

**SB36 ENROLLED**



1 SB36  
2 NZ2E8TJ-2  
3 By Senator Kitchens  
4 RFD: County and Municipal Government  
5 First Read: 04-Feb-25  
6 PFD: 31-Dec-24



## SB36 Enrolled

1 Enrolled, An Act,

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4 Relating to public contracts; to amend Sections  
5 41-4-124, 41-4-132, 41-4-136, 41-4-161, 41-4-164, 41-16-82,  
6 41-16-83, 41-16-85, and 41-16-87, Code of Alabama 1975; to  
7 provide further for who is subject to state competitive bid  
8 laws; to provide further for electronic bid submissions; to  
9 provide further for the procedures for protesting certain  
10 competitive bid contracts; and to revise requirements for  
11 disclosure statement forms.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Sections 41-4-124, 41-4-132, 41-4-136,  
14 41-4-161, 41-4-164, 41-16-82, 41-16-83, 41-16-85, and  
15 41-16-87, Code of Alabama 1975, are amended to read as  
16 follows:

17 "§41-4-124

18 (a) Except as otherwise provided in this article, all  
19 rights, powers, duties, and authority relating to the  
20 procurement of supplies and services now vested in, or  
21 exercised by, any governmental body under existing law are  
22 transferred to the Chief Procurement Officer.

23 (b) The following governmental bodies are subject to  
24 this article except as it relates to the purchase of  
25 professional services and the oversight and authority of the  
26 Chief Procurement Officer, and shall establish and maintain  
27 procurement offices and personnel and adopt rules as may be  
28 necessary to comply with this article:

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29 (1) All educational and eleemosynary institutions  
30 governed by a board of trustees or other similar governing  
31 body.

32 (2) The Retirement Systems of Alabama.

33 (3) The Department of Mental Health.

34 (c) The Alabama Department of Transportation is subject  
35 to this article except as it relates to the purchase of  
36 professional services, and the Department of Transportation  
37 shall adopt rules governing the purchase of professional  
38 services by the department which are consistent with the  
39 principles contained in this article and promote fairness,  
40 competition, transparency, integrity, and value in the  
41 procurement process.

42 (d) The procurement of any supplies, services, or  
43 professional services by a district attorney, ~~or sheriff,~~  
44 volunteer fire department, or rescue squad shall be solely  
45 governed by Article 3, commencing with Section 41-16-50 of  
46 Chapter 16.

47 (e) The procurement of any supplies or services by a  
48 legislative agency or judicial agency shall be solely governed  
49 by procedures adopted by the Legislative Council for all  
50 legislative agencies and by rules adopted by the Supreme Court  
51 of Alabama for all judicial agencies. The procedures adopted  
52 shall be consistent with any applicable requirements of the  
53 Constitution of Alabama of 2022, and shall be established in  
54 accordance with the underlying purposes and policies of  
55 promoting responsible and efficient use of public funds  
56 dedicated and appropriated to the agencies for their use,



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57 providing consistency of application of rules and requirements  
58 across all agencies within the applicable branch of state  
59 government, and promoting fairness, competition, transparency,  
60 integrity, and value in the procurement process. In no case  
61 may the legislative and judicial departments of the state  
62 adopt procedures that conflict with the laws of this state  
63 regarding the public disclosure of the use of public funds and  
64 the transparency of public expenditures, or that otherwise  
65 conflict with state law regarding public records and public  
66 access to those records. Except for the requirement to act in  
67 good faith, no other provision of this article shall apply to  
68 legislative or judicial agencies; provided, that the  
69 legislative and judicial departments may adopt all or any part  
70 of this article and its accompanying rules.

71 (f) (1) The procurement of any supplies or services by  
72 the Alabama State Port Authority shall be solely governed by  
73 procedures adopted by the Board of Directors of the Alabama  
74 State Port Authority. The procedures adopted shall be  
75 consistent with any applicable requirements of the  
76 Constitution of Alabama of 2022, and shall be established in  
77 accordance with the underlying purposes and policies of  
78 promoting responsible and efficient use of the funds of the  
79 Alabama State Port Authority, providing consistency of  
80 application of rules and requirements across all agencies  
81 within the applicable branch of state government, and  
82 promoting fairness, competition, transparency, integrity, and  
83 value in the procurement process.

