

SB290 ENGROSSED



1 4S0M3I-2
2 By Senator Givhan
3 RFD: Fiscal Responsibility and Economic Development
4 First Read: 03-May-23
5 2023 Regular Session



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A BILL
TO BE ENTITLED
AN ACT

Relating to public works contracts; to amend Sections 39-1-1, 39-2-1, 39-2-2, and 39-2-6, Code of Alabama 1975, to increase the threshold dollar amount for which competitive bidding is generally required; to further provide for certain notice procedures; to authorize the publication of notice by electronic means; to authorize the use of electronic sealed bids; to authorize certain statutory dollar amounts to be increased based on increases in the Consumer Price Index; 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 39-1-1, 39-2-1, 39-2-2, and 39-2-6, Code of Alabama 1975, are amended to read as follows:

"§39-1-1

(a) Any person entering into a contract with an awarding authority in this state for the prosecution of any public works ~~shall~~, before commencing the work, shall execute



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29 a performance bond, with penalty equal to 100 percent of the
30 amount of the contract price. In addition, another bond,
31 payable to the awarding authority letting the contract, shall
32 be executed in an amount not less than 50 percent of the
33 contract price, with the obligation that the contractor or
34 contractors shall promptly make payments to all persons
35 supplying labor, materials, or supplies for or in the
36 prosecution of the work provided in the contract and for the
37 payment of reasonable ~~attorneys'~~attorney fees incurred by
38 successful claimants or plaintiffs in civil actions on the
39 bond.

40 (b) Any person that has furnished labor, materials, or
41 supplies for or in the prosecution of a public work and
42 payment has not been made may institute a civil action upon
43 the payment bond and have their rights and claims adjudicated
44 in a civil action and judgment entered thereon.
45 Notwithstanding the foregoing, a civil action shall not be
46 instituted on the bond until 45 days after written notice to
47 the surety of the amount claimed to be due and the nature of
48 the claim. The civil action shall be commenced not later than
49 one year from the date of final settlement of the contract.
50 The giving of notice by registered or certified mail, postage
51 prepaid, addressed to the surety at any of its places of
52 business or offices shall be deemed sufficient under this
53 section. In the event the surety or contractor fails to pay
54 the claim in full within 45 days from the mailing of the
55 notice, then the person or persons may recover from the
56 contractor and surety, in addition to the amount of the claim,



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57 a reasonable ~~attorney's~~attorney fee based on the result,
58 together with interest on the claim from the date of the
59 notice.

60 (c) Every person having a right of action on the last
61 described bond as provided in this section ~~shall~~, upon written
62 application to the authority under the direction of whom the
63 work has been prosecuted, indicating that labor, material,
64 foodstuffs, or supplies for the work have been supplied and
65 that payment has not been made, shall be promptly furnished a
66 certified copy of the additional bond and contract. The
67 claimant may bring a civil action in the claimant's name on
68 the bond against the contractor and the surety, or either of
69 them, in the county in which the work is to be or has been
70 performed or in any other county where venue is otherwise
71 allowed by law.

72 (d) In the event a civil action is instituted on the
73 payment bond, at any time more than 15 days before the trial
74 begins, any party may serve upon the adverse party an offer to
75 accept judgment in favor of the offeror or to allow judgment
76 to be entered in favor of the offeree for the money or as
77 otherwise specified in the offer. If within 10 days after the
78 service of the offer, the adverse party serves written notice
79 that the offer is accepted, either party may then file the
80 offer and notice of acceptance together with proof of service
81 and the clerk of the court shall enter judgment. An offer not
82 accepted shall be deemed withdrawn and evidence of the offer
83 shall not be admissible. If the judgment finally obtained by
84 the offeree is less favorable than the offer, the offeree



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85 shall pay the reasonable ~~attorney's~~attorney fees and costs
86 incurred by the offeror after the making of the offer. An
87 offer that is made but not accepted does not preclude a
88 subsequent offer. When the liability of one party to another
89 party has been determined by verdict, order, or judgment, but
90 the amount or extent of the liability remains to be determined
91 by further proceedings, any party may make an offer of
92 judgment, which shall have the same effect as an offer made
93 before trial if the offer is made no less than 10 days prior
94 to the commencement of hearings to determine the amount or
95 extent of liability.

