

1 HB406
2 183644-1
3 By Representatives Williams (P) and Ball
4 RFD: State Government
5 First Read: 14-MAR-17

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8 SYNOPSIS: Under existing law, public works contracts
9 by city and county boards of education are not
10 subject to the state competitive bid law.

11 This bill would provide that a county or
12 city school board which lets a public works
13 contract which is less than fifty thousand dollars
14 (\$50,000) or less shall not be required to submit a
15 report regarding the contract to any agency of the
16 state except for verification that the contract is
17 less than fifty thousand dollars (\$50,000) if the
18 contract is required to be completed within 24
19 months from the date of the letting of the contract
20 and the winning bidder is required, where possible,
21 to employ individuals to perform the actual
22 construction of the project who reside in the
23 county where the project is located.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

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2 To amend Section 39-2-2, Code of Alabama 1975,
3 relating to public works contracts of county or city boards of
4 education; to provide that a county or city school board which
5 lets a public works contract which is less than fifty thousand
6 dollars (\$50,000) shall not be required to submit a report
7 regarding the contract to any agency of the state except for
8 verification that the contract is less than fifty thousand
9 dollars (\$50,000) if the contract is required to be completed
10 within 24 months from the date of the letting of the contract
11 and the winning bidder is required, where possible, to employ
12 individuals to perform the actual construction of the project
13 who reside in the county where the project is located.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Section 39-2-2 of the Code of Alabama
16 1975, is amended to read as follows:

17 "§39-2-2.

18 "(a) (1) Before entering into any contract for a
19 public works involving an amount in excess of fifty thousand
20 dollars (\$50,000), the awarding authority shall advertise for
21 sealed bids. If the awarding authority is the state or a
22 county, or an instrumentality thereof, it shall advertise for
23 sealed bids at least once each week for three consecutive
24 weeks in a newspaper of general circulation in the county or
25 counties in which the improvement or some part thereof, is to
26 be made. If the awarding authority is a municipality, or an
27 instrumentality thereof, it shall advertise for sealed bids at

1 least once in a newspaper of general circulation published in
2 the municipality where the awarding authority is located. If
3 no newspaper is published in the municipality, the awarding
4 authority shall advertise by posting notice thereof on a
5 bulletin board maintained outside the purchasing office and in
6 any other manner and for the length of time as may be
7 determined. In addition to bulletin board notice, sealed bids
8 shall also be solicited by sending notice by mail to all
9 persons who have filed a request in writing with the official
10 designated by the awarding authority that they be listed for
11 solicitation on bids for the public works contracts indicated
12 in the request. If any person whose name is listed fails to
13 respond to any solicitation for bids after the receipt of
14 three such solicitations, the listing may be canceled. With
15 the exception of the Department of Transportation, for all
16 public works contracts involving an estimated amount in excess
17 of five hundred thousand dollars (\$500,000), awarding
18 authorities shall also advertise for sealed bids at least once
19 in three newspapers of general circulation throughout the
20 state. The advertisements shall briefly describe the
21 improvement, state that plans and specifications for the
22 improvement are on file for examination in a designated office
23 of the awarding authority, state the procedure for obtaining
24 plans and specifications, state the time and place in which
25 bids shall be received and opened, and identify whether
26 prequalification is required and where all written
27 prequalification information is available for review. All bids

1 shall be opened publicly at the advertised time and place. No
2 public work as defined in this chapter involving a sum in
3 excess of fifty thousand dollars (\$50,000) shall be split into
4 parts involving sums of fifty thousand dollars (\$50,000) or
5 less for the purpose of evading the requirements of this
6 section.

7 "(2) Notwithstanding any provision of law to the
8 contrary, a county or city school board which lets a public
9 works contract which is less than fifty thousand dollars
10 (\$50,000) shall not be required to submit a report regarding
11 the contract to any agency of the state except for
12 verification that the contract is less than fifty thousand
13 dollars (\$50,000) if the contract is required to be completed
14 within 24 months from the date of the letting of the contract
15 and the winning bidder is required, where possible, to employ
16 individuals to perform the actual construction of the project
17 who reside in the county where the project is located.

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

21 "(2) An awarding authority may enter into a contract
22 for public works if an advertisement for sealed bids for the
23 contract was submitted by the awarding authority to a
24 newspaper and the newspaper only published the advertisement
25 for two weeks if the authority can provide proof that it in
26 good faith submitted the advertisement to the newspaper with

1 instructions to publish the notice in accordance with the
2 provisions of this section.

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

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

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

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

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

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

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

19 "(g) In the event of a proposed public works
20 project, acknowledged in writing by the Alabama Homeland
21 Security Department as (1) having a direct impact on the
22 security or safety of persons or facilities and (2) requiring
23 confidential handling for the protection of such persons or
24 facilities, contracts may be let without public advertisement
25 but with the taking of informal bids otherwise consistent with
26 the requirements of this title and the requirements of
27 maintaining confidentiality. Records of bidding and award

1 shall not be disclosed to the public, and shall remain
2 confidential.

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

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

11 Section 2. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.