

1 HB13  
2 125481-7  
3 By Representative Williams (J)  
4 RFD: State Government  
5 First Read: 01-MAR-11  
6 PFD: 02/22/2011

1  
2 ENROLLED, An Act,

3           Relating to competitive bidding for public works  
4 projects under Title 39 and public contracts under Title 41 of  
5 the Code of Alabama 1975; to amend Sections 39-2-1, 39-2-6,  
6 41-16-51, and 41-16-57, Code of Alabama 1975, to define the  
7 term "life cycle costs" and to clarify the definition of a  
8 "public works project"; to allow local governments to purchase  
9 goods and services through vendors with a current and valid  
10 contract with the Government Services Administration or the  
11 Western States Contracting Alliance without further  
12 competitive bidding; to provide that life cycle costs may be  
13 considered by the awarding authority in determining the lowest  
14 responsible and responsive bidder; and to clarify that the  
15 definition of personal property includes goods that are, or  
16 are to become, fixtures.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18           Section 1. Sections 39-2-1, 39-2-6, 41-16-51, and  
19 41-16-57, Code of Alabama 1975, are amended to read as  
20 follows:

21           "§39-2-1.

22           "As used in this title, the following words shall  
23 have the meanings ascribed to them as follows:

24           "(1) AWARDING AUTHORITY. Any governmental board,  
25 commission, agency, body, authority, instrumentality,

1 department, or subdivision of the state, its counties and  
 2 municipalities. This term includes, but shall not be limited  
 3 to, the Department of Transportation, the State Building  
 4 Commission, the State Board of Education, and any other entity  
 5 contracting for public works. This term shall exclude the  
 6 State Docks Department and any entity exempted from the  
 7 competitive bid laws of the state by statute.

8           "(2) FORCE ACCOUNT WORK. Work paid for by  
 9 reimbursing for the actual costs for labor, materials, and  
 10 equipment usage incurred in the performance of the work, as  
 11 directed, including a percentage for overhead and profit,  
 12 where appropriate.

13           "~~(3) LIFE CYCLE COSTS. The total costs of ownership~~  
 14 ~~over the expected life of a water or sewer public works~~  
 15 ~~project, taking into consideration the costs of construction,~~  
 16 ~~operation, and maintenance, less any value obtained from~~  
 17 ~~salvage and quantifiable environmental benefits, or the sum of~~  
 18 ~~all recurring and one-time (non-recurring) costs over the full~~  
 19 ~~life span or a specified period of a good, service, structure,~~  
 20 ~~or system, including purchase price, installation cost,~~  
 21 ~~operating costs, maintenance and upgrade costs, and remaining~~  
 22 ~~(residual or salvage) value at the end of ownership or its~~  
 23 ~~useful life.~~

24           "(3) Life Cycle Costs. The total cost of ownership  
 25 over the extended life of a public works project, taking into

1 consideration the costs of construction, operation, and  
2 maintenance, less any value obtained from salvage and  
3 quantifiable environmental benefits, or the sum of all  
4 recurring and one-time (non-recurring) costs over the full  
5 life span or a specified period of a good, service, structure,  
6 or system, including purchase price, installation costs,  
7 operating costs, maintenance and upgrade costs, and remaining  
8 (residual or salvage) value at the end of ownership or its  
9 useful life.

10 "(3)(4) PERSON. Natural persons, partnerships,  
11 limited liability companies, corporations, and other legal  
12 entities.

13 "(4)(5) PUBLIC PROPERTY. Real property which the  
14 state, county, municipality, or awarding authority thereof  
15 owns or has a contractual right to own or purchase, including  
16 easements, rights-of-way, or otherwise.

17 "(5)(6) PUBLIC WORKS. The construction,  
18 installation, repair, renovation, or maintenance of public  
19 buildings, structures, sewers, waterworks, roads, curbs,  
20 gutters, side walls, bridges, docks, underpasses, and viaducts  
21 as well as any other improvement to be constructed, installed,  
22 repaired, renovated, or maintained on public property and to  
23 be paid, in whole or in part, with public funds or with  
24 financing to be retired with public funds in the form of lease  
25 payments or otherwise.

1           "§39-2-6.

