

**SB36 INTRODUCED**



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



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SYNOPSIS:

Under existing law, the state procurement code governs all purchases made by government entities, except district attorneys and sheriffs, whose purchases are governed by local competitive bid laws.

This bill would provide that volunteer fire departments and rescue squads are also governed by local competitive bid laws.

Under existing law, a prospective bidder or offeror may protest the offering of a competitive bid contract by submitting a notice of protest within 14 days of the offering.

This bill would revise the deadline for filing a notice of protest from 14 to 5 days.

This bill would provide that the protest procedures are not subject to the Administrative Procedure Act.

Under existing law, any person that submits a contract, a contract proposal, a bid, or a grant proposal to the state in an amount equal to or greater than \$5,000 and for the purpose of financial gain is required to include a disclosure statement for each contract, contract proposal, bid, or grant proposal that it submits, subject to certain exceptions. A disclosure statement must provide certain information



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29 about individuals who may gain financial benefit from  
30 their relationships with the person submitting the  
31 contract, contract proposal, bid, or grant proposal.

32 This bill would revise the threshold for which a  
33 disclosure statement is required, would allow the use  
34 of alternative disclosure statement forms, and would  
35 allow the submission of a single annual disclosure  
36 statement for multiple proposals with the same state  
37 agency, department, or division.

38 This bill would allow for an alternative method  
39 of certifying the authenticity of a disclosure  
40 statement.

41 Also, under existing law, public contracts for  
42 gas, water, or electric services are exempt from the  
43 requirement to submit a disclosure statement.

44 This bill would also exempt from having to  
45 submit a disclosure statement those public contracts  
46 with publicly traded companies and awards of economic  
47 development incentives.

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A BILL

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TO BE ENTITLED

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AN ACT

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54 Relating to public contracts; to amend Sections  
55 41-4-124, 41-4-132, 41-4-136, 41-4-161, 41-4-164, 41-16-82,  
56 41-16-83, 41-16-85, and 41-16-87, Code of Alabama 1975; to



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57 provide further for who is subject to state competitive bid  
58 laws; to provide further for electronic bid submissions; to  
59 provide further for the procedures for protesting certain  
60 competitive bid contracts; and to revise requirements for  
61 disclosure statement forms.

62 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

63 Section 1. Sections 41-4-124, 41-4-132, 41-4-136,  
64 41-4-161, 41-4-164, 41-16-82, 41-16-83, 41-16-85, and  
65 41-16-87, Code of Alabama 1975, are amended to read as  
66 follows:

67 "§41-4-124

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

73 (b) The following governmental bodies are subject to  
74 this article except as it relates to the purchase of  
75 professional services and the oversight and authority of the  
76 Chief Procurement Officer, and shall establish and maintain  
77 procurement offices and personnel and adopt rules as may be  
78 necessary to comply with this article:

79 (1) All educational and eleemosynary institutions  
80 governed by a board of trustees or other similar governing  
81 body.

82 (2) The Retirement Systems of Alabama.

83 (3) The Department of Mental Health.

84 (c) The Alabama Department of Transportation is subject



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85 to this article except as it relates to the purchase of  
86 professional services, and the Department of Transportation  
87 shall adopt rules governing the purchase of professional  
88 services by the department which are consistent with the  
89 principles contained in this article and promote fairness,  
90 competition, transparency, integrity, and value in the  
91 procurement process.

92 (d) The procurement of any supplies, services, or  
93 professional services by a district attorney, ~~or~~ sheriff,  
94 volunteer fire department, or rescue squad shall be solely  
95 governed by Article 3, commencing with Section 41-16-50 of  
96 Chapter 16.

97 (e) The procurement of any supplies or services by a  
98 legislative agency or judicial agency shall be solely governed  
99 by procedures adopted by the Legislative Council for all  
100 legislative agencies and by rules adopted by the Supreme Court  
101 of Alabama for all judicial agencies. The procedures adopted  
102 shall be consistent with any applicable requirements of the  
103 Constitution of Alabama of 2022, and shall be established in  
104 accordance with the underlying purposes and policies of  
105 promoting responsible and efficient use of public funds  
106 dedicated and appropriated to the agencies for their use,  
107 providing consistency of application of rules and requirements  
108 across all agencies within the applicable branch of state  
109 government, and promoting fairness, competition, transparency,  
110 integrity, and value in the procurement process. In no case  
111 may the legislative and judicial departments of the state  
112 adopt procedures that conflict with the laws of this state



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113 regarding the public disclosure of the use of public funds and  
114 the transparency of public expenditures, or that otherwise  
115 conflict with state law regarding public records and public  
116 access to those records. Except for the requirement to act in  
117 good faith, no other provision of this article shall apply to  
118 legislative or judicial agencies; provided, that the  
119 legislative and judicial departments may adopt all or any part  
120 of this article and its accompanying rules.

