



OFFERED BY SENATOR SESSIONS

SYNOPSIS:

Under existing law, before entering into any contract for a public works involving an amount in excess of \$100,000, an awarding authority must advertise for sealed bids in a specified manner, which generally includes advertisement by newspaper once a week for three consecutive weeks.

This bill would provide certain additional methods of publication that would serve as a safe harbor for the award of a contract for public works in the event a publication by newspaper fails to be completed.

This bill would also establish the Study Commission on Public Notice of Title 39 Advertisements to study and make recommendations regarding the establishment of a centralized website for notice of advertisements for certain public bids.

A BILL  
TO BE ENTITLED  
AN ACT

Relating to contracts for public works; to amend  
Section 39-2-2, Code of Alabama 1975, to further provide for



the requirement to publish public notice of the contract; and  
to establish the Study Commission on Public Notice of Title 39  
Advertisements.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 39-2-2, Code of Alabama 1975, is  
amended to read as follows:

"§39-2-2

(a) (1) Before entering into any contract for a public  
works involving an amount in excess of one hundred thousand  
dollars (\$100,000), the awarding authority shall advertise for  
sealed bids, except as provided in subsection ~~(j)~~ (k).

(2)a. If the awarding authority is the state, a county,  
or an instrumentality thereof, it shall advertise for sealed  
bids at least once each week for three consecutive weeks in a  
newspaper of general circulation in the county or counties in  
which the improvement, or some part thereof, is to be made.

b. 1. If the awarding authority is a municipality, or an  
instrumentality thereof, it shall advertise for sealed bids at  
least once in a newspaper of general circulation published in  
the municipality where the awarding authority is located.

2. If no newspaper is published in the municipality,  
the awarding authority shall advertise by posting notice  
thereof on a bulletin board maintained outside the purchasing  
office and in any other manner and for the length of time as  
may be determined. In addition to bulletin board notice,  
~~sealed bids~~ the awarding authority shall also ~~be solicited by~~  
~~sending~~ send the notice by U.S. mail or electronic mail to ~~all~~  
~~persons who have filed a request in writing with the official~~



~~designated by the awarding authority that they be listed for solicitation on bids for the public works contracts indicated in the request. If any person whose name is listed fails to respond to any solicitation for bids after the receipt of three such solicitations, the listing may be canceled~~ the Department of Finance for publication of the advertisement on the centralized website maintained by the Department of Finance as further described in subsection (c).

(3) The advertisements shall briefly describe the improvement, state that plans and specifications for the improvement are on file for examination in a designated office of the awarding authority, state the procedure for obtaining plans and specifications, state the time and place in which bids shall be received and opened, and identify whether prequalification is required and where all written prequalification information is available for review.

(4) All bids shall be opened publicly at the advertised time and place.

(5) No public work, as defined in this chapter, involving a sum in excess of one hundred thousand dollars (\$100,000) shall be split into parts involving sums of one hundred thousand dollars (\$100,000) or less for the purpose of evading the requirements of this section.

(b)(1) An awarding authority may let contracts for public works involving one hundred thousand dollars (\$100,000) or less with or without advertising or sealed bids.

(2) ~~An~~ Notwithstanding the advertising requirements of subdivision (a)(2), an awarding authority may enter into a



contract for public works if: (i) the awarding authority submitted the advertisement for sealed bids for the contract  
~~an advertisement for sealed bids for the contract was submitted by the awarding authority to a newspaper in~~  
accordance with subdivision (a)(2); and (ii) the newspaper only published the advertisement for two weeks if the  
~~authority can provide proof that it, in good faith, submitted the advertisement to the newspaper with instructions to~~  
~~publish the notice in accordance with the provisions of this section.~~the advertisement was published for at least three  
weeks, or if the awarding authority is a municipality or instrumentality thereof for at least seven consecutive  
calendar days, on a centralized website maintained by the Department of Finance as further described in subsection (c).

(3) If the awarding authority under subdivision (2) is the Department of Transportation, the department may alternatively satisfy the requirements of subdivision (2)(ii) by publishing the advertisement on its publicly accessible website for at least three weeks.

(4) If the awarding authority under subdivision (2) is a county or instrumentality thereof, the county or instrumentality may alternatively satisfy the requirements of subdivision (2)(ii) by publishing the advertisement in accordance with the procedures submitted by the Association of County Engineers of Alabama and approved by the Department of Examiners of Public Accounts as authorized by general law.

