

1 HB275  
2 165809-1  
3 By Representative Tuggle  
4 RFD: State Government  
5 First Read: 12-MAR-15

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8 SYNOPSIS: This bill would give public owners 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 and design-build project delivery  
13 methods as additional options when determined by  
14 the awarding authority that these alternative  
15 project delivery methods potentially offer better  
16 value to taxpayers than the design-bid-build  
17 method.

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

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

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

25 The purpose or effect of this bill would be  
26 to require a new or increased expenditure of local  
27 funds within the meaning of the amendment. However,

1 the bill does not require approval of a local  
2 governmental entity or enactment by a 2/3 vote to  
3 become effective because it comes within one of the  
4 specified exceptions contained in the amendment.

5  
6 A BILL  
7 TO BE ENTITLED  
8 AN ACT

9  
10 Relating to public works projects; to designate  
11 existing Chapter 2, consisting of Sections 39-2-1 to 39-2-14,  
12 inclusive, of Title 39, Code of Alabama 1975, as Article 1 and  
13 add Articles 2 and 3, consisting of Sections 39-2-40 to  
14 39-2-43 and 39-2-60 to 39-2-69, inclusive, to Chapter 2 of  
15 Title 39, Code of Alabama 1975; to amend Sections 39-2-1 and  
16 39-2-2, Code of Alabama 1975, to authorize the selection by an  
17 awarding authority of a construction manager/general  
18 contractor or a design-builder; to specify that a construction  
19 manager/general contractor or a design-builder assumes the  
20 risk for construction, rehabilitation, renovation, alteration,  
21 or repair of a public works project; to provide for the  
22 selection of the contractors and subcontractors for the  
23 project by the construction manager/general contractor or a  
24 design-builder; to exclude all contracts to be awarded by the  
25 Alabama Department of Transportation, or a county or  
26 municipality for the construction or maintenance of a public  
27 road or highway, from Article 2 and Article 3 as created by

1 this act; to provide penalties; and in connection therewith  
2 would have as its purpose or effect the requirement of a new  
3 or increased expenditure of local funds within the meaning of  
4 Amendment 621 of the Constitution of Alabama of 1901, now  
5 appearing as Section 111.05 of the Official Recompilation of  
6 the Constitution of Alabama of 1901, as amended.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

11 ARTICLE 1. GENERAL; DESIGN-BID-BUILD PUBLIC WORKS  
12 CONTRACTS.

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

16 "§39-2-1.

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

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

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

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

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

14                   "~~(2)~~ (5) FORCE ACCOUNT WORK. Work paid for by  
15                   reimbursing for the actual costs for labor, materials, and  
16                   equipment usage incurred in the performance of the work, as  
17                   directed, including a percentage for overhead and profit,  
18                   where appropriate.

19                   "~~(3)~~ (6) LIFE CYCLE COSTS. The total cost of  
20                   ownership over the extended life of a public works project,  
21                   taking into consideration the costs of construction,  
22                   operation, and maintenance, less any value obtained from  
23                   salvage and quantifiable environmental benefits, or the sum of  
24                   all recurring and one-time (non-recurring) costs over the full  
25                   life span or a specified period of a good, service, structure,  
26                   or system, including purchase price, installation costs,  
27                   operating costs, maintenance and upgrade costs, and remaining

1 (residual or salvage) value at the end of ownership or its  
2 useful life.

3 "~~(4)~~ (7) PERSON. Natural persons, partnerships,  
4 limited liability companies, corporations, and other legal  
5 entities.

6 "~~(5)~~ (8) PUBLIC PROPERTY. Real property which the  
7 state, county, municipality, or awarding authority thereof  
8 owns or has a contractual right to own or purchase, including  
9 easements, rights-of-way, or otherwise.

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

19 "§39-2-2.

