

STATE OF ALABAMA) (
 :
COUNTY OF BALDWIN) (
 :

The City Council met in a Work Session
at 4:30 p.m., Fairhope Municipal Complex Council Chamber,
161 North Section Street, Fairhope, Alabama 36532,
on Monday, 24 July 2023.

Present were Council President Jay Robinson, Councilmembers: Corey Martin, Jimmy Conyers, and Kevin Boone, Mayor Sherry Sullivan, City Attorney Marcus E. McDowell, and City Clerk Lisa A. Hanks. Councilmember Jack Burrell was absent.

Council President Jay Robinson called the meeting to order at 4:30 p.m.

The following topics were discussed:

- The first item on the agenda was the Discussion of Decommissioning Substations at Nichols and Church by Electric Superintendent Ben Patterson. He explained the testing of each substations and due diligence for the City of Fairhope.
- Discussion of the Naming of the Clock Corner was next on the agenda. Mayor Sullivan explained the history for the corner with the Gastons. The consensus of the City Council was to move forward with naming the Clock Corner “Gaston Plaza.” She said there would be two bronze plaques on each side of the bench.
- The next item on the agenda was the Discussion of Utilities Line of Credit for the Water and Wastewater by City Treasurer Kim Creech. Councilmember Martin stated he wants a study prepared for Water and Wastewater; and we need a plan for this. Council President Robinson agreed with Councilmember Martin and said we are in catchup phase. The consensus of the City Council was to get a Financial Advisor.
- City of Fairhope Purchasing Policy Guidelines Discussion was presented by Mayor Sullivan; and she explained the changes in the bid laws. Mayor Sullivan commented the Leadership Team agrees with the changes.
- Mayor Sullivan and City Treasurer Kim Creech began the Budget Discussions for Revenue. Sales Tax was discussed; and Mayor Sullivan mentioned SSUT and said the legislature is looking at taking some of these funds back.
- Councilmember Martin said the Recreation Board met and discussed the Fairhope Storm Football Team; pickleball courts; and swimming pool. He also gave a brief update on the Harbor Board; and said they would like a market analysis for Fairhope Docks and revenue making ideas.

Council President Robinson briefly went through the Agenda Items and who would explain if needed.

- Water and Wastewater Superintendent Daryl Morefield addressed the City Council regarding Agenda Items No. 10 and No. 12; and answered any questions if needed.

Monday, 24 July 2023

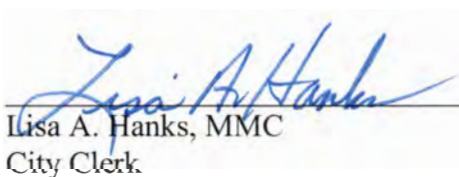
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- Interim Gas Superintendent Wes Boyett addressed the City Council and thanked the City Council and Mayor for attending the Gas Infrastructure meetings.
- Public Works Director Richard Johnson addressed the City Council and mentioned the completion of pickleball courts at Quail Creek Golf Course; and the roof at City Hall update. He briefly updated the City Council on the following items: Founders Project has been delayed; Clock Property Park; and Paving Project. Mr. Johnson explained Agenda Items No. 7, No. 8, and No. 11; and answered any questions if needed.
- Human Resources Director Cory Pierce addressed the City Council regarding Agenda Item No. 5; and answered any questions if needed. Mayor Sullivan explained the ordinance; and also answered any questions if needed. Councilmember Boone thanked Mr. Pierce for his service with the City of Fairhope; and commented this would be his last City Council meeting.
- Captain John Hamrick addressed the City Council regarding Agenda Items No. 13, No. 14, No. 15, and No. 16; and answered any questions if needed.
- Councilmember Martin addressed the City Council regarding Agenda Item No. 17; and answered any questions if needed. He mentioned the Tree Ordinance and some changes needing to be made.
- Mayor Sullivan addressed the City Council regarding Agenda Item No. 6; and answered any questions if needed.

There being no further business to come before the City Council, the meeting was duly adjourned at 5:30 p.m.



Jay Robinson, Council President



Lisa A. Hanks, MMC
City Clerk

NE corner of Fairhope Ave and Section St.- Coleman Corner/Ruge Corner/Gaston Corner/Clock Corner

- The northeast corner of Fairhope Avenue and Section Street was first occupied by the home of Clement L. Coleman, one of Fairhope's 28 founders, sometime around 1896. Coleman served as President and Treasurer of the Fairhope Industrial Association (now the Fairhope Single Tax Corporation) as well as on the City of Fairhope's first City Council (serving three terms).
- Coleman had the home expanded into a larger building in 1902 but, as the Fairhope Courier described, at such a "leisurely growth" that "its use is still as great a conundrum as ever to the public at large." The new building served as a home to Mr. and Mrs. Coleman, rented offices, and a place where Coleman sold miscellaneous items, farming equipment, and even land titles. Coleman called the building "the Conundrum".

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<https://newscomwc.newspapers.com/image/348284864/?terms=%22the%20conundrum%22&pqsid=Tito52EZriaDyzbSGGt1Uw%3A17379%3A641084904&match=1>

<https://newscomwc.newspapers.com/image/348285512/?terms=%22the%20conundrum%22&pqsid=Tito52EZriaDyzbSGGt1Uw%3A17379%3A641084904&match=1>

<https://newscomwc.newspapers.com/image/539426950/?terms=%22gaston%20motor%20company%22%20%22new%20building%22&pqsid=d5RaLPVE0HVuq2yb9AbYbQ%3A459753%3A751615399&match=1>

- In 1908, J.E.E. Ruge took over the building and moved his leather goods business from the corner of School Street and Fairhope Avenue into the building. Between 1908 and 1929 the location was known as the Ruge building and housed multiple businesses, sometimes simultaneously in different portions of the building. Some businesses housed there (besides Ruge's leather goods) were a butcher shop, a barber shop, the Curtis Feed Company of Mobile, the Fairhope Department Store (owned by Ruge), a plumbing shop, and a shoe repair shop. When J.E.E. Ruge died in 1915, his son, E. A. Ruge, took over the building. E. A. Ruge was the foster father of Fairhope mayor Howard Ruge.

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- In 1929, James E. Gaston, son of Fairhope founder Ernest Berry Gaston, acquired the corner lot for the expansion of his business, the Gaston Motor Company, which was

NE corner of Fairhope Ave and Section St.- Coleman Corner/Ruge Corner/Gaston Corner/Clock Corner

located on Fairhope Avenue directly east of the corner. The company was originally founded in a small building by James E. Gaston, in 1914, as Gaston's Auto Livery. The business was renamed Gaston's Garage and then again to Gaston Motor Company (when it became an authorized Ford dealer in 1923). The company's original building was expanded several times, most notably in 1925. Though the company acquired the corner lot in 1929, it did not make use of it until 1934.

<https://newscomwc.newspapers.com/image/539393523/?terms=%22ruge%20building%22&pqsid=KBnYBvjP14iZ6ZUXcbW2IQ%3A1341268%3A1841365692&match=1>

<https://newscomwc.newspapers.com/image/539426950/?terms=%22gaston%20motor%20company%22%20%22new%20building%22&pqsid=d5RaLPVE0HVuq2yb9AbYbQ%3A459753%3A751615399&match=1>

- In August of 1934, the Conundrum and other adjoining buildings that had been occupying the northeast corner of Section Street and Fairhope Avenue were demolished. A portion of Section Street at the intersection was also widened.

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- In November of 1934, the new Gaston Motor Company "Super Service" service station, built by Dyson and Co., was opened.

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CITY OF FAIRHOPE PURCHASING POLICY GUIDELINES
EXPENDITURES UNDER \$30,000 & \$100,000 (FOR PUBLIC WORKS PROJECTS)

Expenditures under \$30,000; \$100,000 for Public Works projects are governed by the City of Fairhope's internal purchasing policies.

Purchase of goods and services for the COF require the issuance of a Purchase Order (PO) to the vendor.

A PO **CANNOT** be issued until the vendor has been established in the Purchasing Department's Vendor Registry Database. **No work is to be conducted by a Vendor prior to the issuance of a PO to the Vendor.** Please contact Purchasing Department if you would like a Vendor to be added to the COF Vendor Database.