(c) The Department of Finance shall establish and maintain a centralized website or digital platform to provide



publicly accessible notice of advertisements for sealed bids pursuant to this section. The department may further provide for the administration and operations related thereto by the adoption of administrative rules, including, but not limited to, the assessment of fees to awarding authorities for the posting of advertisements to cover the implementation and maintenance cost of the website or digital platform.

~~(e)~~ (d) All contracts for public works entered into in violation of this title shall be void and violative of public policy. Anyone who willfully violates this article concerning public works shall be guilty of a Class C felony.

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

(2) a. Excluded from operation of the bidding requirements in this title are contracts for the purchase of any heating or air conditioning units or systems by any awarding authority subject to Chapter 13B of Title 16, Article 3, commencing with Section 41-16-50, ~~of~~ Chapter 16 of Title 41, or Article 5, commencing with Section 41-4-110, ~~of~~ Chapter 4 of Title 41, provided the contract is entered into with an Alabama vendor who has been granted approved vendor status for the sale of heating or air conditioning units or systems as a



part of a purchasing cooperative, and each of the following occur:

~~a.~~1. The heating or air conditioning unit or system being purchased is available as a result of a competitive bid process conducted by a governmental entity which has been approved by the Department of Examiners of Public Accounts.

~~b.~~2. The purchase of the heating or air conditioning unit or system is not available on the state purchasing program at the time or the purchase under the purchasing cooperative is available at a price that is equal to or less than that available through the state purchasing program.

~~c.~~3. The entity entering into the contract for the purchase of the heating or air conditioning unit or system has been notified by the Department of Examiners of Public Accounts that the competitive bid process utilized by the cooperative program offering the goods complies with this subdivision.

~~d.~~4. Upon request, the vendor has provided the purchasing entity with a report of sales made under this subdivision during the previous 12-month period, to include a general description of the heating or air conditioning units and systems sold, the number of units sold per entity, and the purchase price of the units.

~~e.~~b. The exemption from the requirement to ~~utilize~~use sealed bids for the purchase of heating or air conditioning units or systems authorized by this section shall not serve to exempt any public works project from the remaining provisions of this article, including, but not limited to, design,



169 installation, and review requirements, compliance with all  
170 applicable codes, laws, specifications, and standards, and the  
171 compensation of engineers, architects, or others as mandated  
172 by state law or rule.

173 ~~(e)~~ (f) (1) In case of an emergency for which a delay in  
174 remedying would cause immediate harm to a person or public  
175 property, contracts may be let to the extent necessary to meet  
176 the emergency without public advertisement or bidding.

177 (2) In case of an emergency affecting public health,  
178 safety, or convenience, as declared in writing by the awarding  
179 authority, setting forth the nature of the danger to the  
180 public health, safety, or convenience which would result from  
181 delay, contracts may be let to the extent necessary to meet  
182 the emergency without public advertisement.

183 (3) Any action taken under subdivision (1) or (2), and  
184 the reasons for the action taken, shall immediately be made  
185 public by the awarding authority and published in writing.

186 ~~(f)~~ (g) No awarding authority may specify in the plans  
187 and specifications for the improvement the use of materials,  
188 products, systems, or services by a sole source unless all of  
189 the following requirements are met:

190 (1) Except for contracts involving the construction,  
191 reconstruction, renovation, or replacement of public roads,  
192 bridges, and water and sewer facilities, the awarding  
193 authority can document to the satisfaction of the Division of  
194 Real Property Management of the Department of Finance, or in  
195 the case of an educational institution or state educational  
196 institution as provided pursuant to Sections 41-4-353 and



41-4-400, to the satisfaction of its governing board, that the sole source product, material, system, or service is of an indispensable nature for the improvement, that there are no other viable alternatives, and that only this particular product, material, system, or service fulfills the function for which it is needed.

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

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

~~(g)~~ (h) ~~In the event of~~ If a proposed public works project is acknowledged in writing by the Alabama Homeland Security Department as: ~~(1)~~ (i) having a direct impact on the security or safety of persons or facilities; and ~~(2)~~ (ii) requiring confidential handling for the protection of such persons or facilities, contracts may be let without public advertisement but with the taking of informal bids otherwise consistent with the requirements of this title and the requirements of maintaining confidentiality. Records of bidding and award shall not be disclosed to the public and shall remain confidential.

~~(h)~~ (i) If a pre-bid meeting is held, the pre-bid meeting shall be held at least seven days prior to the bid opening except when the project has been declared an emergency





in accordance with subsection ~~(e)~~ (f).

