

HB481 INTRODUCED



1 HB481
2 W1WGH99-1
3 By Representative Shaw
4 RFD: State Government
5 First Read: 01-Apr-25



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SYNOPSIS:

Existing law provides procedures that awarding authorities must follow when entering into contracts for public works.

This bill would exempt the purchase and installation of certain material and equipment by local boards of education and certain public procurement units from those procedures.

A BILL
TO BE ENTITLED
AN ACT

Relating to contracts for public works; to amend Section 39-2-2, Code of Alabama 1975; to provide exemptions from certain requirements relating to contracting for public works.

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



HB481 INTRODUCED

29 sealed bids, except as provided in subsection (j).

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

35 b. If the awarding authority is a municipality⁷ or an
36 instrumentality thereof, it shall advertise for sealed bids at
37 least once in a newspaper of general circulation published in
38 the municipality where the awarding authority is located. If
39 no newspaper is published in the municipality, the awarding
40 authority shall advertise by posting notice thereof on a
41 bulletin board maintained outside the purchasing office and in
42 any other manner and for the length of time as may be
43 determined. In addition to bulletin board notice, sealed bids
44 shall also be solicited by sending notice by mail to all
45 persons who have filed a request in writing with the official
46 designated by the awarding authority that they be listed for
47 solicitation on bids for the public works contracts indicated
48 in the request. If any person whose name is listed fails to
49 respond to any solicitation for bids after the receipt of
50 three such solicitations, the listing may be canceled.

51 (3) The advertisements shall briefly describe the
52 improvement, state that plans and specifications for the
53 improvement are on file for examination in a designated office
54 of the awarding authority, state the procedure for obtaining
55 plans and specifications, state the time and place in which
56 bids shall be received and opened, and identify whether



HB481 INTRODUCED

57 prequalification is required and where all written
58 prequalification information is available for review.

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

61 (5) No public work, ~~as defined in this chapter,~~
62 involving a sum in excess of one hundred thousand dollars
63 (\$100,000) shall be split into parts involving sums of one
64 hundred thousand dollars (\$100,000) or less for the purpose of
65 evading the requirements of this section.

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

69 (2) An awarding authority may enter into a contract for
70 public works if an advertisement for sealed bids for the
71 contract was submitted by the awarding authority to a
72 newspaper and the newspaper only published the advertisement
73 for two weeks if the authority can provide proof that it, in
74 good faith, submitted the advertisement to the newspaper with
75 instructions to publish the notice in accordance with the
76 provisions of this section.

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

81 (d) (1) ~~Excluded from the operation of this title shall~~
82 ~~be contracts~~ Contracts with persons who ~~shall~~ perform only
83 architectural, engineering, construction management, program
84 management, or project management services in support of the



HB481 INTRODUCED

85 public works and who ~~shall~~ do not engage in actual
86 construction, repair, renovation, or maintenance of the public
87 works with their own forces, by contract, subcontract,
88 purchase order, lease, or otherwise are excluded from the
89 operation of this title.

90 (2) ~~Excluded from operation of the bidding requirements~~
91 ~~in this title are contracts~~ Contracts for the purchase of any
92 heating or air conditioning units or systems by any awarding
93 authority subject to Chapter 13B of Title 16; ~~Article 3,~~
94 ~~commencing with Section 41-16-50, of~~ Chapter 16 of Title 41; ~~Article 5,~~
95 ~~commencing with Section 41-4-110, of~~ Chapter 4
96 of Title 41, are excluded from operation of the bidding
97 requirements of this title; provided, the contract is entered
98 into with an Alabama vendor who has been granted approved
99 vendor status for the sale of heating or air conditioning
100 units or systems as a part of a purchasing cooperative, and
101 each of the following occur:

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

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

111 c. The entity entering into the contract for the
112 purchase of the heating or air conditioning unit or system has



HB481 INTRODUCED

113 been notified by the Department of Examiners of Public
114 Accounts that the competitive bid process utilized by the
115 cooperative program offering the goods complies with this
116 subdivision.

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

123 e. The exemption from the requirement to utilize sealed
124 bids for the purchase of heating or air conditioning units or
125 systems authorized by this section shall not serve to exempt
126 any public works project from the remaining provisions of this
127 article, including, but not limited to, design, installation,
128 and review requirements, compliance with all applicable codes,
129 laws, specifications, and standards, and the compensation of
130 engineers, architects, or others as mandated by state law or
131 rule.

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

136 (2) In case of an emergency affecting public health,
137 safety, or convenience, as declared in writing by the awarding
138 authority, setting forth the nature of the danger to the
139 public health, safety, or convenience which would result from
140 delay, contracts may be let to the extent necessary to meet



HB481 INTRODUCED

141 the emergency without public advertisement.

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

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

149 (1) Except for contracts involving the construction,
150 reconstruction, renovation, or replacement of public roads,
151 bridges, and water and sewer facilities, the awarding
152 authority can document to the satisfaction of the Division of
153 Real Property Management of the Department of Finance, or in
154 the case of an educational institution or state educational
155 institution as provided pursuant to Sections 41-4-353 and
156 41-4-400, to the satisfaction of its governing board, that the
157 sole source product, material, system, or service is of an
158 indispensable nature for the improvement, that there are no
159 other viable alternatives, and that only this particular
160 product, material, system, or service fulfills the function
161 for which it is needed.

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

165 (3) All information substantiating the use of a sole
166 source specification, including the recommendation of the
167 architect or engineer of record, shall be documented and made
168 available for examination in the office of the awarding



HB481 INTRODUCED

169 authority at the time of advertisement for sealed bids.

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

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

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

189 (j) Notwithstanding subsection (a), the Department of
190 Transportation may enter into contracts for road construction
191 or road maintenance projects that do not involve more than two
192 hundred fifty thousand dollars (\$250,000) without advertising
193 for sealed bids, provided the project is listed on the
194 department website for at least seven calendar days before
195 entering into the contract. The total cost of all projects not
196 subject to advertising and sealed bids pursuant to this



HB481 INTRODUCED

197 subsection may not exceed one million dollars (\$1,000,000) in
198 the aggregate per year.

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

206 (l) (1) a. Notwithstanding any other provision of law,
207 any entity subject to this chapter ~~that~~ which is an awarding
208 authority of a contract for public works, by resolution or
209 board action, may purchase materials or equipment and may
210 install those materials or equipment, pursuant to: (i) Section
211 41-4-170, et seq.; (ii) ~~subdivisions (14), (16), (17), (18),~~
212 ~~or (19) of~~ Section 41-16-51(a) (14), (16), (17), (18), or (19);
213 or (iii) Section 16-13B-2(a) (13) or (15), even when those
214 materials or equipment are otherwise part of the contract for
215 public works subject to the requirements of this title.

216 b. The installation of materials or equipment pursuant
217 to Section 16-13B-2(a) (13) or (15) are subject to each of the
218 following requirements:

219 1. The installation must require a design professional
220 for plans when the services of a professional architect are
221 required pursuant to Section 34-2-32 or the services of a
222 professional engineer are required pursuant to Section
223 34-11-2.

224 2. The installation must meet the requirements for code



HB481 INTRODUCED

225 compliance in Section 16-1-2.4(b).

226 3. The installation is subject to the bond requirements
227 of Section 39-1-1(a).

228 4. The contract is competitively awarded as a result of
229 a competitive bid process approved by the Department of
230 Examiners of Public Accounts.

231 5. The subcontractor performing the installation is an
232 Alabama licensed contractor.

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

241 Section 2. This act shall become effective on October
242 1, 2025.