

SB36 ENGROSSED



1 SBKC58-2
2 By Senator Elliott
3 RFD: Finance and Taxation Education
4 First Read: 07-Mar-23
5
6 2023 Regular Session



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A BILL
TO BE ENTITLED
AN ACT

To amend Sections 16-13B-1, Section 16-13B-4, and 16-13B-5, Code of Alabama 1975, relating to competitive bidding on contracts of city and county boards of education; to increase the minimum amount for contracts subject to competitive bid from \$15,000 to \$25,000; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Section 111.05 of the Constitution of Alabama of 2022.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§16-13B-1

(a) This chapter shall apply to county boards of education and city boards of education, or any combination of city and county boards of education as herein provided for the competitive bidding of certain contracts. With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all expenditure of funds of whatever nature for labor, services,



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29 work, or for the purchase of materials, equipment, supplies,
30 or other personal property involving ~~fifteen thousand dollars~~
31 ~~(\$15,000)~~ twenty-five thousand dollars (\$25,000) or more, and
32 the lease of materials, equipment, supplies, or other personal
33 property where the lessee is, or becomes legally and
34 contractually, bound under the terms of the lease, to pay a
35 total amount of ~~fifteen thousand dollars (\$15,000)~~ twenty-five
36 thousand dollars (\$25,000) or more, made by or on behalf of
37 any city or county board of education, except as hereinafter
38 provided, shall be made under contractual agreement entered
39 into by free and open competitive bidding, on sealed bids, to
40 the lowest responsible bidder.

41 (b) Prior to advertising for bids for an item of
42 personal property, where a city or county board of education,
43 thereof is the awarding authority, the awarding authority may
44 establish a local preference zone consisting of either the
45 legal boundaries or jurisdiction of the awarding authority, or
46 the boundaries of the county in which the awarding authority
47 is located, or the boundaries of the core based statistical
48 area (CBSA) in which the awarding authority is located. If no
49 such action is taken by the awarding authority, the boundaries
50 of the local preference zone shall be deemed to be the same as
51 the legal boundaries or jurisdiction of the awarding
52 authority. In the event a bid is received for an item of
53 personal property to be purchased or contracted for from a
54 person, firm, or corporation deemed to be a responsible
55 bidder, having a place of business within the local preference
56 zone where a city or county board of education, thereof is the



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57 awarding authority, and the bid is no more than three percent
58 greater than the bid of the lowest responsible bidder, the
59 awarding authority may award the contract to the resident
60 responsible bidder. In the event only one bidder responds to
61 the invitation to bid, the awarding authority may reject the
62 bid and negotiate the purchase or contract, providing the
63 negotiated price is lower than the bid price.

64 (c) The governing bodies of two or more city or county
65 boards of education, or any combination of two or more city or
66 county boards of education, counties, municipalities, or
67 instrumentalities thereof, may provide, by joint agreement,
68 for the purchase of labor, services, or work, or for the
69 purchase or lease of materials, equipment, supplies, or other
70 personal property for use by their respective agencies. The
71 agreement shall be entered into by official actions of the
72 contracting agencies adopted by each of the participating
73 governing bodies which shall set forth the categories of
74 labor, services, or work, or for the purchase or lease of
75 materials, equipment, supplies, or other personal property to
76 be purchased, the manner of advertising for bids and the
77 awarding of contracts, the method of payment by each
78 participating contracting agency, and other matters deemed
79 necessary to carry out the purposes of the agreement. Each
80 contracting agency's share of expenditures for purchases under
81 any agreement shall be appropriated and paid in the manner set
82 forth in the agreement and in the same manner as for other
83 expenses of the contracting agency. The contracting agencies
84 entering into a joint agreement, as herein permitted, may



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85 designate a joint purchasing or bidding agent, and the agent
86 shall comply with this chapter. Purchases, contracts, or
87 agreements made pursuant to a joint purchasing or bidding
88 agreement shall be subject to all terms and conditions of this
89 chapter. Any participation by counties and municipalities
90 authorized in this section shall be subject to the provisions
91 of subsection (b) of Section 41-16-50. In the event that
92 utility services are no longer exempt from competitive bidding
93 under this chapter, non-adjointing boards of education may not
94 purchase utility services by joint agreement under authority
95 granted by this subsection.