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

99 (f) (1) The contractor~~shall~~, immediately after the
100 completion of the contract, shall give notice of the
101 completion by ~~an advertisement in a newspaper of general~~
102 ~~circulation published within the city or county in which the~~
103 ~~work has been done, for a period of four successive~~
104 ~~weeks.~~publishing the notice for a minimum of three weeks using
105 one or more of the following methods:

106 a. In a newspaper of general circulation in the county
107 or counties in which the work, or some portion thereof, has
108 been done.

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

112 c. On a website utilized by the awarding authority for

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113 publishing notices.

114 (2) If no newspaper is published in the county in which
115 the work was done, and if the awarding authority does not
116 utilize a website for the purpose of publishing notices, the
117 notice may be given by posting at the courthouse for 30 days,
118 and proof of the posting of the notice shall be given by the
119 awarding authority and the contractor.

120 (3) A final settlement shall not be made upon the
121 contract until the expiration of 30 days after the completion
122 of the notice. Proof of publication of the notice shall be
123 made by the contractor to the authority by whom the contract
124 was made by affidavit of the publisher or website owner and a
125 printed copy of the notice published. ~~If no newspaper is~~
126 ~~published in the county in which the work is done, the notice~~
127 ~~may be given by posting at the courthouse for 30 days, and~~
128 ~~proof of same shall be made by the judge of probate, sheriff,~~
129 ~~and the contractor.~~

130 (4) For contracts for road resurfacing materials that
131 are awarded on an annual basis, where the bid specifications
132 include options such as a unit price for materials, a unit
133 price for the delivery of materials, or a unit price for
134 materials to be laid in place by the bidder, notice of
135 completion pursuant to this subsection may be given on an
136 annual basis upon completion of the project as a whole, rather
137 than at the completion of each proceed order.

138 (g) Subsection (f) shall not apply to contractors
139 performing contracts of less than ~~fifty thousand dollars~~
140 ~~(\$50,000)~~ one hundred thousand dollars (\$100,000) in amount. ~~In~~



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141 ~~such cases, the governing body of the contracting agency, to~~
142 ~~expedite final payment, shall cause notice of final completion~~
143 ~~of the contract to be published one time in a newspaper of~~
144 ~~general circulation, published in the county of the~~
145 ~~contracting agency and shall post notice of final completion~~
146 ~~on the agency's bulletin board for one week, and shall require~~
147 ~~the contractor to certify under oath that all bills have been~~
148 ~~paid in full. Final settlement with the contractor may be made~~
149 ~~at any time after the notice has been posted for one entire~~
150 ~~week."~~

151 "§39-2-1

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

154 (1) AWARDING AUTHORITY. Any governmental board,
155 commission, agency, body, authority, instrumentality,
156 department, or subdivision of the state, its counties and
157 municipalities. This term includes, but shall not be limited
158 to, the Department of Transportation, ~~the State Building~~
159 ~~Commission~~ the Division of Real Property Management of the
160 Department of Finance, the State Board of Education, and any
161 other entity contracting for public works. This term shall
162 exclude the State Docks Department and any entity exempted
163 from the competitive bid laws of the state by statute.

164 (2) FORCE ACCOUNT WORK. Work paid for by reimbursing
165 for the actual costs for labor, materials, and equipment usage
166 incurred in the performance of the work, as directed,
167 including a percentage for overhead and profit, where
168 appropriate.



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169 (3) LIFE CYCLE COSTS. The total cost of ownership over
170 the extended life of a public works project, taking into
171 consideration the costs of construction, operation, and
172 maintenance, less any value obtained from salvage and
173 quantifiable environmental benefits, or the sum of all
174 recurring and one-time (non-recurring) costs over the full
175 life span or a specified period of a good, service, structure,
176 or system, including purchase price, installation costs,
177 operating costs, maintenance and upgrade costs, and remaining
178 (residual or salvage) value at the end of ownership or its
179 useful life.

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

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

186 (6) PUBLIC WORKS. The construction, installation,
187 repair, renovation, or maintenance of public buildings,
188 structures, sewers, waterworks, roads, curbs, gutters, side
189 walls, bridges, docks, underpasses, and viaducts as well as
190 any other improvement to be constructed, installed, repaired,
191 renovated, or maintained on public property and to be paid, in
192 whole or in part, with public funds or with financing to be
193 retired with public funds in the form of lease payments or
194 otherwise."