2           "(a) The contract shall be awarded to the lowest  
3 responsible and responsive bidder, unless the awarding  
4 authority finds that all the bids are unreasonable or that it  
5 is not to the interest of the awarding authority to accept any  
6 of the bids. A responsible bidder is one who, among other  
7 qualities determined necessary for performance, is competent,  
8 experienced, and financially able to perform the contract. A  
9 responsive bidder is one who submits a bid that complies with  
10 the terms and conditions of the invitation for bids. Minor  
11 irregularities in the bid shall not defeat responsiveness. The  
12 bidder to whom the award is made shall be notified by  
13 telegram, confirmed facsimile, or letter at the earliest  
14 possible date. If the successful bidder fails or refuses to  
15 sign the contract, to make bond as provided in this chapter or  
16 to provide evidence of insurance as required by the bid  
17 documents, the awarding authority may award the contract to  
18 the second lowest responsible and responsive bidder. If the  
19 second lowest bidder fails or refuses to sign the contract,  
20 make bond as provided in this chapter or to provide evidence  
21 of insurance as required by the bid documents, the awarding  
22 authority may award the contract to the third lowest  
23 responsible and responsive bidder.

24           "(b) If no bids or only one bid is received at the  
25 time stated in the advertisement for bids, the awarding

1 authority may advertise for and seek other competitive bids,  
2 or the awarding authority may direct that the work shall be  
3 done by force account under its direction and control or, with  
4 the exception of the Department of Transportation, the  
5 awarding authority may negotiate for the work through the  
6 receipt of informal bids not subject to the requirements of  
7 this section. Where only one responsible and responsive bid  
8 has been received, any negotiation for the work shall be for a  
9 price lower than that bid.

10 "(c) If the awarding authority finds that all bids  
11 received are unreasonable or that it is not to the interest of  
12 the awarding authority to accept any of the bids, the awarding  
13 authority may direct that the work shall be done by force  
14 account under its direction and control.

15 "(d) On any construction project on which the  
16 awarding authority has prepared plans and specifications,  
17 received bids, and has determined to do by force account or by  
18 negotiation, the awarding authority shall make available the  
19 plans and specifications, an itemized estimate of cost and any  
20 informal bids for review by the Department of Examiners of  
21 Public Accounts and, upon completion of the project by an  
22 awarding authority, the final total costs together with an  
23 itemized list of cost of any and all changes made in the  
24 original plans and specifications shall also be made available  
25 for review by the Department of Examiners of Public Accounts.

1 Furthermore, the above described information shall be made  
2 public by the awarding authority upon request. Upon the  
3 approval of the awarding authority, its duly authorized  
4 officer or officers may, when proceeding upon the basis of  
5 force account, let any subdivision or unit of work by contract  
6 on informal bids.

7 "(e) No provision of this section shall be  
8 interpreted as precluding the use of convict labor by the  
9 awarding authority. This section shall not apply to routine  
10 maintenance and repair jobs done by maintenance personnel who  
11 are regular employees of the awarding authority, nor shall it  
12 apply to road or bridge construction work performed by an  
13 awarding authority's regular employees and own equipment.

14 "(f) No contract awarded to the lowest responsible  
15 and responsive bidder shall be assignable by the successful  
16 bidder without written consent of the awarding authority, and  
17 in no event shall a contract be assigned to an unsuccessful  
18 bidder whose bid was rejected because he or she was not a  
19 responsible or responsive bidder.

20 "(g) Any agreement or collusion among bidders or  
21 prospective bidders in restraint of freedom of competition to  
22 bid at a fixed price or to refrain from bidding or otherwise  
23 shall render the bids void and shall cause the bidders or  
24 prospective bidders to be disqualified from submitting further  
25 bids to the awarding authority on future lettings. Any bidder

1 or prospective bidder who willfully participates in any  
2 agreement or collusion in restraint of freedom of competition  
3 shall be guilty of a felony and, on conviction thereof, shall  
4 be fined not less than five thousand dollars (\$5,000) nor more  
5 than fifty thousand dollars (\$50,000) or, at the discretion of  
6 the jury, shall be imprisoned in the penitentiary for not less  
7 than one nor more than three years.

8 "(h) Any disclosure in advance of the terms of a bid  
9 submitted in response to an advertisement for bids shall  
10 render the proceedings void and require advertisement and  
11 award anew.