96 (d) The awarding authority may require bidders to
97 furnish a bid bond for a particular bid solicitation if the
98 bonding requirement applies to all bidders, is included in the
99 written bid specifications, and if bonding is available for
100 the services, equipment, or materials.

101 (e) Beginning October 1, 2027, and every three years
102 thereafter, all dollar amounts used in this chapter shall be
103 subject to a cost adjustment based on the following procedure:
104 The Chief Examiner of the Department of Examiners of Public
105 Accounts may submit to the Chair of the Legislative Council a
106 recommendation that the amount be increased based on the
107 percentage increase in the Consumer Price Index for the
108 immediately preceding three-year period, rounded to the
109 nearest thousand dollars. The recommendation shall be subject
110 to the approval of the Legislative Council. In the event the
111 recommendation is not disapproved by the Legislative Council
112 by the end of April following the submission of the



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113 recommendation, the recommendation shall be deemed to be
114 approved. Upon approval, the Department of Examiners of Public
115 Accounts shall notify the public of the adjusted dollar
116 amounts by July 1 before the fiscal year in which the changes
117 will take effect."

118 "§16-13B-4

119 (a) All proposed purchases in excess of ~~fifteen~~
120 ~~thousand dollars (\$15,000)~~ twenty-five thousand dollars
121 (\$25,000) shall be advertised by posting notice thereof on a
122 bulletin board maintained outside the purchasing office and in
123 any other manner and for any length of time as may be
124 determined. Sealed bids or bids to be submitted by a reverse
125 auction procedure shall also be solicited by sending notice by
126 mail or other electronic means to all persons, firms, or
127 corporations who have filed a request in writing that they be
128 listed for solicitation on bids for the particular items that
129 are set forth in the request. If any person, firm, or
130 corporation whose name is listed fails to respond to any
131 solicitation for bids after the receipt of three
132 solicitations, the listing may be cancelled.

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

136 (c) The awarding authority may make purchases or
137 contracts through a reverse auction procedure; provided,
138 however, that a reverse auction shall only be allowed where
139 the item to be purchased at a reverse auction is either not at
140 the time available on the state purchasing program under the



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141 same terms and conditions or, if available, the lowest price
142 offered in the reverse auction is equal to or less than the
143 price for which the item is available on the state purchasing
144 program under the same terms and conditions. All of the
145 purchases shall be subject to audit by the Department of
146 Examiners of Public Accounts. For purposes of this chapter, a
147 reverse auction procedure includes either of the following:

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

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

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

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

166 (e) No purchase or contract involving professional
167 services shall be subject to the requirements of this chapter
168 and no purchase or contract involving an amount in excess of



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169 ~~fifteen thousand dollars (\$15,000)~~ twenty-five thousand
170 dollars (\$25,000) shall be divided into parts involving
171 amounts of ~~fifteen thousand dollars (\$15,000)~~ twenty-five
172 thousand dollars (\$25,000) or less for the purpose of avoiding
173 the requirements of this chapter. All ~~such~~ partial contracts
174 involving ~~fifteen thousand dollars (\$15,000)~~ twenty-five
175 thousand dollars (\$25,000) or less shall be void."

176 "§16-13B-5

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

183 (b) Whoever knowingly participates in a collusive
184 agreement in violation of this section involving a bid or bids
185 of ~~fifteen thousand dollars (\$15,000)~~ twenty-five thousand
186 dollars (\$25,000) and under shall be guilty of a Class A
187 misdemeanor and, upon conviction, shall be punished as
188 prescribed by law.

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

195 Section 2. Although this bill would have as its purpose
196 or effect the requirement of a new or increased expenditure of



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197 local funds, the bill is excluded from further requirements
198 and application under Section 111.05 of the Constitution of
199 Alabama of 2022, because the bill defines a new crime or
200 amends the definition of an existing crime.

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



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206 Senate

207 Read for the first time and referred07-Mar-23
208 to the Senate committee on Finance
209 and Taxation Education
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211 Read for the second time and placed11-Apr-23
212 on the calendar:
213 0 amendments
214
215 Read for the third time and passed25-Apr-23
216 as amended
217 Yeas 32
218 Nays 0
219 Abstains 0
220
221

Patrick Harris,
Secretary.

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