20 "(a) Before entering into any contract for a public  
21 works involving an amount in excess of fifty thousand dollars  
22 (\$50,000), the awarding authority shall advertise for sealed  
23 bids. If the awarding authority is the state or a county, or  
24 an instrumentality thereof, it shall advertise for sealed bids  
25 at least once each week for three consecutive weeks in a  
26 newspaper of general circulation in the county or counties in  
27 which the improvement or some part thereof, is to be made. If

1 the awarding authority is a municipality, or an  
2 instrumentality thereof, it shall advertise for sealed bids at  
3 least once in a newspaper of general circulation published in  
4 the municipality where the awarding authority is located. If  
5 no newspaper is published in the municipality, the awarding  
6 authority shall advertise by posting notice thereof on a  
7 bulletin board maintained outside the purchasing office and in  
8 any other manner and for the length of time as may be  
9 determined. In addition to bulletin board notice, sealed bids  
10 shall also be solicited by sending notice by mail to all  
11 persons who have filed a request in writing with the official  
12 designated by the awarding authority that they be listed for  
13 solicitation on bids for the public works contracts indicated  
14 in the request. If any person whose name is listed fails to  
15 respond to any solicitation for bids after the receipt of  
16 three such solicitations, the listing may be canceled. With  
17 the exception of the Department of Transportation, for all  
18 public works contracts involving an estimated amount in excess  
19 of five hundred thousand dollars (\$500,000), awarding  
20 authorities shall also advertise for sealed bids at least once  
21 in three newspapers of general circulation throughout the  
22 state. The advertisements shall briefly describe the  
23 improvement, state that plans and specifications for the  
24 improvement are on file for examination in a designated office  
25 of the awarding authority, state the procedure for obtaining  
26 plans and specifications, state the time and place in which  
27 bids shall be received and opened, and identify whether



1 prequalification is required and where all written  
2 prequalification information is available for review. All bids  
3 shall be opened publicly at the advertised time and place. No  
4 public work as defined in this chapter involving a sum in  
5 excess of fifty thousand dollars (\$50,000) shall be split into  
6 parts involving sums of fifty thousand dollars (\$50,000) or  
7 less for the purpose of evading the requirements of this  
8 section.

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

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

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

24           "(d) (1) Excluded from the operation of this title  
25 shall be contracts with persons who shall perform only  
26 architectural, engineering, construction management, program  
27 management, or project management services in support of the

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

5 (2) Except as otherwise provided in Article 2 or  
6 Article 3, subsection (a) of this section, Section 39-2-3,  
7 subsections (a) and (d) of Section 39-2-4, and Sections  
8 39-2-5, 39-2-6, and 39-2-11 do not apply to a contract for a  
9 public works project that is let using the CM/GC method  
10 provided in Article 2 or using the design-build method  
11 provided in Article 3. In addition, subsection (f) of this  
12 section shall not apply to a contract for a public works  
13 project that is let using the design-build method provided in  
14 Article 3. Except as otherwise provided in Article 2 and  
15 Article 3, the remaining provisions of this article shall  
16 apply to the CM/GC method and the design-build method.

17 "(e) In case of an emergency affecting public  
18 health, safety, or convenience, as declared in writing by the  
19 awarding authority, setting forth the nature of the danger to  
20 the public health, safety, or convenience which would result  
21 from delay, contracts may be let to the extent necessary to  
22 meet the emergency without public advertisement. The action  
23 and the reasons for the action taken shall immediately be made  
24 public by the awarding authority upon request.

25 "(f) No awarding authority may specify in the plans  
26 and specifications for the improvement the use of materials,

1 products, systems, or services by a sole source unless all of  
2 the following requirements are met:

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

12 "(2) The sole source specification has been  
13 recommended by the architect or engineer of record as an  
14 indispensable item for which there is no other viable  
15 alternative.

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

21 "(g) In the event of a proposed public works  
22 project, acknowledged in writing by the Alabama Homeland  
23 Security Department as (1) having a direct impact on the  
24 security or safety of persons or facilities and (2) requiring  
25 confidential handling for the protection of such persons or  
26 facilities, contracts may be let without public advertisement  
27 but with the taking of informal bids otherwise consistent with

1 the requirements of this title and the requirements of  
2 maintaining confidentiality. Records of bidding and award  
3 shall not be disclosed to the public, and shall remain  
4 confidential.

