

HB320 ENROLLED



1 HB320
2 7BQA1VV-2
3 By Representative Pringle
4 RFD: State Government
5 First Read: 20-Feb-25



HB320 Enrolled

Enrolled, 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



HB320 Enrolled

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



HB320 Enrolled

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



HB320 Enrolled

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



HB320 Enrolled

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



HB320 Enrolled

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

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

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

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

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

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



HB320 Enrolled

authority can document to the satisfaction of the Division of Real Property Management of the Department of Finance, or in the case of an educational institution or state educational 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



HB320 Enrolled

197 shall remain confidential.

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

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

206 ~~(j)~~ (k) Notwithstanding subsection (a), the Department
207 of Transportation may enter into contracts for road
208 construction or road maintenance projects that do not involve
209 more than two hundred fifty thousand dollars (\$250,000)
210 without advertising for sealed bids, provided the project is
211 listed on the ~~department~~ publicly accessible website of the
212 department for at least seven calendar days before entering
213 into the contract. The total cost of all projects not subject
214 to 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)~~ (l) For the purposes of this chapter, sealed bids
218 may 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)~~ (m) (1) Notwithstanding any other provision of law,



HB320 Enrolled

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.



HB320 Enrolled

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

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

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

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

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

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

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

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

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

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

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



HB320 Enrolled

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

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

(g) Notice of the meetings of the commission shall be posted in accordance with rules applicable to interim committees of the Legislature, and commissioners may participate in commission meetings by means of telephone conference, video conference, or similar communications equipment by means of which all individuals participating in the meeting may hear each other at the same time.

Participation by these electronic means shall constitute presence in person at a meeting for all purposes, including the establishment of a quorum.

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



HB320 Enrolled

305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and
was passed by the House 18-Mar-25.

John Treadwell
Clerk

Senate	<hr/> 01-May-25 <hr/>	Amended and Passed
House	<hr/> 06-May-25 <hr/>	Concurred in Senate Amendment