

HB65 INTRODUCED



1 XQ607E-1
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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SYNOPSIS:

Under existing law, the minimum amount for contracts subject to competitive bid for city and county boards of education is \$15,000.

This bill would increase the minimum amount to \$25,000.

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

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



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A BILL
TO BE ENTITLED
AN ACT

To amend Sections 16-13B-1, Section 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 \$25,000; 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) 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 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)~~ twenty-five thousand dollars (\$25,000) or more, and



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57 the lease of materials, equipment, supplies, or other personal
58 property where the lessee is, or becomes legally and
59 contractually, bound under the terms of the lease, to pay a
60 total amount of ~~fifteen thousand dollars (\$15,000)~~ twenty-five
61 thousand dollars (\$25,000) or more, made by or on behalf of
62 any city or county board of education, except as hereinafter
63 provided, shall be made under contractual agreement entered
64 into by free and open competitive bidding, on sealed bids, to
65 the lowest responsible bidder.

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



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85 responsible bidder. In the event only one bidder responds to
86 the invitation to bid, the awarding authority may reject the
87 bid and negotiate the purchase or contract, providing the
88 negotiated price is lower than the bid price.

89 (c) The governing bodies of two or more city or county
90 boards of education, or any combination of two or more city or
91 county boards of education, counties, municipalities, or
92 instrumentalities thereof, may provide, by joint agreement,
93 for the purchase of labor, services, or work, or for the
94 purchase or lease of materials, equipment, supplies, or other
95 personal property for use by their respective agencies. The
96 agreement shall be entered into by official actions of the
97 contracting agencies adopted by each of the participating
98 governing bodies which shall set forth the categories of
99 labor, services, or work, or for the purchase or lease of
100 materials, equipment, supplies, or other personal property to
101 be purchased, the manner of advertising for bids and the
102 awarding of contracts, the method of payment by each
103 participating contracting agency, and other matters deemed
104 necessary to carry out the purposes of the agreement. Each
105 contracting agency's share of expenditures for purchases under
106 any agreement shall be appropriated and paid in the manner set
107 forth in the agreement and in the same manner as for other
108 expenses of the contracting agency. The contracting agencies
109 entering into a joint agreement, as herein permitted, may
110 designate a joint purchasing or bidding agent, and the agent
111 shall comply with this chapter. Purchases, contracts, or
112 agreements made pursuant to a joint purchasing or bidding



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113 agreement shall be subject to all terms and conditions of this
114 chapter. Any participation by counties and municipalities
115 authorized in this section shall be subject to the provisions
116 of subsection (b) of Section 41-16-50. In the event that
117 utility services are no longer exempt from competitive bidding
118 under this chapter, non-adjointing boards of education may not
119 purchase utility services by joint agreement under authority
120 granted by this subsection.

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

126 "§16-13B-4

127 (a) All proposed purchases in excess of ~~fifteen~~
128 ~~thousand dollars (\$15,000)~~ twenty-five thousand dollars
129 (\$25,000) shall be advertised by posting notice thereof on a
130 bulletin board maintained outside the purchasing office and in
131 any other manner and for any length of time as may be
132 determined. Sealed bids or bids to be submitted by a reverse
133 auction procedure shall also be solicited by sending notice by
134 mail or other electronic means to all persons, firms, or
135 corporations who have filed a request in writing that they be
136 listed for solicitation on bids for the particular items that
137 are set forth in the request. If any person, firm, or
138 corporation whose name is listed fails to respond to any
139 solicitation for bids after the receipt of three
140 solicitations, the listing may be cancelled.



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

144 (c) The awarding authority may make purchases or
145 contracts through a reverse auction procedure; provided,
146 however, that a reverse auction shall only be allowed where
147 the item to be purchased at a reverse auction is either not at
148 the time available on the state purchasing program under the
149 same terms and conditions or, if available, the lowest price
150 offered in the reverse auction is equal to or less than the
151 price for which the item is available on the state purchasing
152 program under the same terms and conditions. All of the
153 purchases shall be subject to audit by the Department of
154 Examiners of Public Accounts. For purposes of this chapter, a
155 reverse auction procedure includes either of the following:

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

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

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



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

174 (e) No purchase or contract involving professional
175 services shall be subject to the requirements of this chapter
176 and no purchase or contract involving an amount in excess of
177 ~~fifteen thousand dollars (\$15,000)~~ twenty-five thousand
178 dollars (\$25,000) shall be divided into parts involving
179 amounts of ~~fifteen thousand dollars (\$15,000)~~ twenty-five
180 thousand dollars (\$25,000) or less for the purpose of avoiding
181 the requirements of this chapter. All ~~such~~ partial contracts
182 involving ~~fifteen thousand dollars (\$15,000)~~ twenty-five
183 thousand dollars (\$25,000) or less shall be void."

184 "§16-13B-5

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

191 (b) Whoever knowingly participates in a collusive
192 agreement in violation of this section involving a bid or bids
193 of ~~fifteen thousand dollars (\$15,000)~~ twenty-five thousand
194 dollars (\$25,000) and under shall be guilty of a Class A
195 misdemeanor and, upon conviction, shall be punished as
196 prescribed by law.



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197 (c) Whoever knowingly and intentionally participates in
198 a collusive agreement in violation of this section involving a
199 bid or bids of over ~~fifteen thousand dollars (\$15,000)~~
200 twenty-five thousand dollars (\$25,000) shall be guilty of a
201 Class C felony, and upon conviction shall be punished as
202 prescribed by law."

203 Section 2. Although this bill would have as its purpose
204 or effect the requirement of a new or increased expenditure of
205 local funds, the bill is excluded from further requirements
206 and application under Section 111.05 of the Constitution of
207 Alabama of 2022, because the bill defines a new crime or
208 amends the definition of an existing crime.

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