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

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

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

16 ARTICLE 2. CONSTRUCTION MANAGER/GENERAL CONTRACTOR  
17 PUBLIC WORKS CONTRACTS.

18 §39-2-40.

19 In addition to the methods provided in Article 1 and  
20 Article 3 for awarding a public works contract, any contract  
21 for public works which, based on the awarding authority's  
22 preliminary budget or the awarding authority's design  
23 professional's estimate, involves an amount in excess of  
24 fifteen million dollars (\$15,000,000) in anticipated  
25 construction costs, may be let by an awarding authority  
26 pursuant to the CM/GC method set forth in this article;  
27 provided, however, no contract for public works, regardless of

1 amount, to be awarded by the Department of Transportation, or  
2 to be awarded by a county or municipality for the construction  
3 or maintenance of a public road or highway, may be let  
4 pursuant to the CM/GC method. Construction costs shall include  
5 all costs necessarily incurred in the proper performance of  
6 the construction of the public work including without  
7 limitation all permitting, management, supervisory, labor,  
8 subcontract, materials, equipment, and temporary facilities  
9 costs and any items which become permanently affixed or  
10 connected to the public work, but shall not include other  
11 project or program costs such as the cost of land acquisition  
12 or any items such as furniture or equipment which do not  
13 become permanently affixed or connected to the public work.  
14 Before an awarding authority proceeds with a CM/GC project,  
15 the awarding authority with the involvement of its design  
16 professional shall declare in writing why the CM/GC project  
17 delivery system is the preferred method for the particular  
18 project. The written statement shall identify the specific  
19 potential benefits to the public which the awarding authority  
20 reasonably believes will result from the use of the CM/GC  
21 delivery method and may include, without limitation,  
22 improvements in the quality, schedule, or cost of the  
23 particular project and shall be signed by the awarding  
24 authority's design professional. The written statement shall  
25 also state the funds available for the project. The written  
26 statement shall be prepared and made available on request  
27 before proceeding with the CM/GC prequalification and it must

1 be included in the advertisement requesting submission of  
2 qualifications and proposals required by Section 39-2-42(a).

3 §39-2-41.

4 For the purposes of this article, the following  
5 terms shall have the following meanings:

6 (1) CM/GC SERVICES. Services provided by a person  
7 that:

8 a. Provides construction management services for a  
9 specific, single project throughout the preconstruction and  
10 construction phases or for any portion thereof. For the  
11 purposes of this article, a specific, single project is a  
12 project that is constructed at a single location or at a  
13 common location so long as for a single project.

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

16 c. Performs or provides for the performance of the  
17 work on the project and guarantees the maximum cost of the  
18 project.

19 (2) CONSTRUCTION MANAGEMENT SERVICES. Services  
20 provided by a construction manager, which may include, but are  
21 not necessarily limited to, design/constructability review,  
22 preparation and coordination of bid packages, scheduling, cost  
23 control, value engineering, preconstruction services,  
24 construction administration, and construction services.

25 §39-2-42.

26 (a) A CM/GC shall be selected after advertising in  
27 accordance with the procedure provided in subsection (a) of

1 Section 39-2-2 (other than the requirement for sealed bids)  
2 and prequalification conducted by the awarding authority or  
3 its agent in accordance with the procedures provided in  
4 subsections (b), (c), and (e) of Section 39-2-4. The final  
5 selection must be made from among those who prequalify. The  
6 CM/GC must be properly licensed prior to submitting for  
7 prequalification. Those who prequalify are then eligible to  
8 submit competitive proposals to the awarding authority or its  
9 agent. The criteria to be used for prequalification and the  
10 content of the request for competitive proposals, including  
11 the criteria for final selection, shall be prepared with the  
12 involvement and participation of the awarding authority's  
13 design professional, or design professionals, who shall be  
14 retained by the awarding authority for observation of  
15 construction requirements as required by law. Nothing herein  
16 is intended to nor shall it be construed as to require or  
17 permit an awarding authority to contract with a design  
18 professional, at any tier, on any basis other than a  
19 qualifications-based selection process. The final selection of  
20 those CM/GCs who prequalify to submit competitive proposals  
21 shall be based upon the awarding authority's written findings  
22 and conclusions regarding the CM/GC's qualifications and  
23 responsibility including, without limitation, specific  
24 evaluations regarding the CM/GC's demonstrated competence on  
25 similar projects, experience specifically relating to similar  
26 projects, financial ability, past performance, relevant safety  
27 record, proposed personnel and methodology for the project,

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



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

1 price, or any component of price or fee. The awarding  
2 authority shall then enter into negotiations with the CM/GC  
3 having the highest ranked competitive proposal to finalize the  
4 terms of a CM/GC contract.

