

HB189 INTRODUCED



1 HB189
2 R7PWYMY-1
3 By Representative Garrett
4 RFD: State Government
5 First Read: 05-Feb-25



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SYNOPSIS:

Under existing law, prior to awarding a public works contract that exceeds one hundred thousand dollars (\$100,000), a state or county awarding authority is required to advertise for sealed bids in a newspaper of general circulation once a week for at least three consecutive weeks in the county or counties in which the improvement will occur.

If a municipality is the awarding authority, it must advertise for sealed bids at least once in a newspaper of general circulation published in the municipality where the awarding authority is located. However, if a newspaper is not available, the awarding authority shall advertise by posting notice on a bulletin board and also by sending notice by mail to all registered persons.

This bill authorizes the expansion of acceptable methods an awarding authority may use to advertise for sealed bids on a public works project that exceeds one hundred thousand dollars (\$100,000).

This bill will provide a safe harbor for state, county, and municipal awarding authorities to have the advertisement requirement deemed satisfied if the awarding authority complies with more than one of the allowable methods but one of the methods of advertising



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29 fails through no fault of the awarding authority.

30 This bill will further provide a safe harbor
31 which deems the advertising requirement satisfied if
32 the Department of Transportation complies with one of
33 the approved advertising methods, the selected method
34 of advertising fails through no fault of the
35 department, and the department advertises on its
36 publicly accessible website for the required number of
37 weeks.

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A BILL

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TO BE ENTITLED

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AN ACT

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44 Relating to public works contracts advertising and
45 notice requirements; to amend Section 39-2-2, Code of Alabama
46 1975; to add additional methods of advertising for sealed
47 bids; to provide a safe harbor for an awarding authority that
48 selects multiple methods of advertising but one of those
49 methods fails; and to provide a safe harbor for the Department
50 of Transportation under certain circumstances.

51 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

54 "§39-2-2

55 (a) (1) Before entering into any contract for a public
56 works involving an amount in excess of one hundred thousand



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57 dollars (\$100,000), the awarding authority shall advertise for
58 sealed bids, except as provided in subsection (j).

59 (2)a. If the awarding authority is the state, a county,
60 or an instrumentality thereof, it shall advertise for sealed
61 bids ~~at least once each week for three consecutive weeks~~ in at
62 least one of the following ways:

63 1. At least once each week for three consecutive weeks
64 in a newspaper of general circulation in the county or
65 counties in which the improvement, or some part thereof of the
66 improvement, is to will be made. The Department of Finance may
67 adopt rules for alternative compliance with this subparagraph
68 by allowing advertisement on the website or digital version of
69 a printed newspaper.

70 2. At least three consecutive weeks on the centralized
71 website administered and maintained by the Department of
72 Finance as authorized through administrative rule.

73 3. At least 30 days prior to bid submission deadline by
74 first class U.S. mail or electronic mail to all persons who
75 have registered with the awarding authority to receive a
76 solicitation on bids for the public works contract. When using
77 this method, the awarding authority shall also publish a
78 notice for the bid solicitation on either the centralized
79 website or the awarding authority's publicly accessible
80 website and the notice shall include instructions on how to
81 register with the awarding authority to receive future bid
82 solicitations by U.S. mail or electronic mail.

83 b. If the awarding authority is a municipality, or an
84 instrumentality thereof, it shall advertise for sealed bids in



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85 at least one of the following ways:

86 1.(i) At~~at~~ least once in a newspaper of general
87 circulation published in the municipality where the awarding
88 authority is located. The Department of Finance may adopt
89 rules for alternative compliance with this subparagraph by
90 allowing advertisement on the website or digital version of a
91 printed newspaper.

92 (ii) If no newspaper is published in the municipality,
93 the awarding authority shall advertise by posting notice
94 thereof on a bulletin board maintained outside the purchasing
95 office and in any other manner and for the length of time as
96 may be determined. In addition to bulletin board notice,
97 sealed bids shall also be solicited by sending notice by U.S.
98 mail or electronic mail to all persons who have filed a
99 request in writing with the official designated by the
100 awarding authority that they be listed for solicitation on
101 bids for the public works contracts indicated in the request.
102 If any person whose name is listed fails to respond to any
103 solicitation for bids after the receipt of three such
104 solicitations, the listing may be canceled.

105 2. At least seven consecutive days on a centralized
106 website administered and maintained by the Department of
107 Finance, as authorized through administrative rule.

108 c.1. If the awarding authority: (i) complies with more
109 than one method of advertising set forth in paragraph a. or
110 b., as applicable; and (ii) one of the selected methods fails
111 to be published through no fault of the awarding authority,
112 the advertisement requirement is deemed satisfied.



