

1 HB236  
2 181760-2  
3 By Representatives Davis and Faust  
4 RFD: County and Municipal Government  
5 First Read: 14-FEB-17

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8 SYNOPSIS: This bill would relate to competitive bids  
9 and, with certain exceptions, would require  
10 awarding authorities to make provisions for the  
11 submission of bids by secure electronic means. This  
12 bill would not apply to the Division of  
13 Construction Management within the Department of  
14 Finance, State Board of Education, or Class 8  
15 municipalities.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
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21 To amend Sections 39-2-2 and 41-16-50 of the Code of  
22 Alabama 1975, relating to competitive bids, to provide for the  
23 submission of bids by secure electronic means; and to provide  
24 certain exceptions.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Sections 39-2-2 and 41-16-50 of the Code  
27 of Alabama 1975, are amended to read as follows:

1           "§39-2-2.

2           "(a) Before entering into any contract for a public  
3 works involving an amount in excess of fifty thousand dollars  
4 (\$50,000), the awarding authority shall advertise for sealed  
5 bids. If the awarding authority is the state or a county, or  
6 an instrumentality thereof, it shall advertise for sealed bids  
7 at least once each week for three consecutive weeks in a  
8 newspaper of general circulation in the county or counties in  
9 which the improvement or some part thereof, is to be made. If  
10 the awarding authority is a municipality, or an  
11 instrumentality thereof, it shall advertise for sealed bids at  
12 least once in a newspaper of general circulation published in  
13 the municipality where the awarding authority is located. If  
14 no newspaper is published in the municipality, the awarding  
15 authority shall advertise by posting notice thereof on a  
16 bulletin board maintained outside the purchasing office and in  
17 any other manner and for the length of time as may be  
18 determined. In addition to bulletin board notice, sealed bids  
19 shall also be solicited by sending notice by mail to all  
20 persons who have filed a request in writing with the official  
21 designated by the awarding authority that they be listed for  
22 solicitation on bids for the public works contracts indicated  
23 in the request. If any person whose name is listed fails to  
24 respond to any solicitation for bids after the receipt of  
25 three such solicitations, the listing may be canceled. With  
26 the exception of the Department of Transportation, for all  
27 public works contracts involving an estimated amount in excess

1 of five hundred thousand dollars (\$500,000), awarding  
2 authorities shall also advertise for sealed bids at least once  
3 in three newspapers of general circulation throughout the  
4 state. The advertisements shall briefly describe the  
5 improvement, state that plans and specifications for the  
6 improvement are on file for examination in a designated office  
7 of the awarding authority, state the procedure for obtaining  
8 plans and specifications, state the time and place in which  
9 bids shall be received and opened, and identify whether  
10 prequalification is required and where all written  
11 prequalification information is available for review. All bids  
12 shall be opened publicly at the advertised time and place.  
13 Awarding authorities, except for the Division of Construction  
14 Management within the Department of Finance, the State Board  
15 of Education, and Class 8 municipalities shall make the  
16 provisions necessary for bidders to submit electronic bids  
17 through a secure, interactive, electronic environment for all  
18 purchases requiring competitive bidding. The submission of a  
19 bid electronically shall be at the option of the bidder. A bid  
20 submitted electronically shall be submitted with an electronic  
21 and digital signature and may not be viewable by the awarding  
22 authority or any other person until the date and time of the  
23 bid opening. All bid related documents shall be posted to the  
24 website accepting electronic bids at time of bid release.  
25 Service providers shall provide awarding authorities the  
26 option to store records pertaining to each bid process for a  
27 minimum of six years after the bid process expires. Any

1 electronic bidding service provider shall assure that all  
2 vendors submitting electronic bids hold awarding authorities  
3 harmless for issues associated with electronic bid submittal.

4 No public work as defined in this chapter involving a sum in  
5 excess of fifty thousand dollars (\$50,000) shall be split into  
6 parts involving sums of fifty thousand dollars (\$50,000) or  
7 less for the purpose of evading the requirements of this  
8 section.

9 "(b) (1) An awarding authority may let contracts for  
10 public works involving fifty thousand dollars (\$50,000) or  
11 less with or without advertising or sealed bids.

12 "(2) An awarding authority may enter into a contract  
13 for public works if an advertisement for sealed bids for the  
14 contract was submitted by the awarding authority to a  
15 newspaper and the newspaper only published the advertisement  
16 for two weeks if the authority can provide proof that it in  
17 good faith submitted the advertisement to the newspaper with  
18 instructions to publish the notice in accordance with the  
19 provisions of this section.

