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3 VERSION ~~7~~8.0

4 ~~March 6~~February 24, 2015

5 ~~3:00~~5:19 p.m.

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7 SYNOPSIS: This bill would give public owners new
8 alternative means for procuring design and
9 construction services for public works contracts by
10 making available the construction manager/general
11 contractor and design-build project delivery
12 methods as additional options when determined by
13 the awarding authority that these alternative
14 project delivery methods potentially offer better
15 value to taxpayers than the design-bid-build
16 method.

17 In addition to the existing design-bid-build
18 project delivery method, this bill would provide
19 awarding authorities the alternatives of selecting
20 a construction manager/general contractor or a
21 design-builder, would specify that a construction
22 manager/general contractor or a design-builder
23 assumes the risk for construction, rehabilitation,
24 renovation, alteration, or repair of a public works
25 project at the contracted price, and would set
26 forth the selection process for the
27 ~~CM/GC~~contractors and subcontractors necessary to
28 complete ~~thea~~ public works project by the
29 construction manager/general contractor method and

1 ~~er the selection process for the design-builder to~~
2 ~~complete a public works project by the~~ design-build
3 process. Furthermore, this bill would provide that
4 prior experience as a construction manager/general
5 contractor or a design-builder on a public project
6 shall not be a criterion for qualification to be
7 selected to submit a proposal on a construction
8 manager/general contractor or design-build project.

9 Amendment 621 of the Constitution of Alabama
10 of 1901, now appearing as Section 111.05 of the
11 Official Recompilation of the Constitution of
12 Alabama of 1901, as amended, prohibits a general
13 law whose purpose or effect would be to require a
14 new or increased expenditure of local funds from
15 becoming effective with regard to a local
16 governmental entity without enactment by a 2/3 vote
17 unless: it comes within one of a number of
18 specified exceptions; it is approved by the
19 affected entity; or the Legislature appropriates
20 funds, or provides a local source of revenue, to
21 the entity for the purpose.

22 The purpose or effect of this bill would be
23 to require a new or increased expenditure of local
24 funds within the meaning of the amendment. However,
25 the bill does not require approval of a local
26 governmental entity or enactment by a 2/3 vote to
27 become effective because it comes within one of the
28 specified exceptions contained in the amendment.
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A BILL
TO BE ENTITLED
AN ACT

Relating to public works projects; to designate existing Chapter 2, consisting of Sections 39-2-1 to 39-2-14, inclusive, of Title 39, Code of Alabama 1975, as Article 1 and add Articles 2 and 3, consisting of Sections 39-2-40 to 39-2-43 and 39-2-60 to 39-2-~~686~~, inclusive, to Chapter 2 of Title 39, Code of Alabama 1975; and amend Sections 39-2-1 and 39-2-2, Code of Alabama 1975, to authorize the selection by an awarding authority of a construction manager/general contractor or a design-builder; to specify that a construction manager/general contractor or a design-builder assumes the risk for construction, rehabilitation, renovation, alteration, or repair of a public works project; to provide for the selection of the contractors and subcontractors for the project by the construction manager/general contractor or a design-builder; to exclude all contracts to be awarded by the Alabama Department of Transportation, or a county or municipality for the construction or maintenance of a public road or highway, from Article 2 and Article 3 as created by this act; to provide penalties; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of

1 Amendment 621 of the Constitution of Alabama of 1901, now
2 appearing as Section 111.05 of the Official Recompilation of
3 the Constitution of Alabama of 1901, as amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. An article heading is added before
6 Section 39-2-1 of the Code of Alabama 1975, to read as
7 follows:

8 ARTICLE 1. GENERAL; DESIGN-BID-BUILD PUBLIC WORKS
9 CONTRACTS.

10 Section 2. Sections 39-2-1 and 39-2-2 of the Code of
11 Alabama 1975, are amended to read as follows:

12 §39-2-1.

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

15 (1) AWARDING AUTHORITY. Any governmental board,
16 commission, agency, body, authority, instrumentality,
17 department, or subdivision of the state, its counties and
18 municipalities. This term includes, but shall not be limited
19 to, the Department of Transportation, the State Building
20 Commission, the State Board of Education, and any other entity
21 contracting for public works. This term shall exclude the
22 State Docks Department and any entity exempted from the
23 competitive bid laws of the state by statute.

24 (2) CONSTRUCTION MANAGER/GENERAL CONTRACTOR
25 (CM/GC). A person that provides construction management and
26 general contractor services for an awarding authority for a
27 project, pursuant to Article 2, through the preconstruction
28 and construction phases of the project.

1 (3) DESIGN-BUILDER. A person that performs or
2 provides design-build services for an awarding authority for a
3 project, pursuant to Article 3, through the preconstruction
4 (including the performance or provision of the design of the
5 project by licensed design professionals) and construction
6 phases of the project.

7 (4) DESIGN PROFESSIONAL. A registered architect or
8 engineer, as appropriate, licensed in the State of Alabama.

9 -(5) FORCE ACCOUNT WORK. Work paid for by
10 reimbursing for the actual costs for labor, materials, and
11 equipment usage incurred in the performance of the work, as
12 directed, including a percentage for overhead and profit,
13 where appropriate.

14 (6) LIFE CYCLE COSTS. The total cost of ownership
15 over the extended life of a public works project, taking into
16 consideration the costs of construction, operation, and
17 maintenance, less any value obtained from salvage and
18 quantifiable environmental benefits, or the sum of all
19 recurring and one-time (non-recurring) costs over the full
20 life span or a specified period of a good, service, structure,
21 or system, including purchase price, installation costs,
22 operating costs, maintenance and upgrade costs, and remaining
23 (residual or salvage) value at the end of ownership or its
24 useful life.

