

1 HB442  
2 96752-1  
3 By Representative Oden  
4 RFD: Government Operations  
5 First Read: 14-FEB-08

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8 SYNOPSIS: Under existing law, competitive bidding is  
9 required on contracts involving \$7,500 or more made  
10 by or on behalf of certain state and local  
11 agencies.

12 This bill would increase the minimum amount  
13 for which competitive bidding is required from  
14 \$7,500 to \$15,000.

15 This bill would include city and county  
16 boards of education in the list of awarding  
17 authorities that may establish local preference  
18 zones for competitively bid contracts.

19 This bill would delete the mandatory  
20 requirement that all bidders furnish a bid bond on  
21 contracts exceeding \$10,000 and, in lieu thereof,  
22 would authorize the awarding authority to require a  
23 bid bond.

24 This bill would exempt from competitive  
25 bidding requirements purchases made by city and  
26 county boards of education under certain joint  
27 purchasing agreements.

1                   This bill would authorize an awarding  
2 authority to make purchases or contracts through a  
3 reverse auction procedure.

4                   This bill would also provide for the award  
5 of the remainder of an award period to the second  
6 lowest responsible bidder in the event of the  
7 default of the lowest responsible bidder and would  
8 specify that the lowest responsible bid may be the  
9 bid offering the lowest life cycle costs.

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11   A BILL  
12   TO BE ENTITLED  
13   AN ACT

14  
15                   To amend Sections 41-16-50, 41-16-54, 41-16-55, and  
16 41-16-57, Code of Alabama 1975, relating to competitive  
17 bidding on contracts of certain state and local agencies; to  
18 increase the minimum amount of contracts subject to  
19 competitive bid from \$7,500 to \$15,000; to include city and  
20 county boards of education in the list of awarding authorities  
21 that may establish local preference zones; to change from  
22 mandatory to permissive the furnishing of a bid bond by a  
23 bidder; to exempt from competitive bidding requirements  
24 purchases made by city and county boards of education under  
25 certain joint purchasing agreements; to authorize an awarding  
26 authority to make purchases or contracts through a reverse  
27 auction procedure; to provide for the award of the remainder

1 of an award period to the second lowest responsible bidder in  
2 the event of the default of the lowest responsible bidder; and  
3 to specify that the lowest responsible bid may be the bid  
4 offering the lowest life cycle costs.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 41-16-50, 41-16-54, 41-16-55,  
7 and 41-16-57 of the Code of Alabama 1975, are amended to read  
8 as follows:

9 "§41-16-50.

10 "(a) With the exception of contracts for public  
11 works whose competitive bidding requirements are governed  
12 exclusively by Title 39, all expenditure of funds of whatever  
13 nature for labor, services, work, or for the purchase of  
14 materials, equipment, supplies, or other personal property  
15 involving ~~seven thousand five hundred dollars (\$7,500)~~ fifteen  
16 thousand dollars (\$15,000) or more, and the lease of  
17 materials, equipment, supplies, or other personal property  
18 where the lessee is, or becomes legally and contractually,  
19 bound under the terms of the lease, to pay a total amount of  
20 ~~seven thousand five hundred dollars (\$7,500)~~ fifteen thousand  
21 dollars (\$15,000) or more, made by or on behalf of any state  
22 trade school, state junior college, state college, or  
23 university under the supervision and control of the State  
24 Board of Education, the city and county boards of education,  
25 the district boards of education of independent school  
26 districts, the county commissions, the governing bodies of the  
27 municipalities of the state, and the governing boards of

1 instrumentalities of counties and municipalities, including  
2 waterworks boards, sewer boards, gas boards, and other like  
3 utility boards and commissions, except as hereinafter  
4 provided, shall be made under contractual agreement entered  
5 into by free and open competitive bidding, on sealed bids, to  
6 the lowest responsible bidder. Prior to advertising for bids  
7 for an item of personal property, where a city or county board  
8 of education, the county, a municipality, or an  
9 instrumentality thereof is the awarding authority, the  
10 awarding authority may establish a local preference zone  
11 consisting of either the legal boundaries or jurisdiction of  
12 the awarding authority, or the boundaries of the county in  
13 which the awarding authority is located, or the boundaries of  
14 the ~~Standard Metropolitan Statistical Area (SMSA)~~ Core Based  
15 Statistical Area (CBSA) in which the awarding authority is  
16 located. If no such action is taken by the awarding authority,  
17 the boundaries of the local preference zone shall be deemed to  
18 be the same as the legal boundaries or jurisdiction of the  
19 awarding authority. In the event a bid is received for an item  
20 of personal property to be purchased or contracted for from a  
21 person, firm, or corporation deemed to be a responsible  
22 bidder, having a place of business within the local preference  
23 zone where a city or county board of education, the county, a  
24 municipality, or an instrumentality thereof is the awarding  
25 authority, and the bid is no more than three percent greater  
26 than the bid of the lowest responsible bidder, the awarding  
27 authority may award the contract to the resident responsible

1 bidder. In the event only one bidder responds to the  
2 invitation to bid, the awarding authority may reject the bid  
3 and negotiate the purchase or contract, providing the  
4 negotiated price is lower than the bid price.

