

SB290 INTRODUCED



1 4S0M3I-1

2 By Senator Givhan

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, contracts for public works involving an amount in excess of \$50,000 are subject to the public works competitive bid procedures.

This bill would increase the threshold amount to \$100,000 and would authorize an additional increase to the amount based on increases in the Consumer Price Index.

This bill would authorize the use of electronic means to provide certain required notices.

This bill would also authorize the use of electronic sealed bids.

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



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29 does not require approval of a local governmental
30 entity or enactment by a 2/3 vote to become effective
31 because it comes within one of the specified exceptions
32 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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39 Relating to public works contracts; to amend Sections
40 39-1-1, 39-2-1, 39-2-2, and 39-2-6, Code of Alabama 1975, to
41 increase the threshold dollar amount for which competitive
42 bidding is generally required; to further provide for certain
43 notice procedures; to authorize the publication of notice by
44 electronic means; to authorize the use of electronic sealed
45 bids; to authorize certain statutory dollar amounts to be
46 increased based on increases in the Consumer Price Index; 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. Sections 39-1-1, 39-2-1, 39-2-2, and 39-2-6,
53 Code of Alabama 1975, are amended to read as follows:

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"§39-1-1

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(a) Any person entering into a contract with an

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awarding authority in this state for the prosecution of any



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57 public works~~shall~~, before commencing the work, shall execute
58 a performance bond, with penalty equal to 100 percent of the
59 amount of the contract price. In addition, another bond,
60 payable to the awarding authority letting the contract, shall
61 be executed in an amount not less than 50 percent of the
62 contract price, with the obligation that the contractor or
63 contractors shall promptly make payments to all persons
64 supplying labor, materials, or supplies for or in the
65 prosecution of the work provided in the contract and for the
66 payment of reasonable ~~attorneys'~~attorney fees incurred by
67 successful claimants or plaintiffs in civil actions on the
68 bond.

69 (b) Any person that has furnished labor, materials, or
70 supplies for or in the prosecution of a public work and
71 payment has not been made may institute a civil action upon
72 the payment bond and have their rights and claims adjudicated
73 in a civil action and judgment entered thereon.
74 Notwithstanding the foregoing, a civil action shall not be
75 instituted on the bond until 45 days after written notice to
76 the surety of the amount claimed to be due and the nature of
77 the claim. The civil action shall be commenced not later than
78 one year from the date of final settlement of the contract.
79 The giving of notice by registered or certified mail, postage
80 prepaid, addressed to the surety at any of its places of
81 business or offices shall be deemed sufficient under this
82 section. In the event the surety or contractor fails to pay
83 the claim in full within 45 days from the mailing of the
84 notice, then the person or persons may recover from the



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85 contractor and surety, in addition to the amount of the claim,
86 a reasonable ~~attorney's~~attorney fee based on the result,
87 together with interest on the claim from the date of the
88 notice.

89 (c) Every person having a right of action on the last
90 described bond as provided in this section ~~shall~~, upon written
91 application to the authority under the direction of whom the
92 work has been prosecuted, indicating that labor, material,
93 foodstuffs, or supplies for the work have been supplied and
94 that payment has not been made, shall be promptly furnished a
95 certified copy of the additional bond and contract. The
96 claimant may bring a civil action in the claimant's name on
97 the bond against the contractor and the surety, or either of
98 them, in the county in which the work is to be or has been
99 performed or in any other county where venue is otherwise
100 allowed by law.

101 (d) In the event a civil action is instituted on the
102 payment bond, at any time more than 15 days before the trial
103 begins, any party may serve upon the adverse party an offer to
104 accept judgment in favor of the offeror or to allow judgment
105 to be entered in favor of the offeree for the money or as
106 otherwise specified in the offer. If within 10 days after the
107 service of the offer, the adverse party serves written notice
108 that the offer is accepted, either party may then file the
109 offer and notice of acceptance together with proof of service
110 and the clerk of the court shall enter judgment. An offer not
111 accepted shall be deemed withdrawn and evidence of the offer
112 shall not be admissible. If the judgment finally obtained by



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113 the offeree is less favorable than the offer, the offeree
114 shall pay the reasonable ~~attorney's~~attorney fees and costs
115 incurred by the offeror after the making of the offer. An
116 offer that is made but not accepted does not preclude a
117 subsequent offer. When the liability of one party to another
118 party has been determined by verdict, order, or judgment, but
119 the amount or extent of the liability remains to be determined
120 by further proceedings, any party may make an offer of
121 judgment, which shall have the same effect as an offer made
122 before trial if the offer is made no less than 10 days prior
123 to the commencement of hearings to determine the amount or
124 extent of liability.

