

1 SB239
2 165928-1
3 By Senator Sanford
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 17-MAR-15

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

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

1 this bill would provide that prior experience as a
2 construction manager/general contractor on a public
3 project shall not be a criterion for qualification
4 to be selected to submit a proposal on a
5 construction manager/general contractor project.

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

19 The purpose or effect of this bill would be
20 to require a new or increased expenditure of local
21 funds within the meaning of the amendment. However,
22 the bill does not require approval of a local
23 governmental entity or enactment by a 2/3 vote to
24 become effective because it comes within one of the
25 specified exceptions contained in the amendment.

26
27 A BILL

1 TO BE ENTITLED

2 AN ACT

3
4 Relating to public works projects; to designate
5 existing Chapter 2, consisting of Sections 39-2-1 to 39-2-14,
6 inclusive, of Title 39, Code of Alabama 1975, as Article 1 and
7 add Article 2, consisting of Sections 39-2-40 to 39-2-43,
8 inclusive, to Chapter 2 of Title 39, Code of Alabama 1975; to
9 amend Sections 39-2-1 and 39-2-2, as last amended by Acts
10 2014-373 and 2014-404, 2014 Regular Session, Code of Alabama
11 1975, to authorize the selection by an awarding authority of a
12 construction manager/general contractor; to specify that a
13 construction manager/general contractor assumes the risk for
14 construction, rehabilitation, renovation, alteration, or
15 repair of a public works project; to provide for the selection
16 of the contractors and subcontractors for the project by the
17 construction manager/general contractor; to exclude all
18 contracts to be awarded by the Alabama Department of
19 Transportation, or a county or municipality for the
20 construction or maintenance of a public road or highway, from
21 Article 2 as created by this act; to provide penalties; and in
22 connection therewith would have as its purpose or effect the
23 requirement of a new or increased expenditure of local funds
24 within the meaning of Amendment 621 of the Constitution of
25 Alabama of 1901, now appearing as Section 111.05 of the
26 Official Recompilation of the Constitution of Alabama of 1901,
27 as amended.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

5 ARTICLE 1. GENERAL; DESIGN-BID-BUILD PUBLIC WORKS
6 CONTRACTS.

7 Section 2. Sections 39-2-1 and 39-2-2, as last
8 amended by Acts 2014-373 and 2014-404, 2014 Regular Session,
9 Code of Alabama 1975, are amended to read as follows:

10 "§39-2-1.

11 "As used in this title, the following words shall
12 have the meanings ascribed to them as follows:

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

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

1 "(3) DESIGN PROFESSIONAL. A registered architect or
2 engineer, as appropriate, licensed in the State of Alabama.

3 "~~(2)~~ (4) FORCE ACCOUNT WORK. Work paid for by
4 reimbursing for the actual costs for labor, materials, and
5 equipment usage incurred in the performance of the work, as
6 directed, including a percentage for overhead and profit,
7 where appropriate.

8 "~~(3)~~ (5) LIFE CYCLE COSTS. The total cost of
9 ownership over the extended life of a public works project,
10 taking into consideration the costs of construction,
11 operation, and maintenance, less any value obtained from
12 salvage and quantifiable environmental benefits, or the sum of
13 all recurring and one-time (non-recurring) costs over the full
14 life span or a specified period of a good, service, structure,
15 or system, including purchase price, installation costs,
16 operating costs, maintenance and upgrade costs, and remaining
17 (residual or salvage) value at the end of ownership or its
18 useful life.

19 "~~(4)~~ (6) PERSON. Natural persons, partnerships,
20 limited liability companies, corporations, and other legal
21 entities.

22 "~~(5)~~ (7) PUBLIC PROPERTY. Real property which the
23 state, county, municipality, or awarding authority thereof
24 owns or has a contractual right to own or purchase, including
25 easements, rights-of-way, or otherwise.

26 "~~(6)~~ (8) PUBLIC WORKS. The construction,
27 installation, repair, renovation, or maintenance of public

1 buildings, structures, sewers, waterworks, roads, curbs,
2 gutters, side walls, bridges, docks, underpasses, and viaducts
3 as well as any other improvement to be constructed, installed,
4 repaired, renovated, or maintained on public property and to
5 be paid, in whole or in part, with public funds or with
6 financing to be retired with public funds in the form of lease
7 payments or otherwise.

8 "§39-2-2.