121 (f) (1) The procurement of any supplies or services by  
122 the Alabama State Port Authority shall be solely governed by  
123 procedures adopted by the Board of Directors of the Alabama  
124 State Port Authority. The procedures adopted shall be  
125 consistent with any applicable requirements of the  
126 Constitution of Alabama of 2022, and shall be established in  
127 accordance with the underlying purposes and policies of  
128 promoting responsible and efficient use of the funds of the  
129 Alabama State Port Authority, providing consistency of  
130 application of rules and requirements across all agencies  
131 within the applicable branch of state government, and  
132 promoting fairness, competition, transparency, integrity, and  
133 value in the procurement process.

134 (2) Except for the protection of information otherwise  
135 legally considered commercially confidential, sensitive, or of  
136 a nature that upon release would harm the competitive  
137 advantage of itself or its customers, concessionaires,  
138 lessees, or suppliers, the Alabama State Port Authority may  
139 not adopt procedures that conflict with the laws of this state  
140 regarding the public disclosure of the use of its funds and



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141 the transparency of its expenditures, or that otherwise  
142 conflict with state law regarding public records and public  
143 access to those records.

144 (3) Except as provided in this subsection and the  
145 requirement to act in good faith, no other provision of this  
146 article shall apply to the Alabama State Port Authority;  
147 provided, however, that the Alabama State Port Authority may  
148 adopt all or any part of this article and its accompanying  
149 rules."

150 "§41-4-132

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

153 (b) An invitation to bid shall be issued and shall  
154 include a purchase description and all contractual terms and  
155 conditions applicable to the procurement.

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

160 (d) Bids shall be opened publicly in the presence of  
161 one or more witnesses at the time and place designated in the  
162 invitation to bid. Alternatively, bids may be opened in an  
163 electronic system at a time specified in the invitation to bid  
164 and in a manner that records the time of opening. The amount  
165 of each bid, the name of each bidder, and any other  
166 information required by rule shall be recorded. The record and  
167 each bid shall be open to public inspection to the extent  
168 required by Section 41-4-115.



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169 (e) Bids shall be unconditionally accepted without  
170 alteration or correction, except as authorized in this  
171 article. Bids shall be evaluated based on the requirements set  
172 forth in the invitation to bid, which may include criteria to  
173 determine acceptability, such as inspection, testing, quality,  
174 workmanship, delivery, and suitability for a particular  
175 purpose. Any criteria that will affect the bid price and will  
176 be considered in evaluation for award shall be objectively  
177 measurable, such as discounts, transportation costs, and total  
178 or life cycle costs. The invitation to bid shall set forth the  
179 evaluation criteria to be used. No criteria may be used in bid  
180 evaluations that are not set forth in the invitation to bid.

181 (f) (1) When a bid is submitted that contains an error,  
182 the Chief Procurement Officer or head of a purchasing agency  
183 may authorize the correction or withdrawal of the bid or may  
184 cancel the award of the contract. The authorization of the  
185 correction or withdrawal shall be done in accordance with  
186 rules adopted by the Chief Procurement Officer.

187 (2) After a bid has been opened, with the exception of  
188 price negotiations with the lowest responsible bidder, no  
189 changes in bid prices or other provisions of bids prejudicial  
190 to the interest of the state or fair competition shall be  
191 permitted.

192 (g) (1) Unless there is a compelling reason to reject  
193 bids, as prescribed by rules, notice of intent to award to the  
194 lowest responsive and responsible bidder whose bid meets the  
195 requirements set forth in the invitation to bid shall be given  
196 by posting the notice at a location specified in the





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197 invitation to bid. Before posting the notice of intent to  
198 award, the Chief Procurement Officer or head of the purchasing  
199 agency may negotiate with the lowest responsive and  
200 responsible bidder to lower the bid price within the scope of  
201 the invitation to bid. The invitation to bid and notice of  
202 intent to award shall contain a statement of the bidder's  
203 right to protest.

204 (2) The Chief Procurement Officer may award multiple  
205 purchase contracts resulting from a single invitation to bid  
206 where the specifications of the items of supplies or services  
207 intended to be purchased by a requisitioning agency or  
208 agencies are determined, in whole or in part, by technical  
209 compatibility and operational requirements. In order to make  
210 multiple awards under this subdivision, the awarding authority  
211 shall include in the invitation to bid a notice that multiple  
212 awards may be made and the specific technical compatibility or  
213 operational requirements necessitating multiple awards.