25 (7) PERSON. Natural persons, partnerships, limited
26 liability companies, corporations, and other legal entities.

27 (8) PUBLIC PROPERTY. Real property which the state,
28 county, municipality, or awarding authority thereof owns or

1 has a contractual right to own or purchase, including
2 easements, rights-of-way, or otherwise.

3 (9) PUBLIC WORKS. The construction, installation,
4 repair, renovation, or maintenance of public buildings,
5 structures, sewers, waterworks, roads, curbs, gutters, side
6 walls, bridges, docks, underpasses, and viaducts as well as
7 any other improvement to be constructed, installed, repaired,
8 renovated, or maintained on public property and to be paid, in
9 whole or in part, with public funds or with financing to be
10 retired with public funds in the form of lease payments or
11 otherwise.

12 "§39-2-2.

13 "(a) Before entering into any contract for a public
14 works involving an amount in excess of fifty thousand dollars
15 (\$50,000), the awarding authority shall advertise for sealed
16 bids. If the awarding authority is the state or a county, or
17 an instrumentality thereof, it shall advertise for sealed bids
18 at least once each week for three consecutive weeks in a
19 newspaper of general circulation in the county or counties in
20 which the improvement or some part thereof, is to be made. If
21 the awarding authority is a municipality, or an
22 instrumentality thereof, it shall advertise for sealed bids at
23 least once in a newspaper of general circulation published in
24 the municipality where the awarding authority is located. If
25 no newspaper is published in the municipality, the awarding
26 authority shall advertise by posting notice thereof on a
27 bulletin board maintained outside the purchasing office and in
28 any other manner and for the length of time as may be
29 determined. In addition to bulletin board notice, sealed bids

1 shall also be solicited by sending notice by mail to all
2 persons who have filed a request in writing with the official
3 designated by the awarding authority that they be listed for
4 solicitation on bids for the public works contracts indicated
5 in the request. If any person whose name is listed fails to
6 respond to any solicitation for bids after the receipt of
7 three such solicitations, the listing may be canceled. With
8 the exception of the Department of Transportation, for all
9 public works contracts involving an estimated amount in excess
10 of five hundred thousand dollars (\$500,000), awarding
11 authorities shall also advertise for sealed bids at least once
12 in three newspapers of general circulation throughout the
13 state. The advertisements shall briefly describe the
14 improvement, state that plans and specifications for the
15 improvement are on file for examination in a designated office
16 of the awarding authority, state the procedure for obtaining
17 plans and specifications, state the time and place in which
18 bids shall be received and opened, and identify whether
19 prequalification is required and where all written
20 prequalification information is available for review. All bids
21 shall be opened publicly at the advertised time and place. No
22 public work as defined in this chapter involving a sum in
23 excess of fifty thousand dollars (\$50,000) shall be split into
24 parts involving sums of fifty thousand dollars (\$50,000) or
25 less for the purpose of evading the requirements of this
26 section.

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

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

5 "(d)(1) Excluded from the operation of this title
6 shall be contracts with persons who shall perform only
7 architectural, engineering, construction management as agent,
8 program management, or project management services in support
9 of the public works and who shall not engage in actual
10 construction, repair, renovation, or maintenance of the public
11 works with their own forces, by contract, subcontract,
12 purchase order, lease, or otherwise.

13 "(2) Except as otherwise provided in Article 2 or
14 Article 3, subsection (a) of this section, Section 39-2-3,
15 subsections (a) and (d) of Section 39-2-4, and Sections 39-2-
16 5, 39-2-6, and 39-2-11 do not apply to a contract for a public
17 works project that is let using the CM/GC method provided in
18 Article 2 or using the design-build method provided in Article
19 3. In addition, subsection (f) of this section shall not apply
20 to a contract for a public works project that is let using the
21 design-build method provided in Article 3. Except as
22 otherwise provided in Article 2 and Article 3, the remaining
23 provisions of this article shall apply to the CM/GC method and
24 the design-build method.

25 "(e) In case of an emergency affecting public
26 health, safety, or convenience, as declared in writing by the
27 awarding authority, setting forth the nature of the danger to
28 the public health, safety, or convenience which would result
29 from delay, contracts may be let to the extent necessary to

1 meet the emergency without public advertisement. The action
2 and the reasons for the action taken shall immediately be made
3 public by the awarding authority upon request.

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

8 "(1) Except for contracts involving the
9 construction, reconstruction, renovation, or replacement of
10 public roads, bridges, and water and sewer facilities, the
11 awarding authority can document to the satisfaction of the
12 State Building Commission that the sole source product,
13 material, system, or service is of an indispensable nature for
14 the improvement, that there are no other viable alternatives,
15 and that only this particular product, material, system, or
16 service fulfills the function for which it is needed.

17 "(2) The sole source specification has been
18 recommended by the architect or engineer of record as an
19 indispensable item for which there is no other viable
20 alternative.

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

26 "(g) In the event of a proposed public works
27 project, acknowledged in writing by the Alabama Homeland
28 Security Department as (1) having a direct impact on the
29 security or safety of persons or facilities and (2) requiring

1 confidential handling for the protection of such persons or
2 facilities, contracts may be let without public advertisement
3 but with the taking of informal bids otherwise consistent with
4 the requirements of this title and the requirements of
5 maintaining confidentiality. Records of bidding and award
6 shall not be disclosed to the public, and shall remain
7 confidential."