9 "(a) Before entering into any contract for a public
10 works involving an amount in excess of fifty thousand dollars
11 (\$50,000), the awarding authority shall advertise for sealed
12 bids. If the awarding authority is the state or a county, or
13 an instrumentality thereof, it shall advertise for sealed bids
14 at least once each week for three consecutive weeks in a
15 newspaper of general circulation in the county or counties in
16 which the improvement or some part thereof, is to be made. If
17 the awarding authority is a municipality, or an
18 instrumentality thereof, it shall advertise for sealed bids at
19 least once in a newspaper of general circulation published in
20 the municipality where the awarding authority is located. If
21 no newspaper is published in the municipality, the awarding
22 authority shall advertise by posting notice thereof on a
23 bulletin board maintained outside the purchasing office and in
24 any other manner and for the length of time as may be
25 determined. In addition to bulletin board notice, sealed bids
26 shall also be solicited by sending notice by mail to all
27 persons who have filed a request in writing with the official

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

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

1 "(2) An awarding authority may enter into a contract
2 for public works if an advertisement for sealed bids for the
3 contract was submitted by the awarding authority to a
4 newspaper and the newspaper only publish the advertisement for
5 two weeks if the authority can provide proof that it in good
6 faith submitted the advertisement to the newspaper with
7 instructions to publish the notice in accordance with the
8 provisions of this section.

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

13 "(d) (1) Excluded from the operation of this title
14 shall be contracts with persons who shall perform only
15 architectural, engineering, construction management, program
16 management, or project management services in support of the
17 public works and who shall not engage in actual construction,
18 repair, renovation, or maintenance of the public works with
19 their own forces, by contract, subcontract, purchase order,
20 lease, or otherwise.

21 "(2) Except as otherwise provided in Article 2 or
22 Article 3, subsection (a) of this section, Section 39-2-3,
23 subsections (a) and (d) of Section 39-2-4, and Sections
24 39-2-5, 39-2-6, and 39-2-11 do not apply to a contract for a
25 public works project that is let using the CM/GC method
26 provided in Article 2. Except as otherwise provided in Article

1 2, the remaining provisions of this article shall apply to the
2 CM/GC method.

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

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

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

24 "(2) The sole source specification has been
25 recommended by the architect or engineer of record as an
26 indispensable item for which there is no other viable
27 alternative.

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

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

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

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

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

1 ARTICLE 2. CONSTRUCTION MANAGER/GENERAL CONTRACTOR
2 PUBLIC WORKS CONTRACTS.

3 §39-2-40.

4 In addition to the methods provided in Article 1 and
5 Article 3 for awarding a public works contract, any contract
6 for public works which, based on the awarding authority's
7 preliminary budget or the awarding authority's design
8 professional's estimate, involves an amount in excess of
9 fifteen million dollars (\$15,000,000) in anticipated
10 construction costs, may be let by an awarding authority
11 pursuant to the CM/GC method set forth in this article;
12 provided, however, no contract for public works, regardless of
13 amount, to be awarded by the Department of Transportation, or
14 to be awarded by a county or municipality for the construction
15 or maintenance of a public road or highway, may be let
16 pursuant to the CM/GC method. Construction costs shall include
17 all costs necessarily incurred in the proper performance of
18 the construction of the public work including without
19 limitation all permitting, management, supervisory, labor,
20 subcontract, materials, equipment, and temporary facilities
21 costs and any items which become permanently affixed or
22 connected to the public work, but shall not include other
23 project or program costs such as the cost of land acquisition
24 or any items such as furniture or equipment which do not
25 become permanently affixed or connected to the public work.
26 Before an awarding authority proceeds with a CM/GC project,
27 the awarding authority with the involvement of its design

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

1 purposes of this article, a specific, single project is a
2 project that is constructed at a single location or at a
3 common location so long as for a single project.

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

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

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

15 §39-2-42.

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

1 the criteria for final selection, shall be prepared with the
2 involvement and participation of the awarding authority's
3 design professional, or design professionals, who shall be
4 retained by the awarding authority for observation of
5 construction requirements as required by law. Nothing herein
6 is intended to nor shall it be construed as to require or
7 permit an awarding authority to contract with a design
8 professional, at any tier, on any basis other than a
9 qualifications-based selection process. The final selection of
10 those CM/GCs who prequalify to submit competitive proposals
11 shall be based upon the awarding authority's written findings
12 and conclusions regarding the CM/GC's qualifications and
13 responsibility including, without limitation, specific
14 evaluations regarding the CM/GC's demonstrated competence on
15 similar projects, experience specifically relating to similar
16 projects, financial ability, past performance, relevant safety
17 record, proposed personnel and methodology for the project,
18 and other specific factors that demonstrate the capability of
19 the CM/GC to perform the subject project; provided, however,
20 that prior experience as a construction manager/general
21 contractor on a public project shall not be a criterion for
22 prequalification to submit a competitive proposal. If the
23 awarding authority contracts with an agent to conduct the
24 prequalification or the receipt and review of competitive
25 proposals, the agent, including a subsidiary thereof or any
26 entity under any degree of common ownership with the agent, is
27 not eligible to perform the CM/GC work on the project or work

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

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

23 (b) Pursuant to a CM/GC contract, the person
24 providing CM/GC services may self-perform portions of a
25 project provided the aggregate total cost of all the work the
26 CM/GC plans to self-perform, not including the general
27 conditions items, does not exceed 10 percent of the guaranteed

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

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

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

13 §39-2-43.