195 "§39-2-2

196 (a) (1) Before entering into any contract for a public



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197 works involving an amount in excess of ~~fifty thousand dollars~~
198 ~~(\$50,000)~~ one hundred thousand dollars (\$100,000), the
199 awarding authority shall advertise for sealed bids, except as
200 provided in subsection (j).

201 (2)a. If the awarding authority is the state, ~~or a~~
202 county, or an instrumentality thereof, it shall advertise for
203 sealed bids at least once each week for three consecutive
204 weeks in a newspaper of general circulation in the county or
205 counties in which the improvement, or some part thereof, is to
206 be made.

207 b. If the awarding authority is a municipality, or an
208 instrumentality thereof, it shall advertise for sealed bids at
209 least once in a newspaper of general circulation published in
210 the municipality where the awarding authority is located. If
211 no newspaper is published in the municipality, the awarding
212 authority shall advertise by posting notice thereof on a
213 bulletin board maintained outside the purchasing office and in
214 any other manner and for the length of time as may be
215 determined. In addition to bulletin board notice, sealed bids
216 shall also be solicited by sending notice by mail to all
217 persons who have filed a request in writing with the official
218 designated by the awarding authority that they be listed for
219 solicitation on bids for the public works contracts indicated
220 in the request. If any person whose name is listed fails to
221 respond to any solicitation for bids after the receipt of
222 three such solicitations, the listing may be canceled.

223 ~~(3) With the exception of the Department of~~
224 ~~Transportation, for all public works contracts involving an~~

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225 ~~estimated amount in excess of five hundred thousand dollars~~
226 ~~(\$500,000), awarding authorities shall also advertise for~~
227 ~~sealed bids at least once in three newspapers of general~~
228 ~~circulation throughout the state.~~

229 ~~(4)~~ (3) The advertisements shall briefly describe the
230 improvement, state that plans and specifications for the
231 improvement are on file for examination in a designated office
232 of the awarding authority, state the procedure for obtaining
233 plans and specifications, state the time and place in which
234 bids shall be received and opened, and identify whether
235 prequalification is required and where all written
236 prequalification information is available for review.

237 ~~(5)~~ (4) All bids shall be opened publicly at the
238 advertised time and place.

239 ~~(6)~~ (5) No public work, as defined in this chapter,
240 involving a sum in excess of ~~fifty thousand dollars (\$50,000)~~
241 one hundred thousand dollars (\$100,000) shall be split into
242 parts involving sums of ~~fifty thousand dollars (\$50,000)~~ one
243 hundred thousand dollars (\$100,000) or less for the purpose of
244 evading the requirements of this section.

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

249 (2) An awarding authority may enter into a contract for
250 public works if an advertisement for sealed bids for the
251 contract was submitted by the awarding authority to a
252 newspaper and the newspaper only published the advertisement



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253 for two weeks if the authority can provide proof that it, in
254 good faith, submitted the advertisement to the newspaper with
255 instructions to publish the notice in accordance with the
256 provisions of this section.

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

261 (d) (1) Excluded from the operation of this title shall
262 be contracts with persons who shall perform only
263 architectural, engineering, construction management, program
264 management, or project management services in support of the
265 public works and who shall not engage in actual construction,
266 repair, renovation, or maintenance of the public works with
267 their own forces, by contract, subcontract, purchase order,
268 lease, or otherwise.

269 (2) Excluded from operation of the bidding requirements
270 in this title are contracts for the purchase of any heating or
271 air conditioning units or systems by any awarding authority
272 subject to Chapter 13B of Title 16, or Article 3, commencing
273 with Section 41-16-50, of Chapter 16 of Title 41, or Article
274 5, commencing with Section 41-4-110, of Chapter 4 of Title 41,
275 provided the contract is entered into with an Alabama vendor
276 who has been granted approved vendor status for the sale of
277 heating or air conditioning units or systems as a part of a
278 purchasing cooperative, and each of the following occur:

279 a. The heating or air conditioning unit or system being
280 purchased is available as a result of a competitive bid



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281 process conducted by a governmental entity which has been
282 approved by the Department of Examiners of Public Accounts.

