

1 HB314
2 174609-1
3 By Representatives Sells and Gaston
4 RFD: Transportation, Utilities and Infrastructure
5 First Read: 24-FEB-16

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8 SYNOPSIS: Under existing law, a governmental body that
9 enters into a public works project that exceeds
10 \$50,000 must advertise and solicit sealed bids.

11 This bill would allow the Department of
12 Transportation to let contracts for road
13 construction or maintenance projects without
14 advertising for sealed bids if the project does not
15 exceed \$250,000, provided all such projects not
16 requiring advertising and sealed bids may not
17 exceed \$1,000,000 in the aggregate per year.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
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23 Relating to competitive bidding; to amend Section
24 39-2-2, Code of Alabama 1975, to allow the Department of
25 Transportation to let contracts for road construction or
26 maintenance projects without advertising for sealed bids if
27 the project does not exceed \$250,000, provided all such

1 projects not requiring advertising and sealed bids may not
2 exceed \$1,000,000 in the aggregate per year.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

6 "§39-2-2.

7 "(a) Before entering into any contract for a public
8 works involving an amount in excess of fifty thousand dollars
9 (\$50,000), the awarding authority shall advertise for sealed
10 bids, except as provided in subsection (j). If the awarding
11 authority is the state or a county, or an instrumentality
12 thereof, it shall advertise for sealed bids at least once each
13 week for three consecutive weeks in a newspaper of general
14 circulation in the county or counties in which the improvement
15 or some part thereof, is to be made. If the awarding authority
16 is a municipality, or an instrumentality thereof, it shall
17 advertise for sealed bids at least once in a newspaper of
18 general circulation published in the municipality where the
19 awarding authority is located. If no newspaper is published in
20 the municipality, the awarding authority shall advertise by
21 posting notice thereof on a bulletin board maintained outside
22 the purchasing office and in any other manner and for the
23 length of time as may be determined. In addition to bulletin
24 board notice, sealed bids shall also be solicited by sending
25 notice by mail to all persons who have filed a request in
26 writing with the official designated by the awarding authority
27 that they be listed for solicitation on bids for the public

1 works contracts indicated in the request. If any person whose
2 name is listed fails to respond to any solicitation for bids
3 after the receipt of three such solicitations, the listing may
4 be canceled. With the exception of the Department of
5 Transportation, for all public works contracts involving an
6 estimated amount in excess of five hundred thousand dollars
7 (\$500,000), awarding authorities shall also advertise for
8 sealed bids at least once in three newspapers of general
9 circulation throughout the state. The advertisements shall
10 briefly describe the improvement, state that plans and
11 specifications for the improvement are on file for examination
12 in a designated office of the awarding authority, state the
13 procedure for obtaining plans and specifications, state the
14 time and place in which bids shall be received and opened, and
15 identify whether prequalification is required and where all
16 written prequalification information is available for review.
17 All bids shall be opened publicly at the advertised time and
18 place. No public work as defined in this chapter involving a
19 sum in excess of fifty thousand dollars (\$50,000) shall be
20 split into parts involving sums of fifty thousand dollars
21 (\$50,000) or less for the purpose of evading the requirements
22 of this section.

23 "(b) (1) An awarding authority may let contracts for
24 public works involving fifty thousand dollars (\$50,000) or
25 less with or without advertising or sealed bids.

26 "(2) An awarding authority may enter into a contract
27 for public works if an advertisement for sealed bids for the

1 contract was submitted by the awarding authority to a
2 newspaper and the newspaper only published the advertisement
3 for two weeks if the authority can provide proof that it in
4 good faith submitted the advertisement to the newspaper with
5 instructions to publish the notice in accordance with the
6 provisions of this section.

7 "(c) All contracts for public works entered into in
8 violation of this title shall be null, void, and violative of
9 public policy. Anyone who willfully violates this article
10 concerning public works shall be guilty of a Class C felony.

11 "(d) Excluded from the operation of this title shall
12 be contracts with persons who shall perform only
13 architectural, engineering, construction management, program
14 management, or project management services in support of the
15 public works and who shall not engage in actual construction,
16 repair, renovation, or maintenance of the public works with
17 their own forces, by contract, subcontract, purchase order,
18 lease, or otherwise.

19 "(e) In case of an emergency affecting public
20 health, safety, or convenience, as declared in writing by the
21 awarding authority, setting forth the nature of the danger to
22 the public health, safety, or convenience which would result
23 from delay, contracts may be let to the extent necessary to
24 meet the emergency without public advertisement. The action
25 and the reasons for the action taken shall immediately be made
26 public by the awarding authority upon request.

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

5 "(1) Except for contracts involving the
6 construction, reconstruction, renovation, or replacement of
7 public roads, bridges, and water and sewer facilities, the
8 awarding authority can document to the satisfaction of the
9 State Building Commission that the sole source product,
10 material, system, or service is of an indispensable nature for
11 the improvement, that there are no other viable alternatives,
12 and that only this particular product, material, system, or
13 service fulfills the function for which it is needed.

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

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

23 "(g) In the event of a proposed public works
24 project, acknowledged in writing by the Alabama Homeland
25 Security Department as (1) having a direct impact on the
26 security or safety of persons or facilities and (2) requiring
27 confidential handling for the protection of such persons or

1 facilities, contracts may be let without public advertisement
2 but with the taking of informal bids otherwise consistent with
3 the requirements of this title and the requirements of
4 maintaining confidentiality. Records of bidding and award
5 shall not be disclosed to the public, and shall remain
6 confidential.

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

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

15 "(j) Notwithstanding subsection (a), the Department
16 of Transportation may let contracts for road construction or
17 maintenance projects involving two hundred fifty thousand
18 dollars (\$250,000) or less without advertising for sealed
19 bids; provided, however, all such projects not subject to
20 advertising and sealed bids may not exceed one million dollars
21 (\$1,000,000) in the aggregate per year."

22 Section 2. This act shall become effective
23 immediately following its passage and approval by the
24 Governor, or its otherwise becoming law.