In order to have a PO number assigned, a PO Requisition must be entered in MUNIS by the requesting department. Quotes, purchasing cooperative contracts (where applicable), green sheets (where applicable), and resolutions (where applicable) must be denoted and / or attached to the requisition. **All Requisitions over \$5,000** will be approved by the Treasurer. Once the Requisition is approved a PO can be issued.

Approval requirements vary for different expenditure thresholds. Requirements are as follows:

Expenditure Threshold	Distinctions	Quotes Required	Approval	Green Sheet	Resolution
Under \$5,000	No restrictions	Not Required	N/A	N/A	N/A
Utilities \$5,001- \$10,000	Operational NON -Budgeted	Three	Treasurer/Mayor	N/A	N/A
Greater than: Gen Govt - \$5,001 Utilities - \$10,001	Operational NON -Budgeted	Three	Council	Required	Required
Gen Govt -\$5,001-\$30,000 Utilities - \$10,001-\$30,000	Operational Budgeted	Three	Treasurer	N/A	N/A
Over \$30,000	Operational Budget*	State Bid List or Buying Group	Treasurer/Mayor	N/A	N/A
Over \$30,000/\$100,000	Operational Budgeted	Bids	Council	Required	Required
Professional Services Over \$5,000	Budgeted or Non-Budgeted	Mayor Select	Council	Required	Required

***Budgeted items that meet or are under budget may be purchased with the Mayor and/or Treasurer's approval if they are on the State Bid list or from an approved buying group. Items that are over budget must go to Council for approval and will require a green sheet and resolution.**

Certain utility purchases may not require bid or approval if they meet criteria below per Alabama Code Title 41. State Government 41-16-51

Competitive bids for entities subject to this article shall not be required for utility services, the rates for which are fixed by law, regulation, or ordinance, and the competitive bidding requirements of this article shall not apply to:

(7) The purchase of equipment, supplies, or materials needed, used, and consumed in the normal and routine operation of any waterworks system, sanitary sewer system, gas system, or electric system, or any two or more thereof, that are owned by municipalities, counties, or public corporations, boards, or authorities that are agencies, departments, or instrumentalities of municipalities or counties and no part of the operating expenses of which system or systems have, during the then current fiscal year, been paid from revenues derived from taxes or from appropriations of the state, a county, or a municipality.

If an expenditure request needs to go to City Council for approval, a memo must be issued to the City Treasurer through the Purchasing Manager for the issuance of a green sheet. Memos must be issued to the Treasurer the Wednesday after the last Council meeting to get on the upcoming Council agenda.

A purchase, contract, etc. CANNOT be broken into several purchases to circumvent the law (Reference Resolution No. 3873-20).

Purchases of "like" items totaling **over \$30,000** in a fiscal year **must be bid** and can only be approved by City Council.

PO value and invoice value must match. Invoices must reference PO number, contract number, project number, bid number, etc.

A bi-monthly report of capital items budgeted and non-budgeted will be provided to the Council by Treasury.

Effective 5/09/2022 Resolution #4454-22

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ACT #2023 - 135

1 1HT13L-2
2 By Senators Coleman-Madison, Coleman, Elliott, Waggoner,
3 Figures, Stewart, Hatcher, Jones
4 RFD: State Governmental Affairs
5 First Read: 21-Mar-23
6
7 2023 Regular Session



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1 Enrolled, An Act,

2
3
4 Relating to public contracts: to amend Sections
5 41-16-50, 41-16-51, 41-16-52, 41-16-53, 41-16-54, and
6 41-16-55, Code of Alabama 1975, to increase the threshold
7 dollar amount for which competitive bidding is generally
8 required for certain state and local public awarding
9 authorities, with exceptions; to provide a legislative method
10 for the increase of the threshold dollar amount; and in
11 connection therewith would have as its purpose or effect the
12 requirement of a new or increased expenditure of local funds
13 within the meaning of Section 111.05 of the Constitution of
14 Alabama of 2022.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 41-16-50, 41-16-51, 41-16-52,
17 41-16-53, 41-16-54, and 41-16-55, Code of Alabama 1975, are
18 amended to read as follows:

19 "§41-16-50

20 (a) With the exception of contracts for public works
21 whose competitive bidding requirements are governed
22 exclusively by Title 39, all expenditure of funds ~~of whatever~~
23 ~~nature~~ for labor, services, work, or for the purchase of
24 materials, equipment, supplies, or other personal property
25 ~~involving fifteen thousand dollars (\$15,000)~~ thirty thousand
26 dollars (\$30,000) or more, and the lease of materials,
27 equipment, supplies, or other personal property where the
28 lessee is ~~or becomes~~ legally and contractually ~~or~~ bound under

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29 the terms of the lease, to pay a total amount of ~~fifteen~~
30 ~~thousand dollars (\$15,000)~~ thirty thousand dollars (\$30,000)
31 or more, made by or on behalf of the Alabama Fire College, the
32 district boards of education of independent school districts,
33 the county commissions, the governing bodies of the
34 municipalities of the state, and the governing boards of
35 instrumentalities of counties and municipalities, including
36 waterworks boards, sewer boards, gas boards, and other like
37 utility boards and commissions, except as ~~hereinafter~~
38 otherwise provided in this article, shall be made under
39 contractual agreement entered into by free and open
40 competitive bidding, on sealed bids, to the lowest responsible
41 and responsive bidder.

42 (b) (1) Prior to advertising for bids for an item of
43 personal property or services, where a county, a municipality,
44 or an instrumentality thereof is the awarding authority, the
45 awarding authority may establish a local preference zone
46 consisting of ~~either~~ any of the following:

47 a. ~~The~~ the legal boundaries or jurisdiction of the
48 awarding authority, ~~or the~~.

49 b. The boundaries of the county in which the awarding
50 authority is located, ~~or the~~.

51 c. The boundaries of the Core Based Statistical Area in
52 which the awarding authority is located.

53 (2) If no ~~such~~ action is taken by the awarding authority
54 under subdivision (1), the boundaries of the local preference
55 zone shall be deemed to be the same as the legal boundaries or
56 jurisdiction of the awarding authority.

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57 (3) In the event a bid is received for an item of
58 personal property or services to be purchased or contracted
59 for from a person, firm, or corporation deemed to be a
60 responsible bidder, having a place of business within the
61 local preference zone where the county, a municipality, or an
62 instrumentality thereof is the awarding authority, and the bid
63 is no more than five percent greater than the bid of the
64 lowest responsible bidder, the awarding authority may award
65 the contract to the resident responsible bidder.

66 (4) If no bids or only one bid is received at the time
67 stated in the advertisement for bids, the awarding authority
68 may advertise for and seek other competitive bids, or the
69 awarding authority may negotiate through the receipt of
70 informal bids not subject to the requirements of this article.
71 Where only one responsible and responsive bid has been
72 received, any negotiation for the work shall be for a price
73 lower than that bid.~~In the event only one bidder responds to~~
74 ~~the invitation to bid, the awarding authority may reject the~~
75 ~~bid and negotiate the purchase or contract, providing the~~
76 ~~negotiated price is lower than the bid price.~~

77 (5) In the event both or all bids exceed the awarding
78 authority's anticipated budget, the awarding authority may
79 negotiate with the lowest responsible and responsive bidder,
80 provided the negotiated price is lower than the bid price.

81 ~~(b)~~ (c) The governing bodies of two or more contracting
82 agencies, as enumerated in subsection (a), or the governing
83 bodies of two or more counties, or the governing bodies of two
84 or more city or county boards of education, may provide, by

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85 joint agreement, for the purchase of labor, services, or work,
86 or for the purchase or lease of materials, equipment,
87 supplies, or other personal property for use by their
88 respective agencies. The agreement shall be entered into by
89 similar ordinances, in the case of municipalities, or
90 resolutions, in the case of other contracting agencies,
91 adopted by each of the participating governing bodies, which
92 shall set forth the categories of labor, services, or work, or
93 for the purchase or lease of materials, equipment, supplies,
94 or other personal property to be purchased, the manner of
95 advertising for bids and the awarding of contracts, the method
96 of payment by each participating contracting agency, and other
97 matters deemed necessary to carry out the purposes of the
98 agreement. Each contracting agency's share of expenditures for
99 purchases under any agreement shall be appropriated and paid
100 in the manner set forth in the agreement and in the same
101 manner as for other expenses of the contracting agency. The
102 contracting agencies entering into a joint agreement, as
103 ~~herein~~ permitted by this section, may designate a joint
104 purchasing or bidding agent, and the agent shall comply with
105 this article. Purchases, contracts, or agreements made
106 pursuant to a joint purchasing or bidding agreement shall be
107 subject to all terms and conditions of this article.

