

1 SB19
2 154759-3
3 By Senator Orr
4 RFD: Fiscal Responsibility and Accountability
5 First Read: 14-JAN-14
6 PFD: 08/23/2013

1 SB19

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4 ENROLLED, An Act,

5 To amend Sections 39-2-2, 41-16-24, and 41-16-54 of
6 the Code of Alabama 1975, relating to a contract for public
7 works; to allow an awarding authority to let a contract for
8 public works if a newspaper to which an advertisement for
9 sealed bids for the contract was submitted by the awarding
10 authority did not publish the advertisement and the authority
11 can provide proof that it in good faith submitted the
12 advertisement to the newspaper.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 39-2-2, 41-16-24, and 41-16-54
15 of the Code of Alabama 1975, are amended to read as follows:

16 "§39-2-2.

17 "(a) Before entering into any contract for a public
18 works involving an amount in excess of fifty thousand dollars
19 (\$50,000), the awarding authority shall advertise for sealed
20 bids. If the awarding authority is the state or a county, or
21 an instrumentality thereof, it shall advertise for sealed bids
22 at least once each week for three consecutive weeks in a
23 newspaper of general circulation in the county or counties in
24 which the improvement or some part thereof, is to be made. If
25 the awarding authority is a municipality, or an

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

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

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

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

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

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

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

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

21 "(1) Except for contracts involving the
22 construction, reconstruction, renovation, or replacement of
23 public roads, bridges, and water and sewer facilities, the
24 awarding authority can document to the satisfaction of the
25 State Building Commission that the sole source product,

1 material, system, or service is of an indispensable nature for
2 the improvement, that there are no other viable alternatives,
3 and that only this particular product, material, system, or
4 service fulfills the function for which it is needed.

5 "(2) The sole source specification has been
6 recommended by the architect or engineer of record as an
7 indispensable item for which there is no other viable
8 alternative.

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

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

25 "§41-16-24.

1 "(a) (1) The Purchasing Agent shall advertise for
2 sealed bids on all purchases in excess of the competitive bid
3 limit as established in Section 41-16-20 by posting notice
4 thereof on a bulletin board maintained outside the office door
5 or by publication of notice thereof, one time, in a newspaper
6 published in Montgomery County, Alabama, or in any other
7 manner, for such lengths of time as the Purchasing Agent may
8 determine. The Purchasing Agent shall also solicit sealed bids
9 or bids to be submitted by reverse auction procedure by
10 notifying all Alabama persons, firms, or corporations who have
11 filed a request in writing that they be listed for
12 solicitation on bids for the particular items set forth in the
13 request and the other persons, firms, or corporations the
14 Purchasing Agent deems necessary to insure competition. If any
15 person, firm, or corporation whose name is listed fails to
16 respond to any solicitation for bids after the receipt of
17 three solicitations, the listing may be cancelled by the
18 Purchasing Agent.

19 "(2) A Purchasing Agent may enter into a contract
20 for purchases if a newspaper to which an advertisement for
21 purchases did not publish the advertisement if the Purchasing
22 Agent can provide proof that it in good faith submitted the
23 advertisement to the newspaper with instructions to publish
24 the notice in accordance with the provisions of this section.

1 "(b) All bids, except as provided in subsection (d),
2 shall be sealed when received, shall be opened in public at
3 the hour stated in the notice, and all original bids together
4 with all documents pertaining to the award of the contract
5 shall be retained in accordance with a retention period
6 established by the State Records Commission and shall be open
7 to public inspection.

8 "(c) If the purchase or contract will involve an
9 amount of the competitive bid limit as established in Section
10 41-16-20 or less, the Purchasing Agent may make the purchases
11 or contracts either upon the basis of sealed bids, reverse
12 auction procedure, or in the open market.

13 (d) For purposes of this article, a reverse auction
14 procedure includes either of the following:

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

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

1 "(e) No purchase or contract involving an amount in
2 excess of the competitive bid limit as established in Section
3 41-16-20 shall be divided into parts involving amounts of the
4 competitive bid limit as established in Section 41-16-20 or
5 less for the purpose of avoiding the requirements of this
6 article. All such partial contracts involving the competitive
7 bid limit as established in Section 41-16-20 or less shall be
8 void.

9 "§41-16-54.

10 "(a) (1) All proposed purchases in excess of fifteen
11 thousand dollars (\$15,000) shall be advertised by posting
12 notice thereof on a bulletin board maintained outside the
13 purchasing office and in any other manner and for any length
14 of time as may be determined. Sealed bids or bids to be
15 submitted by a reverse auction procedure shall also be
16 solicited by sending notice by mail or other electronic means
17 to all persons, firms, or corporations who have filed a
18 request in writing that they be listed for solicitation on
19 bids for the particular items that are set forth in the
20 request. If any person, firm, or corporation whose name is
21 listed fails to respond to any solicitation for bids after the
22 receipt of three solicitations, the listing may be cancelled.

23 "(2) If a governing body mandates that advertisement
24 for bids shall be published in a newspaper, the contract for
25 purchase shall be awarded if the newspaper to which the

1 advertisement was submitted did not publish the advertisement
2 if the governing body can provide proof that it in good faith
3 submitted the advertisement to the newspaper with instructions
4 to publish the notice in accordance with the provisions of
5 this section.

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

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

14 "(d) Beginning January 1, 2009, the awarding
15 authority may make purchases or contracts involving an amount
16 of fifteen thousand dollars (\$15,000) or more through a
17 reverse auction procedure; provided, however, that a reverse
18 auction shall only be allowed where the item to be purchased
19 at a reverse auction is either not at the time available on
20 the state purchasing program under the same terms and
21 conditions or, if available, the lowest price offered in the
22 reverse auction is equal to or less than the price for which
23 the item is available on the state purchasing program under
24 the same terms and conditions. All of the purchases shall be
25 subject to audit by the Examiners of Public Accounts. For

1 purposes of this article, a reverse auction procedure includes
2 either of the following:

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

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

13 "b. No later than November 30, 2008, the Department
14 of Examiners of Public Accounts shall establish procedures for
15 the use of reverse auction, which shall be distributed to all
16 contracting agencies and shall be used in conducting any
17 audits of the purchasing agency.

18 "(e) All original bids together with all documents
19 pertaining to the award of the contract shall be retained in
20 accordance with a retention period of at least seven years
21 established by the Local Government Records Commission and
22 shall be open to public inspection.

23 "(f) No purchase or contract involving professional
24 services shall be subject to the requirements of this article
25 and no purchase or contract involving an amount in excess of

1 fifteen thousand dollars (\$15,000) shall be divided into parts
2 involving amounts of fifteen thousand dollars (\$15,000) or
3 less for the purpose of avoiding the requirements of this
4 article. All such partial contracts involving fifteen thousand
5 dollars (\$15,000) or less shall be void.

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

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB19
Senate 28-JAN-14
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris
Secretary

House of Representatives
Passed: 01-APR-14

By: Senator Orr