12 "(i) The lowest responsible and responsive bidder on  
13 a ~~water or sewer~~ public works project may be determined to be  
14 the bidder offering the lowest life cycle costs. The lowest  
15 responsible and responsive bidder shall otherwise meet all of  
16 the conditions and specifications contained in the invitation  
17 to bid, except that a bidder may still be considered  
18 responsive if he or she responds with a bid using different  
19 construction materials than those specified in the invitation  
20 to bid if the materials' use would result in lower lifecycle  
21 costs for the ~~water or sewer~~ public works project. To utilize  
22 this provision to determine the lowest responsible and  
23 responsive bidder, the awarding authority must include a  
24 notice in the invitation to bid that the lowest responsible  
25 and responsive bidder may be determined by using life cycle



1 costs, and must also include in the invitation to bid the  
2 criteria under which it shall evaluate the life cycle costs,  
3 and must also include in the invitation to bid the criteria  
4 under which it shall evaluate the life cycle costs.

5 "§41-16-51.

6 "(a) Competitive bids shall not be required for  
7 utility services, the rates for which are fixed by law,  
8 regulation, or ordinance, and the competitive bidding  
9 requirements of this article shall not apply to:

10 "(1) The purchase of insurance.

11 "(2) The purchase of ballots and supplies for  
12 conducting any primary, general, special, or municipal  
13 election.

14 "(3) Contracts for securing services of attorneys,  
15 physicians, architects, teachers, superintendents of  
16 construction, artists, appraisers, engineers, consultants,  
17 certified public accountants, public accountants, or other  
18 individuals possessing a high degree of professional skill  
19 where the personality of the individual plays a decisive part.

20 "(4) Contracts of employment in the regular civil  
21 service.

22 "(5) Contracts for fiscal or financial advice or  
23 services.

24 "(6) Purchases of products made or manufactured by  
25 the blind or visually handicapped under the direction or

1 supervision of the Alabama Institute for Deaf and Blind in  
2 accordance with Sections 21-2-1 to 21-2-4, inclusive.

3 "(7) Purchases of maps or photographs from any  
4 federal agency.

5 "(8) Purchases of manuscripts, books, maps,  
6 pamphlets, or periodicals.

7 "(9) The selection of paying agents and trustees for  
8 any security issued by a public body.

9 "(10) Existing contracts up for renewal for  
10 sanitation or solid waste collection, recycling, and disposal  
11 between municipalities or counties, or both, and those  
12 providing the service.

13 "(11) Purchases of computer and word processing  
14 hardware when the hardware is the only type that is compatible  
15 with hardware already owned by the entity taking bids and  
16 custom software.

17 "(12) Professional services contracts for  
18 codification and publication of the laws and ordinances of  
19 municipalities and counties.

20 "(13) Contractual services and purchases of  
21 commodities for which there is only one vendor or supplier and  
22 contractual services and purchases of personal property which  
23 by their very nature are impossible to award by competitive  
24 bidding.

1           "(14) Purchases of dirt, sand, or gravel by a county  
 2 governing body from in-county property owners in order to  
 3 supply a county road or bridge project in which the materials  
 4 will be used. The material shall be delivered to the project  
 5 site by county employees and equipment used only on projects  
 6 conducted exclusively by county employees.

7           "(15) Contractual services and purchases of products  
 8 related to, or having an impact upon, security plans,  
 9 procedures, assessments, measures, or systems, or the security  
 10 or safety of persons, structures, facilities, or  
 11 infrastructures.

12           "(16) Subject to the limitations in this  
 13 subdivision, purchases of goods made as a part of the  
 14 purchasing cooperative sponsored by the National Association  
 15 of Counties, ~~or~~ its successor organization , or any other  
 16 competitive bid nationwide cooperative purchasing program, or  
 17 other national or regional governmental cooperative purchasing  
 18 program. This subdivision shall not apply to goods for which a  
 19 service or service contract, whether subject to competitive  
 20 bidding under this article or not, is necessary to utilize the  
 21 goods. Such purchases may only be made if all of the following  
 22 occur:

23           "a. The goods being purchased are available as a  
 24 result of a competitive bid process conducted by a

1 governmental entity and approved by the Alabama Department of  
2 Examiners of Public Accounts for each bid.

3 "b. The goods are either not at the time available  
4 to counties on the state purchasing program or are available  
5 at a price equal to or less than that on the state purchasing  
6 program.

7 "c. The purchase is made through a participating  
8 Alabama vendor holding an Alabama business license if such a  
9 vendor exists.