108 In the event that utility services are no longer exempt
109 from competitive bidding under this article, non-adjointing
110 counties may not purchase utility services by joint agreement
111 under authority granted by this subsection.

112 ~~(e)~~ (d) The awarding authority may require bidders to

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113 furnish a bid bond for a particular bid solicitation if the
114 bonding requirement applies to all bidders, is included in the
115 written bid specifications, and if bonding is available for
116 the services, equipment, or materials.

117 ~~(d)~~(e) Notwithstanding subsection (a), in the event the
118 lowest bid for an item of personal property or services to be
119 purchased or contracted for is received from a foreign entity,
120 where the county, a municipality, or an instrumentality
121 thereof is the awarding authority, the awarding authority may
122 award the contract to a responsible bidder whose bid is no
123 more than 10 percent greater than the foreign entity if the
124 bidder has a place of business within the local preference
125 zone or is a responsible bidder from a business within the
126 state that is a woman-owned enterprise, an enterprise of small
127 business, as defined in Section 25-10-3, a minority-owned
128 business enterprise, a veteran-owned business enterprise, or a
129 disadvantaged-owned business enterprise. For the purposes of
130 this subsection, foreign entity means a business entity that
131 does not have a place of business within the state.

132 (f)(1) No expenditure involving thirty thousand dollars
133 (\$30,000) or more may be split into parts involving sums of
134 less than thirty thousand dollars (\$30,000) for the purpose of
135 evading the requirements of this article.

136 (2) If an awarding authority documents its reasonable
137 belief, based on expenditures in previous years, that an
138 expenditure will not meet the dollar threshold and, based upon
139 that reasonable belief, makes the expenditure without bidding,
140 but then circumstances arise that necessitate making a

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141 subsequent expenditure of like items or services that would
142 increase the total to or above the dollar threshold, then the
143 subsequent expenditure shall be bid pursuant to this article.
144 The awarding authority shall not be deemed to have violated
145 this article for the prior expenditure that was not bid,
146 provided that the awarding authority documented its reasonable
147 belief, based on expenditures in previous years, that the
148 total amount would be below the dollar threshold and that the
149 subsequent expenditure was bid.

150 (g) Beginning October 1, 2027, and every three years
151 thereafter, all dollar amounts used in this article shall be
152 subject to a cost adjustment based on the following procedure:
153 The Chief Examiner of the Department of Examiners of Public
154 Accounts may submit to the Chair of the Legislative Council a
155 recommendation that the amount be increased based on the
156 percentage increase in the Consumer Price Index for the
157 immediately preceding three-year period, rounded to the
158 nearest thousand dollars. The recommendation shall be subject
159 to the approval of the Legislative Council. In the event the
160 recommendation is not disapproved by the Legislative Council
161 by the end of April following the submission of the
162 recommendation, the recommendation shall be deemed to be
163 approved. Upon approval, the Department of Examiners of Public
164 Accounts shall notify the public of the adjusted dollar
165 amounts by July 1 before the fiscal year in which the changes
166 will take effect."

167 "§41-16-51

168 (a) Competitive bids for entities subject to this

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169 article shall not be required for utility services, the rates
170 for which are fixed by law, regulation, or ordinance, and the
171 competitive bidding requirements of this article shall not
172 apply to any of the following:

173 (1) The purchase of insurance.

174 (2) The purchase of ballots and supplies for conducting
175 any primary, general, special, or municipal election.

176 (3) Contracts for securing services of attorneys,
177 physicians, architects, teachers, superintendents of
178 construction, artists, appraisers, engineers, consultants,
179 certified public accountants, public accountants, or other
180 individuals possessing a high degree of professional skill
181 where the personality of the individual plays a decisive part.

182 (4) Contracts of employment in the regular civil
183 service.

184 (5) Contracts for fiscal or financial advice or
185 services.

186 (6) Purchases of products made or manufactured by blind
187 or visually impaired individuals under the direction or
188 supervision of the Alabama Institute for Deaf and Blind in
189 accordance with ~~Sections 21-2-1 to 21-2-4, inclusive~~ Chapter 2
190 of Title 21.

191 (7) Purchases of maps or photographs from any federal
192 agency.

193 (8) Purchases of manuscripts, books, maps, pamphlets,
194 periodicals, and library/research electronic data bases of
195 manuscripts, books, maps, pamphlets, or periodicals.

196 (9) The selection of paying agents and trustees for any

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197 security issued by a public body.

198 (10) Existing contracts up for renewal for sanitation or
199 solid waste collection, recycling, and disposal between
200 municipalities or counties, or both, and those providing the
201 service.

202 (11) Purchases of computer and word processing hardware
203 when the hardware is the only type that is compatible with
204 hardware already owned by the entity taking bids and custom
205 software.

206 (12) Professional services contracts for codification
207 and publication of the laws and ordinances of municipalities
208 and counties.

209 (13) Contractual services and purchases of commodities
210 for which there is only one vendor or supplier and contractual
211 services and purchases of personal property which by their
212 very nature are impossible to award by competitive bidding.

213 (14) Purchases of dirt, sand, or gravel by a county
214 governing body from in-county property owners in order to
215 supply a county ~~road or bridge~~ project in which the materials
216 will be used. The material shall be delivered to the project
217 site by county employees and equipment used only on ~~projects~~
218 project components conducted exclusively by county employees.

219 (15) Contractual services and purchases of products
220 related to, or having an impact upon, security plans,
221 procedures, assessments, measures, or systems, or the security
222 or safety of persons, structures, facilities, or
223 infrastructures.

224 (16) Subject to the limitations in this subdivision,

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225 purchases, leases, or lease/purchases of goods or services,
226 other than voice or data wireless communication services, made
227 as a part of the purchasing cooperative sponsored by the
228 National Association of Counties, its successor organization,
229 or any other national or regional governmental cooperative
230 purchasing program. The purchases, leases, or lease/purchases
231 may only be made if all of the following occur:

232 a. The goods or services being purchased, including
233 those purchased through a lease/purchase agreement, or leased
234 are available as a result of a competitive bid process
235 conducted by a governmental entity and approved by the Alabama
236 Department of Examiners of Public Accounts for each bid.

237 b. The goods or services are either not at the time
238 available to counties on the state purchasing program or are
239 available at a price equal to or less than that on the state
240 purchasing program.

241 c. The purchase, lease, or lease/purchase is made
242 through a participating Alabama vendor holding an Alabama
243 business license if such a vendor exists.

244 d. The entity purchasing, leasing, or lease/purchasing
245 goods or services under this subdivision has been notified by
246 the Department of Examiners of Public Accounts that the
247 competitive bid process utilized by the cooperative program
248 offering the goods complies with this subdivision. In
249 addition, upon request, a vendor shall provide the entity
250 purchasing, leasing, or lease/purchasing ~~items that exceed~~
251 ~~fifteen thousand dollars (\$15,000)~~ goods or services equaling
252 thirty thousand dollars (\$30,000) or more which are made under

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253 ~~this exception~~ subdivision during the previous 12 months a
254 report of the sales, leases, and lease/purchases. ~~which~~
255 ~~includes~~ The report shall include a general description of the
256 goods or services; the number of units sold, leased, and
257 leased/purchased per entity; and the price of units purchased,
258 leased, or leased/purchased.

259 (17) ~~Purchase~~ Purchases of goods or services, other than
260 wireless communication services, whether voice or data, from
261 vendors that have been awarded a current and valid Government
262 Services Administration contract. Any purchase made pursuant
263 to this subdivision shall be under the same terms and
264 conditions as provided in the Government Services
265 Administration contract. Prices paid for such goods and
266 services, other than wireless communication services, whether
267 voice or data, may not exceed the amount provided in the
268 Government Services Administration contract.