84 (2) Except for the protection of information otherwise



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85 legally considered commercially confidential, sensitive, or of  
86 a nature that upon release would harm the competitive  
87 advantage of itself or its customers, concessionaires,  
88 lessees, or suppliers, the Alabama State Port Authority may  
89 not adopt procedures that conflict with the laws of this state  
90 regarding the public disclosure of the use of its funds and  
91 the transparency of its expenditures, or that otherwise  
92 conflict with state law regarding public records and public  
93 access to those records.

94 (3) Except as provided in this subsection and the  
95 requirement to act in good faith, no other provision of this  
96 article shall apply to the Alabama State Port Authority;  
97 provided, however, that the Alabama State Port Authority may  
98 adopt all or any part of this article and its accompanying  
99 rules."

100 "§41-4-132

101 (a) Except as otherwise provided in this division,  
102 contracts shall be awarded by competitive sealed bidding.

103 (b) An invitation to bid shall be issued and shall  
104 include a purchase description and all contractual terms and  
105 conditions applicable to the procurement.

106 (c) Adequate public notice of the invitation to bid  
107 shall be given a reasonable time prior to the date set forth  
108 in the invitation for the opening of bids, in accordance with  
109 rules adopted under this article.

110 (d) Bids shall be opened publicly in the presence of  
111 one or more witnesses at the time and place designated in the  
112 invitation to bid. Alternatively, bids may be opened in an



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113 electronic system at a time specified in the invitation to bid  
114 and in a manner that records the time of opening. The amount  
115 of each bid, the name of each bidder, and any other  
116 information required by rule shall be recorded. The record and  
117 each bid shall be open to public inspection to the extent  
118 required by Section 41-4-115.

119 (e) Bids shall be unconditionally accepted without  
120 alteration or correction, except as authorized in this  
121 article. Bids shall be evaluated based on the requirements set  
122 forth in the invitation to bid, which may include criteria to  
123 determine acceptability, such as inspection, testing, quality,  
124 workmanship, delivery, and suitability for a particular  
125 purpose. Any criteria that will affect the bid price and will  
126 be considered in evaluation for award shall be objectively  
127 measurable, such as discounts, transportation costs, and total  
128 or life cycle costs. The invitation to bid shall set forth the  
129 evaluation criteria to be used. No criteria may be used in bid  
130 evaluations that are not set forth in the invitation to bid.

131 (f) (1) When a bid is submitted that contains an error,  
132 the Chief Procurement Officer or head of a purchasing agency  
133 may authorize the correction or withdrawal of the bid or may  
134 cancel the award of the contract. The authorization of the  
135 correction or withdrawal shall be done in accordance with  
136 rules adopted by the Chief Procurement Officer.

137 (2) After a bid has been opened, with the exception of  
138 price negotiations with the lowest responsible bidder, no  
139 changes in bid prices or other provisions of bids prejudicial  
140 to the interest of the state or fair competition shall be



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141 permitted.

142 (g) (1) Unless there is a compelling reason to reject  
143 bids, as prescribed by rules, notice of intent to award to the  
144 lowest responsive and responsible bidder whose bid meets the  
145 requirements set forth in the invitation to bid shall be given  
146 by posting the notice at a location specified in the  
147 invitation to bid. Before posting the notice of intent to  
148 award, the Chief Procurement Officer or head of the purchasing  
149 agency may negotiate with the lowest responsive and  
150 responsible bidder to lower the bid price within the scope of  
151 the invitation to bid. The invitation to bid and notice of  
152 intent to award shall contain a statement of the bidder's  
153 right to protest.