10 "d. The entity purchasing goods under this  
11 subdivision has been notified by the Department of Examiners  
12 of Public Accounts that the competitive bid process utilized  
13 by the cooperative program offering the goods complies with  
14 this subdivision.

15 "(17) Purchase of goods or services, other than  
16 wireless communication services, whether voice or data, from  
17 vendors that have been awarded a current and valid Government  
18 Services Administration contract ~~or the Western States~~  
19 Contracting Alliance contract. Any purchase made pursuant to  
20 this subdivision shall be under the same terms and conditions  
21 as provided in the Government Services Administration contract  
22 or the Western States Contracting Alliance contract. Prices.  
23 Prices paid for such goods and services, other than wireless  
24 communication services, whether voice or data, may not exceed

1 the amount provided in the Government Services Administration  
2 contract or the Western States Contracting Alliance contract.

3 "(b) This article shall not apply to:

4 "(1) Any purchases of products where the price of  
5 the products is already regulated and established by state  
6 law.

7 "(2) Purchases made by individual schools of the  
8 county or municipal public school systems from moneys other  
9 than those raised by taxation or received through  
10 appropriations from state or county sources.

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

16 "(4) The purchase, lease, or other acquisition of  
17 machinery, equipment, supplies, and other personal property or  
18 services by a medical clinic board organized under Sections  
19 11-58-1 to 11-58-14, inclusive.

20 "(5) Purchases for public hospitals and nursing  
21 homes operated by the governing boards of instrumentalities of  
22 the state, counties, and municipalities.

23 "(6) Contracts for the purchase, lease, sale,  
24 construction, installation, acquisition, improvement,  
25 enlargement, or extension of any plant, building, structure,

1 or other facility or any machinery, equipment, furniture, or  
2 furnishings therefor designed or intended for lease or sale  
3 for industrial development, other than public utilities, under  
4 Sections 11-54-80 to 11-54-99, inclusive, or Sections 11-54-20  
5 to 11-54-28, inclusive, or any other statute or amendment to  
6 the Constitution of Alabama authorizing the construction of  
7 plants or other facilities for industrial development or for  
8 the construction and equipment of buildings for public  
9 building authorities under Sections 11-56-1 to 11-56-22,  
10 inclusive.

11 "(7) The purchase of equipment, supplies, or  
12 materials needed, used, and consumed in the normal and routine  
13 operation of any waterworks system, sanitary sewer system, gas  
14 system, or electric system, or any two or more thereof, that  
15 are owned by municipalities, counties, or public corporations,  
16 boards, or authorities that are agencies, departments, or  
17 instrumentalities of municipalities or counties and no part of  
18 the operating expenses of which system or systems have, during  
19 the then current fiscal year, been paid from revenues derived  
20 from taxes or from appropriations of the state, a county, or a  
21 municipality.

22 "(8) Purchases made by local housing authorities,  
23 organized and existing under Chapter 1 of Title 24, from  
24 moneys other than those raised by state, county, or city

1       taxation or received through appropriations from state,  
2       county, or city sources.

3               "(c) The state trade schools, state junior colleges,  
4       state colleges, and universities under the supervision and  
5       control of the State Board of Education, the district boards  
6       of education of independent school districts, the county  
7       commissions, and the governing bodies of the municipalities of  
8       the state shall establish and maintain such purchasing  
9       facilities and procedures as may be necessary to carry out the  
10      intent and purpose of this article by complying with the  
11      requirements for competitive bidding in the operation and  
12      management of each state trade school, state junior college,  
13      state college, or university under the supervision and control  
14      of the State Board of Education, the district boards of  
15      education of independent school districts, the county  
16      commissions, and the governing bodies of the municipalities of  
17      the state and the governing boards of instrumentalities of  
18      counties and municipalities, including waterworks boards,  
19      sewer boards, gas boards, and other like utility boards and  
20      commissions.

21              "(d) Contracts entered into in violation of this  
22      article shall be void and anyone who violates the provisions  
23      of this article shall be guilty of a Class C felony.

24              "§41-16-57.