269 (18) Purchases of goods or services from vendors that
270 have been awarded a current and valid statewide contract
271 listed on the Alabama Buys e-procurement system. Any purchase
272 made pursuant to this subdivision shall be under the same
273 terms and conditions as provided in the statewide contract.
274 Prices paid for such goods and services may not exceed the
275 amount provided in the statewide contract.

276 (19) Purchases of goods or services between governmental
277 entities of the state, as authorized by Section 11-1-10.

278 (b) This article shall not apply to:

279 (1) Any purchases of products where the price of the
280 products is already regulated and established by state law.

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281 (2) Purchases made by individual schools of the county
282 or municipal public school systems from monies other than
283 those raised by taxation or received through appropriations
284 from state or county sources.

285 (3) The purchase, lease, sale, construction,
286 installation, acquisition, improvement, enlargement, or
287 expansion of any building or structure or other facility
288 designed or intended for lease or sale by a medical clinic
289 board organized under ~~Sections 11-58-1 to 11-58-14, inclusive~~
290 Chapter 58 of Title 11.

291 (4) The purchase, lease, or other acquisition of
292 machinery, equipment, supplies, and other personal property or
293 services by a medical clinic board organized under ~~Sections~~
294 ~~11-58-1 to 11-58-14, inclusive~~ Chapter 58 of Title 11.

295 (5) Purchases for public hospitals and nursing homes
296 operated by the governing boards of instrumentalities of the
297 state, counties, and municipalities.

298 (6) Contracts for the purchase, lease, sale,
299 construction, installation, acquisition, improvement,
300 enlargement, or extension of any plant, building, structure,
301 or other facility or any machinery, equipment, furniture, or
302 furnishings therefor designed or intended for lease or sale
303 for industrial development, other than public utilities, under
304 ~~Sections 11-54-80 to 11-54-99, inclusive~~ Division 1 of Article
305 4 of Chapter 54 of Title 11, or Sections 11-54-20 to 11-54-28,
306 ~~inclusive~~ Article 2 of Chapter 54 of Title 11, or any other
307 law or amendment to the Constitution of Alabama of 2022
308 authorizing the construction of plants or other facilities for

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309 industrial development or for the construction and equipment
310 of buildings for public building authorities under ~~Sections~~
311 ~~11-56-1 to 11-56-22, inclusive~~ Chapter 56 of Title 11.

312 (7) The purchase of equipment, supplies, or materials
313 needed, used, and consumed in the normal and routine operation
314 of any waterworks system, sanitary sewer system, gas system,
315 or electric system, or any two or more thereof, that are owned
316 by municipalities, counties, or public corporations, boards,
317 or authorities that are agencies, departments, or
318 instrumentalities of municipalities or counties and no part of
319 the operating expenses of which system or systems, during the
320 then current fiscal year, have been paid from revenues derived
321 from taxes or from appropriations of the state, a county, or a
322 municipality.

323 (8) Purchases made by local housing authorities,
324 organized and existing under Chapter 1 of Title 24, from
325 monies other than those raised by state, county, or city
326 taxation or received through appropriations from state,
327 county, or city sources.

328 (c) The state trade schools, state junior colleges,
329 state colleges, and universities under the supervision and
330 control of the State Board of Education, the district boards
331 of education of independent school districts, the county
332 commissions, and the governing bodies of the municipalities of
333 the state shall establish and maintain such purchasing
334 facilities and procedures as may be necessary to carry out the
335 intent and purpose of this article by complying with the
336 requirements for competitive bidding in the operation and

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337 management of each state trade school, state junior college,
338 state college, or university under the supervision and control
339 of the State Board of Education, the district boards of
340 education of independent school districts, the county
341 commissions, and the governing bodies of the municipalities of
342 the state and the governing boards of instrumentalities of
343 counties and municipalities, including waterworks boards,
344 sewer boards, gas boards, and other like utility boards and
345 commissions.

346 (d) Contracts entered into in violation of this article
347 shall be void and any person who violates the provisions of
348 this article shall be guilty of a Class C felony."

349 "§41-16-52

350 (a) All expenditures of funds ~~of whatever nature~~ for
351 repair parts and the repair of heavy duty off-highway
352 construction equipment or of any vehicles with a gross vehicle
353 weight rating of 25,000 pounds or greater, including machinery
354 used for grading, drainage, road construction, and compaction
355 for the exclusive use of county and municipal highway, street,
356 and sanitation departments, involving not more than ~~twenty-two~~
357 ~~thousand five hundred dollars (\$22,500)~~ forty thousand dollars
358 (\$40,000) made by or on behalf of any county commissions and
359 the governing bodies of the municipalities of the state, and
360 the governing bodies of instrumentalities, including
361 waterworks boards, sewer boards, gas boards, and other like
362 utility boards and commissions, shall be made, at the option
363 of the governing boards, bodies, instrumentalities, and
364 commissions, without regard to this article. The foregoing

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365 exemption from this article shall apply to each incident of
366 repair as to any repair parts, equipment, vehicles, or
367 machinery. The amount of the exempted expenditure shall not be
368 construed to be an aggregate of all the expenditures per
369 fiscal year as to any individual vehicle or piece of equipment
370 or machinery.

371 (b) The option provided by subsection (a) may be
372 exercised by the governing boards, bodies, instrumentalities,
373 and commissions by specific reference to this section on any
374 ~~and all~~ purchase orders and purchase commitments executed by
375 the governing boards, bodies, instrumentalities, and
376 commissions; ~~provided, however.~~ However, the option shall not
377 be exercised by any employee, agent, or servant unless done so
378 after having received official prior approval of the
379 respective governing board, body, instrumentality, or
380 commission or unless exercised pursuant to a formal policy
381 adopted by the governing board, body, instrumentality, or
382 commission setting out conditions and restrictions under which
383 the option shall be exercised.

384 (c) All expenditures of funds ~~of whatever nature~~ for the
385 leasing of heavy duty off-highway construction equipment and
386 all vehicles with a gross vehicle weight rating of 25,000
387 pounds or greater, including machinery for grading, drainage,
388 road construction, and compaction for exclusive use of county
389 and municipal highway, street, and sanitation departments,
390 involving a monthly rental of not more than ~~five thousand~~
391 ~~dollars (\$5,000)~~ ten thousand dollars (\$10,000) per month per
392 vehicle or piece of equipment or machinery but not to exceed

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393 ~~fifteen thousand dollars (\$15,000)~~ thirty thousand dollars
394 (\$30,000) per month for all such vehicles and pieces of
395 equipment made by or on behalf of any county commissions and
396 the governing boards of municipalities of the state and the
397 governing bodies of instrumentalities, including waterworks
398 boards, sewer boards, gas boards, and other like utility
399 boards and commissions shall be made, at the option of the
400 governing boards, bodies, instrumentalities, and commissions,
401 without regard to ~~the provisions of~~ this article."

402 "§41-16-53

403 ~~In case of emergency affecting public health, safety or~~
404 ~~convenience, so declared in writing by the awarding authority,~~
405 ~~setting forth the nature of the danger to public health,~~
406 ~~safety or convenience involved in delay, contracts may be let~~
407 ~~to the extent necessary to meet the emergency without public~~
408 ~~advertisement. Such action and the reasons therefor shall~~
409 ~~immediately be made public by the awarding~~
410 ~~authority. Notwithstanding any law to the contrary, in the~~
411 ~~event circumstances arise for which a delay in remedying or~~
412 ~~otherwise addressing would likely cause harm to an individual~~
413 ~~or public property, a contract may be let to the extent~~
414 ~~necessary to mitigate the harm without regard to the~~
415 ~~requirements of this article, provided the awarding authority~~
416 ~~does both of the following:~~

417 (1) Documents two or more price quotations or price
418 estimates before letting the contract.

419 (2) Adopts a resolution declaring the nature of the
420 circumstances, the action to be taken, and the reasons for

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421 taking the action."

422 "§41-16-54

423 (a) (1) All proposed purchases in excess of ~~fifteen~~
424 ~~thousand dollars (\$15,000)~~ thirty thousand dollars (\$30,000)
425 shall be advertised by posting notice thereof on a bulletin
426 board maintained outside the purchasing office and in any
427 other manner and for any length of time as may be determined.
428 Sealed bids or bids to be submitted by a reverse auction
429 procedure shall also be solicited by sending notice by mail or
430 other electronic means to all persons, firms, or corporations
431 who have filed a request in writing that they be listed for
432 solicitation on bids for the particular items that are set
433 forth in the request. If any person, firm, or corporation
434 whose name is listed fails to respond to any solicitation for
435 bids after the receipt of three solicitations, the listing may
436 be cancelled.

