

SB121 INTRODUCED



1 SB121
2 F2415DC-1
3 By Senator Elliott
4 RFD: County and Municipal Government
5 First Read: 06-Feb-25



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 additional means by which the required public notice of the public contract may be published, including a method of publication on a website, application, or other digital platform maintained by the Department of Finance for the purpose of providing public notice.

A BILL
TO BE ENTITLED
AN ACT

Relating to public works contracts; to amend Section 39-2-2, Code of Alabama 1975, to further provide for the requirement to publish notice of certain public works contracts.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 39-2-2, Code of Alabama 1975, is



SB121 INTRODUCED

29 amended to read as follows:

30 "§39-2-2

31 (a) (1) ~~Before entering into any contract~~All contracts
32 for a public works involving an amount in excess of one
33 hundred thousand dollars (\$100,000), ~~the awarding authority~~
34 ~~shall advertise for sealed bids~~shall be awarded by competitive
35 sealed bidding, except as provided in subsection (j).

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

41 ~~b. 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. If~~
45 ~~no newspaper is published in the municipality, the awarding~~
46 ~~authority shall advertise by posting notice thereof on a~~
47 ~~bulletin board maintained outside the purchasing office and in~~
48 ~~any other manner and for the length of time as may be~~
49 ~~determined. In addition to bulletin board notice, sealed bids~~
50 ~~shall also be solicited by sending notice by mail to all~~
51 ~~persons who have filed a request in writing with the official~~
52 ~~designated by the awarding authority that they be listed for~~
53 ~~solicitation on bids for the public works contracts indicated~~
54 ~~in the request. If any person whose name is listed fails to~~
55 ~~respond to any solicitation for bids after the receipt of~~
56 ~~three such solicitations, the listing may be canceled.~~



SB121 INTRODUCED

57 ~~(2) (3) The advertisements~~An invitation to bid shall
58 briefly describe the improvement, state that plans and
59 specifications for the improvement are on file for examination
60 in a designated office of the awarding authority, state the
61 procedure for obtaining plans and specifications, state the
62 time and place in which bids shall be received and opened, and
63 identify whether prequalification is required and where all
64 written prequalification information is available for review,
65 and state all contractual terms and conditions applicable to
66 the improvement.

67 (3) Adequate public notice of the invitation to bid
68 shall be given a reasonable time prior to the date set forth
69 for the opening of bids as described in subdivision (5). The
70 public notice shall be publicized in any of the following
71 ways:

72 a. Once per week for three consecutive weeks in a
73 newspaper of general circulation in the county or municipality
74 in which the work, or some part thereof, is to be made.

75 b. For a minimum of three weeks on an Internet website,
76 application, or other digital platform maintained by the
77 Department of Finance for the purpose of giving public notice;
78 provided, if the awarding authority is a municipality, the
79 publication shall be for a minimum of seven consecutive
80 calendar days.

81 c. In accordance with the procedures submitted by the
82 Association of County Engineers of Alabama and approved by the
83 Department of Examiners of Public Accounts as authorized by
84 general law.



SB121 INTRODUCED

85 (4) Notwithstanding the requirements of subdivision
86 (3), the publication requirements of the public notice of the
87 invitation to bid shall be deemed to be satisfied under either
88 of the following conditions:

89 a. Both of the following occur: (i) The public awarding
90 authority complies with one or more of the methods of
91 publication described in subdivision (3); and (ii) one of the
92 selected methods fails to be published through no fault of the
93 public awarding authority.

94 b. If the awarding authority is the Department of
95 Transportation, all of the following occur: (i) The department
96 complies with one or more of the methods of publication
97 described in subdivision (3); (ii) the selected method fails
98 to be published through no fault of the department; and (iii)
99 the department successfully advertises the public notice of
100 the invitation to bid on its publicly accessible website for a
101 minimum of three weeks.

102 ~~(4)~~ (5) All bids shall be opened publicly at the
103 ~~advertised~~-time and place designated in the invitation to bid.
104 The amount of each bid and the name of each bidder shall be
105 recorded. The record and each bid shall be open to public
106 inspection to the extent required by law for public records.

107 ~~(5)~~ (6) No public work, ~~as defined in this chapter,~~
108 involving a sum in excess of one hundred thousand dollars
109 (\$100,000) shall be split into parts involving sums of one
110 hundred thousand dollars (\$100,000) or less for the purpose of
111 evading the requirements of this section.

112 (b) ~~(1)~~ An awarding authority may let contracts for



SB121 INTRODUCED

113 public works involving one hundred thousand dollars (\$100,000)
114 or less with or without advertising or sealed bids.

115 ~~(2) An awarding authority may enter into a contract for~~
116 ~~public works if an advertisement for sealed bids for the~~
117 ~~contract was submitted by the awarding authority to a~~
118 ~~newspaper and the newspaper only published the advertisement~~
119 ~~for two weeks if the authority can provide proof that it, in~~
120 ~~good faith, submitted the advertisement to the newspaper with~~
121 ~~instructions to publish the notice in accordance with the~~
122 ~~provisions of this section.~~

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

127 (d) (1) Excluded from the operation of this title shall
128 be contracts with persons who shall perform only
129 architectural, engineering, construction management, program
130 management, or project management services in support of the
131 public works and who shall not engage in actual construction,
132 repair, renovation, or maintenance of the public works with
133 their own forces, by contract, subcontract, purchase order,
134 lease, or otherwise.