125 (e) This section shall not require the taking of a bond
126 to secure contracts in an amount less than ~~fifty thousand~~
127 ~~dollars (\$50,000)~~one hundred thousand dollars (\$100,000).

128 (f) (1) The contractor~~shall~~, immediately after the
129 completion of the contract, shall give notice of the
130 completion by ~~an advertisement in a newspaper of general~~
131 ~~circulation published within the city or county in which the~~
132 ~~work has been done, for a period of four successive~~
133 ~~weeks.~~publishing the notice for a minimum of three weeks using
134 one or more of the following methods:

135 a. In a newspaper of general circulation in the county
136 or counties in which the work, or some portion thereof, has
137 been done.

138 b. On a website that is maintained by a newspaper of
139 general circulation in the county or counties in which the
140 work, or some portion thereof, has been done.



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141 c. On a website utilized by the awarding authority for
142 publishing notices.

143 (2) If no newspaper is published in the county in which
144 the work was done, and if the awarding authority does not
145 utilize a website for the purpose of publishing notices, the
146 notice may be given by posting at the courthouse for 30 days,
147 and proof of the posting of the notice shall be given by the
148 judge of probate, the sheriff, and the contractor.

149 (3) A final settlement shall not be made upon the
150 contract until the expiration of 30 days after the completion
151 of the notice. Proof of publication of the notice shall be
152 made by the contractor to the authority by whom the contract
153 was made by affidavit of the publisher or website owner and a
154 printed copy of the notice published. ~~If no newspaper is~~
155 ~~published in the county in which the work is done, the notice~~
156 ~~may be given by posting at the courthouse for 30 days, and~~
157 ~~proof of same shall be made by the judge of probate, sheriff,~~
158 ~~and the contractor.~~

159 (4) For contracts for road resurfacing materials that
160 are awarded on an annual basis, where the bid specifications
161 include options such as a unit price for materials, a unit
162 price for the delivery of materials, or a unit price for
163 materials to be laid in place by the bidder, notice of
164 completion pursuant to this subsection may be given on an
165 annual basis upon completion of the project as a whole, rather
166 than at the completion of each proceed order.

167 (g) Subsection (f) shall not apply to contractors
168 performing contracts of less than ~~fifty thousand dollars~~



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169 ~~(\$50,000)~~one hundred thousand dollars (\$100,000) in amount. ~~In~~
170 ~~such cases, the governing body of the contracting agency, to~~
171 ~~expedite final payment, shall cause notice of final completion~~
172 ~~of the contract to be published one time in a newspaper of~~
173 ~~general circulation, published in the county of the~~
174 ~~contracting agency and shall post notice of final completion~~
175 ~~on the agency's bulletin board for one week, and shall require~~
176 ~~the contractor to certify under oath that all bills have been~~
177 ~~paid in full. Final settlement with the contractor may be made~~
178 ~~at any time after the notice has been posted for one entire~~
179 ~~week."~~

180 "§39-2-1

181 As used in this title, the following words shall have
182 the meanings ascribed to them as follows:

183 (1) AWARDING AUTHORITY. Any governmental board,
184 commission, agency, body, authority, instrumentality,
185 department, or subdivision of the state, its counties and
186 municipalities. This term includes, but shall not be limited
187 to, the Department of Transportation, ~~the State Building~~
188 ~~Commission~~ the Division of Real Property Management of the
189 Department of Finance, the State Board of Education, and any
190 other entity contracting for public works. This term shall
191 exclude the State Docks Department and any entity exempted
192 from the competitive bid laws of the state by statute.