5 (b) Pursuant to a CM/GC contract, the person  
6 providing CM/GC services may self-perform portions of a  
7 project provided the aggregate total cost of all the work the  
8 CM/GC plans to self-perform, not including the general  
9 conditions items, does not exceed 10 percent of the guaranteed  
10 maximum price (at the time the final contract is awarded).

11 General conditions costs are those costs incurred by the CM/GC  
12 for work that is necessary to perform the project but does not  
13 become an integral or permanent part of the finished project.

14 General conditions costs shall include preconstruction  
15 services. For purposes of determining the aggregate total cost  
16 of self-performed work, the total cost shall include all costs  
17 reasonably necessary for the proper performance of the  
18 self-performed work including, without limitation, the total  
19 sum of all labor, materials, tools, equipment, trade  
20 supervision, layout, taxes, and bond and insurance premium  
21 (when and if required). In addition, for purposes of  
22 compliance with the 10 percent limitation, work subcontracted  
23 to a separate entity in which the CM/GC has any ownership  
24 interest or is under common ownership with the CM/GC shall be  
25 considered self-performed work. Notwithstanding the foregoing  
26 10 percent limitation, the CM/GC may self-perform additional  
27 work on the project in the event a subcontractor or

1 subcontractors is terminated for default, is deemed by the  
2 CM/GC to be non-performing or underperforming some portion of  
3 the subcontract scope of work, or is otherwise not materially  
4 complying with the subcontract requirements such as to require  
5 the CM/GC to supplement the subcontractor's work by  
6 self-performing some portion of the subcontractor's scope of  
7 work, or if there are no subcontractors who bid or submit  
8 proposals for some portion of the work. If all bids or  
9 proposals received for a particular scope of work to be  
10 subcontracted exceed the proposed budget for that work, the  
11 CM/GC shall negotiate with the lowest bidder or proposer to  
12 attempt to obtain a price at or below the proposed budget  
13 amount. If the CM/GC is unable to negotiate a price within the  
14 proposed budget amount, then the CM/GC may, at its option and  
15 discretion, perform that scope of work itself or apply savings  
16 or contingency amounts from another line item in the proposed  
17 budget sufficient to bring the work within the proposed budget  
18 amount.

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

22 §39-2-43.

23 (a) Within 30 days after ranking the competitive  
24 proposals, the awarding authority shall notify in writing the  
25 CM/GC having the highest ranked competitive proposal for the  
26 purpose of entering into a CM/GC contract. The letter of  
27 intent to award the project issued by the awarding authority

1 shall describe the services to be performed and the proposed  
2 compensation.

3 (b) Within 30 days of receipt of the awarding  
4 authority's letter of intent, the CM/GC shall present to the  
5 awarding authority a proposed date by which the guaranteed  
6 maximum price shall be agreed upon together with staffing  
7 costs for the CM/GC, other proposed general conditions costs,  
8 and the fee for CM/GC services. The awarding authority may  
9 accept, reject, or continue to negotiate with the CM/GC to  
10 reach a contract agreement; however, if the negotiation is not  
11 completed within 90 days after issuance of the awarding  
12 authority's letter of intent to award, the awarding authority  
13 and CM/GC must agree in writing to an extension of time.