5 "(b) The governing bodies of two or more contracting  
6 agencies, as enumerated in subsection (a) ~~within the same~~  
7 ~~county or adjoining counties~~, or the governing bodies of two  
8 or more counties, or the governing bodies of two or more city  
9 or county boards of education, may provide, by joint  
10 agreement, for the purchase of labor, services, or work, or  
11 for the purchase or lease of materials, equipment, supplies,  
12 or other personal property for use by their respective  
13 agencies. The agreement shall be entered into by similar  
14 ordinances, in the case of municipalities, or resolutions, in  
15 the case of other contracting agencies, adopted by each of the  
16 participating governing bodies, which shall set forth the  
17 categories of labor, services, or work, or for the purchase or  
18 lease of materials, equipment, supplies, or other personal  
19 property to be purchased, the manner of advertising for bids  
20 and the awarding of contracts, the method of payment by each  
21 participating contracting agency, and other matters deemed  
22 necessary to carry out the purposes of the agreement. Each  
23 contracting agency's share of expenditures for purchases under  
24 any agreement shall be appropriated and paid in the manner set  
25 forth in the agreement and in the same manner as for other  
26 expenses of the contracting agency. The contracting agencies  
27 entering into a joint agreement, as herein permitted, may

1 designate a joint purchasing agent, and the agent shall have  
2 the responsibility to comply with this article. Purchases,  
3 contracts, or agreements made pursuant to a joint purchasing  
4 agreement shall be subject to all terms and conditions of this  
5 article.

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

10 "(c) ~~All~~ The awarding authority may require bidders  
11 ~~shall to~~ furnish a bid bond on any contract ~~exceeding ten~~  
12 ~~thousand dollars (\$10,000)~~ if bonding is available for the  
13 services, equipment, or materials.

14 "\$41-16-54.

15 "(a) All proposed purchases in excess of ~~seven~~  
16 ~~thousand five hundred dollars (\$7,500)~~ fifteen thousand  
17 dollars (\$15,000) shall be advertised by posting notice  
18 thereof on a bulletin board maintained outside the purchasing  
19 office and in any other manner and for any length of time as  
20 may be determined. Sealed bids or bids to be submitted by a  
21 reverse auction procedure shall also be solicited by sending  
22 notice by mail or other electronic means to all persons,  
23 firms, or corporations who have filed a request in writing  
24 that they be listed for solicitation on bids for the  
25 particular items that are set forth in the request. If any  
26 person, firm, or corporation whose name is listed fails to

1 respond to any solicitation for bids after the receipt of  
2 three solicitations, the listing may be cancelled.

3 "(b) Except as provided in subsection (d), all bids  
4 shall be sealed when received and shall be opened in public at  
5 the hour stated in the notice.

6 "(c) If the purchase or contract will involve an  
7 amount of ~~seven thousand five hundred dollars (\$7,500)~~ fifteen  
8 thousand dollars (\$15,000) or less, the purchases or contracts  
9 may be made upon the basis of sealed bids, a joint purchasing  
10 agreement, a reverse auction procedure, or in the open market.

11 "(d) The awarding authority may make purchases or  
12 contracts through a reverse auction procedure. For purposes of  
13 this article, a reverse auction procedure includes either of  
14 the following:

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

20 "(2) A bidding process usually lasting less than two  
21 weeks and taking place during a previously scheduled period  
22 and at a previously scheduled Internet location, in which  
23 multiple anonymous suppliers submit bids to provide the  
24 designated goods or services.

25 "(e) All original bids together with all documents  
26 pertaining to the award of the contract shall be retained in  
27 accordance with a retention period of at least seven years

1 established by the Local Government Records Commission and  
2 shall be open to public inspection.

3 "(f) No purchase or contract involving professional  
4 services shall be subject to the requirements of this article  
5 and no purchase or contract involving an amount in excess of  
6 ~~seven thousand five hundred dollars (\$7,500)~~ fifteen thousand  
7 dollars (\$15,000) shall be divided into parts involving  
8 amounts of ~~seven thousand five hundred dollars (\$7,500)~~  
9 fifteen thousand dollars (\$15,000) or less for the purpose of  
10 avoiding the requirements of this article. All such partial  
11 contracts involving ~~seven thousand five hundred dollars~~  
12 ~~(\$7,500)~~ fifteen thousand dollars (\$15,000) or less shall be  
13 void.

14 "§41-16-55.