437 (2) If a governing body mandates that advertisement for
438 bids shall be published in a newspaper, the contract for
439 purchase shall be awarded if the newspaper to which the
440 advertisement was submitted did not publish the advertisement
441 if the governing body can provide proof that it in good faith
442 submitted the advertisement to the newspaper with instructions
443 to publish the notice in accordance with this section.

444 (b) Except as provided in subsection (d), all bids shall
445 be sealed when received and shall be opened in public at the
446 hour stated in the notice.

447 (c) If the purchase or contract will involve an amount
448 of ~~fifteen thousand dollars (\$15,000) or less~~ less than thirty

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449 thousand dollars (\$30,000), the purchases or contracts may be
450 made upon the basis of sealed bids, a joint purchasing
451 agreement, a reverse auction procedure, or in the open market.

452 (d) Beginning January 1, 2009, the awarding authority
453 may make purchases or contracts involving an amount of ~~fifteen~~
454 ~~thousand dollars (\$15,000)~~ thirty thousand dollars (\$30,000)
455 or more through a reverse auction procedure, ~~provided,~~
456 ~~however, that.~~ However, a reverse auction shall only be
457 allowed where the item to be purchased at a reverse auction is
458 either not at the time available on the state purchasing
459 program under the same terms and conditions or, if available,
460 the lowest price offered in the reverse auction is equal to or
461 less than the price for which the item is available on the
462 state purchasing program under the same terms and conditions.

463 All of the purchases shall be subject to audit by the
464 Examiners of Public Accounts. For purposes of this article, a
465 reverse auction procedure includes either of the following:

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

470 (2) a. A bidding process usually lasting less than two
471 weeks and taking place during a previously scheduled period
472 and at a previously scheduled Internet location, in which
473 multiple anonymous suppliers submit bids to provide the
474 designated goods or services.

475 b. No later than November 30, 2008, the Department of
476 Examiners of Public Accounts shall establish procedures for

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477 the use of reverse auction, which shall be distributed to all
478 contracting agencies and shall be used in conducting any
479 audits of the purchasing agency.

480 (e) All original bids together with all documents
481 pertaining to the award of the contract shall be retained in
482 accordance with a retention period of at least seven years
483 established by the Local Government Records Commission and
484 shall be open to public inspection.

485 (f) No purchase or contract involving professional
486 services shall be subject to the requirements of this article
487 ~~and no purchase or contract involving an amount in excess of~~
488 ~~fifteen thousand dollars (\$15,000) shall be divided into parts~~
489 ~~involving amounts of fifteen thousand dollars (\$15,000) or~~
490 ~~less for the purpose of avoiding the requirements of this~~
491 ~~article. All such partial contracts involving fifteen thousand~~
492 ~~dollars (\$15,000) or less shall be void.~~

493 (g) This section shall be applicable to education
494 purchases made pursuant to Chapter 13B of Title 16."

495 "§41-16-55

496 (a) Any agreement or collusion among bidders or
497 prospective bidders in restraint of freedom of competition, by
498 agreement, to bid at a fixed price or to refrain from bidding
499 or otherwise shall render the bids of ~~such~~ the bidders void
500 and shall cause ~~such~~ the bidders to be disqualified from
501 submitting further bids to the awarding authority on future
502 purchases.

503 (b) Whoever knowingly participates in a collusive
504 agreement in violation of this section involving a bid or bids

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505 ~~of fifteen thousand dollars (\$15,000)~~ less than thirty
506 thousand dollars (\$30,000) ~~and under~~ shall be guilty of a
507 Class A misdemeanor and, upon conviction, shall be punished as
508 prescribed by law.

509 (c) Whoever knowingly and intentionally participates in
510 a collusive agreement in violation of this section involving a
511 bid or bids of ~~over fifteen thousand dollars (\$15,000)~~ thirty
512 thousand dollars (\$30,000) or more shall be guilty of a Class
513 C felony, and upon conviction shall be punished as prescribed
514 by law."

515 Section 2. Although this bill would have as its purpose
516 or effect the requirement of a new or increased expenditure of
517 local funds, the bill is excluded from further requirements
518 and application under Section 111.05 of the Constitution of
519 Alabama of 2022, because the bill defines a new crime or
520 amends the definition of an existing crime.

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



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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB108
Senate 06-Apr-23
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 27-Apr-23

By: Senator Coleman-Madison

APPROVED _____
TIME _____
Became law without
Governor's signature

GOVERNOR

Alabama Secretary Of State

Act Num....: 2023-135
Bill Num....: S-108

Recv'd 05/10/23 09:24amSLF

FOR

ONSORS

W. Glenn Maden

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- CLX* 20
- Wiggin* 21
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SENATE ACTION

DATE: 3-21 2023
 RD 1 RFD SGA

I hereby certify that the notice & proof is attached to the Bill, SB _____ as required in the General Acts of Alabama, 1975 Act No. 919.
PATRICK HARRIS,
 Secretary

This Bill was referred to the Standing Committee of the Senate on SGA and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amd(s) _____ w/sub _____ w/eng sub _____ years 10 nays 0 abstain 0 this 5 day of April, 2023
Tom Butler, Chairperson

DATE: 4-5 2023
 RF FAV RD 2 CAL

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB 108.
 years 31 nays 0 abstain 0
PATRICK HARRIS,
 Secretary

DATE: 4-6-23 RD 3 at length
 PASSED PASSED AS AMENDED
 years 31 nays 0 abstain 0
 And was ordered sent forthwith to the House.

HOUSE ACTION

DATE: 4-6 2023
 RD 1 RFD SG

REPORT OF STANDING COMMITTEE
 This bill having been referred by the House to its standing committee on State Government was acted upon by such Committee in session, and returned therefrom to the House with the recommendation that it be Passed w/amd(s) _____ w/sub _____ this 19 day of April, 2023.
Chris Sells, Chairperson

DATE: 4-19 2023
 RF RD 2 CAL

DATE: _____ 20____
 RE-REFERRED RE-COMMITTED
 COMMITTEE _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB 108.
 YEARS 102 NAYS 0

HB168 ENROLLED



ACT #2023 - 497

- 1 KJ7EUA-3
- 2 By Representatives Underwood, Pettus, Rigsby, Lomax, Woods
- 3 RFD: State Government
- 4 First Read: 21-Mar-23
- 5 2023 Regular Session



HB168 Enrolled



1 Enrolled, An Act,

2
3
4

5 Relating to public works contracts; to amend Sections
6 39-1-1, 39-2-1, 39-2-2, and 39-2-6, Code of Alabama 1975, to
7 increase the threshold dollar amount for which competitive
8 bidding is generally required; to further provide for certain
9 notice procedures; to authorize the publication of notice by
10 electronic means; to authorize the use of electronic sealed
11 bids; and in connection therewith would have as its purpose or
12 effect the requirement of a new or increased expenditure of
13 local funds within the meaning of Section 111.05 of the
14 Constitution of Alabama of 2022.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 39-1-1, 39-2-1, 39-2-2, and 39-2-6,
17 Code of Alabama 1975, are amended to read as follows:

18 "§39-1-1

19 (a) Any person entering into a contract with an
20 awarding authority in this state for the prosecution of any
21 public works~~shall~~, before commencing the work, shall execute
22 a performance bond, with penalty equal to 100 percent of the
23 amount of the contract price. In addition, another bond,
24 payable to the awarding authority letting the contract, shall
25 be executed in an amount not less than 50 percent of the
26 contract price, with the obligation that the contractor or
27 contractors shall promptly make payments to all persons
28 supplying labor, materials, or supplies for or in the

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29 prosecution of the work provided in the contract and for the
30 payment of reasonable ~~attorneys'~~attorney fees incurred by
31 successful claimants or plaintiffs in civil actions on the
32 bond.

