

SB291 INTRODUCED



1 2B4VKS-1

2 By Senator Coleman

3 RFD: Fiscal Responsibility and Economic Development

4 First Read: 03-May-23

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6 2023 Regular Session



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SYNOPSIS:

Under existing law, public contracts for the purchase of materials, equipment, supplies, or other personal property involving \$15,000 or more are required to be made under contractual agreement by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.

Also under existing law, certain contracts are exempt from the competitive bidding requirements.

This bill would further provide for the exemption from the competitive bidding requirements, by including within the exemption contracts for the purchase of computer programs and software applications and contracts for the purchase of equipment and services to aid in the prevention and detection of criminal activity by law enforcement agencies and community-oriented policing programs.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or



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29 provides a local source of revenue, to the entity for
30 the purpose.

31 The purpose or effect of this bill would be to
32 require a new or increased expenditure of local funds
33 within the meaning of the amendment. However, the bill
34 does not require approval of a local governmental
35 entity or enactment by a 2/3 vote to become effective
36 because it comes within one of the specified exceptions
37 contained in the amendment.

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A BILL

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TO BE ENTITLED

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AN ACT

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44 Relating to public contracts; to amend Section
45 41-16-51, Code of Alabama 1975, to further provide for
46 contracts for which competitive bidding is not required; and
47 in connection therewith would have as its purpose or effect
48 the requirement of a new or increased expenditure of local
49 funds within the meaning of Section 111.05 of the Constitution
50 of Alabama of 2022.

51 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

52 Section 1. Section 41-16-51, Code of Alabama 1975, is
53 amended to read as follows:

54 "§41-16-51

55 (a) Competitive bids for entities subject to this
56 article shall not be required for utility services, the rates



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57 for which are fixed by law, regulation, or ordinance, and the
58 competitive bidding requirements of this article shall not
59 apply to:

60 (1) The purchase of insurance.

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

63 (3) Contracts for securing services of attorneys,
64 physicians, architects, teachers, superintendents of
65 construction, artists, appraisers, engineers, consultants,
66 certified public accountants, public accountants, or other
67 individuals possessing a high degree of professional skill
68 where the personality of the individual plays a decisive part.

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

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

73 (6) Purchases of products made or manufactured by blind
74 or visually impaired individuals under the direction or
75 supervision of the Alabama Institute for Deaf and Blind in
76 accordance with Sections 21-2-1 to 21-2-4, inclusive.

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

79 (8) Purchases of computer programs, software
80 applications, manuscripts, books, maps, pamphlets,
81 periodicals, and ~~library/research~~ library or research
82 electronic data bases of manuscripts, books, maps, pamphlets,
83 or periodicals.

84 (9) The selection of paying agents and trustees for any



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85 security issued by a public body.

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

90 (11) Purchases of computer and word processing hardware
91 when the hardware is the only type that is compatible with
92 hardware already owned by the entity taking bids and custom
93 software.

94 (12) Professional services contracts for codification
95 and publication of the laws and ordinances of municipalities
96 and counties.

97 (13) Contractual services and purchases of commodities
98 for which there is only one vendor or supplier and contractual
99 services and purchases of personal property which by their
100 very nature are impossible to award by competitive bidding.

101 (14) Purchases of dirt, sand, or gravel by a county
102 governing body from in-county property owners in order to
103 supply a county road or bridge project in which the materials
104 will be used. The material shall be delivered to the project
105 site by county employees and equipment used only on projects
106 conducted exclusively by county employees.

107 (15) Contractual services and purchases of products
108 related to, or having an impact upon, security plans,
109 procedures, assessments, measures, or systems, or the security
110 or safety of ~~persons~~individuals, structures, facilities, or
111 infrastructures.

112 (16) Subject to the limitations in this subdivision,



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113 purchases, leases, or lease/purchases of goods or services,
114 other than voice or data wireless communication services, made
115 as a part of the purchasing cooperative sponsored by the
116 National Association of Counties, its successor organization,
117 or any other national or regional governmental cooperative
118 purchasing program. The purchases, leases, or lease/purchases
119 may only be made if all of the following occur:

120 a. The goods or services being purchased, including
121 those purchased through a lease/purchase agreement, or leased
122 are available as a result of a competitive bid process
123 conducted by a governmental entity and approved by the ~~Alabama~~
124 Department of Examiners of Public Accounts for each bid.