283 b. The purchase of the heating or air conditioning unit
284 or system is not available on the state purchasing program at
285 the time or the purchase under the purchasing cooperative is
286 available at a price that is equal to or less than that
287 available through the state purchasing program.

288 c. The entity entering into the contract for the
289 purchase of the heating or air conditioning unit or system has
290 been notified by the Department of Examiners of Public
291 Accounts that the competitive bid process utilized by the
292 cooperative program offering the goods complies with this
293 subdivision.

294 d. Upon request, the vendor has provided the purchasing
295 entity with a report of sales made under this subdivision
296 during the previous 12-month period, to include a general
297 description of the heating or air conditioning units and
298 systems sold, the number of units sold per entity, and the
299 purchase price of the units.

300 e. The exemption from the requirement to utilize sealed
301 bids for the purchase of heating or air conditioning units or
302 systems authorized by this section shall not serve to exempt
303 any public works project from the remaining provisions of this
304 article, including, but not limited to, design, installation,
305 and review requirements, compliance with all applicable codes,
306 laws, specifications, and standards, and the compensation of
307 engineers, architects, or others as mandated by state law or
308 rule.

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309 (e) ~~(1) In case of an emergency affecting public health,~~
310 ~~safety, or convenience, as declared in writing by the awarding~~
311 ~~authority, setting forth the nature of the danger to the~~
312 ~~public health, safety, or convenience which would result from~~
313 ~~delay, contracts may be let to the extent necessary to meet~~
314 ~~the emergency without public advertisement. The action and the~~
315 ~~reasons for the action taken shall immediately be made public~~
316 ~~by the awarding authority upon request.~~ In case of an
317 emergency for which a delay in remedying would cause immediate
318 harm to a person or public property, contracts may be let to
319 the extent necessary to meet the emergency without public
320 advertisement or bidding.

321 (2) In case of an emergency affecting public health,
322 safety, or convenience, as declared in writing by the awarding
323 authority, setting forth the nature of the danger to the
324 public health, safety, or convenience which would result from
325 delay, contracts may be let to the extent necessary to meet
326 the emergency without public advertisement.

327 (3) Any action taken under subdivision (1) or (2), and
328 the reasons for the action taken, shall immediately be made
329 public by the awarding authority and published in writing.

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

334 (1) Except for contracts involving the construction,
335 reconstruction, renovation, or replacement of public roads,
336 bridges, and water and sewer facilities, the awarding



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337 authority can document to the satisfaction of the ~~Division of~~
338 ~~Construction Management~~ Division of Real Property Management
339 of the Department of Finance, or in the case of an educational
340 institution or state educational institution as provided
341 pursuant to Sections 41-4-353 and 41-4-400, to the
342 satisfaction of its governing board, that the sole source
343 product, material, system, or service is of an indispensable
344 nature for the improvement, that there are no other viable
345 alternatives, and that only this particular product, material,
346 system, or service fulfills the function for which it is
347 needed.

348 (2) The sole source specification has been recommended
349 by the architect or engineer of record as an indispensable
350 item for which there is no other viable alternative.

351 (3) All information substantiating the use of a sole
352 source specification, including the recommendation of the
353 architect or engineer of record, shall be documented and made
354 available for examination in the office of the awarding
355 authority at the time of advertisement for sealed bids.

356 (g) In the event of a proposed public works project,
357 acknowledged in writing by the Alabama Homeland Security
358 Department as: (1) having a direct impact on the security or
359 safety of persons or facilities; and (2) requiring
360 confidential handling for the protection of such persons or
361 facilities, contracts may be let without public advertisement
362 but with the taking of informal bids otherwise consistent with
363 the requirements of this title and the requirements of
364 maintaining confidentiality. Records of bidding and award



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365 shall not be disclosed to the public and shall remain
366 confidential.

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

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

375 (j) Notwithstanding subsection (a), the Department of
376 Transportation may enter into contracts for road construction
377 or road maintenance projects that do not involve more than two
378 hundred fifty thousand dollars (\$250,000) without advertising
379 for sealed bids, provided the project is listed on the
380 department website for at least seven calendar days before
381 entering into the contract. The total cost of all projects not
382 subject to advertising and sealed bids pursuant to this
383 subsection may not exceed one million dollars (\$1,000,000) in
384 the aggregate per year.