33 (b) Any person that has furnished labor, materials, or
34 supplies for or in the prosecution of a public work and
35 payment has not been made may institute a civil action upon
36 the payment bond and have their rights and claims adjudicated
37 in a civil action and judgment entered thereon.

38 Notwithstanding the foregoing, a civil action shall not be
39 instituted on the bond until 45 days after written notice to
40 the surety of the amount claimed to be due and the nature of
41 the claim. The civil action shall be commenced not later than
42 one year from the date of final settlement of the contract.

43 The giving of notice by registered or certified mail, postage
44 prepaid, addressed to the surety at any of its places of
45 business or offices shall be deemed sufficient under this
46 section. In the event the surety or contractor fails to pay
47 the claim in full within 45 days from the mailing of the
48 notice, then the person or persons may recover from the
49 contractor and surety, in addition to the amount of the claim,
50 a reasonable ~~attorney's~~attorney fee based on the result,
51 together with interest on the claim from the date of the
52 notice.

53 (c) Every person having a right of action on the last
54 described bond as provided in this section ~~shall~~, upon written
55 application to the authority under the direction of whom the
56 work has been prosecuted, indicating that labor, material,

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57 foodstuffs, or supplies for the work have been supplied and
58 that payment has not been made, shall be promptly furnished a
59 certified copy of the additional bond and contract. The
60 claimant may bring a civil action in the claimant's name on
61 the bond against the contractor and the surety, or either of
62 them, in the county in which the work is to be or has been
63 performed or in any other county where venue is otherwise
64 allowed by law.

65 (d) In the event a civil action is instituted on the
66 payment bond, at any time more than 15 days before the trial
67 begins, any party may serve upon the adverse party an offer to
68 accept judgment in favor of the offeror or to allow judgment
69 to be entered in favor of the offeree for the money or as
70 otherwise specified in the offer. If within 10 days after the
71 service of the offer, the adverse party serves written notice
72 that the offer is accepted, either party may then file the
73 offer and notice of acceptance together with proof of service
74 and the clerk of the court shall enter judgment. An offer not
75 accepted shall be deemed withdrawn and evidence of the offer
76 shall not be admissible. If the judgment finally obtained by
77 the offeree is less favorable than the offer, the offeree
78 shall pay the reasonable ~~attorney's~~attorney fees and costs
79 incurred by the offeror after the making of the offer. An
80 offer that is made but not accepted does not preclude a
81 subsequent offer. When the liability of one party to another
82 party has been determined by verdict, order, or judgment, but
83 the amount or extent of the liability remains to be determined
84 by further proceedings, any party may make an offer of

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85 judgment, which shall have the same effect as an offer made
86 before trial if the offer is made no less than 10 days prior
87 to the commencement of hearings to determine the amount or
88 extent of liability.

89 (e) This section shall not require the taking of a bond
90 to secure contracts in an amount less than ~~fifty thousand~~
91 ~~dollars (\$50,000)~~ one hundred thousand dollars (\$100,000).

92 (f) (1) The contractor shall, immediately after the
93 completion of the contract, shall give notice of the
94 completion by an advertisement in a newspaper of general
95 circulation published within the city or county in which the
96 work has been done, for a period of four successive
97 weeks, publishing the notice for a minimum of three weeks using
98 one or more of the following methods:

99 a. In a newspaper of general circulation in the county
100 or counties in which the work, or some portion thereof, has
101 been done.

102 b. On a website that is maintained by a newspaper of
103 general circulation in the county or counties in which the
104 work, or some portion thereof, has been done.

105 c. On a website utilized by the awarding authority for
106 publishing notices.

107 (2) If no newspaper is published in the county in which
108 the work was done, and if the awarding authority does not
109 utilize a website for the purpose of publishing notices, the
110 notice may be given by posting at the courthouse for 30 days,
111 and proof of the posting of the notice shall be given by the
112 awarding authority and the contractor.

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113 (3) A final settlement shall not be made upon the
114 contract until the expiration of 30 days after the completion
115 of the notice. Proof of publication of the notice shall be
116 made by the contractor to the authority by whom the contract
117 was made by affidavit of the publisher or website owner and a
118 printed copy of the notice published. ~~If no newspaper is~~
119 ~~published in the county in which the work is done, the notice~~
120 ~~may be given by posting at the courthouse for 30 days, and~~
121 ~~proof of same shall be made by the judge of probate, sheriff,~~
122 ~~and the contractor.~~

123 (4) For contracts for road resurfacing materials that
124 are awarded on an annual basis, where the bid specifications
125 include options such as a unit price for materials, a unit
126 price for the delivery of materials, or a unit price for
127 materials to be laid in place by the bidder, notice of
128 completion pursuant to this subsection may be given on an
129 annual basis upon completion of the project as a whole, rather
130 than at the completion of each proceed order.

131 (g) Subsection (f) shall not apply to contractors
132 performing contracts of less than ~~fifty thousand dollars~~
133 ~~(\$50,000)~~ one hundred thousand dollars (\$100,000) in amount. ~~In~~
134 ~~such cases, the governing body of the contracting agency, to~~
135 ~~expedite final payment, shall cause notice of final completion~~
136 ~~of the contract to be published one time in a newspaper of~~
137 ~~general circulation, published in the county of the~~
138 ~~contracting agency and shall post notice of final completion~~
139 ~~on the agency's bulletin board for one week, and shall require~~
140 ~~the contractor to certify under oath that all bills have been~~

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141 ~~paid in full. Final settlement with the contractor may be made~~
142 ~~at any time after the notice has been posted for one entire~~
143 ~~week."~~

144 "\$39-2-1

145 As used in this title, the following words shall have
146 the meanings ascribed to them as follows:

147 (1) AWARDING AUTHORITY. Any governmental board,
148 commission, agency, body, authority, instrumentality,
149 department, or subdivision of the state, its counties and
150 municipalities. This term includes, but shall not be limited
151 to, the Department of Transportation, ~~the State Building~~
152 ~~Commission~~ the Division of Real Property Management of the
153 Department of Finance, the State Board of Education, and any
154 other entity contracting for public works. This term shall
155 exclude the State Docks Department and any entity exempted
156 from the competitive bid laws of the state by statute.

157 (2) FORCE ACCOUNT WORK. Work paid for by reimbursing
158 for the actual costs for labor, materials, and equipment usage
159 incurred in the performance of the work, as directed,
160 including a percentage for overhead and profit, where
161 appropriate.

162 (3) LIFE CYCLE COSTS. The total cost of ownership over
163 the extended life of a public works project, taking into
164 consideration the costs of construction, operation, and
165 maintenance, less any value obtained from salvage and
166 quantifiable environmental benefits, or the sum of all
167 recurring and one-time (non-recurring) costs over the full
168 life span or a specified period of a good, service, structure,

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169 or system, including purchase price, installation costs,
170 operating costs, maintenance and upgrade costs, and remaining
171 (residual or salvage) value at the end of ownership or its
172 useful life.

173 (4) PERSON. Natural persons, partnerships, limited
174 liability companies, corporations, and other legal entities.

175 (5) PUBLIC PROPERTY. Real property which the state,
176 county, municipality, or awarding authority thereof owns or
177 has a contractual right to own or purchase, including
178 easements, rights-of-way, or otherwise.

179 (6) PUBLIC WORKS. The construction, installation,
180 repair, renovation, or maintenance of public buildings,
181 structures, sewers, waterworks, roads, curbs, gutters, side
182 walls, bridges, docks, underpasses, and viaducts as well as
183 any other improvement to be constructed, installed, repaired,
184 renovated, or maintained on public property and to be paid, in
185 whole or in part, with public funds or with financing to be
186 retired with public funds in the form of lease payments or
187 otherwise."

188 "\$39-2-2

189 (a) (1) Before entering into any contract for a public
190 works involving an amount in excess of ~~fifty thousand dollars~~
191 ~~(\$50,000)~~ one hundred thousand dollars (\$100,000), the
192 awarding authority shall advertise for sealed bids, except as
193 provided in subsection (j).

194 (2)a. If the awarding authority is the state, ~~or~~ a
195 county, or an instrumentality thereof, it shall advertise for
196 sealed bids at least once each week for three consecutive

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197 weeks in a newspaper of general circulation in the county or
198 counties in which the improvement, or some part thereof, is to
199 be made.

