

SB149 INTRODUCED



1 SB149
2 7ITS2EE-1
3 By Senator Kitchens
4 RFD: County and Municipal Government
5 First Read: 11-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, a public awarding authority is required by law to advertise for sealed bids in a manner required by law before awarding a contract for a public works. If the awarding authority acts in good faith reliance on an advertiser, the awarding authority may award the contract notwithstanding an advertiser's failure to properly publish the advertisement.

This bill would provide greater specificity for the procedure to ratify an advertiser's failure to properly publish an advertisement for sealed bids.

Also under existing law, a willful violation of the public works law is a Class C felony.

This bill would provide that an advertiser bears no criminal liability for its negligence to properly advertise a public notice but would authorize the award of civil damages for the negligence.

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



SB149 INTRODUCED

29 the requirement to publish public notice of the contract; and
30 to provide for the liability of an advertiser of a public
31 notice.

32 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

33 Section 1. Section 39-2-2, Code of Alabama 1975, is
34 amended to read as follows:

35 "§39-2-2

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

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

45 b. If the awarding authority is a municipality, or an
46 instrumentality thereof, it shall advertise for sealed bids at
47 least once in a newspaper of general circulation published in
48 the municipality where the awarding authority is located. If
49 no newspaper is published in the municipality, the awarding
50 authority shall advertise by posting notice thereof on a
51 bulletin board maintained outside the purchasing office and in
52 any other manner and for the length of time as may be
53 determined. In addition to bulletin board notice, sealed bids
54 shall also be solicited by sending notice by mail to all
55 persons who have filed a request in writing with the official
56 designated by the awarding authority that they be listed for



SB149 INTRODUCED

57 solicitation on bids for the public works contracts indicated
58 in the request. If any person whose name is listed fails to
59 respond to any solicitation for bids after the receipt of
60 three such 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 subsection (a), 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~~



SB149 INTRODUCED

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) either 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.

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

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

99 2. Posted a notice on either the centralized website of
100 the awarding authority or of the Department of Finance as
101 described in paragraph a.

102 (c) (1) All contracts for public works entered into in
103 violation of this title shall be void and violative of public
104 policy.

105 (2) ~~Anyone~~ Except as provided in subdivision (3), a
106 person who willfully violates this article concerning public
107 works shall be guilty of a Class C felony.

108 (3)a. An advertiser who negligently fails to provide
109 confirmation or publish an advertisement in accordance with
110 this section shall not be subject to criminal liability under
111 this subsection.

112 b. If an advertiser's negligence under paragraph a.



SB149 INTRODUCED

113 results in a contract being voided, canceled, or otherwise
114 required to be re-advertised, the advertiser may be held
115 civilly liable for an amount not to exceed double the amount
116 of the agreed-upon price for the subject advertisement.

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

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

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

139 b. The purchase of the heating or air conditioning unit
140 or system is not available on the state purchasing program at



SB149 INTRODUCED

141 the time or the purchase under the purchasing cooperative is
142 available at a price that is equal to or less than that
143 available through the state purchasing program.

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

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

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

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



SB149 INTRODUCED

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

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

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

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

195 (2) The sole source specification has been recommended
196 by the architect or engineer of record as an indispensable



SB149 INTRODUCED

197 item for which there is no other viable alternative.

198 (3) All information substantiating the use of a sole
199 source specification, including the recommendation of the
200 architect or engineer of record, shall be documented and made
201 available for examination in the office of the awarding
202 authority at the time of advertisement for sealed bids.

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

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

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

222 (j) Notwithstanding subsection (a), the Department of
223 Transportation may enter into contracts for road construction
224 or road maintenance projects that do not involve more than two



SB149 INTRODUCED

225 hundred fifty thousand dollars (\$250,000) without advertising
226 for sealed bids, provided the project is listed on the
227 department website for at least seven calendar days before
228 entering into the contract. The total cost of all projects not
229 subject to advertising and sealed bids pursuant to this
230 subsection may not exceed one million dollars (\$1,000,000) in
231 the aggregate per year.

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

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

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



SB149 INTRODUCED

253 described in subdivision (1)."

254 Section 2. This act shall become effective on October

255 1, 2025.