154 (2) The Chief Procurement Officer may award multiple  
155 purchase contracts resulting from a single invitation to bid  
156 where the specifications of the items of supplies or services  
157 intended to be purchased by a requisitioning agency or  
158 agencies are determined, in whole or in part, by technical  
159 compatibility and operational requirements. In order to make  
160 multiple awards under this subdivision, the awarding authority  
161 shall include in the invitation to bid a notice that multiple  
162 awards may be made and the specific technical compatibility or  
163 operational requirements necessitating multiple awards.  
164 Multiple awards of purchase contracts with unique technical  
165 compatibility or operational specifications shall be made to  
166 the lowest responsible bidder complying with the unique  
167 technical compatibility or operational specifications. The  
168 requisitioning agency shall provide the awarding authority



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169 with the information necessary for it to determine the  
170 necessity for the award of multiple purchase contracts under  
171 this subdivision.

172 (h) When it is considered impractical by the Chief  
173 Procurement Officer to initially prepare a purchase  
174 description to support an award based on price, an invitation  
175 to bid may be issued requesting the submission of unpriced  
176 offers to be followed by an invitation to bid limited to those  
177 bidders whose offers have been qualified under the criteria  
178 set forth in the first solicitation.

179 (i) (1) Before soliciting bids, the Chief Procurement  
180 Officer may authorize issuance of a request for qualifications  
181 from prospective bidders. The request shall contain, at a  
182 minimum, a description of the scope of work to be solicited by  
183 the invitation for bids, the deadline for submission of  
184 information, and how prospective bidders may apply for  
185 consideration. The request shall require information  
186 concerning the prospective bidders' product specifications,  
187 qualifications, experience, and ability to perform the  
188 requirements of the contract. Adequate public notice of the  
189 request for qualifications shall be given in the manner  
190 provided in subsection (c).

191 (2) After receipt of the responses to the request for  
192 qualifications from prospective bidders, all qualified  
193 bidders, as determined by the Chief Procurement Officer, shall  
194 have an opportunity to bid. The determination regarding which  
195 bidders are qualified is not subject to review."

196 "§41-4-136





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197           (a) Notwithstanding any other provision of this  
198 article, the Chief Procurement Officer or the head of a  
199 purchasing agency may make emergency procurements when there  
200 is a threat to public health, welfare, or safety under  
201 emergency conditions, as defined by rule. Emergency  
202 procurements made under this section shall be made with as  
203 much competition as is practicable under the circumstances.

204           (b) The authority to make emergency procurements may  
205 not be delegated except to the Chief Procurement Officer's  
206 staff in the Division of Procurement at his or her direction.  
207 Supplies and services that are exempt from the oversight and  
208 authority of the Chief Procurement Officer, including, but not  
209 limited to, those listed in Sections 41-4-125, 41-4-125.01,  
210 and 41-4-126, shall not be required to be procured under the  
211 emergency procurement authority of the Chief Procurement  
212 Officer. A purchasing agency not otherwise under the oversight  
213 and authority of the Chief Procurement Officer shall not be  
214 required to make emergency procurements under the authority of  
215 the Chief Procurement Officer.

216           (c) A written determination of the basis for the  
217 emergency and for the selection of the particular contractor  
218 shall be included in the contract file."

219           "§41-4-161

220           (a) (1) A bona fide prospective bidder or offeror who is  
221 aggrieved in connection with the solicitation of a contract  
222 may file a notice of intent to protest ~~to~~ with the Chief  
223 Procurement Officer within 14 ~~five~~ calendar ~~of the date of~~  
224 ~~issuance of~~ after the date the solicitation or any amendment to



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225 ~~if~~ the solicitation is issued, if the amendment is at issue.  
226 After filing a notice of intent to protest, the bona fide  
227 prospective bidder or offeror shall have seven calendar days  
228 to submit a formal written protest.

229 (2)a. Except as provided in paragraph b., a bona fide  
230 actual bidder or offeror who is aggrieved in connection with  
231 the intended award or the award of a contract may file a  
232 notice of intent to protest ~~to~~ with the Chief Procurement  
233 Officer within ~~14~~ five calendar days ~~or~~ after the date of the  
234 award or the date of the notice ~~notification~~ of intent to  
235 award, whichever is earlier, is posted in accordance with this  
236 article. After filing a notice of intent to protest, the bona  
237 fide actual bidder or offeror shall have seven calendar days  
238 to submit a formal written protest. The Chief Procurement  
239 Officer may award the contract at issue if he or she does not  
240 receive the notice of intent to protest within the five-day  
241 period.

