

1 HB69
2 184592-2
3 By Representative Standridge
4 RFD: State Government
5 First Read: 09-JAN-18
6 PFD: 01/04/2018

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8 SYNOPSIS: Under existing law, all portions of a public
9 works project are required to be bid and otherwise
10 comply with the public works law.

11 This bill would allow for certain exceptions
12 for contracting for the purchase and installation
13 of heating or air conditioning units or systems for
14 county, municipal, and local school board entities
15 when the purchase and installation of the units or
16 systems have been competitively bid pursuant to the
17 purchasing cooperative sponsored by the National
18 Association of Counties and the National League of
19 Cities or their successor organizations and the bid
20 process has been approved by the Department of
21 Examiners of Public Accounts.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 To amend Sections 39-1-5 and 39-2-2, Code of Alabama
2 1975, to provide an exception to the public works law for
3 certain contracts for the purchase and installation of heating
4 or air conditioning units or systems that have been
5 competitively bid pursuant to the purchasing cooperative
6 sponsored by the National Association of Counties and National
7 League of Cities, or their successor organizations, if the bid
8 process has been approved by the Department of Examiners of
9 Public Accounts.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 39-1-5 and 39-2-2 of the Code of
12 Alabama 1975, are amended to read as follows:

13 "§39-1-5.

14 "Notwithstanding any other laws to the contrary, ~~Act~~
15 ~~97-225~~ this title shall control all public works contracts on
16 the state, county, and municipal levels of government in the
17 State of Alabama.

18 "§39-2-2.

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

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

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

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

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

23 "(d) (1) Excluded from the operation of this title
24 shall be contracts with persons who shall perform only
25 architectural, engineering, construction management, program
26 management, or project management services in support of the
27 public works and who shall not engage in actual construction,

1 repair, renovation, or maintenance of the public works with
2 their own forces, by contract, subcontract, purchase order,
3 lease, or otherwise.

4 "(2) Also excluded from operation of this title are
5 contracts for the purchase and installation of any heating or
6 air conditioning units or systems by any awarding authority
7 subject to Chapter 13B of Title 16, or Article 3, commencing
8 with Section 41-16-50, of Chapter 16, Title 41, provided the
9 contract is entered into with an Alabama vendor who has been
10 granted approved vendor status for the sale and installation
11 of heating or air conditioning units or systems as a part of
12 the purchasing cooperative sponsored by the National
13 Association of Counties and the National League of Cities, or
14 their successor organizations, and each of the following
15 occur:

16 "a. The heating or air conditioning unit or system
17 being purchased and installed is available as a result of a
18 competitive bid process conducted by a local governing body
19 which has been approved by the Department of Examiners of
20 Public Accounts.

21 "b. The purchase and installation of the heating or
22 air conditioning unit or system is not available on the state
23 purchasing program at the time of the purchase and
24 installation under the purchasing cooperative is available at
25 a price that is equal to or less than that available through
26 the state purchasing program.

1 "c. The entity entering into the contract for the
2 purchase and installation of the heating or air conditioning
3 unit or system has been notified by the Department of
4 Examiners of Public Accounts that the competitive bid process
5 utilized by the cooperative program offering the goods and
6 installation complies with state competitive bid laws.

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

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

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

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

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

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

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

25 "(i) The awarding authority may not offer a contract
26 for bidding unless confirmation of any applicable grant has

1 been received and any required matching funds have been
2 secured by or are available to the awarding authority."

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