14 (c) If the awarding authority is unable to negotiate  
15 a satisfactory contract with the initially selected CM/GC, the  
16 awarding authority shall terminate negotiations with the CM/GC  
17 and withdraw the letter of intent to award. If the awarding  
18 authority decides to proceed with the public works project,  
19 the awarding authority shall issue a letter of intent to the  
20 next highest ranked CM/GC and proceed as outlined above until  
21 an acceptable agreement on contract terms is reached. This  
22 process may proceed with respect to each prequalified CM/GC in  
23 the order in which the CM/GC was ranked by the awarding  
24 authority. However, if the awarding authority is unable to  
25 award a contract to a CM/GC within 120 days of ranking the  
26 competitive proposals, all proposals shall expire unless at  
27 least one ranked CM/GC agrees in writing to a stipulated

1 extension of time for consideration of its proposal.  
2 Alternatively, if at any point before contracting with the  
3 CM/GC the awarding authority decides it is in the project's or  
4 the public's best interest, it may choose to let a contract  
5 for the project in accordance with Article 1 or Article 3 or  
6 it may cancel the project.

7 (d) Once the awarding authority reaches an agreement  
8 on contract terms with the CM/GC selected, the awarding  
9 authority and CM/GC shall enter a written contract for the  
10 specific, single project advertised and negotiated. The  
11 contract shall be written by the awarding authority with the  
12 involvement of its design professional using as the basis for  
13 the contract either an industry standard form developed for a  
14 CM/GC project or a form for a CM/GC project used or  
15 promulgated by the state.

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

19 (1) For the selection of subcontractors whose  
20 contract is not expected to exceed fifty thousand dollars  
21 (\$50,000) in amount, the CM/GC shall have sole discretion in  
22 the manner, method, and conditions of selection. The project  
23 shall not be divided into subcontracts of less than fifty  
24 thousand dollars (\$50,000) for the purpose of evading the  
25 prequalification selection process or any other provisions of  
26 this title.

1           (2) Other than subcontractors awarded in accordance  
2 with (1) above or (3) below, for all subcontracts greater than  
3 fifty thousand dollars (\$50,000) the CM/GC shall prequalify  
4 all subcontractors and shall solicit lump sum bids from the  
5 subcontractors who prequalify. Based on its review and  
6 analysis of the bids received, the CM/GC shall identify the  
7 subcontractors it intends to contract with on a lump sum basis  
8 and shall submit the list to the awarding authority.  
9 Additional subcontractors may be added to the list as they are  
10 identified by the CM/GC. The awarding authority may object to  
11 the use of particular subcontractors; provided, however, if  
12 the awarding authority's rejection of a particular subcontract  
13 results in additional cost or time or both, the CM/GC may be  
14 entitled to an increase in the contract time or GMP or both.

15           (3) The CM/GC may desire to select certain  
16 subcontractors before the scope of work is defined well enough  
17 for subcontractors to submit lump sum bids. In such case, the  
18 subcontractor may be selected solely on the basis of the  
19 subcontractor's qualifications. The CM/GC shall prequalify all  
20 such subcontractors using a prequalification procedure which  
21 is consistent with the requirements in Section 39-2-4. The  
22 list of prequalified subcontractors shall be submitted to the  
23 awarding authority and the design professional by the CM/GC.  
24 Within 10 days of receipt of the list of subcontractors, the  
25 awarding authority may provide comments on or reject the  
26 selection of any proposed subcontractors based upon a past  
27 experience, prior or current legal dispute the awarding

1 authority may have with a subcontractor or for other  
2 reasonable cause; provided, however, should the awarding  
3 authority's rejection of any proposed subcontractor result in  
4 additional cost or time that exceeds the awarded contract  
5 amount, the CM/GC may be entitled to compensation for any such  
6 additional costs or time that resulted from the substitution  
7 of a proposed subcontractor. The CM/GC shall then receive  
8 competitive proposals from the subcontractors who have  
9 prequalified. Prior to the submission of competitive  
10 proposals, the CM/GC shall establish the criteria upon which  
11 the competitive proposals shall be scored. Each criterion  
12 shall be assigned a percentage of the total score and shall be  
13 submitted to the awarding authority and its design  
14 professional for approval. After approval by the awarding  
15 authority but sufficiently in advance of the submission of  
16 proposals, the CM/GC shall provide the criteria and percentage  
17 valuation that will be assigned to each element to the  
18 subcontractors submitting competitive proposals and shall  
19 state the date for submission of the competitive proposals.  
20 The competitive proposals shall respond to the criteria upon  
21 which the CM/GC's selection shall be based. The CM/GC shall  
22 rank the proposals received from first to last and shall  
23 submit in writing to the awarding authority the ranking  
24 together with the score for each competitive proposal  
25 indicating the score each criterion received and a written  
26 narrative describing the basis for the selection and the  
27 ranking. Based on the competitive proposals ranking, the CM/GC

