

HB320 ENGROSSED



1 HB320
2 SLL3T75-2
3 By Representative Pringle
4 RFD: State Government
5 First Read: 20-Feb-25



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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.

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).

(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. The Department of Finance may adopt rules to provide for the advertisement for the sealed bids on the website or digital version of the printed newspaper described in this paragraph.

b.1. If the awarding authority is a municipality, or an



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29 instrumentality thereof, it shall advertise for sealed bids at
30 least once in a newspaper of general circulation published in
31 the municipality where the awarding authority is located. The
32 Department of Finance may adopt rules to provide for the
33 advertisement for the sealed bids on the website or digital
34 version of the printed newspaper described in this paragraph.

35 2. If no newspaper is published in the municipality,
36 the awarding authority shall advertise by posting notice
37 thereof on a bulletin board maintained outside the purchasing
38 office and in any other manner and for the length of time as
39 may be determined. In addition to bulletin board notice,
40 sealed bids shall also be solicited by sending notice by U.S.
41 mail or electronic mail to all persons who have filed a
42 request in writing with the official designated by the
43 awarding authority that they be listed for solicitation on
44 bids for the public works contracts indicated in the request.
45 If any person whose name is listed fails to respond to any
46 solicitation for bids after the receipt of three such
47 solicitations, the listing may be canceled.

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

56 (4) All bids shall be opened publicly at the advertised



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57 time and place.

58 (5) No public work, as defined in this chapter,
59 involving a sum in excess of one hundred thousand dollars
60 (\$100,000) shall be split into parts involving sums of one
61 hundred thousand dollars (\$100,000) or less for the purpose of
62 evading the requirements of this section.

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

66 (2) ~~An~~ Notwithstanding subdivision (a) (2), an awarding
67 authority may enter into a contract for public works if: (i)
68 an advertisement for sealed bids for the contract was
69 submitted by the awarding authority to a newspaper in
70 accordance with this section~~and;~~ (ii) the newspaper only
71 published~~failed to publish the advertisement for two weeks if~~
72 ~~the authority can provide proof that it, in good faith,~~
73 ~~submitted the advertisement to the newspaper with instructions~~
74 ~~to publish the notice in accordance with the provisions of~~
75 ~~this section.~~ in accordance with this section; and (iii) any of
76 the following occurred:

77 a. The advertisement was published for at least three
78 consecutive weeks on a centralized website maintained by the
79 Department of Finance as authorized by rule; provided, if the
80 awarding authority is a municipality, the publication shall be
81 for a minimum of seven consecutive calendar days.

82 b. The awarding authority did both of the following:

83 1. Thirty or more days prior to the bid submission
84 deadline, mailed by first class U.S. mail or electronic mail



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85 the advertisement to all persons who registered with the
86 awarding authority to receive a solicitation on bids for the
87 public works contract.

88 2. Posted the advertisement on the centralized website
89 of the Department of Finance as described in paragraph a. and
90 included in the advertisement instructions on how to register
91 with the awarding authority to receive future bid
92 solicitations by U.S. mail or electronic mail.

93 c. If the awarding authority is the Department of
94 Transportation, the department published the advertisement on
95 its publicly accessible website for a minimum of three weeks.

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

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

108 (2) a. Excluded from operation of the bidding
109 requirements in this title are contracts for the purchase of
110 any heating or air conditioning units or systems by any
111 awarding authority subject to Chapter 13B of Title 16, Article
112 3, commencing with Section 41-16-50, of Chapter 16 of Title



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113 41, or Article 5, commencing with Section 41-4-110, of Chapter
114 4 of Title 41, provided the contract is entered into with an
115 Alabama vendor who has been granted approved vendor status for
116 the sale of heating or air conditioning units or systems as a
117 part of a purchasing cooperative, and each of the following
118 occur:

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

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

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

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

140 ~~e.~~b. The exemption from the requirement to ~~utilize~~use



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141 sealed bids for the purchase of heating or air conditioning
142 units or systems authorized by this section shall not serve to
143 exempt any public works project from the remaining provisions
144 of this article, including, but not limited to, design,
145 installation, and review requirements, compliance with all
146 applicable codes, laws, specifications, and standards, and the
147 compensation of engineers, architects, or others as mandated
148 by state law or rule.

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

153 (2) In case of an emergency affecting public health,
154 safety, or convenience, as declared in writing by the awarding
155 authority, setting forth the nature of the danger to the
156 public health, safety, or convenience which would result from
157 delay, contracts may be let to the extent necessary to meet
158 the emergency without public advertisement.

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

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

166 (1) Except for contracts involving the construction,
167 reconstruction, renovation, or replacement of public roads,
168 bridges, and water and sewer facilities, the awarding



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169 authority can document to the satisfaction of the Division of
170 Real Property Management of the Department of Finance, or in
171 the case of an educational institution or state educational
172 institution as provided pursuant to Sections 41-4-353 and
173 41-4-400, to the satisfaction of its governing board, that the
174 sole source product, material, system, or service is of an
175 indispensable nature for the improvement, that there are no
176 other viable alternatives, and that only this particular
177 product, material, system, or service fulfills the function
178 for which it is needed.

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

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

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



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197 confidential.

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

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

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

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

224 (l) (1) Notwithstanding any other provision of law, any



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225 entity subject to this chapter that is an awarding authority
226 of a contract for public works, by resolution or board action,
227 may purchase materials or equipment pursuant to ~~subdivisions~~
228 ~~(14), (16), (17), (18), or (19) of Section 41-16-51(a) (14),~~
229 (16), (17), (18), or (19), even when those materials or
230 equipment are otherwise part of the contract for public works
231 subject to the requirements of this title.

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

239 Section 2. This act shall become effective on October
240 1, 2025.



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House of Representatives

Read for the first time and referred20-Feb-25
to the House of Representatives
committee on State Government

Read for the second time and placed27-Feb-25
on the calendar:
1 amendment

Read for the third time and passed 18-Mar-25
as amended
Yeas 100
Nays 0
Abstains 3

John Treadwell
Clerk