242 b. A matter that could have been raised under  
243 subdivision (1) as a protest of the solicitation may not be  
244 raised as a protest of the award or intended award of a  
245 contract.

246 (3) A notice of intent to protest filed under  
247 subdivision (1) or (2) shall be in writing, ~~be~~ filed with the  
248 Chief Procurement Officer, ~~and set forth~~ state the intent to  
249 protest, and state the grounds of the protest and the relief  
250 requested with enough particularity to give notice of the  
251 issues to be decided.

252 (b) The Chief Procurement Officer, ~~or~~ or his or her



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253 designee, may settle and resolve the protest of a bona fide  
254 actual or prospective bidder or offeror concerning the  
255 solicitation or award of a contract in accordance with rules  
256 adopted under this article.

257 (c) If the protest is not resolved by mutual agreement  
258 within 10 days after the protest is filed, the Chief  
259 Procurement Officer shall commence an administrative review of  
260 the protest and issue a decision in writing within 14 days  
261 ~~of~~after the review.

262 (d) A copy of the decision under subsection (c) shall  
263 be mailed or otherwise furnished immediately to the protestor  
264 and any other party intervening.

265 (e) A decision under subsection (c) shall be final and  
266 conclusive, unless fraudulent, or unless a party adversely  
267 affected by the decision appeals administratively to the  
268 Director of Finance in accordance with Section 41-4-164.

269 (f) (1) Except as provided in subdivision (2), in~~In~~ the  
270 event of a timely protest under subsection (a) or an appeal  
271 under Section 41-4-164, the state may not proceed further with  
272 the solicitation or with the award of the contract until five  
273 days after notice of the final decision is provided to the  
274 protestor, ~~except that~~.

275 (2) Notwithstanding subdivision (1), a solicitation or  
276 award of a protested contract is not stayed~~may proceed without~~  
277 delay if the Chief Procurement Officer, after consultation  
278 with the head of the using agency or the head of a purchasing  
279 agency, makes a written determination that the solicitation or  
280 award of the contract without further delay is necessary to



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281 protect the best interests of the state."

282 "§41-4-164

283 (a) A party that receives an adverse decision from the  
284 Chief Procurement Officer under ~~subsection (e) of Section~~  
285 41-4-161(c) or ~~subsection (e) of Section 41-4-162(c)~~ may  
286 appeal the decision to the Director of Finance.

287 (b) ~~An~~Any appeal to the Director of Finance shall be  
288 made in writing within five days ~~of~~after receipt of the  
289 adverse decision ~~from~~by the Chief Procurement Officer.

290 (c) The Director of Finance shall hold unlawful and set  
291 aside any decision issued by the Chief Procurement Officer  
292 that the director finds to be arbitrary, capricious, an abuse  
293 of discretion, or otherwise ~~not in accordance~~inconsistent with  
294 law.

295 (d) The Director of Finance shall issue a written  
296 decision within 14 days ~~of~~after receipt of the appeal.

297 (e) A copy of the decision under subsection (d) shall  
298 be mailed or otherwise furnished immediately to the parties.

299 (f) A decision under subsection (d) shall be final and  
300 conclusive unless fraudulent.

301 (g) The administrative procedures and remedies provided  
302 in this division shall not be construed as a contested case  
303 under the Alabama Administrative Procedure Act."

304 "§41-16-82

305 (a) This article shall only apply ~~in cases where the~~to  
306 either of the following:

307 (1) A proposed grant that exceeds twenty-five thousand  
308 dollars (\$25,000).



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309 (2) A~~er~~ proposed contract ~~at issue exceeds five~~  
310 ~~thousand dollars (\$5,000)~~that meets or exceeds the threshold  
311 for bid or other formal solicitations under Article 5 of  
312 Chapter 4 of Title 41 or any other law that requires formal  
313 solicitation procedures for awarding public contracts.