1 shall select the subcontractors with whom it intends to  
2 perform the project. The CM/GC shall not be required to base  
3 its selection of subcontractors solely on lowest price, or any  
4 component of price or fee; however, if price, or any component  
5 thereof, is used as a selection criterion for any particular  
6 subcontractor, the CM/GC shall provide the awarding authority,  
7 in writing, reasonable cause for choosing a subcontractor not  
8 having the lowest price.

9 (f) 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 (g) All proceedings, records, proposals, contracts,  
14 and other documents relating to the contracting for public  
15 works under this article shall be public records. Upon request  
16 of an interested citizen, the awarding authority shall make  
17 available for inspection any and all such documents.

18 Section 4. Article 3, consisting of Sections 39-2-60  
19 to 39-2-69, inclusive, is added to Chapter 2 of Title 39, Code  
20 of Alabama 1975, to read as follows:

21 ARTICLE 3. DESIGN BUILD PUBLIC WORKS CONTRACTS.

22 §39-2-60.

23 In addition to the methods provided in Articles 1  
24 and 2 for awarding a public works contract, any contract for  
25 public works which, based on the awarding authority's  
26 preliminary budget or design professional's estimate, involves  
27 an amount in excess of fifteen million dollars (\$15,000,000)



1 in design and construction costs, may be let pursuant to the  
2 design-build method set forth in this article; provided,  
3 however, no contract for public works, regardless of amount,  
4 to be awarded by the Department of Transportation, or to be  
5 awarded by a county or municipality for the construction or  
6 maintenance of a public road or highway, may be let pursuant  
7 to the design-build method. The design and construction costs  
8 shall include all costs necessarily incurred in the proper  
9 performance of a complete design and the proper performance of  
10 construction including without limitation all permitting,  
11 management, supervisory, labor, subcontract, materials,  
12 equipment, and temporary facilities costs and any items which  
13 become permanently affixed or connected to the public work,  
14 but shall not include other project or program costs such as  
15 the cost of land acquisition or any items such as furniture or  
16 equipment which do not become permanently affixed or connected  
17 to the public work. Before an awarding authority may proceed  
18 with a design-build project, the awarding authority with the  
19 involvement of its design professional, or design  
20 professionals, shall declare in writing why the design-build  
21 project delivery system is the preferred method for the  
22 particular project, it shall be signed by the awarding  
23 authority's design professional, or design professionals, and  
24 it must be included in the advertisement requesting submission  
25 of qualifications and proposals required by Section 39-2-2(a).  
26 The written statement shall also state the funds available for  
27 the project.

1 §39-2-61.

2 For the purposes of this article, the following  
3 terms shall have the following meanings:

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

6 a. Performs or provides the project design and  
7 construction management services for a specific, single  
8 project throughout the design, preconstruction and  
9 construction phases. For the purposes of this article, a  
10 specific, single project is a project that is constructed at a  
11 single location or at a common location so long as for a  
12 single project.

13 b. During the design phase, performs or provides the  
14 project design which must be performed by a full team of  
15 licensed design professionals representing the engineering and  
16 architectural disciplines required by the needs of the  
17 specific project. Nothing herein, however, is intended to nor  
18 shall it be construed as to require or permit the  
19 design-builder to contract with design professionals, at any  
20 tier, on any basis other than a qualifications-based  
21 selection.

22 c. During the construction phase, acts as a general  
23 contractor in accordance with the design-build contract.  
24 Services may include, without limitation, scheduling, cost  
25 control, value engineering, evaluation, preconstruction  
26 services, construction administration (provided that the  
27 observation of construction requirements are performed by the

1 licensed design professionals of record as required by law),  
2 and construction services pursuant to a single contract.