385 (k) For the purposes of this chapter, sealed bids may
386 also be solicited and submitted through electronic means
387 including, but not limited to, electrical, digital, magnetic,
388 optical, electromagnetic, or any other similar technology,
389 provided that the awarding authority adopts rules and policies
390 to ensure that all electronic submissions are transmitted
391 securely and bids remained sealed until bid opening.

392 (l) (1) Notwithstanding any other provision of law, any

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393 entity subject to this chapter that is an awarding authority
394 of a contract for public works, by resolution or board action,
395 may purchase materials or equipment pursuant to subdivisions
396 (14), (16), 17), (18), or (19) of Section 41-16-51(a), even
397 when those materials or equipment are otherwise part of the
398 contract for public works subject to the requirements of this
399 title.

400 (2) Except for those materials or equipment described
401 in subdivision (1), the remaining portion of the public works
402 project shall be subject to the requirements of this title,
403 even if the remaining portion would involve an amount less
404 than one hundred thousand dollars (\$100,000) as a result of
405 the exclusion of the purchase of the materials or equipment as
406 described in subdivision (1).

407 (m) Beginning October 1, 2027, and every five years
408 thereafter, all dollar amounts used in this article shall be
409 subject to a cost adjustment based on the following procedure:
410 The Chief Examiner of the Department of Examiners of Public
411 Accounts may submit to the Chair of the Legislative Council a
412 recommendation that the amount be increased based on the
413 percentage increase in the Consumer Price Index for the
414 immediately preceding five-year period, rounded to the nearest
415 thousand dollars. The recommendation shall be subject to the
416 approval of the Legislative Council. In the event the
417 recommendation is not disapproved by the Legislative Council
418 by the end of April following the submission of the
419 recommendation, the recommendation shall be deemed to be
420 approved. Upon approval, the Department of Examiners of Public

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421 Accounts shall notify the public of the adjusted dollar
422 amounts by July 1 before the fiscal year in which the changes
423 will take effect."

424 "§39-2-6

425 (a) The contract shall be awarded to the lowest
426 responsible and responsive bidder, unless the awarding
427 authority finds that all the bids are unreasonable or that it
428 is not ~~to~~in the interest of the awarding authority to accept
429 any of the bids. A responsible bidder is one who, among other
430 qualities determined necessary for performance, is competent,
431 experienced, and financially able to perform the contract. A
432 responsive bidder is one who submits a bid that complies with
433 the terms and conditions of the invitation for bids. Minor
434 irregularities in the bid shall not defeat responsiveness. The
435 bidder to whom the award is made shall be notified by
436 ~~telegram,~~ confirmed facsimile, electronic mail, or letter at
437 the earliest possible date. If the successful bidder fails or
438 refuses to sign the contract, to make bond as provided in this
439 chapter, or to provide evidence of insurance as required by
440 the bid documents, the awarding authority may award the
441 contract to the second lowest responsible and responsive
442 bidder. If the second lowest bidder fails or refuses to sign
443 the contract, make bond as provided in this chapter, or to
444 provide evidence of insurance as required by the bid
445 documents, the awarding authority may award the contract to
446 the third lowest responsible and responsive bidder.

447 (b) If no bids or only one bid is received at the time
448 stated in the advertisement for bids, the awarding authority



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449 may advertise for and seek other competitive bids, or the
450 awarding authority may direct that the work shall be done by
451 force account under its direction and control or, with the
452 exception of the Department of Transportation, the awarding
453 authority may negotiate for the work through the receipt of
454 informal bids not subject to the requirements of this section.
455 Where only one responsible and responsive bid has been
456 received, any negotiation for the work shall be for a price
457 lower than that bid.

458 (c) ~~When~~ With the exception of the Department of
459 Transportation, when two or more bids are received, and all
460 bids exceed available funding for the contract, ~~a local board~~
461 ~~of education or a public two-year or four-year institution of~~
462 ~~higher education~~ the awarding authority may negotiate for the
463 work with the lowest responsible and responsive bidder,
464 provided that the ~~local board of education or public two-year~~
465 ~~or four-year institution of higher education~~ awarding
466 authority can document the shortage of funding, that time is
467 of the essence, and that the negotiated changes are in the
468 public interest and do not materially alter the scope and
469 nature of the project.

