

SB75 INTRODUCED



1 SB75
2 YMXXV422-1
3 By Senator Chesteen
4 RFD: Education Policy
5 First Read: 13-Jan-26



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4 SYNOPSIS:

5 Under existing law, an awarding authority
6 desiring to enter into a contract for a public works
7 involving an amount in excess of \$100,000 is required
8 to advertise for sealed bids and generally follow the
9 requirements of the public works law for the award of
10 the contract.

11 Existing law allows certain contracts to be
12 awarded without following the public works competitive
13 bidding requirements.

14 This bill would expand the current exception to
15 allow an awarding authority to make purchases of
16 materials or equipment pursuant to a cooperative
17 purchasing agreement, the requirements for which are
18 regulated by existing law.

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21 A BILL
22 TO BE ENTITLED
23 AN ACT

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25 Relating to public works contracts; to amend Section
26 39-2-2, Code of Alabama 1975, as last amended by Act 2025-383,
27 2025 Regular Session, to provide an exception to the public
28 works law for the purchase of certain materials and equipment

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29 made pursuant to a cooperative purchasing agreement.

30 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

31 Section 1. Sections 39-2-2, Code of Alabama 1975, as
32 last amended by Act 2025-383, 2025 Regular Session, is amended
33 to read as follows:

34 "§39-2-2

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

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

44 b. 1. If the awarding authority is a municipality, or an
45 instrumentality thereof, it shall advertise for sealed bids at
46 least once in a newspaper of general circulation published in
47 the municipality where the awarding authority is located.

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, the
53 awarding authority shall also send the notice by U.S. mail or
54 electronic mail to the Department of Finance for publication
55 of the advertisement on the centralized website maintained by
56 the department as further described in subsection (c).



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

67 (5) No public work involving a sum in excess of one
68 hundred thousand dollars (\$100,000) shall be split into parts
69 involving sums of one hundred thousand dollars (\$100,000) or
70 less for the purpose of evading the requirements of this
71 section.

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



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(3) If the awarding authority under subdivision (2) is the Department of Transportation, the Department of Finance 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 County Engineers of Alabama and approved by the Department of Examiners of Public Accounts as authorized by general law.

97 (c) The Department of Finance shall establish and
98 maintain a centralized website or digital platform to provide
99 publicly accessible notice of advertisements for sealed bids
100 pursuant to this section. The department may further provide
101 for the administration and operations related thereto by the
102 adoption of administrative rules, including, but not limited
103 to, the assessment of fees to awarding authorities for the
104 posting of advertisements to cover the implementation and
105 maintenance cost of the website or digital platform.

106 (d) All contracts for public works entered into in
107 violation of this title shall be void and violative of public
108 policy. Anyone who willfully violates this chapter concerning
109 public works shall be guilty of a Class C felony.

110 (e) (1) Excluded from the operation of this title shall
111 be contracts with persons who shall perform only
112 architectural, engineering, construction management, program



113 management, or project management services in support of the
114 public works and who shall not engage in actual construction,
115 repair, renovation, or maintenance of the public works with
116 their own forces, by contract, subcontract, purchase order,
117 lease, or otherwise.

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

129 1. The heating or air conditioning unit or system being
130 purchased is available as a result of a competitive bid
131 process conducted by a governmental entity which has been
132 approved by the Department of Examiners of Public Accounts.

133 2. The purchase of the heating or air conditioning unit
134 or system is not available on the state purchasing program at
135 the time or the purchase under the purchasing cooperative is
136 available at a price that is equal to or less than that
137 available through the state purchasing program.

138 3. The entity entering into the contract for the
139 purchase of the heating or air conditioning unit or system has
140 been notified by the Department of Examiners of Public



141 Accounts that the competitive bid process utilized by the
142 cooperative program offering the goods complies with this
143 subdivision.

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

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

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

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



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

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

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

192 (3) All information substantiating the use of a sole
193 source specification, including the recommendation of the
194 architect or engineer of record, shall be documented and made
195 available for examination in the office of the awarding
196 authority at the time of advertisement for sealed bids.



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

207 (i) If a pre-bid meeting is held, the pre-bid meeting
208 shall be held at least seven days prior to the bid opening
209 except when the project has been declared an emergency in
210 accordance with subsection (f).

211 (j) The awarding authority may not offer a contract for
212 bidding unless confirmation of any applicable grant has been
213 received and any required matching funds have been secured by
214 or are available to the awarding authority.

215 (k) Notwithstanding subsection (a), the Department of
216 Transportation may enter into contracts for road construction
217 or road maintenance projects that do not involve more than two
218 hundred fifty thousand dollars (\$250,000) without advertising
219 for sealed bids, provided the project is listed on the
220 publicly accessible website of the department for at least
221 seven calendar days before entering into the contract. The
222 total cost of all projects not subject to advertising and
223 sealed bids pursuant to this subsection may not exceed one
224 million dollars (\$1,000,000) in the aggregate per year.



225 (1) For the purposes of this chapter, sealed bids may
226 also be solicited and submitted through electronic means
227 including, but not limited to, electrical, digital, magnetic,
228 optical, electromagnetic, or any other similar technology,
229 provided that the awarding authority adopts rules and policies
230 to ensure that all electronic submissions are transmitted
231 securely and bids ~~remained~~remain sealed until bid opening.

232 (m) (1) Notwithstanding any other provision of law, any
233 entity subject to this chapter ~~that which~~ is an awarding
234 authority of a contract for public works, by resolution or
235 board action, may purchase materials or equipment pursuant to
236 a cooperative purchasing agreement under Division 7 of Article
237 5 of Chapter 4 of Title 41, or pursuant to the requirements of
238 Section 41-16-51(a) (14), (16), (17), (18), or (19), as
239 applicable, even when those materials or equipment are
240 otherwise part of the contract for public works subject to the
241 requirements of this title.