1           "(a) When purchases are required to be made through  
2 competitive bidding, awards shall be made to the lowest  
3 responsible bidder taking into consideration the qualities of  
4 the commodities proposed to be supplied, their conformity with  
5 specifications, the purposes for which required, the terms of  
6 delivery, transportation charges, and the dates of delivery.  
7 If at any time after the award has been made the lowest  
8 responsible bidder notifies the awarding authority in writing  
9 that the bidder will no longer comply with the terms of the  
10 award to provide the goods or services to the awarding  
11 authority under the terms and conditions of the original  
12 award, or the awarding authority documents that the lowest  
13 responsible bidder defaults under the terms of the original  
14 award, the awarding authority may terminate the award to the  
15 defaulting bidder and make an award to the second lowest  
16 responsible bidder for the remainder of the award period  
17 without rebidding, provided the award to the second lowest  
18 responsible bidder is in all respects made under the terms and  
19 conditions contained in the original bid specifications and is  
20 for the same or a lower price than the bid originally  
21 submitted to the awarding authority by the second lowest  
22 responsible bidder.

23           "(b) The awarding authority in the purchase of or  
24 contract for personal property or contractual services shall  
25 give preference, provided there is no sacrifice or loss in



1 price or quality, to commodities produced in Alabama or sold  
2 by Alabama persons, firms, or corporations. Notwithstanding  
3 the foregoing, no county official, county commission, school  
4 board, city council or city councilmen, or other public  
5 official, state board, or state agency charged with the  
6 letting of contracts or purchase of materials for the  
7 construction, modification, alteration, or repair of any  
8 publicly owned facility may specify the use of materials or  
9 systems by a sole source, unless:

10 "(1) The governmental body can document to the  
11 satisfaction of the State of Alabama Building Commission that  
12 the sole source product or service is of an indispensable  
13 nature, all other viable alternatives have been explored, and  
14 it has been determined that only this product or service will  
15 fulfill the function for which the product is needed.  
16 Frivolous features will not be considered.

17 "(2) The sole source specification has been  
18 recommended by the architect or engineer of record and who  
19 also documents that there is no other product available and  
20 that the use of the requirement is of an indispensable nature  
21 and why.

22 "(3) All information substantiating the use of a  
23 sole source specification is documented in writing and is  
24 filed into the project file.

1           "(c) (1) Beginning January 1, 2009, for purchases of  
2           personal property, including on or after the effective date of  
3           this amendatory act, goods which are, or are to become,  
4           fixtures, in instances where the awarding authority determines  
5           that the total cost of ownership over the expected life of the  
6           item or items, including acquisition costs plus sustaining  
7           costs or life cycle costs, can be reasonably ascertained from  
8           industry recognized and accepted sources, the lowest  
9           responsible bid may be determined to be the bid offering the  
10          lowest life cycle costs and otherwise meeting all of the  
11          conditions and specifications contained in the invitation to  
12          bid. To utilize this subdivision to determine the lowest  
13          responsible bidder, the awarding authority shall include a  
14          notice in the invitation to bid that the lowest responsible  
15          bid may be determined by using life cycle costs and identify  
16          the industry recognized and accepted sources that will be  
17          applicable to such an evaluation.

18           "(2) No later than November 30, 2008, the Department  
19          of Examiners of Public Accounts shall establish procedures for  
20          the use of life cycle costs, which shall be distributed to all  
21          contracting agencies and shall be used in conducting any  
22          audits of the purchasing agency.

23           "(d) The awarding authority or requisitioning agency  
24          may reject any bid if the price is deemed excessive or quality  
25          of product inferior.

1           "(e) Each record, with the successful bid indicated  
2 thereon, and with the reasons for the award if not awarded to  
3 the lowest bidder, shall, after award of the order or  
4 contract, be open to public inspection.

5           "(f) Contracts for the purchase of personal property  
6 or contractual services shall be let for periods not greater  
7 than three years. Contracts for the leasing of motor vehicles  
8 by local governing bodies shall be let for periods not greater  
9 than five years. Lease-purchase contracts for capital  
10 improvements and repairs to real property shall be let for  
11 periods not greater than 10 years and all other lease-purchase  
12 contracts shall be let for periods not greater than 10 years."

13           Section 2. This act shall become effective  
14 immediately following its passage and approval by the  
15 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

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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 31-MAR-11, as amended.

Greg Pappas  
Clerk

Senate	<hr/> 02-JUN-11 <hr/>	Amended and Passed
House	<hr/> 02-JUN-11 <hr/>	Concurred in Sen- ate Amendment