3 d. Performs or provides both the design and  
4 construction of the work on the project either for a lump sum  
5 or for a guaranteed maximum cost for the project.

6 §39-2-62.

7 (a) The awarding authority shall engage a licensed  
8 design professional in the design-build team prequalification  
9 and selection process. The design professional shall include a  
10 full, professional design team that includes all major  
11 engineering disciplines involved in the proposed project. The  
12 design professional and its full professional team shall be  
13 retained by the awarding authority for observation of  
14 construction requirements as required by law and until the  
15 project is completed and accepted by the awarding authority.  
16 The design professional, with the involvement of its full  
17 professional team, shall: develop a scope of work that defines  
18 the project and the awarding authority's requirements; be  
19 involved in the preparation of the prequalification criteria  
20 and final selection criteria; be involved in the evaluation  
21 and scoring of the prequalification and final selection  
22 criteria; and provide technical reviews, project oversight and  
23 other technical project administration services to the  
24 awarding authority for the duration of the project. The design  
25 professional and its full professional team shall also assist  
26 the awarding authority in developing the proposed budget for  
27 the project. The awarding authority may use in-house design

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

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

24 (c) An awarding authority wishing to undertake a  
25 design-build project shall prepare a written request for  
26 qualifications from potential design-builders. At a minimum,  
27 the request for qualifications shall be published in

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

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

19 (d) From the prequalification data submitted, the  
20 awarding authority and its design professional, with the  
21 involvement of its full professional team, shall then review  
22 the prequalification data submitted and shall prequalify up to  
23 five potential design-builders from whom to request  
24 competitive proposals. While the awarding authority and design  
25 professional may prequalify fewer than five potential  
26 design-builders, a minimum of three design-builders must be  
27 prequalified to proceed with the design-builder selection

1 process. The awarding authority shall prepare written findings  
2 and conclusions regarding the awarding authority's assessment  
3 of the qualifications of each design-builder who responds to  
4 the request for qualifications.

5 (e) Following the awarding authority's establishment  
6 of a list of those design-builders who prequalify, but at  
7 least 45 days in advance of the submission of final proposals,  
8 the awarding authority shall provide in writing to all  
9 prequalified design-builders the criteria upon which the  
10 competitive proposals shall be scored and the percentage  
11 valuation that will be assigned to each element in the final  
12 selection criteria and shall state the date for submission of  
13 the competitive proposals so that those submitting competitive  
14 proposals know how each criterion shall be weighted. The  
15 awarding authority shall also include the minimum score  
16 required for a competitive proposal to be technically  
17 acceptable. The final qualification criteria are left to the  
18 awarding authority and awarding authority's design  
19 professional's, with the involvement of its full professional  
20 team, discretion but shall be related to the specific project  
21 requirements. The criteria shall be compiled to enable the  
22 awarding authority to make an informed selection of the  
23 design-builder best qualified for the particular needs of the  
24 project and may include but are not necessarily limited to:  
25 (1) the design-builder's project design concepts; (2) proposed  
26 design approach and technical solutions; (3) proposed project  
27 management approach; (4) proposed project team members

1 including key personnel, project team organization, project  
2 team management and assignment of specific project  
3 responsibilities; (5) proposed project enhancements including  
4 design approach, schedule improvements, added quality or  
5 proposed cost savings for the project; (6) proposed project  
6 schedule including significant project milestones and (7) the  
7 design-builder's proposed methodology for achieving  
8 woman-owned business enterprise, enterprise of small business,  
9 as defined in Section 25-10-3, minority-owned business  
10 enterprise, and disadvantaged-owned business enterprise goals,  
11 if any. Each prequalified design-builder shall also submit a  
12 sealed proposal with the proposed lump sum or guaranteed  
13 maximum price. The awarding authority shall not open the  
14 sealed proposal until after the final proposals have been  
15 scored.

