement entered
41 into by free and open competitive bidding, on sealed bids, to
42 the lowest responsible bidder.

43 (2) Beginning October 1, 2027, and every three years
44 thereafter, all minimum dollar amounts used in this chapter
45 shall be subject to a cost adjustment based on the following
46 procedure: The Chief Examiner of the Department of Examiners
47 of Public Accounts may submit to the Chair of the Legislative
48 Council a recommendation that the amount be increased based on
49 the percentage increase in the Consumer Price Index for the
50 immediately preceding three-year period, rounded down to the
51 nearest thousand dollars. The recommendation shall be subject
52 to the approval of the Legislative Council. In the event the
53 recommendation is not disapproved by the Legislative Council
54 by the end of April following the submission of the
55 recommendation, the recommendation shall be deemed to be
56 approved. Upon approval, the Chief Examiner shall notify the



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57 public of the adjusted dollar amounts by July 1 before the
58 fiscal year in which the changes are to take effect. The
59 increase may not exceed three percent.

60 (b) Prior to advertising for bids for an item of
61 personal property, where a city or county board of education,
62 thereof is the awarding authority, the awarding authority may
63 establish a local preference zone consisting of either the
64 legal boundaries or jurisdiction of the awarding authority, or
65 the boundaries of the county in which the awarding authority
66 is located, or the boundaries of the core based statistical
67 area (CBSA) in which the awarding authority is located. If no
68 such action is taken by the awarding authority, the boundaries
69 of the local preference zone shall be deemed to be the same as
70 the legal boundaries or jurisdiction of the awarding
71 authority. In the event a bid is received for an item of
72 personal property to be purchased or contracted for from a
73 person, firm, or corporation deemed to be a responsible
74 bidder, having a place of business within the local preference
75 zone where a city or county board of education, thereof is the
76 awarding authority, and the bid is no more than three percent
77 greater than the bid of the lowest responsible bidder, the
78 awarding authority may award the contract to the resident
79 responsible bidder. In the event only one bidder responds to
80 the invitation to bid, the awarding authority may reject the
81 bid and negotiate the purchase or contract, providing the
82 negotiated price is lower than the bid price.

83 (c) The governing bodies of two or more city or county
84 boards of education, or any combination of two or more city or



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85 county boards of education, counties, municipalities, or
86 instrumentalities thereof, may provide, by joint agreement,
87 for the purchase of labor, services, or work, or for the
88 purchase or lease of materials, equipment, supplies, or other
89 personal property for use by their respective agencies. The
90 agreement shall be entered into by official actions of the
91 contracting agencies adopted by each of the participating
92 governing bodies which shall set forth the categories of
93 labor, services, or work, or for the purchase or lease of
94 materials, equipment, supplies, or other personal property to
95 be purchased, the manner of advertising for bids and the
96 awarding of contracts, the method of payment by each
97 participating contracting agency, and other matters deemed
98 necessary to carry out the purposes of the agreement. Each
99 contracting agency's share of expenditures for purchases under
100 any agreement shall be appropriated and paid in the manner set
101 forth in the agreement and in the same manner as for other
102 expenses of the contracting agency. The contracting agencies
103 entering into a joint agreement, as herein permitted, may
104 designate a joint purchasing or bidding agent, and the agent
105 shall comply with this chapter. Purchases, contracts, or
106 agreements made pursuant to a joint purchasing or bidding
107 agreement shall be subject to all terms and conditions of this
108 chapter. Any participation by counties and municipalities
109 authorized in this section shall be subject to the provisions
110 of subsection (b) of Section 41-16-50. In the event that
111 utility services are no longer exempt from competitive bidding
112 under this chapter, non-adjointing boards of education may not



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113 purchase utility services by joint agreement under authority
114 granted by this subsection.

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

120 "§16-13B-4

121 (a) All proposed purchases in excess of ~~fifteen~~
122 ~~thousand dollars (\$15,000)~~ forty thousand dollars (\$40,000)
123 shall be advertised by posting notice thereof on a bulletin
124 board maintained outside the purchasing office and in any
125 other manner and for any length of time as may be determined.
126 Sealed bids or bids to be submitted by a reverse auction
127 procedure shall also be solicited by sending notice by mail or
128 other electronic means to all persons, firms, or corporations
129 who have filed a request in writing that they be listed for
130 solicitation on bids for the particular items that are set
131 forth in the request. If any person, firm, or corporation
132 whose name is listed fails to respond to any solicitation for
133 bids after the receipt of three solicitations, the listing may
134 be cancelled.

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

138 (c) The awarding authority may make purchases or
139 contracts through a reverse auction procedure; provided,
140 however, that a reverse auction shall only be allowed where



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141 the item to be purchased at a reverse auction is either not at
142 the time available on the state purchasing program under the
143 same terms and conditions or, if available, the lowest price
144 offered in the reverse auction is equal to or less than the
145 price for which the item is available on the state purchasing
146 program under the same terms and conditions. All of the
147 purchases shall be subject to audit by the Department of
148 Examiners of Public Accounts. For purposes of this chapter, a
149 reverse auction procedure includes either of the following:

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

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

159 b. The Department of Examiners of Public Accounts shall
160 establish procedures for the use of reverse auction, which
161 shall be distributed to all contracting agencies and shall be
162 used in conducting any audits of the purchasing agency.

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

168 (e) No purchase or contract involving professional



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169 services shall be subject to the requirements of this chapter
170 and no purchase or contract involving an amount in excess of
171 ~~fifteen thousand dollars (\$15,000)~~ forty thousand dollars
172 (\$40,000) shall be divided into parts involving amounts of
173 ~~fifteen thousand dollars (\$15,000)~~ forty thousand dollars
174 (\$40,000) or less for the purpose of avoiding the requirements
175 of this chapter. All ~~such~~ partial contracts involving ~~fifteen~~
176 ~~thousand dollars (\$15,000)~~ forty thousand dollars (\$40,000) or
177 less shall be void."

178 "§16-13B-5

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

185 (b) Whoever knowingly participates in a collusive
186 agreement in violation of this section involving a bid or bids
187 of ~~fifteen thousand dollars (\$15,000)~~ forty thousand dollars
188 (\$40,000) and under shall be guilty of a Class A misdemeanor
189 and, upon conviction, shall be punished as prescribed by law.

190 (c) Whoever knowingly and intentionally participates in
191 a collusive agreement in violation of this section involving a
192 bid or bids of over ~~fifteen thousand dollars (\$15,000)~~ forty
193 thousand dollars (\$40,000) shall be guilty of a Class C
194 felony, and upon conviction shall be punished as prescribed by
195 law."

196 Section 2. Although this bill would have as its purpose



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197 or effect the requirement of a new or increased expenditure of
198 local funds, the bill is excluded from further requirements
199 and application under Section 111.05 of the Constitution of
200 Alabama of 2022, because the bill defines a new crime or
201 amends the definition of an existing crime.

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



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House of Representatives

208 Read for the first time and referred06-Mar-23
209 to the House of Representatives
210 committee on Ways and Means
211 Education
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213 Read for the second time and placed22-Mar-23
214 on the calendar:
215 0 amendments
216
217 Read for the third time and passed11-Apr-23
218 as amended
219 Yeas 101
220 Nays 0
221 Abstains 2

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John Treadwell
Clerk