8 Section 3. Article 2, consisting of Sections 39-2-40
9 to 39-2-43, inclusive, is added to Chapter 2 of Title 39, Code
10 of Alabama 1975, to read as follows:

11 ARTICLE 2. CONSTRUCTION MANAGER/GENERAL CONTRACTOR
12 PUBLIC WORKS CONTRACTS.

13 §39-2-40.

14 In addition to the methods provided in Article 1 and
15 Article 3 for awarding a public works contract, any contract
16 for public works which, based on the awarding authority's
17 preliminary budget or the awarding authority's design
18 professional's estimate, involves an amount in excess of
19 fifteen million dollars (\$15,000,000) —in anticipated
20 construction costs, ~~but not including other program costs such~~
21 ~~as the cost of land acquisition~~, may be let by an awarding
22 authority pursuant to the CM/GC method set forth in this
23 article; provided, however, no contract for public works,
24 regardless of amount, to be awarded by the Department of
25 Transportation, or to be awarded by a county or municipality
26 for the construction or maintenance of a public road or
27 highway, may be let pursuant to the CM/GC method.
28 Construction costs shall include all costs of construction of
29 the public work including items which become permanently

1 affixed or connected to the public work, but shall not include
2 other project or program costs such as the cost of land
3 acquisition or any items such as furniture or equipment which
4 do not become permanently affixed or connected to the public
5 work. Before an awarding authority proceeds with a CM/GC

6 project, the awarding authority with the involvement of its
7 design professional shall declare in writing why the CM/GC
8 project delivery system is the preferred method for the
9 particular project. The written statement shall identify the
10 specific potential benefits to the public which the awarding
11 authority reasonably believes will result from the use of the
12 CM/GC delivery method and may include, without limitation,
13 improvements in the quality, schedule, or cost of the
14 particular project. The written statement shall also state the
15 funds available for the project. The written statement shall
16 be prepared and made available on request before proceeding
17 with the CM/GC prequalification and it must be included in the
18 advertisement requesting proposals required by Section 39-2-
19 42(a).

20 §39-2-41.

21 For the purposes of this article, the following
22 terms shall have the following meanings:

23 (1) CM/GC SERVICES. Services provided by a person
24 that:

25 a. Provides construction management services for a
26 specific, single project throughout the preconstruction and
27 construction phases or for any portion thereof. For the
28 purposes of this article, a specific, single project is a

1 project that is constructed at a single location or at a
2 common location so long as for a single project.

3 b. During the construction phase, acts as a general
4 contractor in accordance with the CM/GC contract.

5 c. Performs or provides for the performance of the
6 work on the project and guarantees the maximum cost of the
7 project.

8 (2) CONSTRUCTION MANAGEMENT SERVICES. Services
9 provided by a construction manager, which may include, but are
10 not necessarily limited to, design/constructability review,
11 preparation and coordination of bid packages, scheduling, cost
12 control, value engineering, preconstruction services,
13 construction administration, and construction services.

14 ~~(3) FIRST TIER SUBCONTRACTOR. A subcontractor who~~
15 ~~contracts directly with the CM/GC and whose contract is~~
16 ~~expected to exceed fifty thousand dollars (\$50,000). A person~~
17 ~~performing design services only is not a first tier~~
18 ~~subcontractor for purposes of the CM/GC or design build~~
19 ~~methods.~~

20 §39-2-42.

21 (a) A CM/GC shall be selected after advertising in
22 accordance with the procedure provided in subsection (a) of
23 Section 39-2-2 (other than the requirement for sealed bids)
24 and prequalification conducted by the awarding authority or
25 its agent in accordance with the procedures_s provided in
26 subsections (b), (c), and (e) of Section 39-2-4. The final
27 selection must be made from among those who prequalify. The
28 CM/GC must be properly licensed prior to submitting for
29 prequalification. Those who prequalify are then eligible

1 ~~to may then~~ submit competitive proposals to the awarding
2 authority or its agent. While more than one design
3 professional may be involved in the project, ~~the~~ criteria to
4 be used for prequalification and the content of the request
5 for competitive proposals, including the criteria for final
6 selection, shall be prepared with the involvement and
7 participation of the awarding authority's lead design
8 professional of record. ~~The design professional shall be the~~
9 ~~design professional of record for the project and who~~ shall
10 be also be retained by the awarding authority for observation
11 of construction requirements as required by law ~~and shall~~
12 ~~coordinate and consult with other design professionals having~~
13 ~~expertise in different design disciplines as may be required~~
14 ~~by the specific needs of the project.~~ Nothing herein is
15 intended to nor shall it be construed as to require or permit
16 an awarding authority to contract with a design professional
17 on any basis other than a qualifications-based selection
18 process. The final selection of those CM/GCs who prequalify
19 to submit competitive proposals shall be based upon the
20 awarding authority's written findings and conclusions
21 regarding the CM/GC's qualifications and responsibility
22 including, without limitation, specific evaluations regarding
23 the CM/GC's demonstrated competence on similar projects,
24 experience specifically relating to similar projects,
25 financial ability, past performance, relevant safety record,
26 proposed personnel and methodology for the project, and other
27 specific factors that demonstrate the capability of the CM/GC
28 to perform the subject project; provided, however, that prior
29 experience as a construction manager/general contractor on a

