

HB320 INTRODUCED



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



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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.

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



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

33 (2)a. If the awarding authority is the state, a county,
34 or an instrumentality thereof, it shall advertise for sealed
35 bids at least once each week for three consecutive weeks in a
36 newspaper of general circulation in the county or counties in
37 which the improvement, or some part thereof, is to be made.
38 The Department of Finance may adopt rules to provide for the
39 advertisement for the sealed bids on the website or digital
40 version of the printed newspaper described in this paragraph.

41 b.1. If the awarding authority is a municipality, or an
42 instrumentality thereof, it shall advertise for sealed bids at
43 least once in a newspaper of general circulation published in
44 the municipality where the awarding authority is located. The
45 Department of Finance may adopt rules to provide for the
46 advertisement for the sealed bids on the website or digital
47 version of the printed newspaper described in this paragraph.

48 2. If no newspaper is published in the municipality,
49 the awarding authority shall advertise by posting notice
50 thereof on a bulletin board maintained outside the purchasing
51 office and in any other manner and for the length of time as
52 may be determined. In addition to bulletin board notice,
53 sealed bids shall also be solicited by sending notice by U.S.
54 mail or electronic mail to all persons who have filed a
55 request in writing with the official designated by the
56 awarding authority that they be listed for solicitation on



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57 bids for the public works contracts indicated in the request.
58 If any person whose name is listed fails to respond to any
59 solicitation for bids after the receipt of three such
60 solicitations, the listing may be canceled.

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

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

71 (5) No public work, as defined in this chapter,
72 involving a sum in excess of one hundred thousand dollars
73 (\$100,000) shall be split into parts involving sums of one
74 hundred thousand dollars (\$100,000) or less for the purpose of
75 evading the requirements of this section.

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

79 (2) ~~An~~ Notwithstanding subdivision (a) (2), an awarding
80 authority may enter into a contract for public works if: (i)
81 an advertisement for sealed bids for the contract was
82 submitted by the awarding authority to a newspaper ~~and;~~ (ii)
83 the newspaper ~~only published~~ failed to publish the
84 advertisement ~~for two weeks if the authority can provide proof~~



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85 ~~that it, in good faith, submitted the advertisement to the~~
86 ~~newspaper with instructions to publish the notice in~~
87 ~~accordance with the provisions of this section.~~ in accordance
88 with this section; and (iii) any of the following occurred:

89 a. The advertisement was published for at least three
90 consecutive weeks on a centralized website maintained by the
91 awarding authority or by the Department of Finance as
92 authorized by rule; provided, if the awarding authority is a
93 municipality, the publication shall be for a minimum of seven
94 consecutive calendar days.

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

96 1. Thirty or more days prior to the bid submission
97 deadline, mailed by first class U.S. mail or electronic mail
98 the advertisement to all persons who registered with the
99 awarding authority to receive a solicitation on bids for the
100 public works contract.

101 2. Posted the advertisement on either the centralized
102 website of the awarding authority or of the Department of
103 Finance as described in paragraph a. and included in the
104 advertisement instructions on how to register with the
105 awarding authority to receive future bid solicitations by U.S.
106 mail or electronic mail.

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

110 (c) All contracts for public works entered into in
111 violation of this title shall be void and violative of public
112 policy. Anyone who willfully violates this article concerning



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113 public works shall be guilty of a Class C felony.

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

122 (2) a. Excluded from operation of the bidding
123 requirements in this title are contracts for the purchase of
124 any heating or air conditioning units or systems by any
125 awarding authority subject to Chapter 13B of Title 16, Article
126 3, commencing with Section 41-16-50, of Chapter 16 of Title
127 41, or Article 5, commencing with Section 41-4-110, of Chapter
128 4 of Title 41, provided the contract is entered into with an
129 Alabama vendor who has been granted approved vendor status for
130 the sale of heating or air conditioning units or systems as a
131 part of a purchasing cooperative, and each of the following
132 occur:

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

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



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141 than that available through the state purchasing program.

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

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

154 ~~e.~~b. The exemption from the requirement to ~~utilize~~use
155 sealed bids for the purchase of heating or air conditioning
156 units or systems authorized by this section shall not serve to
157 exempt any public works project from the remaining provisions
158 of this article, including, but not limited to, design,
159 installation, and review requirements, compliance with all
160 applicable codes, laws, specifications, and standards, and the
161 compensation of engineers, architects, or others as mandated
162 by state law or rule.

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

167 (2) In case of an emergency affecting public health,
168 safety, or convenience, as declared in writing by the awarding



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169 authority, setting forth the nature of the danger to the
170 public health, safety, or convenience which would result from
171 delay, contracts may be let to the extent necessary to meet
172 the emergency without public advertisement.

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

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

180 (1) Except for contracts involving the construction,
181 reconstruction, renovation, or replacement of public roads,
182 bridges, and water and sewer facilities, the awarding
183 authority can document to the satisfaction of the Division of
184 Real Property Management of the Department of Finance, or in
185 the case of an educational institution or state educational
186 institution as provided pursuant to Sections 41-4-353 and
187 41-4-400, to the satisfaction of its governing board, that the
188 sole source product, material, system, or service is of an
189 indispensable nature for the improvement, that there are no
190 other viable alternatives, and that only this particular
191 product, material, system, or service fulfills the function
192 for which it is needed.

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

196 (3) All information substantiating the use of a sole



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197 source specification, including the recommendation of the
198 architect or engineer of record, shall be documented and made
199 available for examination in the office of the awarding
200 authority at the time of advertisement for sealed bids.

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

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

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

220 (j) Notwithstanding subsection (a), the Department of
221 Transportation may enter into contracts for road construction
222 or road maintenance projects that do not involve more than two
223 hundred fifty thousand dollars (\$250,000) without advertising
224 for sealed bids, provided the project is listed on the



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225 ~~department~~ publicly accessible website of the department for
226 at least seven calendar days before entering into the
227 contract. The total cost of all projects not subject to
228 advertising and sealed bids pursuant to this subsection may
229 not exceed one million dollars (\$1,000,000) in the aggregate
230 per year.

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

238 (1) (1) Notwithstanding any other provision of law, any
239 entity subject to this chapter that is an awarding authority
240 of a contract for public works, by resolution or board action,
241 may purchase materials or equipment pursuant to ~~subdivisions~~
242 ~~(14), (16), (17), (18), or (19)~~ of Section 41-16-51(a) (14),
243 (16), (17), (18), or (19), even when those materials or
244 equipment are otherwise part of the contract for public works
245 subject to the requirements of this title.

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



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253 Section 2. This act shall become effective on October
254 1, 2025.