20 "(c) All contracts for public works entered into in  
21 violation of this title shall be null, void, and violative of  
22 public policy. Anyone who willfully violates this article  
23 concerning public works shall be guilty of a Class C felony.

24 "(d) Excluded from the operation of this title shall  
25 be contracts with persons who shall perform only  
26 architectural, engineering, construction management, program  
27 management, or project management services in support of the

1 public works and who shall not engage in actual construction,  
2 repair, renovation, or maintenance of the public works with  
3 their own forces, by contract, subcontract, purchase order,  
4 lease, or otherwise.

5 "(e) In case of an emergency affecting public  
6 health, safety, or convenience, as declared in writing by the  
7 awarding authority, setting forth the nature of the danger to  
8 the public health, safety, or convenience which would result  
9 from delay, contracts may be let to the extent necessary to  
10 meet the emergency without public advertisement. The action  
11 and the reasons for the action taken shall immediately be made  
12 public by the awarding authority upon request.

13 "(f) No awarding authority may specify in the plans  
14 and specifications for the improvement the use of materials,  
15 products, systems, or services by a sole source unless all of  
16 the following requirements are met:

17 "(1) Except for contracts involving the  
18 construction, reconstruction, renovation, or replacement of  
19 public roads, bridges, and water and sewer facilities, the  
20 awarding authority can document to the satisfaction of the  
21 State Building Commission that the sole source product,  
22 material, system, or service is of an indispensable nature for  
23 the improvement, that there are no other viable alternatives,  
24 and that only this particular product, material, system, or  
25 service fulfills the function for which it is needed.

26 "(2) The sole source specification has been  
27 recommended by the architect or engineer of record as an

1       indispensable item for which there is no other viable  
2       alternative.

3               "(3) All information substantiating the use of a  
4       sole source specification, including the recommendation of the  
5       architect or engineer of record, shall be documented and made  
6       available for examination in the office of the awarding  
7       authority at the time of advertisement for sealed bids.

8               "(g) In the event of a proposed public works  
9       project, acknowledged in writing by the Alabama Homeland  
10       Security Department as (1) having a direct impact on the  
11       security or safety of persons or facilities and (2) requiring  
12       confidential handling for the protection of such persons or  
13       facilities, contracts may be let without public advertisement  
14       but with the taking of informal bids otherwise consistent with  
15       the requirements of this title and the requirements of  
16       maintaining confidentiality. Records of bidding and award  
17       shall not be disclosed to the public, and shall remain  
18       confidential.

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

23               "(i) The awarding authority may not offer a contract  
24       for bidding unless confirmation of any applicable grant has  
25       been received and any required matching funds have been  
26       secured by or are available to the awarding authority.

27               "§41-16-50.

1           "(a) With the exception of contracts for public  
2 works whose competitive bidding requirements are governed  
3 exclusively by Title 39, all expenditure of funds of whatever  
4 nature for labor, services, work, or for the purchase of  
5 materials, equipment, supplies, or other personal property  
6 involving fifteen thousand dollars (\$15,000) or more, and the  
7 lease of materials, equipment, supplies, or other personal  
8 property where the lessee is, or becomes legally and  
9 contractually, bound under the terms of the lease, to pay a  
10 total amount of fifteen thousand dollars (\$15,000) or more,  
11 made by or on behalf of any state trade school, state junior  
12 college, state college, or university under the supervision  
13 and control of the Alabama Community College System, the  
14 district boards of education of independent school districts,  
15 the county commissions, the governing bodies of the  
16 municipalities of the state, and the governing boards of  
17 instrumentalities of counties and municipalities, including  
18 waterworks boards, sewer boards, gas boards, and other like  
19 utility boards and commissions, except as hereinafter  
20 provided, shall be made under contractual agreement entered  
21 into by free and open competitive bidding, on sealed bids, to  
22 the lowest responsible bidder. Prior to advertising for bids  
23 for an item of personal property or services, where a county,  
24 a municipality, or an instrumentality thereof is the awarding  
25 authority, the awarding authority may establish a local  
26 preference zone consisting of either the legal boundaries or  
27 jurisdiction of the awarding authority, or the boundaries of



1 the county in which the awarding authority is located, or the  
2 boundaries of the Core Based Statistical Area in which the  
3 awarding authority is located. If no such action is taken by  
4 the awarding authority, the boundaries of the local preference  
5 zone shall be deemed to be the same as the legal boundaries or  
6 jurisdiction of the awarding authority. In the event a bid is  
7 received for an item of personal property or services to be  
8 purchased or contracted for from a person, firm, or  
9 corporation deemed to be a responsible bidder, having a place  
10 of business within the local preference zone where the county,  
11 a municipality, or an instrumentality thereof is the awarding  
12 authority, and the bid is no more than five percent greater  
13 than the bid of the lowest responsible bidder, the awarding  
14 authority may award the contract to the resident responsible  
15 bidder. In the event only one bidder responds to the  
16 invitation to bid, the awarding authority may reject the bid  
17 and negotiate the purchase or contract, providing the  
18 negotiated price is lower than the bid price.