1 public project shall not be a criterion for prequalification
2 to submit a competitive proposal. If the awarding authority
3 contracts with an agent to conduct the prequalification or the
4 receipt and review of competitive proposals, the agent,
5 including a subsidiary thereof or any entity under any degree
6 of common ownership with the agent, is not eligible to perform
7 the CM/GC work on the project or work as a subcontractor, at
8 any tier, on the project. Following the awarding authority's
9 establishment of a list of those persons which prequalify, but
10 sufficiently in advance of the submission of competitive
11 proposals for all prequalified persons to respond, the
12 awarding authority shall provide in writing to all
13 prequalified persons the criteria upon which the competitive
14 proposals shall be scored and the percentage valuation that
15 will be assigned to each element in the final selection
16 criteria and shall state the date for submission of the
17 competitive proposals so that those submitting competitive
18 proposals know how each criterion shall be weighted. The
19 criteria are left to the awarding authority's and design
20 professional's discretion but shall be compiled to enable the
21 awarding authority to make an informed selection of the CM/GC
22 best qualified for the particular needs of the project and may
23 include but are not necessarily limited to: the CM/GC's
24 experience with similar types of construction; the CM/GC's
25 proposed project management team including their prior
26 experience with similar types of construction and scope of
27 services provided; the CM/GC's experience with other public
28 works projects; the CM/GC's other projects in progress and
29 ability to perform additional work; the CM/GC's prior schedule

1 performance, proposed schedule for the project and possible
2 schedule improvements for the project; the CM/GC's prior cost
3 control performance, proposed cost control procedures for the
4 project, and proposed cost savings and value engineering; the
5 CM/GC's prior or current work in the location of the project;
6 the CM/GC's quality assurance and quality control programs and
7 performance and any proposals to add or improve quality; the
8 CM/GC's proposed methodology for achieving woman-owned
9 business enterprise, minority-owned business enterprise, and
10 disadvantaged-owned business enterprise goals, if any; and the
11 CM/GC's financial condition, insurability and bonding
12 capacity. The competitive proposals shall respond to the
13 criteria established by the awarding authority, and they shall
14 be scored by the awarding authority and its design
15 professional under a qualifications based analysis. The
16 awarding authority shall then review the proposals and rank
17 them from first to last and shall prepare in writing the
18 ranking together with the score for each competitive proposal
19 received indicating the score each criterion received and a
20 written narrative describing the basis for the selection and
21 the ranking. The awarding authority is not required to make
22 its ranking or final selection of CM/GC based solely on lowest
23 price, or any component of price or fee. The awarding
24 authority shall then enter into negotiations with the CM/GC
25 having the highest ranked competitive proposal to finalize the
26 terms of a CM/GC contract.

27 (b) Pursuant to a CM/GC contract, the person
28 providing CM/GC services may self-perform portions of a
29 project provided the aggregate total cost of all the work the

1 CM/GC plans to self-perform, not including the general
2 conditions items, does not exceed 10 percent of the guaranteed
3 maximum price (at the time the final contract is awarded).
4 General conditions costs are those costs incurred by the CM/GC
5 for work that is necessary to perform the project but does not
6 become an integral or permanent part of the finished project.
7 General conditions costs shall include preconstruction
8 services. For purposes of determining the aggregate total
9 cost of self-performed work, the total cost shall include all
10 costs reasonably necessary for the proper performance of the
11 self-performed work including, without limitation, the total
12 sum of all labor, materials, tools, equipment, trade
13 supervision, layout, taxes, and bond and insurance premium
14 (when and if required). In addition, for purposes of
15 compliance with the 10 percent limitation, work subcontracted
16 to a separate entity in which the CM/GC has any ownership
17 interest or is under common ownership with the CM/GC shall be
18 considered self-performed work. Notwithstanding the foregoing
19 10 percent limitation, the CM/GC may self-perform additional
20 work on the project in the event a subcontractor or
21 subcontractors is terminated for default, is deemed by the
22 CM/GC to be non-performing or underperforming some portion of
23 the subcontract scope of work, or is otherwise not materially
24 complying with the subcontract requirements such as to require
25 the CM/GC to supplement the subcontractor's work by self-
26 performing some portion of the subcontractor's scope of work,
27 or if there are no subcontractors who bid or submit proposals
28 for some portion of the work. If all bids or proposals
29 received for a particular scope of work to be subcontracted

1 exceed the proposed budget for that work, the CM/GC shall
2 negotiate with the lowest bidder to attempt to obtain a price
3 at or below the proposed budget amount. If the CM/GC is unable
4 to negotiate a price within the proposed budget amount, then
5 the CM/GC may, at its option and discretion, perform that
6 scope of work itself or apply savings or contingency amounts
7 from another line item in the proposed budget sufficient to
8 bring the work within the proposed budget amount.

9 (c) A person providing CM/GC services is subject to
10 all licensing, insurance, and bonding requirements for public
11 works projects in Alabama.

12 §39-2-43.

13 (a) Within thirty (30) days after ranking the
14 competitive proposals, the awarding authority shall notify in
15 writing the CM/GC having the highest ranked competitive
16 proposal for the purpose of entering into a CM/GC contract.
17 The letter of intent to award the project issued by the
18 awarding authority shall describe the services to be performed
19 and the proposed compensation.

20 (b) Within thirty (30) days of receipt of the
21 awarding authority's letter of intent, the CM/GC shall present
22 to the awarding authority a proposed date by which the
23 guaranteed maximum price shall be agreed upon together with
24 staffing costs for the CM/GC, other proposed general
25 conditions costs, and the fee for CM/GC services. The awarding
26 authority may accept, reject, or continue to negotiate with
27 the CM/GC to reach a contract agreement; however, if the
28 negotiation is not completed within ninety (90) days after
29 issuance of the awarding authority's letter of intent to

1 award, the awarding authority and CM/GC must agree in writing
2 to an extension of time.