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

21 (b) Within 30 days of receipt of the awarding
22 authority's letter of intent, the CM/GC shall present to the
23 awarding authority a proposed date by which the guaranteed
24 maximum price shall be agreed upon together with staffing
25 costs for the CM/GC, other proposed general conditions costs,
26 and the fee for CM/GC services. The awarding authority may
27 accept, reject, or continue to negotiate with the CM/GC to

1 reach a contract agreement; however, if the negotiation is not
2 completed within 90 days after issuance of the awarding
3 authority's letter of intent to award, the awarding authority
4 and CM/GC must agree in writing to an extension of time.

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

20 Alternatively, if at any point before contracting with the
21 CM/GC the awarding authority decides it is in the project's or
22 the public's best interest, it may choose to let a contract
23 for the project in accordance with Article 1 or Article 3 or
24 it may cancel the project.

25 (d) Once the awarding authority reaches an agreement
26 on contract terms with the CM/GC selected, the awarding
27 authority and CM/GC shall enter a written contract for the

1 specific, single project advertised and negotiated. The
2 contract shall be written by the awarding authority with the
3 involvement of its design professional using as the basis for
4 the contract either an industry standard form developed for a
5 CM/GC project or a form for a CM/GC project used or
6 promulgated by the state.

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

10 (1) For the selection of subcontractors whose
11 contract is not expected to exceed fifty thousand dollars
12 (\$50,000) in amount, the CM/GC shall have sole discretion in
13 the manner, method, and conditions of selection. The project
14 shall not be divided into subcontracts of less than fifty
15 thousand dollars (\$50,000) for the purpose of evading the
16 prequalification selection process or any other provisions of
17 this title.

18 (2) Other than subcontractors awarded in accordance
19 with (1) above or (3) below, for all subcontracts greater than
20 fifty thousand dollars (\$50,000) the CM/GC shall prequalify
21 all subcontractors and shall solicit lump sum bids from the
22 subcontractors who prequalify. Based on its review and
23 analysis of the bids received, the CM/GC shall identify the
24 subcontractors it intends to contract with on a lump sum basis
25 and shall submit the list to the awarding authority.
26 Additional subcontractors may be added to the list as they are
27 identified by the CM/GC. The awarding authority may object to

1 the use of particular subcontractors; provided, however, if
2 the awarding authority's rejection of a particular subcontract
3 results in additional cost or time or both, the CM/GC may be
4 entitled to an increase in the contract time or GMP or both.

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

1 the competitive proposals shall be scored. Each criterion
2 shall be assigned a percentage of the total score and shall be
3 submitted to the awarding authority and its design
4 professional for approval. After approval by the awarding
5 authority but sufficiently in advance of the submission of
6 proposals, the CM/GC shall provide the criteria and percentage
7 valuation that will be assigned to each element to the
8 subcontractors submitting competitive proposals and shall
9 state the date for submission of the competitive proposals.
10 The competitive proposals shall respond to the criteria upon
11 which the CM/GC's selection shall be based. The CM/GC shall
12 rank the proposals received from first to last and shall
13 submit in writing to the awarding authority the ranking
14 together with the score for each competitive proposal
15 indicating the score each criterion received and a written
16 narrative describing the basis for the selection and the
17 ranking. Based on the competitive proposals ranking, the CM/GC
18 shall select the subcontractors with whom it intends to
19 perform the project. The CM/GC shall not be required to base
20 its selection of subcontractors solely on lowest price, or any
21 component of price or fee; however, if price, or any component
22 thereof, is used as a selection criterion for any particular
23 subcontractor, the CM/GC shall provide the awarding authority,
24 in writing, reasonable cause for choosing a subcontractor not
25 having the lowest price.

26 (f) All contracts for public works entered into in
27 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. Although this bill would have as its
9 purpose or effect the requirement of a new or increased
10 expenditure of local funds, the bill is excluded from further
11 requirements and application under Amendment 621, now
12 appearing as Section 111.05 of the Official Recompilation of
13 the Constitution of Alabama of 1901, as amended, because the
14 bill defines a new crime or amends the definition of an
15 existing crime.

16 Section 5. This act shall become effective on
17 October 1, 2016, following its passage and approval by the
18 Governor, or its otherwise becoming law.