200 b. If the awarding authority is a municipality, or an
201 instrumentality thereof, it shall advertise for sealed bids at
202 least once in a newspaper of general circulation published in
203 the municipality where the awarding authority is located. If
204 no newspaper is published in the municipality, the awarding
205 authority shall advertise by posting notice thereof on a
206 bulletin board maintained outside the purchasing office and in
207 any other manner and for the length of time as may be
208 determined. In addition to bulletin board notice, sealed bids
209 shall also be solicited by sending notice by mail to all
210 persons who have filed a request in writing with the official
211 designated by the awarding authority that they be listed for
212 solicitation on bids for the public works contracts indicated
213 in the request. If any person whose name is listed fails to
214 respond to any solicitation for bids after the receipt of
215 three such solicitations, the listing may be canceled.

216 ~~(3) With the exception of the Department of~~
217 ~~Transportation, for all public works contracts involving an~~
218 ~~estimated amount in excess of five hundred thousand dollars~~
219 ~~(\$500,000), awarding authorities shall also advertise for~~
220 ~~sealed bids at least once in three newspapers of general~~
221 ~~circulation throughout the state.~~

222 ~~(4)~~ (3) The advertisements shall briefly describe the
223 improvement, state that plans and specifications for the
224 improvement are on file for examination in a designated office

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225 of the awarding authority, state the procedure for obtaining
226 plans and specifications, state the time and place in which
227 bids shall be received and opened, and identify whether
228 prequalification is required and where all written
229 prequalification information is available for review.

230 ~~(5)~~ (4) All bids shall be opened publicly at the
231 advertised time and place.

232 ~~(6)~~ (5) No public work, as defined in this chapter,
233 involving a sum in excess of ~~fifty thousand dollars (\$50,000)~~
234 one hundred thousand dollars (\$100,000) shall be split into
235 parts involving sums of ~~fifty thousand dollars (\$50,000)~~ one
236 hundred thousand dollars (\$100,000) or less for the purpose of
237 evading the requirements of this section.

238 (b) (1) An awarding authority may let contracts for
239 public works involving ~~fifty thousand dollars (\$50,000)~~ one
240 hundred thousand dollars (\$100,000) or less with or without
241 advertising or sealed bids.

242 (2) An awarding authority may enter into a contract for
243 public works if an advertisement for sealed bids for the
244 contract was submitted by the awarding authority to a
245 newspaper and the newspaper only published the advertisement
246 for two weeks if the authority can provide proof that it, in
247 good faith, submitted the advertisement to the newspaper with
248 instructions to publish the notice in accordance with the
249 provisions of this section.

250 (c) All contracts for public works entered into in
251 violation of this title shall be void and violative of public
252 policy. Anyone who willfully violates this article concerning

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253 public works shall be guilty of a Class C felony.

254 (d) (1) Excluded from the operation of this title shall
255 be contracts with persons who shall perform only
256 architectural, engineering, construction management, program
257 management, or project management services in support of the
258 public works and who shall not engage in actual construction,
259 repair, renovation, or maintenance of the public works with
260 their own forces, by contract, subcontract, purchase order,
261 lease, or otherwise.

262 (2) Excluded from operation of the bidding requirements
263 in this title are contracts for the purchase of any heating or
264 air conditioning units or systems by any awarding authority
265 subject to Chapter 13B of Title 16, or Article 3, commencing
266 with Section 41-16-50, of Chapter 16 of Title 41, or Article
267 5, commencing with Section 41-4-110, of Chapter 4 of Title 41,
268 provided the contract is entered into with an Alabama vendor
269 who has been granted approved vendor status for the sale of
270 heating or air conditioning units or systems as a part of a
271 purchasing cooperative, and each of the following occur:

272 a. The heating or air conditioning unit or system being
273 purchased is available as a result of a competitive bid
274 process conducted by a governmental entity which has been
275 approved by the Department of Examiners of Public Accounts.

276 b. The purchase of the heating or air conditioning unit
277 or system is not available on the state purchasing program at
278 the time or the purchase under the purchasing cooperative is
279 available at a price that is equal to or less than that
280 available through the state purchasing program.

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281 c. The entity entering into the contract for the
282 purchase of the heating or air conditioning unit or system has
283 been notified by the Department of Examiners of Public
284 Accounts that the competitive bid process utilized by the
285 cooperative program offering the goods complies with this
286 subdivision.

287 d. Upon request, the vendor has provided the purchasing
288 entity with a report of sales made under this subdivision
289 during the previous 12-month period, to include a general
290 description of the heating or air conditioning units and
291 systems sold, the number of units sold per entity, and the
292 purchase price of the units.

293 e. The exemption from the requirement to utilize sealed
294 bids for the purchase of heating or air conditioning units or
295 systems authorized by this section shall not serve to exempt
296 any public works project from the remaining provisions of this
297 article, including, but not limited to, design, installation,
298 and review requirements, compliance with all applicable codes,
299 laws, specifications, and standards, and the compensation of
300 engineers, architects, or others as mandated by state law or
301 rule.

302 ~~(e) (1) In case of an emergency affecting public health,~~
303 ~~safety, or convenience, as declared in writing by the governing~~
304 ~~authority, setting forth the nature of the danger to the~~
305 ~~public health, safety, or convenience which would result from~~
306 ~~delay, contracts may be let to the extent necessary to meet~~
307 ~~the emergency without public advertisement. The action and the~~
308 ~~reasons for the action taken shall immediately be made public~~

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309 ~~by the awarding authority upon request.~~ In case of an
310 emergency for which a delay in remedying would cause immediate
311 harm to a person or public property, contracts may be let to
312 the extent necessary to meet the emergency without public
313 advertisement or bidding.

314 (2) In case of an emergency affecting public health,
315 safety, or convenience, as declared in writing by the awarding
316 authority, setting forth the nature of the danger to the
317 public health, safety, or convenience which would result from
318 delay, contracts may be let to the extent necessary to meet
319 the emergency without public advertisement.

320 (3) Any action taken under subdivision (1) or (2), and
321 the reasons for the action taken, shall immediately be made
322 public by the awarding authority and published in writing.

323 (f) No awarding authority may specify in the plans and
324 specifications for the improvement the use of materials,
325 products, systems, or services by a sole source unless all of
326 the following requirements are met:

327 (1) Except for contracts involving the construction,
328 reconstruction, renovation, or replacement of public roads,
329 bridges, and water and sewer facilities, the awarding
330 authority can document to the satisfaction of the ~~Division of~~
331 ~~Construction Management~~ Division of Real Property Management
332 of the Department of Finance, or in the case of an educational
333 institution or state educational institution as provided
334 pursuant to Sections 41-4-353 and 41-4-400, to the
335 satisfaction of its governing board, that the sole source
336 product, material, system, or service is of an indispensable

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337 nature for the improvement, that there are no other viable
338 alternatives, and that only this particular product, material,
339 system, or service fulfills the function for which it is
340 needed.

341 (2) The sole source specification has been recommended
342 by the architect or engineer of record as an indispensable
343 item for which there is no other viable alternative.

344 (3) All information substantiating the use of a sole
345 source specification, including the recommendation of the
346 architect or engineer of record, shall be documented and made
347 available for examination in the office of the awarding
348 authority at the time of advertisement for sealed bids.

349 (g) In the event of a proposed public works project,
350 acknowledged in writing by the Alabama Homeland Security
351 Department as: (1) having a direct impact on the security or
352 safety of persons or facilities; and (2) requiring
353 confidential handling for the protection of such persons or
354 facilities, contracts may be let without public advertisement
355 but with the taking of informal bids otherwise consistent with
356 the requirements of this title and the requirements of
357 maintaining confidentiality. Records of bidding and award
358 shall not be disclosed to the public and shall remain
359 confidential.

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

364 (i) The awarding authority may not offer a contract for

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365 bidding unless confirmation of any applicable grant has been
366 received and any required matching funds have been secured by
367 or are available to the awarding authority.

368 (j) Notwithstanding subsection (a), the Department of
369 Transportation may enter into contracts for road construction
370 or road maintenance projects that do not involve more than two
371 hundred fifty thousand dollars (\$250,000) without advertising
372 for sealed bids, provided the project is listed on the
373 department website for at least seven calendar days before
374 entering into the contract. The total cost of all projects not
375 subject to advertising and sealed bids pursuant to this
376 subsection may not exceed one million dollars (\$1,000,000) in
377 the aggregate per year.