3 (c) If the awarding authority is unable to negotiate
4 a satisfactory contract with the initially selected CM/GC, the
5 awarding authority shall terminate negotiations with the CM/GC
6 and withdraw the letter of intent to award. If the awarding
7 authority decides to proceed with the public works project,
8 the awarding authority shall issue a letter of intent to the
9 next highest ranked CM/GC and proceed as outlined above until
10 an acceptable agreement on contract terms is reached. This
11 process may proceed with respect to each prequalified CM/GC in
12 the order in which the CM/GC was ranked by the awarding
13 authority. However, if the awarding authority is unable to
14 award a contract to a CM/GC within one hundred twenty (120)
15 days of ranking the competitive proposals, all proposals shall
16 expire unless at least one ranked CM/GC agrees in writing to
17 a stipulated extension of time for consideration of its
18 proposal. Alternatively, if at any point before contracting
19 with the CM/GC the awarding authority decides it is in the
20 project's or the public's best interest, it may choose to let
21 a contract for the project in accordance with Article 1 or
22 Article 3 or it may cancel the project.

23 (d) Once the awarding authority reaches an agreement
24 on contract terms with the CM/GC selected, the awarding
25 authority and CM/GC shall enter a written contract for the
26 specific, single project advertised and negotiated. The
27 contract shall be written by the awarding authority with the
28 involvement of its design professional using an industry
29 standard form developed for a CM/GC project.

1 (e) The CM/GC shall contract with subcontractors for
2 all work which the CM/GC does not intend to self-perform as
3 follows:

4 (i) For the selection of subcontractors whose
5 contract is not expected to exceed fifty thousand dollars
6 (\$50,000) in amount, the CM/GC shall have sole discretion in
7 the manner, method, and conditions of selection. The project
8 shall not be divided into subcontracts of less than fifty
9 thousand dollars (\$50,000) for the purpose of evading the
10 prequalification selection process or any other provisions of
11 this title.

12 (ii) Other than subcontractors awarded in accordance
13 with (i) above or (iii) below, for all subcontracts greater
14 than \$50,000 the CM/GC shall prequalify all ~~and first tier~~
15 ~~subcontractors using the prequalification procedures in~~
16 ~~Section 39 2 4 for those portions of the project the CM/GC~~
17 ~~chooses not to self perform.~~ shall solicit lump sum bids from
18 the subcontractors who prequalify. Based on its review and
19 analysis of the bids received, the CM/GC shall identify the
20 subcontractors it intends to contract with on a lump sum basis
21 and shall submit the list to the awarding authority.
22 Additional subcontractors may be added to the list as they are
23 identified by the CM/GC. The awarding authority may object to
24 the use of particular subcontractors; provided, however, if
25 the awarding authority's rejection of a particular subcontract
26 results in additional cost or time or both, the CM/GC may be
27 entitled to an increase in the contract time or GMP or both.

28 (iii) The CM/GC may desire to select certain
29 subcontractors before the scope of work is defined well enough

1 for subcontractors to submit lump sum bids. In such case, the
2 subcontractor may be selected solely on the basis of the
3 subcontractor's qualifications. The CM/GC shall prequalify all
4 such subcontractors using a prequalification procedure which
5 is consistent with the requirements in Section 39-2-4. The
6 list of prequalified ~~first-tier~~ subcontractors shall be
7 submitted to the awarding authority and the design
8 professional by the CM/GC. Within ten (10) days of receipt of
9 the list of subcontractors, the awarding authority may provide
10 comments on or reject the selection of any proposed ~~first-tier~~
11 subcontractors based upon a past experience, prior or current
12 legal dispute the awarding authority may have with a
13 subcontractor or for other reasonable cause; provided,
14 however, should the awarding authority's rejection of any
15 proposed ~~first-tier~~ subcontractor result in additional cost or
16 time that exceeds the awarded contract amount, the CM/GC may
17 be entitled to compensation for any such additional costs or
18 time that resulted from the substitution of a proposed
19 subcontractor. The CM/GC shall then receive competitive
20 proposals from the ~~first-tier~~ subcontractors who have
21 prequalified. Prior to the submission of competitive
22 proposals, the CM/GC shall establish the criteria upon which
23 the competitive proposals shall be scored. Each criterion
24 shall be assigned a percentage of the total score and shall be
25 submitted to the awarding authority and its design
26 professional for approval. After approval by the awarding
27 authority but sufficiently in advance of the submission of
28 proposals, the CM/GC shall provide the criteria and percentage
29 valuation that will be assigned to each element to the ~~first~~