19 "(b) The governing bodies of two or more contracting  
20 agencies, as enumerated in subsection (a), or the governing  
21 bodies of two or more counties, or the governing bodies of two  
22 or more city or county boards of education, may provide, by  
23 joint agreement, for the purchase of labor, services, or work,  
24 or for the purchase or lease of materials, equipment,  
25 supplies, or other personal property for use by their  
26 respective agencies. The agreement shall be entered into by  
27 similar ordinances, in the case of municipalities, or

1 resolutions, in the case of other contracting agencies,  
2 adopted by each of the participating governing bodies, which  
3 shall set forth the categories of labor, services, or work, or  
4 for the purchase or lease of materials, equipment, supplies,  
5 or other personal property to be purchased, the manner of  
6 advertising for bids and the awarding of contracts, the method  
7 of payment by each participating contracting agency, and other  
8 matters deemed necessary to carry out the purposes of the  
9 agreement. Each contracting agency's share of expenditures for  
10 purchases under any agreement shall be appropriated and paid  
11 in the manner set forth in the agreement and in the same  
12 manner as for other expenses of the contracting agency. The  
13 contracting agencies entering into a joint agreement, as  
14 herein permitted, may designate a joint purchasing or bidding  
15 agent, and the agent shall comply with this article.

16 Purchases, contracts, or agreements made pursuant to a joint  
17 purchasing or bidding agreement shall be subject to all terms  
18 and conditions of this article.

19 "In the event that utility services are no longer  
20 exempt from competitive bidding under this article,  
21 non-adjointing counties may not purchase utility services by  
22 joint agreement under authority granted by this subsection.

23 "(c) The awarding authority may require bidders to  
24 furnish a bid bond for a particular bid solicitation if the  
25 bonding requirement applies to all bidders, is included in the  
26 written bid specifications, and if bonding is available for  
27 the services, equipment, or materials.

1           "(d) Notwithstanding subsection (a), in the event  
2 the lowest bid for an item of personal property or services to  
3 be purchased or contracted for is received from a foreign  
4 entity, where the county, a municipality, or an  
5 instrumentality thereof is the awarding authority, the  
6 awarding authority may award the contract to responsible  
7 bidder whose bid is no more than 10 percent greater than the  
8 foreign entity if the bidder has a place of business within  
9 the local preference zone or is a responsible bidder from a  
10 business within the state that is a woman-owned enterprise, an  
11 enterprise of small business, as defined in Section 25-10-3, a  
12 minority-owned business enterprise, a veteran-owned business  
13 enterprise, or a disadvantaged-owned business enterprise. For  
14 the purposes of this subsection, foreign entity means a  
15 business entity that does not have a place of business within  
16 the state.

17           "(e) (1) Except as provided herein, an awarding  
18 authority shall make the provisions necessary for bidders to  
19 submit electronic bids through a secure, interactive,  
20 electronic environment for all purchases requiring competitive  
21 bidding. The submission of a bid electronically shall be at  
22 the option of the bidder. A bid submitted electronically shall  
23 be submitted with an electronic and digital signature and may  
24 not be viewable by the awarding authority or any other person  
25 until the date and time of the bid opening. All bid related  
26 documents shall be posted to the website accepting electronic  
27 bids at the time of bid release. Service providers shall

1 provide awarding authorities the option to store records  
2 pertaining to each bid process for a minimum of six years  
3 after the bid process expires. Any electronic bidding service  
4 provider shall assure that all vendors submitting electronic  
5 bids hold awarding authorities harmless for issues associated  
6 with electronic bid submittal.

7 "(2) This subsection shall not apply to an awarding  
8 authority that does not have available high speed Internet  
9 access to their facility or does not use high speed Internet  
10 in their facility, to purchases made by an awarding authority  
11 pursuant to separate statutory provisions, and to Class 8  
12 municipalities."

13 Section 2. This act shall become effective October  
14 1, 2017.