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

~~(j)~~ (k) Notwithstanding subsection (a), the Department of Transportation may enter into contracts for road construction or road maintenance projects that do not involve more than two hundred fifty thousand dollars (\$250,000) without advertising for sealed bids, provided the project is listed on the ~~department~~ publicly accessible website of the department for at least seven calendar days before entering into the contract. The total cost of all projects not subject to advertising and sealed bids pursuant to this subsection may not exceed one million dollars (\$1,000,000) in the aggregate per year.

~~(k)~~ (l) For the purposes of this chapter, sealed bids may also be solicited and submitted through electronic means including, but not limited to, electrical, digital, magnetic, optical, electromagnetic, or any other similar technology, provided that the awarding authority adopts rules and policies to ensure that all electronic submissions are transmitted securely and bids remained sealed until bid opening.

~~(l)~~ (m) (1) Notwithstanding any other provision of law, any entity subject to this chapter that is an awarding authority of a contract for public works, by resolution or board action, may purchase materials or equipment pursuant to ~~subdivisions (14), (16), (17), (18), or (19) of~~ Section



41-16-51(a) (14), (16), (17), (18), or (19), even when those materials or equipment are otherwise part of the contract for public works subject to the requirements of this title.

(2) Except for those materials or equipment described in subdivision (1), the remaining portion of the public works project shall be subject to the requirements of this title, even if the remaining portion would involve an amount less than one hundred thousand dollars (\$100,000) as a result of the exclusion of the purchase of the materials or equipment as described in subdivision (1)."

Section 2. (a) The Study Commission on Public Notice of Title 39 Advertisements is established to study and make recommendations regarding the establishment, maintenance, use, display, accessibility, and promotion of a centralized website to provide public notice of advertisements for sealed bids under Title 39.

(b) The Study Commission shall be comprised of the following members:

(1) The Director of Finance of the State of Alabama, or his or her designee.

(2) The Chancellor of the Alabama Community College System, or his or her designee.

(3) The Chancellor of The University of Alabama System, or his or her designee.

(4) The President of Auburn University, or his or her designee.

(5) The State Superintendent of Education, or his or her designee.



281           (6) The Executive Director of the Alabama League of  
282 Municipalities, or his or her designee.

283           (7) The Director of the Alabama Department of  
284 Transportation, or his or her designee.

285           (8) The Executive Director of the Association of County  
286 Commissions of Alabama, or his or her designee.

287           (9) The President of the Associated Builders and  
288 Contractors, or his or her designee.

289           (10) The Chief Executive Officer of the Alabama  
290 Associated General Contractors, or his or her designee.

291           (11) The President of the Alabama Contractors  
292 Association, or his or her designee.

293           (12) The Chief Examiner of the Alabama Department of  
294 Examiners of Public Accounts, or his or her designee.

295           (c) Each member shall serve at the pleasure of his or  
296 her appointing authority. A vacancy in the membership shall be  
297 filled in the same manner as the original appointment.

298           (d) The first meeting of the commission shall be held  
299 no later than August 1, 2025, at a time and place to be  
300 determined by the Director of Finance of the State of Alabama,  
301 or his or her designee. The commission members shall select a  
302 chair at the first meeting, after which the commission shall  
303 meet at the call of the chair, as needed, to complete its  
304 duty.

305           (e) Members of the commission shall serve without  
306 compensation but may be reimbursed for necessary expenses  
307 associated with attending meetings of the commission pursuant  
308 to the policies of their respective appointing authority.



309 (f) The commission shall prepare a report of its  
310 findings, conclusions, and recommendations related to the  
311 establishment and use of the centralized website for public  
312 notice of advertisements for sealed bids under Title 39 to the  
313 Legislature no later than the fifth legislative day of the  
314 2026 Regular Session, at which point the commission shall  
315 stand dissolved.

316 (g) Notice of the meetings of the commission shall be  
317 posted in accordance with rules applicable to interim  
318 committees of the Legislature, and commissioners may  
319 participate in commission meetings by means of telephone  
320 conference, video conference, or similar communications  
321 equipment by means of which all individuals participating in  
322 the meeting may hear each other at the same time.  
323 Participation by these electronic means shall constitute  
324 presence in person at a meeting for all purposes, including  
325 the establishment of a quorum.

326 Section 3. Section 1 of this act shall become effective  
327 on October 1, 2025. Section 2 of this act shall become  
328 effective on June 1, 2025.