1 ~~tier~~ subcontractors submitting competitive proposals and shall
2 state the date for submission of the competitive proposals.
3 The competitive proposals shall respond to the criteria upon
4 which the CM/GC's selection shall be based. The CM/GC shall
5 rank the proposals received from first to last and shall
6 submit in writing to the awarding authority the ranking
7 together with the score for each competitive proposal
8 indicating the score each criterion received and a written
9 narrative describing the basis for the selection and the
10 ranking. Based on the competitive proposals ranking, the CM/GC
11 shall select the ~~first tier~~ subcontractors with whom it
12 intends to perform the project. The CM/GC shall not be
13 required to base its selection of ~~first tier~~ subcontractors
14 solely on lowest price, or any component of price or fee;
15 however, if price, or any component thereof, is used as a
16 selection criterion for any particular ~~first tier~~
17 subcontractor, the CM/GC shall provide the awarding authority,
18 in writing, reasonable cause for choosing a ~~first tier~~
19 subcontractor not having the lowest price. ~~For the selection~~
20 ~~of subcontractors whose contract is not expected to exceed~~
21 ~~fifty thousand dollars (\$50,000) in amount, the CM/GC shall~~
22 ~~have sole discretion in the manner, method, and conditions of~~
23 ~~selection. The project shall not be divided into subcontracts~~
24 ~~of less than fifty thousand dollars (\$50,000) for the purpose~~
25 ~~of evading the prequalification selection process for first~~
26 ~~tier subcontractors or any other provisions of this title.~~

27 (f) All contracts for public works entered into in
28 violation of this title shall be null, void, and violative of

1 public policy. Anyone who willfully violates this article
2 concerning public works shall be guilty of a Class C felony.

3 (g) All proceedings, records, proposals, contracts,
4 and other documents relating to the contracting for public
5 works under this article shall be public records. Upon request
6 of an interested citizen, the awarding authority shall make
7 available for inspection any and all such documents.

8 Section 4. Article 3, consisting of Sections 39-2-60
9 to 39-2-66, inclusive, is added to Chapter 2 of Title 39, Code
10 of Alabama 1975, to read as follows:

11 ARTICLE 3. DESIGN BUILD PUBLIC WORKS CONTRACTS.

12 §39-2-60.

13 In addition to the methods provided in Articles 1
14 and 2 for awarding a public works contract, any contract for
15 public works which, based on the awarding authority's
16 preliminary budget or design professional's estimate, involves
17 an amount in excess of fifteen million dollars (\$15,000,000)
18 in design and construction costs, ~~but not including other~~
19 ~~program costs such as the cost of land acquisition,~~ may be let
20 pursuant to the design-build method set forth in this article;
21 provided, however, no contract for public works, regardless of
22 amount, to be awarded by the Department of Transportation, or
23 to be awarded by a county or municipality for the construction
24 or maintenance of a public road or highway, may be let
25 pursuant to the design-build method. The design and
26 construction costs shall include all costs of designing and
27 constructing the public work including items which become
28 permanently affixed or connected to the public work, but shall
29 not include other project or program costs such as the cost of

1 land acquisition or any items such as furniture or equipment
2 which do not become permanently affixed or connected to the
3 public work. Before an awarding authority may proceed with a
4 design-build project, the awarding authority with the
5 involvement of its design professional shall declare in
6 writing why the design-build project delivery system is the
7 preferred method for the particular project and it must be
8 included in the advertisement requesting proposals required by
9 Section 39-2-2(a). The written statement shall also state the
10 funds available for the project.

11

12 §39-2-61.

13 For the purposes of this article, the following
14 terms shall have the following meanings:

15 (1) DESIGN-BUILD SERVICES. Services performed or
16 provided by a design-builder that:

17 a. Performs or provides the project design and
18 construction management services for a specific, single
19 project throughout the design, preconstruction and
20 construction phases. For the purposes of this article, a
21 specific, single project is a project that is constructed at a
22 single location or at a common location so long as for a
23 single project.

24 b. During the design phase, performs or provides the
25 project design which must be performed by licensed design
26 professionals. Nothing herein, however, is intended to nor
27 shall it be construed as to require or permit the design-
28 builder to contract~~ing~~ with design professionals, at any tier,
29 on any basis other than a qualifications-based selection.

1 c. During the construction phase, acts as a general
2 contractor in accordance with the design-build contract.
3 Services may include, without limitation, scheduling, cost
4 control, value engineering, evaluation, preconstruction
5 services, construction administration (provided that the
6 observation of construction requirements are performed by a
7 licensed design professional as required by law), and
8 construction services pursuant to a single contract.

9 d. Performs or provides both the design and
10 construction of the work on the project either for a lump sum
11 or for a guaranteed maximum cost for the project.

12 §39-2-62.

13 (a) The awarding authority shall engage a licensed
14 design professional in the prequalification and selection ~~of~~
15 the design-builder. The design professional shall be retained
16 by the awarding authority for observation of construction
17 requirements as required by law and until the project is
18 completed and accepted by the awarding authority. The design
19 professional shall coordinate and consult with other design
20 professionals having expertise in different design disciplines
21 as may be required by the specific needs of the project. The
22 design professional shall: develop a scope of work that
23 defines the project and the awarding authority's requirements;
24 be involved in the preparation of the prequalification
25 criteria and final selection criteria; be involved in the
26 evaluation and scoring of the prequalification and final
27 selection criteria; and provide technical reviews, project
28 oversight and other technical project administration services
29 to the awarding authority for the duration of the project. ~~The~~

1 design professional shall also assist the awarding authority
2 in developing the proposed budget for the project. The
3 awarding authority may use in-house design professionals, but
4 if the awarding authority contracts with an agent, the agent
5 must be selected as set forth in Section 41-16-72(3). If the
6 awarding authority contracts with an agent, the agent,
7 including a subsidiary thereof or any entity under common
8 ownership with the agent, is not eligible to perform or
9 provide the design-build work on the project, including
10 performing work as a subcontractor, or subconsultant, at any
11 tier, to the design-builder.