314 (b) (1) All persons ~~who~~that, for the purpose of direct  
315 financial gain, submit a proposal, bid, contract, or grant  
316 proposal to the State of Alabama~~r~~, shall include a disclosure  
317 statement identical to, or provide the same required  
318 disclosures as, the disclosure statement developed by the  
319 Attorney General and approved by the Legislative Council. The  
320 disclosure statement shall not be required for ~~contracts~~any of  
321 the following:

322 a. Contracts with publicly traded companies.

323 b. Contracts for gas, water, and electric services  
324 where no competition exists, or where rates are fixed by law  
325 or ordinance.

326 c. Awards of economic development incentives.

327 (2) In circumstances where a contract is awarded by  
328 competitive bid or other formal solicitation procedure, the  
329 disclosure statement shall be required only from the person  
330 ~~receiving~~awarded the contract and shall be submitted by that  
331 person within ~~10~~30 days of the award.

332 (c) (1) State agencies, departments, or divisions may  
333 establish electronic systems for submission of annual  
334 disclosure statements, and submission to the shared electronic  
335 systems shall satisfy the requirements for submitting a  
336 disclosure statement to the agency, department, or division.



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337 (2) Agencies, departments, and divisions may establish  
338 shared electronic systems to satisfy the requirements of this  
339 article."

340 "§41-16-83

341 (a) The information required on the disclosure  
342 statement shall ~~be made under oath and penalty as prescribed~~  
343 ~~herein and shall include~~, but not be limited to, the  
344 following:

345 (1) A list of the names and addresses of any public  
346 official, ~~and~~ public employee, and family members of the  
347 public official ~~and~~ or public employee, ~~7~~ who may have a family  
348 relationship with the submitting person or his or her  
349 immediate family members, ~~7~~ or ~~his or her employees, 7~~ and who may  
350 directly personally benefit financially from the contract,  
351 proposal, request for proposal, invitation to bid, or grant  
352 proposal.

353 (2) A description of any financial benefit that may be  
354 knowingly gained by any public official, public employee,  
355 ~~and~~ or family ~~members~~ member of the public official ~~and~~ or public  
356 employee that may result ~~either directly or indirectly~~ from  
357 the person or his or her immediate family members, or his or  
358 her employees.

359 (3) The names and addresses of any paid consultant or  
360 lobbyist for the contract, proposal, request for proposal,  
361 invitation to bid, or grant proposal.

362 (b) The State of Alabama shall not enter into any  
363 contract or appropriate any public funds with any person  
364 ~~who~~ that refuses to provide information required by this



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365 section.

366 (c) The information required on the disclosure  
367 statement shall be certified by the vendor or the grant  
368 recipient. The certification may be performed by electronic  
369 methods and must include all of the following:

370 (1) A representation that the individual who signs the  
371 document is authorized to sign on behalf of the vendor, if  
372 applicable.

373 (2) A declaration that the disclosure statement is  
374 given under the penalty of perjury in the jurisdiction in  
375 which it is executed.

376 (3) The date and place of execution."

377 "§41-16-85

378 (a) A copy of the disclosure statement shall be filed  
379 with the awarding entity and ~~as required by this article,~~  
380 retained as required by the State Records Commission, and made  
381 available for review for audit purposes by the Department of  
382 Examiners of Public Accounts ~~and if it pertains to a state~~  
383 ~~contract,~~ or other auditing authority. If the disclosure  
384 pertains to a state contract that must be submitted to the  
385 Contract Review Permanent Legislative Oversight Committee  
386 pursuant to Article 3 of Chapter 2 of Title 29, a copy  
387 ~~shall~~ must be submitted to the ~~Contract Review Permanent~~  
388 ~~Legislative Oversight Committee~~ committee.

389 (b) Any disclosure statement filed pursuant to this  
390 article shall be a public record."

391 "§41-16-87

392 This article shall not apply to either of the



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393 following:

394           (1) Any person that ~~any entity which~~ does not receive  
395 state funds under a grant or a contract.

396           (2) Any grants or contracts between public procurement  
397 units."

398           Section 2. This act shall become effective on June 1,  
399 2025.





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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB36

Senate 12-Feb-25

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,  
Secretary.

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House of Representatives

Passed: 27-Feb-25

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By: Senator Kitchens