193 (2) FORCE ACCOUNT WORK. Work paid for by reimbursing
194 for the actual costs for labor, materials, and equipment usage
195 incurred in the performance of the work, as directed,
196 including a percentage for overhead and profit, where



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197 appropriate.

198 (3) LIFE CYCLE COSTS. The total cost of ownership over
199 the extended life of a public works project, taking into
200 consideration the costs of construction, operation, and
201 maintenance, less any value obtained from salvage and
202 quantifiable environmental benefits, or the sum of all
203 recurring and one-time (non-recurring) costs over the full
204 life span or a specified period of a good, service, structure,
205 or system, including purchase price, installation costs,
206 operating costs, maintenance and upgrade costs, and remaining
207 (residual or salvage) value at the end of ownership or its
208 useful life.

209 (4) PERSON. Natural persons, partnerships, limited
210 liability companies, corporations, and other legal entities.

211 (5) PUBLIC PROPERTY. Real property which the state,
212 county, municipality, or awarding authority thereof owns or
213 has a contractual right to own or purchase, including
214 easements, rights-of-way, or otherwise.

215 (6) PUBLIC WORKS. The construction, installation,
216 repair, renovation, or maintenance of public buildings,
217 structures, sewers, waterworks, roads, curbs, gutters, side
218 walls, bridges, docks, underpasses, and viaducts as well as
219 any other improvement to be constructed, installed, repaired,
220 renovated, or maintained on public property and to be paid, in
221 whole or in part, with public funds or with financing to be
222 retired with public funds in the form of lease payments or
223 otherwise."

224 "§39-2-2



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225 (a) (1) Before entering into any contract for a public
226 works involving an amount in excess of ~~fifty thousand dollars~~
227 ~~(\$50,000)~~ one hundred thousand dollars (\$100,000), the
228 awarding authority shall advertise for sealed bids, except as
229 provided in subsection (j).

230 (2)a. If the awarding authority is the state, ~~or a~~
231 county, or municipality, or an instrumentality thereof, it
232 shall advertise for sealed bids ~~at least once each week for~~
233 ~~three consecutive weeks in a newspaper of general circulation~~
234 ~~in the county or counties in which the improvement, or some~~
235 ~~part thereof, is to be made.~~ for a minimum of three weeks
236 prior to any submission deadline using one or more of the
237 following methods:

238 1. Publication in a newspaper of general publication in
239 the county or counties in which the work is to be done.

240 2. Publication on a website that is maintained by a
241 newspaper of general circulation in the county or counties in
242 which the work is to be done.

243 3. Publication on a website utilized by the awarding
244 authority for publishing notices.

245 ~~b. If the awarding authority is a municipality, or an~~
246 ~~instrumentality thereof, it shall advertise for sealed bids at~~
247 ~~least once in a newspaper of general circulation published in~~
248 ~~the municipality where the awarding authority is located. If~~
249 ~~no newspaper is published in the municipality, the awarding~~
250 ~~authority shall advertise by posting notice thereof on a~~
251 ~~bulletin board maintained outside the purchasing office and in~~
252 ~~any other manner and for the length of time as may be~~



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253 ~~determined. In addition to bulletin board notice, sealed bids~~
254 ~~shall also be solicited by sending notice by mail to all~~
255 ~~persons who have filed a request in writing with the official~~
256 ~~designated by the awarding authority that they be listed for~~
257 ~~solicitation on bids for the public works contracts indicated~~
258 ~~in the request. If any person whose name is listed fails to~~
259 ~~respond to any solicitation for bids after the receipt of~~
260 ~~three such solicitations, the listing may be canceled. If no~~
261 ~~newspaper is published in the county in which the work is~~
262 ~~done, and if the awarding authority does not utilize a website~~
263 ~~for the purposes of publishing the notices, the notice may be~~
264 ~~given by posting at the courthouse for 30 days, and proof of~~
265 ~~the same shall be made by the judge of probate, sheriff, and~~
266 ~~the awarding authority.~~

267 ~~(3) With the exception of the Department of~~
268 ~~Transportation, for all public works contracts involving an~~
269 ~~estimated amount in excess of five hundred thousand dollars~~
270 ~~(\$500,000), awarding authorities shall also advertise for~~
271 ~~sealed bids at least once in three newspapers of general~~
272 ~~circulation throughout the state.~~

273 ~~(4)~~ (3) The advertisements shall briefly describe the
274 improvement, state that plans and specifications for the
275 improvement are on file for examination in a designated office
276 of the awarding authority, state the procedure for obtaining
277 plans and specifications, state the time and place in which
278 bids shall be received and opened, and identify whether
279 prequalification is required and where all written
280 prequalification information is available for review.