12 (b) A design-builder shall be selected after
13 advertising in accordance with the procedure provided in
14 subsection (a) of Section 39-2-2 (other than the requirement
15 for sealed bids) and two-step prequalification and selection
16 process conducted by the awarding authority or its agent in
17 accordance with the procedure provided in subsections (b),
18 (c), and (e) of Section 39-2-4 and Section 41-16-72(3),
19 respectively. The final selection must be made from among
20 those who prequalify. The design-builder and the design
21 professional whom the design-builder intends to be the lead
22 ~~designer~~ professional of record for the project must be
23 properly licensed as required by law prior to submitting for
24 prequalification. Those who prequalify may then submit
25 competitive proposals to the awarding authority or its agent
26 as directed by the awarding authority.

27 (c) An awarding authority wishing to undertake a design-
28 build project shall prepare a written request for
29 qualifications from potential design-builders. At a minimum,

1 the request for qualifications shall be published in
2 accordance with the advertising requirements set forth in
3 subsection (a) of Section 39-2-2 (other than the requirement
4 for sealed bids) and shall be widely disseminated to the
5 professional community in a full and open manner. The request
6 for qualifications shall include the scope of work prepared by
7 the awarding authority's design professional describing the
8 specific requirements and nature of the project; the
9 prequalification criteria and the percentage valuation that
10 will be assigned to each criterion; and shall state the date
11 for submission of the prequalification submittal. In addition,
12 the request for qualifications shall state the stipulated
13 proposal fee which the awarding authority intends to pay, if
14 any, to each of the prequalified design-builders who are
15 selected and submit final qualification proposals. The
16 selection of the design-builders who prequalify to submit
17 competitive proposals shall be based upon the awarding
18 authority's written findings and conclusions regarding the
19 design-builder's qualifications and responsibility, including
20 without limitation, specific findings regarding the (1) the
21 design-builder's specialized expertise, capabilities, and
22 technical competence with similar types of construction and
23 the scope of services provided on similar previous projects;
24 (2) proposed project team including the name and
25 qualifications of the project team members; (3) the design-
26 builder's proposed project management team's record of past
27 performance and prior experience with similar projects and
28 types of construction including quality of work, ability to
29 meet schedules, cost control and contract administration; (4)

1 the design-builder's quality assurance and quality control
2 programs and prior performance; (5) the design-builder's other
3 projects in progress and ability to perform additional work;
4 (6) resources available to perform the work, including any
5 specialized services within the specified time limits for the
6 project; (7) the design-builder's responsibility, competency,
7 experience, safety record, financial condition, insurability
8 and bonding capacity; (8) availability to and familiarity with
9 the project locale; (9) the design-builder's experience with
10 other public works projects; provided, however, prior
11 experience as a design-builder on a public project shall not
12 necessarily be a criterion for qualification to submit a final
13 proposal provided the design-builder has prior design-build
14 experience on private projects and construction experience on
15 projects of similar size and scope.

16 (d) From the prequalification data submitted, the
17 awarding authority and its design professional shall then
18 review the prequalification data submitted and shall
19 prequalify up to five potential design-builders from whom to
20 request competitive proposals. While the awarding authority
21 and design professional may prequalify fewer than five
22 potential design-builders, a minimum of three design-builders
23 must be prequalified to proceed with the design-builder
24 selection process. The awarding authority shall prepare
25 written findings and conclusions regarding the awarding
26 authority's assessment of the qualifications of each design-
27 builder who responds to the request for qualifications.

28 (e) Following the awarding authority's establishment of a
29 list of those design-builders who prequalify, but at least 45

1 days in advance of the submission of final proposals, the
2 awarding authority shall provide in writing to all
3 prequalified design-builders the criteria upon which the
4 competitive proposals shall be scored and the percentage
5 valuation that will be assigned to each element in the final
6 selection criteria and shall state the date for submission of
7 the competitive proposals so that those submitting competitive
8 proposals know how each criterion shall be weighted. The
9 awarding authority shall also include the minimum score
10 required for a competitive proposal to be technically
11 acceptable. The final qualification criteria are left to the
12 awarding authority and awarding authority's design
13 professional's discretion but shall be related to the specific
14 project requirements. The criteria shall be compiled to enable
15 the awarding authority to make an informed selection of the
16 design-builder best qualified for the particular needs of the
17 project and may include but are not necessarily limited to:
18 (1) the design-builder's project design concepts; (2) proposed
19 design approach and technical solutions; (3) proposed project
20 management approach; (4) proposed project team members
21 including key personnel, project team organization, project
22 team management and assignment of specific project
23 responsibilities; (5) proposed project enhancements including
24 design approach, schedule improvements, added quality or
25 proposed cost savings for the project; (6) proposed project
26 schedule including significant project milestones and (7) the
27 design-builder's prior experience and performance in achieving
28 woman-owned business enterprise, minority-owned business
29 enterprise and disadvantaged-owned business enterprise goals.

1 Each prequalified design-builder shall also submit a sealed
2 proposal with the proposed lump sum or guaranteed maximum
3 price. The awarding authority shall not open the sealed
4 proposal until after the final proposals have been scored.

5 (f) The final proposals shall respond to the
6 criteria upon which the awarding authority's selection shall
7 be based, and they shall be scored based on the awarding
8 authority's analysis of each potential design-builder's
9 proposal. Proposals that do not meet the minimum score
10 established by the awarding authority shall not be technically
11 acceptable and the design-builder shall not be eligible for
12 award. The awarding authority shall then open and score the
13 sealed proposals of the responsive proposals. The awarding
14 authority shall then rank the technically acceptable proposals
15 from first to last, based on the total cumulative score. The
16 awarding authority is not required to make its final ranking
17 based solely on lowest price or any component of price. The
18 awarding authority shall maintain a written record of the
19 ranking together with the score for each proposal received
20 indicating the score each criterion received and a written
21 narrative describing the basis for the selection and the
22 ranking.

