

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

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8 SYNOPSIS: Under existing law, an awarding authority
9 may let contracts for public works involving
10 \$50,000 or less with or without advertising for
11 sealed bids.

12 This bill would allow an awarding authority
13 to let a contract for public works if a newspaper
14 to which an advertisement for sealed bids for the
15 contract was submitted by the awarding authority
16 did not publish the advertisement, and the
17 authority can provide proof that it in good faith
18 submitted the advertisement to the newspaper.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT
23

24 To amend Sections 39-2-2, 41-16-24, and 41-16-54 of
25 the Code of Alabama 1975, relating to a contract for public
26 works; to allow an awarding authority to let a contract for
27 public works if a newspaper to which an advertisement for

1 sealed bids for the contract was submitted by the awarding
2 authority did not publish the advertisement and the authority
3 can provide proof that it in good faith submitted the
4 advertisement to the newspaper.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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) Excluded from the operation of this title shall
14 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 "(e) In case of an emergency affecting public
22 health, safety, or convenience, as declared in writing by the
23 awarding authority, setting forth the nature of the danger to
24 the public health, safety, or convenience which would result
25 from delay, contracts may be let to the extent necessary to
26 meet the emergency without public advertisement. The action

1 and the reasons for the action taken shall immediately be made
2 public by the awarding authority upon request.

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

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

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

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

25 "(g) In the event of a proposed public works
26 project, acknowledged in writing by the Alabama Homeland
27 Security Department as (1) having a direct impact on the

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

9 "§41-16-24.

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

1 "(2) A Purchasing Agent may enter into a contract
2 for purchases if a newspaper to which an advertisement for
3 purchases did not publish the advertisement if the Purchasing
4 Agent can provide proof that it in good faith submitted the
5 advertisement to the newspaper with instructions to publish
6 the notice in accordance with the provisions of this section.

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

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

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

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

26 "(2) A bidding process usually lasting less than two
27 weeks and taking place during a previously scheduled period

1 and at a previously scheduled Internet location, in which
2 multiple anonymous suppliers submit bids to provide the
3 designated goods or services.

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

12 "§41-16-54.

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

26 "(2) If a governing body mandates that advertisement
27 for bids shall be published in a newspaper, the contract for

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

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

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

15 "(d) Beginning January 1, 2009, the awarding
16 authority may make purchases or contracts involving an amount
17 of fifteen thousand dollars (\$15,000) or more through a
18 reverse auction procedure; provided, however, that a reverse
19 auction shall only be allowed where the item to be purchased
20 at a reverse auction is either not at the time available on
21 the state purchasing program under the same terms and
22 conditions or, if available, the lowest price offered in the
23 reverse auction is equal to or less than the price for which
24 the item is available on the state purchasing program under
25 the same terms and conditions. All of the purchases shall be
26 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
26 fifteen thousand dollars (\$15,000) shall be divided into parts
27 involving amounts of fifteen thousand dollars (\$15,000) or

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

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

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