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281 ~~(5)~~ (4) All bids shall be opened publicly at the
282 advertised time and place.

283 ~~(6)~~ (5) No public work, as defined in this chapter,
284 involving a sum in excess of ~~fifty thousand dollars (\$50,000)~~
285 one hundred thousand dollars (\$100,000) shall be split into
286 parts involving sums of ~~fifty thousand dollars (\$50,000)~~ one
287 hundred thousand dollars (\$100,000) or less for the purpose of
288 evading the requirements of this section.

289 (b) (1) An awarding authority may let contracts for
290 public works involving ~~fifty thousand dollars (\$50,000)~~ one
291 hundred thousand dollars (\$100,000) or less with or without
292 advertising or sealed bids.

293 (2) An awarding authority may enter into a contract for
294 public works if an advertisement for sealed bids for the
295 contract was submitted by the awarding authority to a
296 newspaper and the newspaper only published the advertisement
297 for two weeks if the authority can provide proof that it, in
298 good faith, submitted the advertisement to the newspaper with
299 instructions to publish the notice in accordance with the
300 provisions of this section.

301 (c) All contracts for public works entered into in
302 violation of this title shall be void and violative of public
303 policy. Anyone who willfully violates this article concerning
304 public works shall be guilty of a Class C felony.

305 (d) (1) Excluded from the operation of this title shall
306 be contracts with persons who shall perform only
307 architectural, engineering, construction management, program
308 management, or project management services in support of the



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309 public works and who shall not engage in actual construction,
310 repair, renovation, or maintenance of the public works with
311 their own forces, by contract, subcontract, purchase order,
312 lease, or otherwise.

313 (2) Excluded from operation of the bidding requirements
314 in this title are contracts for the purchase of any heating or
315 air conditioning units or systems by any awarding authority
316 subject to Chapter 13B of Title 16, or Article 3, commencing
317 with Section 41-16-50, of Chapter 16 of Title 41, provided the
318 contract is entered into with an Alabama vendor who has been
319 granted approved vendor status for the sale of heating or air
320 conditioning units or systems as a part of a purchasing
321 cooperative, and each of the following occur:

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

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

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



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

343 e. The exemption from the requirement to utilize sealed
344 bids for the purchase of heating or air conditioning units or
345 systems authorized by this section shall not serve to exempt
346 any public works project from the remaining provisions of this
347 article, including, but not limited to, design, installation,
348 and review requirements, compliance with all applicable codes,
349 laws, specifications, and standards, and the compensation of
350 engineers, architects, or others as mandated by state law or
351 rule.

352 (e) ~~(1) In case of an emergency affecting public health,~~
353 ~~safety, or convenience, as declared in writing by the awarding~~
354 ~~authority, setting forth the nature of the danger to the~~
355 ~~public health, safety, or convenience which would result from~~
356 ~~delay, contracts may be let to the extent necessary to meet~~
357 ~~the emergency without public advertisement. The action and the~~
358 ~~reasons for the action taken shall immediately be made public~~
359 ~~by the awarding authority upon request.~~ In case of an
360 emergency for which a delay in remedying would cause
361 additional harm to a person or public property, contracts may
362 be let to the extent necessary to meet the emergency without
363 public advertisement or bidding.

364 (2) In case of an emergency affecting public health,



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365 safety, or convenience, as declared in writing by the awarding
366 authority, setting forth the nature of the danger to the
367 public health, safety, or convenience which would result from
368 delay, contracts may be let to the extent necessary to meet
369 the emergency without public advertisement.

370 (3) Any action taken under subdivision (1) or (2), and
371 the reasons for the action taken, shall immediately be made
372 public by the awarding authority upon request.

