

SB75 INTRODUCED



1 SB75
2 YMXV422-1
3 By Senator Chesteen
4 RFD: Education Policy
5 First Read: 13-Jan-26



SYNOPSIS:

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

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

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

A BILL
TO BE ENTITLED
AN ACT

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



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made pursuant to a cooperative purchasing agreement.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 39-2-2, Code of Alabama 1975, as last amended by Act 2025-383, 2025 Regular Session, 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 sealed bids, except as provided in subsection (k).

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

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

2. If no newspaper is published in the municipality, the awarding authority shall advertise by posting notice thereof on a bulletin board maintained outside the purchasing office and in any other manner and for the length of time as may be determined. In addition to bulletin board notice, the awarding authority shall also send the notice by U.S. mail or electronic mail to the Department of Finance for publication of the advertisement on the centralized website maintained by the department as further described in subsection (c).



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

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

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

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

(2) Notwithstanding the advertising requirements of subdivision (a)(2), an awarding authority may enter into a contract for public works if: (i) the awarding authority submitted the advertisement for sealed bids for the contract in accordance with subdivision (a)(2); and (ii) the advertisement was published for at least three weeks, or if the awarding authority is a municipality or instrumentality thereof for at least seven consecutive calendar days, on a centralized website maintained by the Department of Finance as further described in subsection (c).



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85 (3) If the awarding authority under subdivision (2) is
86 the Department of Transportation, the Department of Finance
87 may alternatively satisfy the requirements of subdivision
88 (2)(ii) by publishing the advertisement on its publicly
89 accessible website for at least three weeks.

90 (4) If the awarding authority under subdivision (2) is
91 a county or instrumentality thereof, the county or
92 instrumentality may alternatively satisfy the requirements of
93 subdivision (2)(ii) by publishing the advertisement in
94 accordance with the procedures submitted by the Association of
95 County Engineers of Alabama and approved by the Department of
96 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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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



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

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

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

Section 2. This act shall become effective on October 1, 2026.