470 (d) If the awarding authority finds that all bids
471 received are unreasonable or that it is not to the interest of
472 the awarding authority to accept any of the bids, the awarding
473 authority may direct that the work shall be done by force
474 account under its direction and control.

475 (e) On any construction project on which the awarding
476 authority has prepared plans and specifications, has received



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477 bids, and has determined to do by force account or by
478 negotiation, the awarding authority shall make available the
479 plans and specifications, an itemized estimate of cost, and
480 any informal bids for review by the Department of Examiners of
481 Public Accounts and, upon completion of the project by an
482 awarding authority, the final total costs together with an
483 itemized list of cost of any and all changes made in the
484 original plans and specifications shall also be made available
485 for review by the Department of Examiners of Public Accounts.
486 Furthermore, the above described information shall be made
487 public by the awarding authority upon request. Upon the
488 approval of the awarding authority, its duly authorized
489 officer or officers, when proceeding upon the basis of force
490 account, may let any subdivision or unit of work by contract
491 on informal bids.

492 (f) No provision of this section shall be interpreted
493 as precluding the use of convict labor by the awarding
494 authority. This section shall not apply to routine maintenance
495 and repair jobs done by maintenance personnel who are regular
496 employees of the awarding authority, nor shall it apply to
497 road or bridge construction work performed by an awarding
498 authority's regular employees and own equipment.

499 (g) No contract awarded to the lowest responsible and
500 responsive bidder shall be assignable by the successful bidder
501 without written consent of the awarding authority, and in no
502 event shall a contract be assigned to an unsuccessful bidder
503 whose bid was rejected because he or she was not a responsible
504 or responsive bidder.



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505 (h) Any agreement or collusion among bidders or
506 prospective bidders in restraint of freedom of competition to
507 bid at a fixed price or to refrain from bidding or otherwise
508 shall render the bids void and shall cause the bidders or
509 prospective bidders to be disqualified from submitting further
510 bids to the awarding authority on future lettings. Any bidder
511 or prospective bidder who willfully participates in any
512 agreement or collusion in restraint of freedom of competition
513 shall be guilty of a felony and, on conviction thereof, shall
514 be fined not less than five thousand dollars (\$5,000) nor more
515 than fifty thousand dollars (\$50,000) or, at the discretion of
516 the jury, shall be imprisoned in the penitentiary for not less
517 than one nor more than three years.

518 (i) Any disclosure in advance of the terms of a bid
519 submitted in response to an advertisement for bids shall
520 render the proceedings void and require advertisement and
521 award anew.

522 (j) The lowest responsible and responsive bidder on a
523 public works project may be determined to be the bidder
524 offering the lowest life cycle costs. The lowest responsible
525 and responsive bidder shall otherwise meet all of the
526 conditions and specifications contained in the invitation to
527 bid, except that a bidder may still be considered responsive
528 if he or she responds with a bid using different construction
529 materials than those specified in the invitation to bid if the
530 materials' use would result in lower life cycle costs for the
531 public works project. To utilize this provision to determine
532 the lowest responsible and responsive bidder, the awarding



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533 authority must include a notice in the invitation to bid that
534 the lowest responsible and responsive bidder may be determined
535 by using life cycle costs, and must also include in the
536 invitation to bid the criteria under which it shall evaluate
537 the life cycle costs."

538 Section 2. Although this bill would have as its purpose
539 or effect the requirement of a new or increased expenditure of
540 local funds, the bill is excluded from further requirements
541 and application under Section 111.05 of the Constitution of
542 Alabama of 2022, because the bill defines a new crime or
543 amends the definition of an existing crime.

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

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547
548
549 Senate

550 Read for the first time and referred03-May-23
551 to the Senate committee on Fiscal
552 Responsibility and Economic
553 Development

554
555 Read for the second time and placed11-May-23
556 on the calendar:
557 0 amendments

558
559 Read for the third time and passed18-May-23
560 as amended
561 Yeas 31
562 Nays 0
563 Abstains 0

564
565
566 Patrick Harris,
567 Secretary.
568