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

377 (1) Except for contracts involving the construction,
378 reconstruction, renovation, or replacement of public roads,
379 bridges, and water and sewer facilities, the awarding
380 authority can document to the satisfaction of the ~~Division of~~
381 ~~Construction Management~~ Division of Real Property Management
382 of the Department of Finance, or in the case of an educational
383 institution or state educational institution as provided
384 pursuant to Sections 41-4-353 and 41-4-400, to the
385 satisfaction of its governing board, that the sole source
386 product, material, system, or service is of an indispensable
387 nature for the improvement, that there are no other viable
388 alternatives, and that only this particular product, material,
389 system, or service fulfills the function for which it is
390 needed.

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



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393 item for which there is no other viable alternative.

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

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

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

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

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



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

428 (k) For the purposes of this chapter, sealed bids may
429 also be solicited and submitted through electronic means
430 including, but not limited to, electrical, digital, magnetic,
431 optical, electromagnetic, or any other similar technology,
432 provided that the awarding authority adopts rules and policies
433 to ensure that all electronic submissions are transmitted
434 securely and bids remained sealed until bid opening.

435 (1) (1) Notwithstanding any other provision of law, a
436 county or municipality, or instrumentality thereof, that is an
437 awarding authority of a contract for public works, by
438 resolution, may purchase materials or equipment pursuant to
439 subdivisions (14), (16), 17), (18), or (19) of Section
440 41-16-51(a), even when those materials or equipment are
441 otherwise part of the contract for public works subject to
442 the requirements of this title.

443 (2) Except for those materials or equipment described
444 in subdivision (1), the remaining portion of the public works
445 project shall be subject to the requirements of this title,
446 even if the remaining portion would involve an amount less
447 than one hundred thousand dollars (\$100,000) as a result of
448 the exclusion of the purchase of the materials or equipment as



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449 described in subdivision (1).

450 (m) The dollar amounts specified in this chapter shall
451 be adjusted beginning October 1, 2027, and every three years
452 thereafter. The adjustment to the dollar amounts shall be made
453 based on the percentage increase in the Consumer Price Index
454 for all urban consumers, as published by the U.S. Department
455 of Labor, Bureau of Labor Statistics, and then rounded to the
456 nearest thousand dollars. The Department of Examiners of
457 Public Accounts shall notify the public of the adjusted dollar
458 amounts by July 1 before the fiscal year in which the changes
459 shall take effect."

460 "§39-2-6

461 (a) The contract shall be awarded to the lowest
462 responsible and responsive bidder, unless the awarding
463 authority finds that all the bids are unreasonable or that it
464 is not ~~to~~in the interest of the awarding authority to accept
465 any of the bids. A responsible bidder is one who, among other
466 qualities determined necessary for performance, is competent,
467 experienced, and financially able to perform the contract. A
468 responsive bidder is one who submits a bid that complies with
469 the terms and conditions of the invitation for bids. Minor
470 irregularities in the bid shall not defeat responsiveness. The
471 bidder to whom the award is made shall be notified by
472 ~~telegram,~~ confirmed facsimile, electronic mail, or letter at
473 the earliest possible date. If the successful bidder fails or
474 refuses to sign the contract, to make bond as provided in this
475 chapter, or to provide evidence of insurance as required by
476 the bid documents, the awarding authority may award the



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477 contract to the second lowest responsible and responsive
478 bidder. If the second lowest bidder fails or refuses to sign
479 the contract, make bond as provided in this chapter, or to
480 provide evidence of insurance as required by the bid
481 documents, the awarding authority may award the contract to
482 the third lowest responsible and responsive bidder.

483 (b) If no bids or only one bid is received at the time
484 stated in the advertisement for bids, the awarding authority
485 may advertise for and seek other competitive bids, or the
486 awarding authority may direct that the work shall be done by
487 force account under its direction and control or, with the
488 exception of the Department of Transportation, the awarding
489 authority may negotiate for the work through the receipt of
490 informal bids not subject to the requirements of this section.
491 Where only one responsible and responsive bid has been
492 received, any negotiation for the work shall be for a price
493 lower than that bid.