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

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

132 d. The entity purchasing, leasing, or lease/purchasing
133 goods or services under this subdivision has been notified by
134 the Department of Examiners of Public Accounts that the
135 competitive bid process utilized by the cooperative program
136 offering the goods complies with this subdivision. In
137 addition, upon request, a vendor shall provide the entity
138 purchasing, leasing, or lease/purchasing items that exceed
139 fifteen thousand dollars (\$15,000) made under this exception
140 during the previous 12 months a report of the sales, leases,



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141 and lease/purchases which includes a general description of
142 the goods or services; the number of units sold, leased, and
143 leased/purchased per entity; and the price of units purchased,
144 leased, or leased/purchased.

145 (17) ~~Purchase~~ The purchase of goods or services, other
146 than wireless communication services, whether voice or data,
147 from vendors that have been awarded a current and valid
148 Government Services Administration contract. Any purchase made
149 pursuant to this subdivision shall be under the same terms and
150 conditions as provided in the Government Services
151 Administration contract. Prices paid for such goods and
152 services, other than wireless communication services, whether
153 voice or data, may not exceed the amount provided in the
154 Government Services Administration contract.

155 (b) This article shall not apply to:

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

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

162 (3) The purchase, lease, sale, construction,
163 installation, acquisition, improvement, enlargement, or
164 expansion of any building or structure or other facility
165 designed or intended for lease or sale by a medical clinic
166 board organized under Sections 11-58-1 to 11-58-14, inclusive.

167 (4) The purchase, lease, or other acquisition of
168 machinery, equipment, supplies, and other personal property or



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169 services by a medical clinic board organized under Sections
170 11-58-1 to 11-58-14, inclusive.

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

174 (6) Contracts for the purchase, lease, sale,
175 construction, installation, acquisition, improvement,
176 enlargement, or extension of any plant, building, structure,
177 or other facility or any machinery, equipment, furniture, or
178 furnishings therefor designed or intended for lease or sale
179 for industrial development, other than public utilities, under
180 Sections 11-54-80 to 11-54-99, inclusive, or Sections 11-54-20
181 to 11-54-28, inclusive, or any other law or amendment to the
182 Constitution of Alabama [of 2022](#) authorizing the construction
183 of plants or other facilities for industrial development or
184 for the construction and equipment of buildings for public
185 building authorities under Sections 11-56-1 to 11-56-22,
186 inclusive.

187 (7) The purchase of equipment, supplies, or materials
188 needed, used, and consumed in the normal and routine operation
189 of any waterworks system, sanitary sewer system, gas system,
190 or electric system, or any two or more thereof, that are owned
191 by municipalities, counties, or public corporations, boards,
192 or authorities that are agencies, departments, or
193 instrumentalities of municipalities or counties and no part of
194 the operating expenses of which system or systems, during the
195 then current fiscal year, have been paid from revenues derived
196 from taxes or from appropriations of the state, a county, or a



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197 municipality.

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

203 (9) The purchase of equipment and services to aid in
204 the prevention and detection of criminal activity by law
205 enforcement agencies and community-oriented policing programs.

206 (c) The state trade schools, state junior colleges,
207 state colleges, and universities under the supervision and
208 control of the State Board of Education, the district boards
209 of education of independent school districts, the county
210 commissions, and the governing bodies of the municipalities of
211 the state shall establish and maintain ~~such~~ purchasing
212 facilities and procedures as may be necessary to carry out the
213 intent and purpose of this article by complying with the
214 requirements for competitive bidding in the operation and
215 management of each state trade school, state junior college,
216 state college, or university under the supervision and control
217 of the State Board of Education, the district boards of
218 education of independent school districts, the county
219 commissions, and the governing bodies of the municipalities of
220 the state and the governing boards of instrumentalities of
221 counties and municipalities, including waterworks boards,
222 sewer boards, gas boards, and other like utility boards and
223 commissions.

224 (d) Contracts entered into in violation of this article



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225 shall be void and any ~~person~~individual who violates ~~the~~
226 ~~provisions of~~ this article shall be guilty of a Class C
227 felony."

228 Section 2. Although this bill would have as its purpose
229 or effect the requirement of a new or increased expenditure of
230 local funds, the bill is excluded from further requirements
231 and application under Section 111.05 of the Constitution of
232 Alabama of 2022, because the bill defines a new crime or
233 amends the definition of an existing crime.

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