

HB65 ENROLLED



1 XQ607E-3
2 By Representative Collins
3 RFD: Ways and Means Education
4 First Read: 07-Mar-23
5 PFD: 06-Mar-23
6 2023 Regular Session



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1 Enrolled, An Act,

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4 To amend Sections 16-13B-1, 16-13B-4, and 16-13B-5,
5 Code of Alabama 1975, relating to competitive bidding on
6 contracts of city and county boards of education; to increase
7 the minimum amount for contracts subject to competitive bid
8 from \$15,000 to \$40,000; to provide a legislative process for
9 increasing the threshold dollar amount in the future based on
10 increases in the Consumer Price Index; and in connection
11 therewith would have as its purpose or effect the requirement
12 of a new or increased expenditure of local funds within the
13 meaning of Section 111.05 of the Constitution of Alabama of
14 2022.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 16-13B-1, 16-13B-4, and 16-13B-5 of
17 the Code of Alabama 1975, are amended to read as follows:

18 "§16-13B-1

19 (a) (1) This chapter shall apply to county boards of
20 education and city boards of education, or any combination of
21 city and county boards of education as herein provided for the
22 competitive bidding of certain contracts. With the exception
23 of contracts for public works whose competitive bidding
24 requirements are governed exclusively by Title 39, all
25 expenditure of funds of whatever nature for labor, services,
26 work, or for the purchase of materials, equipment, supplies,
27 or other personal property involving ~~fifteen thousand dollars~~
28 ~~(\$15,000)~~ forty thousand dollars (\$40,000) or more, and the



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29 lease of materials, equipment, supplies, or other personal
30 property where the lessee is, or becomes legally and
31 contractually, bound under the terms of the lease, to pay a
32 total amount of ~~fifteen thousand dollars (\$15,000)~~ forty
33 thousand dollars (\$40,000) or more, made by or on behalf of
34 any city or county board of education, except as hereinafter
35 provided, shall be made under contractual agreement entered
36 into by free and open competitive bidding, on sealed bids, to
37 the lowest responsible bidder.

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

55 (b) Prior to advertising for bids for an item of
56 personal property, where a city or county board of education,



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

78 (c) The governing bodies of two or more city or county
79 boards of education, or any combination of two or more city or
80 county boards of education, counties, municipalities, or
81 instrumentalities thereof, may provide, by joint agreement,
82 for the purchase of labor, services, or work, or for the
83 purchase or lease of materials, equipment, supplies, or other
84 personal property for use by their respective agencies. The



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

110 (d) The awarding authority may require bidders to
111 furnish a bid bond for a particular bid solicitation if the
112 bonding requirement applies to all bidders, is included in the



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113 written bid specifications, and if bonding is available for
114 the services, equipment, or materials."

115 "§16-13B-4

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

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

133 (c) The awarding authority may make purchases or
134 contracts through a reverse auction procedure; provided,
135 however, that a reverse auction shall only be allowed where
136 the item to be purchased at a reverse auction is either not at
137 the time available on the state purchasing program under the
138 same terms and conditions or, if available, the lowest price
139 offered in the reverse auction is equal to or less than the
140 price for which the item is available on the state purchasing



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141 program under the same terms and conditions. All of the
142 purchases shall be subject to audit by the Department of
143 Examiners of Public Accounts. For purposes of this chapter, a
144 reverse auction procedure includes either of the following:

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

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

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

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

163 (e) No purchase or contract involving professional
164 services shall be subject to the requirements of this chapter
165 and no purchase or contract involving an amount in excess of
166 ~~fifteen thousand dollars (\$15,000)~~ forty thousand dollars
167 (\$40,000) shall be divided into parts involving amounts of
168 ~~fifteen thousand dollars (\$15,000)~~ forty thousand dollars



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169 (\$40,000) or less for the purpose of avoiding the requirements
170 of this chapter. All ~~such~~ partial contracts involving ~~fifteen~~
171 ~~thousand dollars (\$15,000)~~ forty thousand dollars (\$40,000) or
172 less shall be void."

173 "§16-13B-5

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

180 (b) Whoever knowingly participates in a collusive
181 agreement in violation of this section involving a bid or bids
182 of ~~fifteen thousand dollars (\$15,000)~~ forty thousand dollars
183 (\$40,000) and under shall be guilty of a Class A misdemeanor
184 and, upon conviction, shall be punished as prescribed by law.

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

191 Section 2. Although this bill would have as its purpose
192 or effect the requirement of a new or increased expenditure of
193 local funds, the bill is excluded from further requirements
194 and application under Section 111.05 of the Constitution of
195 Alabama of 2022, because the bill defines a new crime or
196 amends the definition of an existing crime.

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



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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 11-Apr-23 as amended.

John Treadwell
Clerk

Senate

02-May-23

Passed