494 (c) ~~When~~ With the exception of the Department of
495 Transportation, when two or more bids are received, and all
496 bids exceed available funding for the contract, ~~a local board~~
497 ~~of education or a public two-year or four-year institution of~~
498 ~~higher education~~ the awarding authority may negotiate for the
499 work with the lowest responsible and responsive bidder,
500 provided that the ~~local board of education or public two-year~~
501 ~~or four-year institution of higher education~~ awarding
502 authority can document the shortage of funding, that time is
503 of the essence, and that the negotiated changes are in the
504 public interest and do not materially alter the scope and



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505 nature of the project.

506 (d) If the awarding authority finds that all bids
507 received are unreasonable or that it is not to the interest of
508 the awarding authority to accept any of the bids, the awarding
509 authority may direct that the work shall be done by force
510 account under its direction and control.

511 (e) On any construction project on which the awarding
512 authority has prepared plans and specifications, has received
513 bids, and has determined to do by force account or by
514 negotiation, the awarding authority shall make available the
515 plans and specifications, an itemized estimate of cost, and
516 any informal bids for review by the Department of Examiners of
517 Public Accounts and, upon completion of the project by an
518 awarding authority, the final total costs together with an
519 itemized list of cost of any and all changes made in the
520 original plans and specifications shall also be made available
521 for review by the Department of Examiners of Public Accounts.
522 Furthermore, the above described information shall be made
523 public by the awarding authority upon request. Upon the
524 approval of the awarding authority, its duly authorized
525 officer or officers, when proceeding upon the basis of force
526 account, may let any subdivision or unit of work by contract
527 on informal bids.

528 (f) No provision of this section shall be interpreted
529 as precluding the use of convict labor by the awarding
530 authority. This section shall not apply to routine maintenance
531 and repair jobs done by maintenance personnel who are regular
532 employees of the awarding authority, nor shall it apply to



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533 road or bridge construction work performed by an awarding
534 authority's regular employees and own equipment.

535 (g) No contract awarded to the lowest responsible and
536 responsive bidder shall be assignable by the successful bidder
537 without written consent of the awarding authority, and in no
538 event shall a contract be assigned to an unsuccessful bidder
539 whose bid was rejected because he or she was not a responsible
540 or responsive bidder.

541 (h) Any agreement or collusion among bidders or
542 prospective bidders in restraint of freedom of competition to
543 bid at a fixed price or to refrain from bidding or otherwise
544 shall render the bids void and shall cause the bidders or
545 prospective bidders to be disqualified from submitting further
546 bids to the awarding authority on future lettings. Any bidder
547 or prospective bidder who willfully participates in any
548 agreement or collusion in restraint of freedom of competition
549 shall be guilty of a felony and, on conviction thereof, shall
550 be fined not less than five thousand dollars (\$5,000) nor more
551 than fifty thousand dollars (\$50,000) or, at the discretion of
552 the jury, shall be imprisoned in the penitentiary for not less
553 than one nor more than three years.

554 (i) Any disclosure in advance of the terms of a bid
555 submitted in response to an advertisement for bids shall
556 render the proceedings void and require advertisement and
557 award anew.

558 (j) The lowest responsible and responsive bidder on a
559 public works project may be determined to be the bidder
560 offering the lowest life cycle costs. The lowest responsible



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561 and responsive bidder shall otherwise meet all of the
562 conditions and specifications contained in the invitation to
563 bid, except that a bidder may still be considered responsive
564 if he or she responds with a bid using different construction
565 materials than those specified in the invitation to bid if the
566 materials' use would result in lower life cycle costs for the
567 public works project. To utilize this provision to determine
568 the lowest responsible and responsive bidder, the awarding
569 authority must include a notice in the invitation to bid that
570 the lowest responsible and responsive bidder may be determined
571 by using life cycle costs, and must also include in the
572 invitation to bid the criteria under which it shall evaluate
573 the life cycle costs."

574 Section 2. Although this bill would have as its purpose
575 or effect the requirement of a new or increased expenditure of
576 local funds, the bill is excluded from further requirements
577 and application under Section 111.05 of the Constitution of
578 Alabama of 2022, because the bill defines a new crime or
579 amends the definition of an existing crime.

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