378 (k) For the purposes of this chapter, sealed bids may
379 also be solicited and submitted through electronic means
380 including, but not limited to, electrical, digital, magnetic,
381 optical, electromagnetic, or any other similar technology,
382 provided that the awarding authority adopts rules and policies
383 to ensure that all electronic submissions are transmitted
384 securely and bids remained sealed until bid opening.

385 (l)(1) Notwithstanding any other provision of law, any
386 entity subject to this chapter that is an awarding authority
387 of a contract for public works, by resolution or board action,
388 may purchase materials or equipment pursuant to subdivisions
389 (14), (16), 17), (18), or (19) of Section 41-16-51(a), even
390 when those materials or equipment are otherwise part of the
391 contract for public works subject to the requirements of this
392 title.

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393 (2) Except for those materials or equipment described
394 in subdivision (1), the remaining portion of the public works
395 project shall be subject to the requirements of this title,
396 even if the remaining portion would involve an amount less
397 than one hundred thousand dollars (\$100,000) as a result of
398 the exclusion of the purchase of the materials or equipment as
399 described in subdivision (1)."

400 "\$39-2-6

401 (a) The contract shall be awarded to the lowest
402 responsible and responsive bidder, unless the awarding
403 authority finds that all the bids are unreasonable or that it
404 is not ~~to~~in the interest of the awarding authority to accept
405 any of the bids. A responsible bidder is one who, among other
406 qualities determined necessary for performance, is competent,
407 experienced, and financially able to perform the contract. A
408 responsive bidder is one who submits a bid that complies with
409 the terms and conditions of the invitation for bids. Minor
410 irregularities in the bid shall not defeat responsiveness. The
411 bidder to whom the award is made shall be notified by
412 ~~telegram,~~ confirmed facsimile, electronic mail, or letter at
413 the earliest possible date. If the successful bidder fails or
414 refuses to sign the contract, to make bond as provided in this
415 chapter, or to provide evidence of insurance as required by
416 the bid documents, the awarding authority may award the
417 contract to the second lowest responsible and responsive
418 bidder. If the second lowest bidder fails or refuses to sign
419 the contract, make bond as provided in this chapter, or to
420 provide evidence of insurance as required by the bid

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421 documents, the awarding authority may award the contract to
422 the third lowest responsible and responsive bidder.

423 (b) If no bids or only one bid is received at the time
424 stated in the advertisement for bids, the awarding authority
425 may advertise for and seek other competitive bids, or the
426 awarding authority may direct that the work shall be done by
427 force account under its direction and control or, with the
428 exception of the Department of Transportation, the awarding
429 authority may negotiate for the work through the receipt of
430 informal bids not subject to the requirements of this section.
431 Where only one responsible and responsive bid has been
432 received, any negotiation for the work shall be for a price
433 lower than that bid.

434 (c) ~~When~~ With the exception of the Department of
435 Transportation, when two or more bids are received, and all
436 bids exceed available funding for the contract, a local board
437 of education or a public two-year or four-year institution of
438 higher education the awarding authority may negotiate for the
439 work with the lowest responsible and responsive bidder,
440 provided that the ~~local board of education or public two-year~~
441 ~~or four-year institution of higher education~~ awarding
442 authority can document the shortage of funding, that time is
443 of the essence, and that the negotiated changes are in the
444 public interest and do not materially alter the scope and
445 nature of the project.

446 (d) If the awarding authority finds that all bids
447 received are unreasonable or that it is not to the interest of
448 the awarding authority to accept any of the bids, the awarding

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449 authority may direct that the work shall be done by force
450 account under its direction and control.

451 (e) On any construction project on which the awarding
452 authority has prepared plans and specifications, has received
453 bids, and has determined to do by force account or by
454 negotiation, the awarding authority shall make available the
455 plans and specifications, an itemized estimate of cost, and
456 any informal bids for review by the Department of Examiners of
457 Public Accounts and, upon completion of the project by an
458 awarding authority, the final total costs together with an
459 itemized list of cost of any and all changes made in the
460 original plans and specifications shall also be made available
461 for review by the Department of Examiners of Public Accounts.
462 Furthermore, the above described information shall be made
463 public by the awarding authority upon request. Upon the
464 approval of the awarding authority, its duly authorized
465 officer or officers, when proceeding upon the basis of force
466 account, may let any subdivision or unit of work by contract
467 on informal bids.

468 (f) No provision of this section shall be interpreted
469 as precluding the use of convict labor by the awarding
470 authority. This section shall not apply to routine maintenance
471 and repair jobs done by maintenance personnel who are regular
472 employees of the awarding authority, nor shall it apply to
473 road or bridge construction work performed by an awarding
474 authority's regular employees and own equipment.

475 (g) No contract awarded to the lowest responsible and
476 responsive bidder shall be assignable by the successful bidder

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477 without written consent of the awarding authority, and in no
478 event shall a contract be assigned to an unsuccessful bidder
479 whose bid was rejected because he or she was not a responsible
480 or responsive bidder.

481 (h) Any agreement or collusion among bidders or
482 prospective bidders in restraint of freedom of competition to
483 bid at a fixed price or to refrain from bidding or otherwise
484 shall render the bids void and shall cause the bidders or
485 prospective bidders to be disqualified from submitting further
486 bids to the awarding authority on future lettings. Any bidder
487 or prospective bidder who willfully participates in any
488 agreement or collusion in restraint of freedom of competition
489 shall be guilty of a felony and, on conviction thereof, shall
490 be fined not less than five thousand dollars (\$5,000) nor more
491 than fifty thousand dollars (\$50,000) or, at the discretion of
492 the jury, shall be imprisoned in the penitentiary for not less
493 than one nor more than three years.

494 (i) Any disclosure in advance of the terms of a bid
495 submitted in response to an advertisement for bids shall
496 render the proceedings void and require advertisement and
497 award anew.

498 (j) The lowest responsible and responsive bidder on a
499 public works project may be determined to be the bidder
500 offering the lowest life cycle costs. The lowest responsible
501 and responsive bidder shall otherwise meet all of the
502 conditions and specifications contained in the invitation to
503 bid, except that a bidder may still be considered responsive
504 if he or she responds with a bid using different construction



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505 materials than those specified in the invitation to bid if the
506 materials' use would result in lower life cycle costs for the
507 public works project. To utilize this provision to determine
508 the lowest responsible and responsive bidder, the awarding
509 authority must include a notice in the invitation to bid that
510 the lowest responsible and responsive bidder may be determined
511 by using life cycle costs, and must also include in the
512 invitation to bid the criteria under which it shall evaluate
513 the life cycle costs."

514 Section 2. Although this bill would have as its purpose
515 or effect the requirement of a new or increased expenditure of
516 local funds, the bill is excluded from further requirements
517 and application under Section 111.05 of the Constitution of
518 Alabama of 2022, because the bill defines a new crime or
519 amends the definition of an existing crime.

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



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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 23-May-23, as amended.

John Treadwell
Clerk

Senate

01-Jun-23

Passed

APPROVED

6-14-2023

TIME

9:30 am

GOVERNOR

Alabama Secretary Of State

Act Num....: 2023-497
Bill Num...: H-168

Recv'd 06/15/23 09:46amSLF

SPONSOR

Underwood

CO-SPONSORS

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HOUSE ACTION

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 168

YEAS 99 NAYS 0

JOHN TREADWELL, Clerk

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. _____ AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919.

JOHN TREADWELL, Clerk

CONFERENCE COMMITTEE

House Conferees _____

SENATE ACTION TRW

DATE: 5-23 2023

RD 1 RFD FRED

This Bill was referred to the Standing Committee of the Senate on _____ FRED

and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amend(s) _____ w/sub _____ by a vote of yeas 11 nays 0 abstain 0 this 24th day of May 2023

John Judger, Chair

DATE: 5-24 2023

RF FAV RD 2 CAL

DATE: _____ 20__

RE-REFERRED RE-COMMITTED

Committee _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB _____

YEAS _____ NAYS _____

PATRICK HARRIS,
Secretary

FURTHER SENATE ACTION (OVER)