

1 HB243  
2 189322-1  
3 By Representative Sells  
4 RFD: State Government  
5 First Read: 18-JAN-18

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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 and the project is listed on the  
16 department website for a certain time period  
17 beforehand, provided all such projects not  
18 requiring advertising and sealed bids may not  
19 exceed \$1,000,000 in the aggregate per year.  
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21 A BILL

22 TO BE ENTITLED

23 AN ACT

24  
25 Relating to competitive bidding; to amend Section  
26 39-2-2, Code of Alabama 1975, to allow the Department of  
27 Transportation to let contracts for road construction or

1 maintenance projects without advertising for sealed bids if  
2 the project does not exceed \$250,000 and the project is listed  
3 on the department website for a certain time period  
4 beforehand, provided all such projects not requiring  
5 advertising and sealed bids may not exceed \$1,000,000 in the  
6 aggregate per year.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

10 "§39-2-2.

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

1 board notice, sealed bids shall also be solicited by sending  
2 notice by mail to all persons who have filed a request in  
3 writing with the official designated by the awarding authority  
4 that they be listed for solicitation on bids for the public  
5 works contracts indicated in the request. If any person whose  
6 name is listed fails to respond to any solicitation for bids  
7 after the receipt of three such solicitations, the listing may  
8 be canceled. With the exception of the Department of  
9 Transportation, for all public works contracts involving an  
10 estimated amount in excess of five hundred thousand dollars  
11 (\$500,000), awarding authorities shall also advertise for  
12 sealed bids at least once in three newspapers of general  
13 circulation throughout the state. The advertisements shall  
14 briefly describe the improvement, state that plans and  
15 specifications for the improvement are on file for examination  
16 in a designated office of the awarding authority, state the  
17 procedure for obtaining plans and specifications, state the  
18 time and place in which bids shall be received and opened, and  
19 identify whether prequalification is required and where all  
20 written prequalification information is available for review.  
21 All bids shall be opened publicly at the advertised time and  
22 place. No public work as defined in this chapter involving a  
23 sum in excess of fifty thousand dollars (\$50,000) shall be  
24 split into parts involving sums of fifty thousand dollars  
25 (\$50,000) or less for the purpose of evading the requirements  
26 of this section.

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

4           "(2) An awarding authority may enter into a contract  
5 for public works if an advertisement for sealed bids for the  
6 contract was submitted by the awarding authority to a  
7 newspaper and the newspaper only published the advertisement  
8 for two weeks if the authority can provide proof that it in  
9 good faith submitted the advertisement to the newspaper with  
10 instructions to publish the notice in accordance with the  
11 provisions of this section.

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

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

24           "(e) In case of an emergency affecting public  
25 health, safety, or convenience, as declared in writing by the  
26 awarding authority, setting forth the nature of the danger to  
27 the public health, safety, or convenience which would result

1 from delay, contracts may be let to the extent necessary to  
2 meet the emergency without public advertisement. The action  
3 and the reasons for the action taken shall immediately be made  
4 public by the awarding authority upon request.

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

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

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

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

1           "(g) In the event of a proposed public works  
2 project, acknowledged in writing by the Alabama Homeland  
3 Security Department as (1) having a direct impact on the  
4 security or safety of persons or facilities and (2) requiring  
5 confidential handling for the protection of such persons or  
6 facilities, contracts may be let without public advertisement  
7 but with the taking of informal bids otherwise consistent with  
8 the requirements of this title and the requirements of  
9 maintaining confidentiality. Records of bidding and award  
10 shall not be disclosed to the public, and shall remain  
11 confidential.

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

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

20           "(j) Notwithstanding subsection (a), the Department  
21 of Transportation may enter into contracts for road  
22 construction or maintenance projects that do not involve more  
23 than two hundred fifty thousand dollars (\$250,000) without  
24 advertising for sealed bids, provided the project is listed on  
25 the department website for at least seven calendar days before  
26 entering into the contract. The total cost of all projects not  
27 subject to advertising and sealed bids pursuant to this

1 subsection may not exceed one million dollars (\$1,000,000) in  
2 the aggregate per year.

3           Section 2. This act shall become effective  
4 immediately following its passage and approval by the  
5 Governor, or its otherwise becoming law.