135 (2) a. Excluded from operation of the bidding
136 requirements in this title are contracts for the purchase of
137 any heating or air conditioning units or systems by any
138 awarding authority subject to Chapter 13B of Title 16, Article
139 3, commencing with Section 41-16-50, of Chapter 16 of Title
140 41, or Article 5, commencing with Section 41-4-110, of Chapter



SB121 INTRODUCED

141 4 of Title 41, provided the contract is entered into with an
142 Alabama vendor who has been granted approved vendor status for
143 the sale of heating or air conditioning units or systems as a
144 part of a purchasing cooperative, and each of the following
145 occur:

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

150 ~~b.~~2. The purchase of the heating or air conditioning
151 unit or system is not available on the state purchasing
152 program at the time or the purchase under the purchasing
153 cooperative is available at a price that is equal to or less
154 than that available through the state purchasing program.

155 ~~c.~~3. The entity entering into the contract for the
156 purchase of the heating or air conditioning unit or system has
157 been notified by the Department of Examiners of Public
158 Accounts that the competitive bid process utilized by the
159 cooperative program offering the goods complies with this
160 subdivision.

161 ~~d.~~4. Upon request, the vendor has provided the
162 purchasing entity with a report of sales made under this
163 subdivision during the previous 12-month period, to include a
164 general description of the heating or air conditioning units
165 and systems sold, the number of units sold per entity, and the
166 purchase price of the units.

167 ~~e.~~b. The exemption from the requirement to ~~utilize~~use
168 sealed bids for the purchase of heating or air conditioning



SB121 INTRODUCED

169 units or systems authorized by this section shall not serve to
170 exempt any public works project from the remaining provisions
171 of this article, including, but not limited to, design,
172 installation, and review requirements, compliance with all
173 applicable codes, laws, specifications, and standards, and the
174 compensation of engineers, architects, or others as mandated
175 by state law or rule.

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

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

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

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

193 (1) Except for contracts involving the construction,
194 reconstruction, renovation, or replacement of public roads,
195 bridges, and water and sewer facilities, the awarding
196 authority can document to the satisfaction of the Division of



SB121 INTRODUCED

197 Real Property Management of the Department of Finance, or in
198 the case of an educational institution or state educational
199 institution as provided pursuant to Sections 41-4-353 and
200 41-4-400, to the satisfaction of its governing board, that the
201 sole source product, material, system, or service is of an
202 indispensable nature for the improvement, that there are no
203 other viable alternatives, and that only this particular
204 product, material, system, or service fulfills the function
205 for which it is needed.

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

209 (3) All information substantiating the use of a sole
210 source specification, including the recommendation of the
211 architect or engineer of record, shall be documented and made
212 available for examination in the office of the awarding
213 authority at the time of advertisement for sealed bids.

214 (g) ~~In the event of~~If a proposed public works project,
215 is acknowledged in writing by the Alabama Homeland Security
216 Department as: ~~(1)~~(i) having a direct impact on the security
217 or safety of persons or facilities; and ~~(2)~~(ii) requiring
218 confidential handling for the protection of such persons or
219 facilities, contracts may be let without public advertisement
220 but with the taking of informal bids otherwise consistent with
221 the requirements of this title and the requirements of
222 maintaining confidentiality. Records of bidding and award
223 shall not be disclosed to the public and shall remain
224 confidential.



SB121 INTRODUCED

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

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

233 (j) Notwithstanding subsection (a), the Department of
234 Transportation may enter into contracts for road construction
235 or road maintenance projects that do not involve more than two
236 hundred fifty thousand dollars (\$250,000) without advertising
237 for sealed bids, provided the project is listed on the
238 ~~department~~department's publicly accessible website for at
239 least seven calendar days before entering into the contract.
240 The total cost of all projects not subject to advertising and
241 sealed bids pursuant to this subsection may not exceed one
242 million dollars (\$1,000,000) in the aggregate per year.

243 (k) For the purposes of this chapter, sealed bids may
244 also be solicited and submitted through electronic means,
245 including, but not limited to, electrical, digital, magnetic,
246 optical, electromagnetic, or any other similar technology,
247 provided that the awarding authority adopts rules and policies
248 to ensure that all electronic submissions are transmitted
249 securely and bids remained sealed until bid opening.

250 (l) (1) Notwithstanding any other provision of law, any
251 entity subject to this chapter that is an awarding authority
252 of a contract for public works, by resolution or board action,



SB121 INTRODUCED

253 may purchase materials or equipment pursuant to subdivisions
254 (14), (16), (17), (18), or (19) of Section 41-16-51(a), even
255 when those materials or equipment are otherwise part of the
256 contract for public works subject to the requirements of this
257 title.

258 (2) Except for those materials or equipment described
259 in subdivision (1), the remaining portion of the public works
260 project shall be subject to the requirements of this title,
261 even if the remaining portion would involve an amount less
262 than one hundred thousand dollars (\$100,000) as a result of
263 the exclusion of the purchase of the materials or equipment as
264 described in subdivision (1)."

265 Section 2. This act shall become effective on October
266 1, 2025.