

**SB36 INTRODUCED**



1 SBKC58-1  
2 By Senator Elliott  
3 RFD: Finance and Taxation Education  
4 First Read: 07-Mar-23  
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SYNOPSIS:

Under existing law, the minimum amount for contracts subject to competitive bid for city and county boards of education is \$15,000.

This bill would increase the minimum amount to \$25,000.

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 does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.



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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, work, or for the purchase of materials, equipment, supplies, or other personal property involving ~~fifteen thousand dollars (\$15,000)~~ twenty-five thousand dollars (\$25,000) or more, and



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57 the lease of materials, equipment, supplies, or other personal  
58 property where the lessee is, or becomes legally and  
59 contractually, bound under the terms of the lease, to pay a  
60 total amount of ~~fifteen thousand dollars (\$15,000)~~ twenty-five  
61 thousand dollars (\$25,000) or more, made by or on behalf of  
62 any city or county board of education, except as hereinafter  
63 provided, shall be made under contractual agreement entered  
64 into by free and open competitive bidding, on sealed bids, to  
65 the lowest responsible bidder.

66 (b) Prior to advertising for bids for an item of  
67 personal property, where a city or county board of education,  
68 thereof is the awarding authority, the awarding authority may  
69 establish a local preference zone consisting of either the  
70 legal boundaries or jurisdiction of the awarding authority, or  
71 the boundaries of the county in which the awarding authority  
72 is located, or the boundaries of the core based statistical  
73 area (CBSA) in which the awarding authority is located. If no  
74 such action is taken by the awarding authority, the boundaries  
75 of the local preference zone shall be deemed to be the same as  
76 the legal boundaries or jurisdiction of the awarding  
77 authority. In the event a bid is received for an item of  
78 personal property to be purchased or contracted for from a  
79 person, firm, or corporation deemed to be a responsible  
80 bidder, having a place of business within the local preference  
81 zone where a city or county board of education, thereof is the  
82 awarding authority, and the bid is no more than three percent  
83 greater than the bid of the lowest responsible bidder, the  
84 awarding authority may award the contract to the resident



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85 responsible bidder. In the event only one bidder responds to  
86 the invitation to bid, the awarding authority may reject the  
87 bid and negotiate the purchase or contract, providing the  
88 negotiated price is lower than the bid price.

89 (c) The governing bodies of two or more city or county  
90 boards of education, or any combination of two or more city or  
91 county boards of education, counties, municipalities, or  
92 instrumentalities thereof, may provide, by joint agreement,  
93 for the purchase of labor, services, or work, or for the  
94 purchase or lease of materials, equipment, supplies, or other  
95 personal property for use by their respective agencies. The  
96 agreement shall be entered into by official actions of the  
97 contracting agencies adopted by each of the participating  
98 governing bodies which shall set forth the categories of  
99 labor, services, or work, or for the purchase or lease of  
100 materials, equipment, supplies, or other personal property to  
101 be purchased, the manner of advertising for bids and the  
102 awarding of contracts, the method of payment by each  
103 participating contracting agency, and other matters deemed  
104 necessary to carry out the purposes of the agreement. Each  
105 contracting agency's share of expenditures for purchases under  
106 any agreement shall be appropriated and paid in the manner set  
107 forth in the agreement and in the same manner as for other  
108 expenses of the contracting agency. The contracting agencies  
109 entering into a joint agreement, as herein permitted, may  
110 designate a joint purchasing or bidding agent, and the agent  
111 shall comply with this chapter. Purchases, contracts, or  
112 agreements made pursuant to a joint purchasing or bidding



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113 agreement shall be subject to all terms and conditions of this  
114 chapter. Any participation by counties and municipalities  
115 authorized in this section shall be subject to the provisions  
116 of subsection (b) of Section 41-16-50. In the event that  
117 utility services are no longer exempt from competitive bidding  
118 under this chapter, non-adjointing boards of education may not  
119 purchase utility services by joint agreement under authority  
120 granted by this subsection.

121 (d) The awarding authority may require bidders to  
122 furnish a bid bond for a particular bid solicitation if the  
123 bonding requirement applies to all bidders, is included in the  
124 written bid specifications, and if bonding is available for  
125 the services, equipment, or materials."

126 "§16-13B-4

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



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

144 (c) The awarding authority may make purchases or  
145 contracts through a reverse auction procedure; provided,  
146 however, that a reverse auction shall only be allowed where  
147 the item to be purchased at a reverse auction is either not at  
148 the time available on the state purchasing program under the  
149 same terms and conditions or, if available, the lowest price  
150 offered in the reverse auction is equal to or less than the  
151 price for which the item is available on the state purchasing  
152 program under the same terms and conditions. All of the  
153 purchases shall be subject to audit by the Department of  
154 Examiners of Public Accounts. For purposes of this chapter, a  
155 reverse auction procedure includes either of the following:

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

160 (2) a. A bidding process usually lasting less than two  
161 weeks and taking place during a previously scheduled period  
162 and at a previously scheduled Internet location, in which  
163 multiple anonymous suppliers submit bids to provide the  
164 designated goods or services.

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



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169 (d) All original bids together with all documents  
170 pertaining to the award of the contract shall be retained in  
171 accordance with a retention period of at least seven years  
172 established by the Local Government Records Commission and  
173 shall be open to public inspection.

174 (e) No purchase or contract involving professional  
175 services shall be subject to the requirements of this chapter  
176 and no purchase or contract involving an amount in excess of  
177 ~~fifteen thousand dollars (\$15,000)~~ twenty-five thousand  
178 dollars (\$25,000) shall be divided into parts involving  
179 amounts of ~~fifteen thousand dollars (\$15,000)~~ twenty-five  
180 thousand dollars (\$25,000) or less for the purpose of avoiding  
181 the requirements of this chapter. All ~~such~~ partial contracts  
182 involving ~~fifteen thousand dollars (\$15,000)~~ twenty-five  
183 thousand dollars (\$25,000) or less shall be void."

184 "§16-13B-5

185 (a) Any agreement or collusion among bidders or  
186 prospective bidders in restraint of freedom of competition, by  
187 agreement, to bid at a fixed price or to refrain from bidding  
188 or otherwise shall render the bids of such bidders void and  
189 shall cause such bidders to be disqualified from submitting  
190 further bids to the awarding authority on future purchases.

191 (b) Whoever knowingly participates in a collusive  
192 agreement in violation of this section involving a bid or bids  
193 of ~~fifteen thousand dollars (\$15,000)~~ twenty-five thousand  
194 dollars (\$25,000) and under shall be guilty of a Class A  
195 misdemeanor and, upon conviction, shall be punished as  
196 prescribed by law.





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

203 Section 2. Although this bill would have as its purpose  
204 or effect the requirement of a new or increased expenditure of  
205 local funds, the bill is excluded from further requirements  
206 and application under Section 111.05 of the Constitution of  
207 Alabama of 2022, because the bill defines a new crime or  
208 amends the definition of an existing crime.

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