214 Multiple awards of purchase contracts with unique technical  
215 compatibility or operational specifications shall be made to  
216 the lowest responsible bidder complying with the unique  
217 technical compatibility or operational specifications. The  
218 requisitioning agency shall provide the awarding authority  
219 with the information necessary for it to determine the  
220 necessity for the award of multiple purchase contracts under  
221 this subdivision.

222 (h) When it is considered impractical by the Chief  
223 Procurement Officer to initially prepare a purchase  
224 description to support an award based on price, an invitation



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225 to bid may be issued requesting the submission of unpriced  
226 offers to be followed by an invitation to bid limited to those  
227 bidders whose offers have been qualified under the criteria  
228 set forth in the first solicitation.

229 (i) (1) Before soliciting bids, the Chief Procurement  
230 Officer may authorize issuance of a request for qualifications  
231 from prospective bidders. The request shall contain, at a  
232 minimum, a description of the scope of work to be solicited by  
233 the invitation for bids, the deadline for submission of  
234 information, and how prospective bidders may apply for  
235 consideration. The request shall require information  
236 concerning the prospective bidders' product specifications,  
237 qualifications, experience, and ability to perform the  
238 requirements of the contract. Adequate public notice of the  
239 request for qualifications shall be given in the manner  
240 provided in subsection (c).

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

246 "§41-4-136

247 (a) Notwithstanding any other provision of this  
248 article, the Chief Procurement Officer or the head of a  
249 purchasing agency may make emergency procurements when there  
250 is a threat to public health, welfare, or safety under  
251 emergency conditions, as defined by rule. Emergency  
252 procurements made under this section shall be made with as



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253 much competition as is practicable under the circumstances.

254 (b) The authority to make emergency procurements may  
255 not be delegated except to the Chief Procurement Officer's  
256 staff in the Division of Procurement at his or her direction.  
257 Supplies and services that are exempt from the oversight and  
258 authority of the Chief Procurement Officer, including, but not  
259 limited to, those listed in Sections 41-4-125, 41-4-125.01,  
260 and 41-4-126, shall not be required to be procured under the  
261 emergency procurement authority of the Chief Procurement  
262 Officer. A purchasing agency not otherwise under the oversight  
263 and authority of the Chief Procurement Officer shall not be  
264 required to make emergency procurements under the authority of  
265 the Chief Procurement Officer.

266 (c) A written determination of the basis for the  
267 emergency and for the selection of the particular contractor  
268 shall be included in the contract file."

269 "§41-4-161

270 (a) (1) A bona fide prospective bidder or offeror who is  
271 aggrieved in connection with the solicitation of a contract  
272 may file a notice of intent to protest ~~to~~with the Chief  
273 Procurement Officer within ~~14~~five calendar days ~~of the date of~~  
274 ~~issuance of~~after the date the solicitation or any amendment to  
275 ~~it~~the solicitation is issued, if the amendment is at issue.  
276 After filing a notice of intent to protest, the bona fide  
277 prospective bidder or offeror shall have seven calendar days  
278 to submit a formal written protest.

279 (2)a. Except as provided in paragraph b., a bona fide  
280 actual bidder or offeror who is aggrieved in connection with



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281 the intended award or the award of a contract may file a  
282 notice of intent to protest ~~to~~with the Chief Procurement  
283 Officer within ~~14~~five calendar days ~~or~~after the date of the  
284 award or the date of the notice~~notification~~ of intent to  
285 award, whichever is earlier, is posted in accordance with this  
286 article. After filing a notice of intent to protest, the bona  
287 fide actual bidder or offeror shall have seven calendar days  
288 to submit a formal written protest. The Chief Procurement  
289 Officer may award the contract at issue if he or she does not  
290 receive the notice of intent to protest within the five-day  
291 period.

292 b. A matter that could have been raised under  
293 subdivision (1) as a protest of the solicitation may not be  
294 raised as a protest of the award or intended award of a  
295 contract.

296 (3) A notice of intent to protest filed under  
297 subdivision (1) or (2) shall be in writing, ~~be~~ filed with the  
298 Chief Procurement Officer, ~~and set forth~~state the intent to  
299 protest, and state the grounds of the protest and the relief  
300 requested with enough particularity to give notice of the  
301 issues to be decided.

302 (b) The Chief Procurement Officer~~,~~ or his or her  
303 designee~~,~~ may settle and resolve the protest of a bona fide  
304 actual or prospective bidder or offeror concerning the  
305 solicitation or award of a contract in accordance with rules  
306 adopted under this article.