15 "Any agreement or collusion among bidders or  
16 prospective bidders in restraint of freedom of competition, by  
17 agreement, to bid at a fixed price or to refrain from bidding  
18 or otherwise shall render the bids of such bidders void and  
19 shall cause such bidders to be disqualified from submitting  
20 further bids to the awarding authority on future purchases.

21 "Whoever knowingly participates in a collusive  
22 agreement in violation of this section involving a bid or bids  
23 of ~~\$3,000.00~~ fifteen thousand dollars (\$15,000) and under  
24 shall be guilty of a Class A misdemeanor and, upon conviction,  
25 shall be punished as prescribed by law.

26 "Whoever knowingly and intentionally participates in  
27 a collusive agreement in violation of this section involving a

1 bid or bids of over ~~\$3,000.00~~ fifteen thousand dollars  
2 (\$15,000) shall be guilty of a Class C felony, and upon  
3 conviction shall be punished as prescribed by law.

4 "§41-16-57.

5 "(a) When purchases are required to be made through  
6 competitive bidding, awards shall be made to the lowest  
7 responsible bidder taking into consideration the qualities of  
8 the commodities proposed to be supplied, their conformity with  
9 specifications, the purposes for which required, the terms of  
10 delivery, transportation charges, and the dates of delivery.

11 If at any time after the award has been made the lowest  
12 responsible bidder notifies the awarding authority in writing  
13 that the bidder will no longer comply with the terms of the  
14 award to provide the goods or services to the awarding  
15 authority under the terms and conditions of the original  
16 award, or the awarding authority documents that the lowest  
17 responsible bidder defaults under the terms of the original  
18 award, the awarding authority may terminate the award to the  
19 defaulting bidder and make an award to the second lowest  
20 responsible bidder for the remainder of the award period  
21 without rebidding, provided the award to the second lowest  
22 responsible bidder is in all respects made under the terms and  
23 conditions contained in the original bid specifications and is  
24 for the same or a lower price than the bid originally  
25 submitted to the awarding authority by the second lowest  
26 responsible bidder.

1           "(b) The awarding authority in the purchase of or  
2 contract for personal property or contractual services shall  
3 give preference, provided there is no sacrifice or loss in  
4 price or quality, to commodities produced in Alabama or sold  
5 by Alabama persons, firms, or corporations. Notwithstanding  
6 the foregoing, no county official, county commission, school  
7 board, city council or city councilmen, or other public  
8 official, state board, or state agency charged with the  
9 letting of contracts or purchase of materials for the  
10 construction, modification, alteration, or repair of any  
11 publicly owned facility may specify the use of materials or  
12 systems by a sole source, unless:

13           "(1) The governmental body can document to the  
14 satisfaction of the State of Alabama Building Commission that  
15 the "sole source" product or service is of an "indispensable"  
16 nature, all other viable alternatives have been explored, and  
17 it has been determined that only this product or service will  
18 fulfill the function for which the product is needed.  
19 Frivolous features will not be considered.

20           "(2) The sole source specification has been  
21 recommended by the architect or engineer of record and who  
22 also documents that there is no other product available and  
23 that the use of the requirement is of an indispensable nature  
24 and why.

25           "(3) All information substantiating the use of a  
26 sole source specification is documented in writing and is  
27 filed into the project file.

1           "(c) For purchases of personal property in instances  
2 where the awarding authority determines that the total cost of  
3 ownership over the expected life of the item or items,  
4 including acquisition costs plus sustaining costs or life  
5 cycle costs, can be reasonably ascertained from industry  
6 recognized and accepted sources, the lowest responsible bid  
7 may be determined to be the bid offering the lowest life cycle  
8 costs and otherwise meeting all of the conditions and  
9 specifications contained in the invitation to bid. To utilize  
10 this subsection to determine the lowest responsible bidder,  
11 the awarding authority shall include a notice in the  
12 invitation to bid that the lowest responsible bid may be  
13 determined by using life cycle costs and identify the industry  
14 recognized and accepted sources that will be applicable to  
15 such an evaluation.

16           "(d) ~~(c)~~ The awarding authority or requisitioning  
17 agency may reject any bid if the price is deemed excessive or  
18 quality of product inferior.

19           "(e) ~~(d)~~ Each record, with the successful bid  
20 indicated thereon, and with the reasons for the award if not  
21 awarded to the lowest bidder, shall, after award of the order  
22 or contract, be open to public inspection.

23           "(f) ~~(e)~~ Contracts for the purchase of personal  
24 property or contractual services shall be let for periods not  
25 greater than three years. "Lease-purchase" contracts for  
26 capital improvements and repairs to real property shall be let  
27 for periods not greater than 10 years and all other

1 lease-purchase contracts shall be let for periods not greater  
2 than 10 years."

3 Section 2. This act shall become effective on the  
4 first day of the third month following its passage and  
5 approval by the Governor, or its otherwise becoming law.