16 (f) The final proposals shall respond to the  
17 criteria upon which the awarding authority's selection shall  
18 be based, and they shall be scored based on the awarding  
19 authority's analysis of each potential design-builder's  
20 proposal. Proposals that do not meet the minimum score  
21 established by the awarding authority shall not be technically  
22 acceptable and the design-builder shall not be eligible for  
23 award. The awarding authority shall then open and score the  
24 sealed proposals of the responsive proposals. The awarding  
25 authority shall then rank the technically acceptable proposals  
26 from first to last, based on the total cumulative score. The  
27 awarding authority is not required to make its final ranking



1 based solely on lowest price or any component of price. The  
2 awarding authority shall maintain a written record of the  
3 ranking together with the score for each proposal received  
4 indicating the score each criterion received and a written  
5 narrative describing the basis for the selection and the  
6 ranking.

7 (g) If the sealed proposal of the first-ranked  
8 design-builder is within the awarding authority's proposed  
9 budget, then the awarding authority shall proceed with  
10 entering into a design-build contract with the successful  
11 design-builder. If the sealed proposal from the first ranked  
12 design-builder is not within the awarding authority's proposed  
13 budget, the awarding authority shall proceed to the  
14 second-ranked design-builder. If the sealed proposal of the  
15 second-ranked design-builder is not within the awarding  
16 authority's proposed budget, then the awarding authority shall  
17 proceed to the sealed proposal of the third-ranked  
18 design-builder. If the sealed proposal of the third-ranked  
19 design-builder is not within the awarding authority's proposed  
20 budget, then the awarding authority may proceed in order to  
21 the fourth-ranked and fifth-ranked design-builders' proposals,  
22 respectively. If none of the sealed proposals are within the  
23 awarding authority's proposed budget, then the awarding  
24 authority shall reject all proposals. The awarding authority  
25 may then let the contract for the project pursuant to Article  
26 1 or Article 2 or may cancel the project; however, the  
27 awarding authority may not proceed under the design-build

1 method described in this section without revising the project  
2 scope and project budget and starting with the advertisement  
3 of a new request for prequalification. In addition, any of the  
4 criteria provided in any previous qualification and selection  
5 process may not be considered if the project is re-advertised.

6 §39-2-63.

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

10 §39-2-64.

11 (a) Within 30 days of opening the sealed proposal  
12 from the successful design-builder, the awarding authority,  
13 shall enter a written design-build contract, prepared by the  
14 awarding authority with the involvement of its design  
15 professional, with the design-builder for design-build  
16 services. As the basis for the contract, the awarding  
17 authority shall use an industry standard form developed for  
18 design-build projects or a form for a design-build project  
19 used or promulgated by the state. The design-builder's final  
20 proposal, including the proposed design concept, proposed  
21 schedule, proposed project team members, and guaranteed  
22 maximum price shall be incorporated into the award of the  
23 design-build contract. The awarding authority shall have the  
24 right to terminate the design-build contract for failure to  
25 comply substantially with the final proposal and accepted  
26 price.

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

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

23 §39-2-65.

24 The design-builder shall be responsible for  
25 complying with all applicable laws, codes and regulations. The  
26 awarding authority shall not be responsible for the  
27 design-builder's failure to comply.

1 §39-2-66.

2 Within 90 days after the awarding authority  
3 publishes the rankings of the competitive proposals, each  
4 prequalified design-builder who submitted a responsive,  
5 competitive proposal shall be paid the proposal fee which the  
6 competitive proposal criteria stipulated, if any. If the  
7 awarding authority elects to pay a stipulated proposal fee,  
8 the amount shall be set forth in the request for  
9 qualifications. The awarding authority's design professional  
10 shall review the proposal requirements and shall recommend to  
11 the awarding authority the amount of the fee based on the  
12 design professional's opinion of the required effort. The  
13 proposal fee shall not be paid to the successful  
14 design-builder nor shall the proposal fee be paid to any  
15 proposer whose proposal was not technically acceptable as  
16 determined by the awarding authority and its design  
17 professional.

18 §39-2-67.

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

24 §39-2-68.

25 All contracts for public works entered into in  
26 violation of this article shall be null, void, and violative

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

3 §39-2-69.

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

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

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