307 (c) If the protest is not resolved by mutual agreement  
308 within 10 days after the protest is filed, the Chief



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309 Procurement Officer shall commence an administrative review of  
310 the protest and issue a decision in writing within 14 days  
311 ~~o~~after the review.

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

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

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

325 (2) Notwithstanding subdivision (1), a solicitation or  
326 award of a protested contract ~~is not stayed~~may proceed without  
327 delay if the Chief Procurement Officer, after consultation  
328 with the head of the using agency or the head of a purchasing  
329 agency, makes a written determination that the solicitation or  
330 award of the contract without further delay is necessary to  
331 protect the best interests of the state."

332 "§41-4-164

333 (a) A party that receives an adverse decision from the  
334 Chief Procurement Officer under ~~subsection (c) of~~ Section  
335 41-4-161 (c) or ~~subsection (c) of~~ Section 41-4-162 (c) may  
336 appeal the decision to the Director of Finance.



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

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

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

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

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

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

354 "§41-16-82

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

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

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

364 (b) (1) All persons ~~who~~that, for the purpose of direct



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365 financial gain, submit a proposal, bid, contract, or grant  
366 proposal to the State of Alabama, shall include a disclosure  
367 statement identical to, or provide the same required  
368 disclosures as, the disclosure statement developed by the  
369 Attorney General and approved by the Legislative Council. The  
370 disclosure statement shall not be required for ~~contracts~~any of  
371 the following:

372 a. Contracts with publicly traded companies.

373 b. Contracts for gas, water, and electric services  
374 where no competition exists, or where rates are fixed by law  
375 or ordinance.

376 c. Awards of economic development incentives.

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

382 (c) (1) State agencies, departments, or divisions may  
383 establish electronic systems for submission of annual  
384 disclosure statements, and submission to the shared electronic  
385 systems shall satisfy the requirements for submitting a  
386 disclosure statement to the agency, department, or division.

387 (2) Agencies, departments, and divisions may establish  
388 shared electronic systems to satisfy the requirements of this  
389 article."

390 "§41-16-83

391 (a) The information required on the disclosure  
392 statement shall ~~be made under oath and penalty as prescribed~~



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393 ~~herein and shall~~ include, but not be limited to, the  
394 following:

395 (1) A list of the names and addresses of any public  
396 official, ~~and~~ public employee, and family members of the  
397 public official ~~and or~~ public employee, who may have a family  
398 relationship with the submitting person or his or her  
399 immediate family members, ~~or his or her~~ employees, and who may  
400 directly personally benefit financially from the contract,  
401 proposal, request for proposal, invitation to bid, or grant  
402 proposal.

403 (2) A description of any financial benefit that may be  
404 knowingly gained by any public official, public employee,  
405 ~~and or~~ family ~~members~~ member of the public official ~~and or~~ public  
406 employee that may result ~~either directly or indirectly~~ from  
407 the person or his or her immediate family members, or his or  
408 her employees.

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

412 (b) The State of Alabama shall not enter into any  
413 contract or appropriate any public funds with any person  
414 ~~who~~ that refuses to provide information required by this  
415 section.

416 (c) The information required on the disclosure  
417 statement shall be certified by the vendor or the grant  
418 recipient. The certification may be performed by electronic  
419 methods and must include all of the following:

420 (1) A representation that the individual who signs the





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421 document is authorized to sign on behalf of the vendor, if  
422 applicable.

423 (2) A declaration that the disclosure statement is  
424 given under the penalty of perjury in the jurisdiction in  
425 which it is executed.

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

427 "§41-16-85

428 (a) A copy of the disclosure statement shall be filed  
429 ~~with the awarding entity and~~ as required by this article,  
430 retained as required by the State Records Commission, and made  
431 available for review for audit purposes by the Department of  
432 Examiners of Public Accounts ~~and if it pertains to a state~~  
433 ~~contract,~~ or other auditing authority. If the disclosure  
434 pertains to a state contract that must be submitted to the  
435 Contract Review Permanent Legislative Oversight Committee  
436 pursuant to Article 3 of Chapter 2 of Title 29, a copy  
437 ~~shall~~ must be submitted to the ~~Contract Review Permanent~~  
438 ~~Legislative Oversight Committee~~ committee.

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

441 "§41-16-87

442 This article shall not apply to either of the  
443 following:

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

446 (2) Any grants or contracts between public procurement  
447 units."

448 Section 2. This act shall become effective on June 1,



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449 2025.