23 (g) If the sealed proposal of the first-ranked
24 design-builder is within the awarding authority's proposed
25 budget, then the awarding authority shall proceed with
26 entering into a design-build contract with the successful
27 design-builder. If the sealed proposal from the first ranked
28 design-builder is not within the awarding authority's proposed
29 budget, the awarding authority shall proceed to the second-

1 ranked design-builder. If the sealed proposal of the second-
2 ranked design-builder is not within the awarding authority's
3 proposed budget, then the awarding authority shall proceed to
4 the sealed proposal of the third-ranked design-builder. If the
5 sealed proposal of the third-ranked design-builder is not
6 within the awarding authority's proposed budget, then the
7 awarding authority may proceed in order to the fourth-ranked
8 and fifth-ranked design-builders' proposals, respectively. If
9 none of the sealed proposals are within the awarding
10 authority's proposed budget, then the awarding authority shall
11 reject all proposals. The awarding authority may then let the
12 contract for the project pursuant to Article 1 or Article 2 or
13 may cancel the project; however, the awarding authority may
14 not proceed under the design-build method described in this
15 section without revising the project scope and project budget
16 and starting with the advertisement of a new request for
17 prequalification. In addition, any of the criteria provided in
18 any previous qualification and selection process may not be
19 considered if the project is re-advertised.

20 §39-2-63.

21 A person, corporation, or entity providing design-
22 build services is subject to all licensing, insurance, and
23 bonding requirements for public works projects in Alabama.

24 §39-2-64.

25 (a) Within 30 days of opening the sealed proposal
26 from the successful design-builder, the awarding authority,
27 shall enter a written design-build contract, prepared by the
28 awarding authority with the involvement of its design
29 professional, with the design-builder for design-build

1 services. The design-builder's final proposal, including the
2 proposed design concept, proposed schedule, proposed project
3 team members, and guaranteed maximum price shall be
4 incorporated into the award of the design-build contract. The
5 awarding authority shall have the right to terminate the
6 design-build contract for failure to comply substantially with
7 the final proposal and accepted price.

8 (b) After award of the design-build contract and in
9 accordance with the proposed project schedule, the design-
10 builder shall present the final design to the awarding
11 authority and the awarding authority's design professional for
12 approval. Within 30 days of receiving the final design, the
13 awarding authority and the awarding authority's design
14 professional must provide written comments to the design-
15 builder and the awarding authority must either approve or
16 reject the final design. The design-builder must have the
17 awarding authority's written approval of the final design
18 before proceeding with any construction. If the design-builder
19 proposes that the project will be constructed in phases, then
20 the design-builder must present the final design for each
21 phase of the work and must have the awarding authority's
22 written approval of each proposed phase before the design-
23 builder can proceed with the proposed phase of construction.

24 (c) The awarding authority shall have the right to
25 terminate the design-build contract if the design-builder
26 cannot provide a final design that substantially complies with
27 the accepted final proposal and the project requirements.

28 §39-2-65.

1 The design-builder shall be responsible for
2 complying with all applicable laws, codes and regulations. The
3 awarding authority shall not be responsible for the design-
4 builder's failure to comply.

5 §39-2-66.

6 Within 90 days after the awarding authority
7 publishes the rankings of the competitive proposals, each
8 prequalified design-builder who submitted a responsive,
9 competitive proposal shall be paid the proposal fee which the
10 competitive proposal criteria stipulated, if any. If the
11 awarding authority elects to pay a stipulated proposal fee,
12 the amount shall be set forth in the request for
13 qualifications. The awarding authority's design professional
14 shall review the proposal requirements and shall recommend to
15 the awarding authority the amount of the fee based on the
16 design professional's opinion of the required effort. The
17 proposal fee shall not be paid to the successful design-
18 builder.

19 §39-2-67.

20 All proceedings, records, proposals, contracts, and
21 other documents relating to the contracting for public works
22 under this article shall be public records. Upon request of an
23 interested citizen, the awarding authority shall make
24 available for inspection any and all such documents.

25 §39-2-68.

26 All contracts for public works entered into in
27 violation of this article shall be null, void, and violative
28 of public policy. Anyone who willfully violates this article
29 concerning public works shall be guilty of a Class C felony.

1 § 39-5-4.

2 The Attorney General, a bona fide unsuccessful or
3 disqualified bidder or proposer, or any interested citizen may
4 maintain an action to enjoin the letting or execution of any
5 public works contract in violation of or contrary to the
6 provisions of this title or any other statute and may enjoin
7 payment of any public funds under any such contract. In the
8 case of a successful action brought by a bidder or proposer,
9 reasonable bid or proposal preparation costs shall be
10 recoverable by that bidder or proposer. The action shall be
11 commenced within 45 days of the contract award.

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12 Section 5. Although this bill would have as its
13 purpose or effect the requirement of a new or increased
14 expenditure of local funds, the bill is excluded from further
15 requirements and application under Amendment 621, now
16 appearing as Section 111.05 of the Official Recompilation of
17 the Constitution of Alabama of 1901, as amended, because the
18 bill defines a new crime or amends the definition of an
19 existing crime.

20 Section 6. This act shall become effective on
21 October 1, 2016, following its passage and approval by the
22 Governor, or its otherwise becoming law.

23