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113 2. If the awarding authority: (i) is the Department of
114 Transportation; (ii) the department complies with one of the
115 methods of advertising set forth in paragraph a.; (iii) the
116 selected method fails to be published through no fault of the
117 department; and (iv) the department also advertises on its
118 publicly accessible website for the required number of weeks,
119 the advertisement requirement is deemed satisfied.

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

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

130 (5) No public work, as defined in this chapter,
131 involving a sum in excess of one hundred thousand dollars
132 (\$100,000) shall be split into parts involving sums of one
133 hundred thousand dollars (\$100,000) or less for the purpose of
134 evading the requirements of this section.

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

138 ~~(2) An awarding authority may enter into a contract for~~
139 ~~public works if an advertisement for sealed bids for the~~
140 ~~contract was submitted by the awarding authority to a~~



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141 ~~newspaper and the newspaper only published the advertisement~~
142 ~~for two weeks if the authority can provide proof that it, in~~
143 ~~good faith, submitted the advertisement to the newspaper with~~
144 ~~instructions to publish the notice in accordance with the~~
145 ~~provisions of this section.~~

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

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

158 (2) Excluded from operation of the bidding requirements
159 in this title are contracts for the purchase of any heating or
160 air conditioning units or systems by any awarding authority
161 subject to Chapter 13B of Title 16, Article 3, commencing with
162 Section 41-16-50, of Chapter 16 of Title 41, or Article 5,
163 commencing with Section 41-4-110, of Chapter 4 of Title 41,
164 provided the contract is entered into with an Alabama vendor
165 who has been granted approved vendor status for the sale of
166 heating or air conditioning units or systems as a part of a
167 purchasing cooperative, and each of the following occur:

168 a. The heating or air conditioning unit or system being



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169 purchased is available as a result of a competitive bid
170 process conducted by a governmental entity which has been
171 approved by the Department of Examiners of Public Accounts.

172 b. The purchase of the heating or air conditioning unit
173 or system is not available on the state purchasing program at
174 the time, or the purchase under the purchasing cooperative is
175 available at a price that is equal to or less than that
176 available through the state purchasing program.

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

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

189 e. The exemption from the requirement to utilize sealed
190 bids for the purchase of heating or air conditioning units or
191 systems authorized by this section shall not serve to exempt
192 any public works project from the remaining provisions of this
193 article, including, but not limited to, design, installation,
194 and review requirements, compliance with all applicable codes,
195 laws, specifications, and standards, and the compensation of
196 engineers, architects, or others as mandated by state law or



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197 rule.

198 (e) (1) In case of an emergency for which a delay in
199 remedying would cause immediate harm to a person or public
200 property, contracts may be let to the extent necessary to meet
201 the emergency without public advertisement or bidding.

202 (2) In case of an emergency affecting public health,
203 safety, or convenience, as declared in writing by the awarding
204 authority, setting forth the nature of the danger to the
205 public health, safety, or convenience which would result from
206 delay, contracts may be let to the extent necessary to meet
207 the emergency without public advertisement.

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

211 (f) No awarding authority may specify in the plans and
212 specifications for the improvement the use of materials,
213 products, systems, or services by a sole source unless all of
214 the following requirements are met:

215 (1) Except for contracts involving the construction,
216 reconstruction, renovation, or replacement of public roads,
217 bridges, and water and sewer facilities, the awarding
218 authority can document to the satisfaction of the Division of
219 Real Property Management of the Department of Finance, or in
220 the case of an educational institution or state educational
221 institution as provided pursuant to Sections 41-4-353 and
222 41-4-400, to the satisfaction of its governing board, that the
223 sole source product, material, system, or service is of an
224 indispensable nature for the improvement, that there are no



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225 other viable alternatives, and that only this particular
226 product, material, system, or service fulfills the function
227 for which it is needed.

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

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

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

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

251 (i) The awarding authority may not offer a contract for
252 bidding unless confirmation of any applicable grant has been



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253 received and any required matching funds have been secured by
254 or are available to the awarding authority.

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

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

272 (1)(1) Notwithstanding any other provision of law, any
273 entity subject to this chapter that is an awarding authority
274 of a contract for public works, by resolution or board action,
275 may purchase materials or equipment pursuant to subdivisions
276 (14), (16), (17), (18), or (19) of Section 41-16-51(a), even
277 when those materials or equipment are otherwise part of the
278 contract for public works subject to the requirements of this
279 title.

280 (2) Except for those materials or equipment described



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

287 Section 2. This act shall become effective on October
288 1, 2025.