

1 HB69
2 184592-3
3 By Representative Standridge
4 RFD: State Government
5 First Read: 09-JAN-18
6 PFD: 01/04/2018

1 ENGROSSED

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3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
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8 To amend Sections 39-1-5 and 39-2-2, Code of Alabama
9 1975, to provide an exception to the public works law for
10 certain contracts for the purchase and installation of heating
11 or air conditioning units or systems that have been
12 competitively bid pursuant to the purchasing cooperative
13 sponsored by the National Association of Counties and National
14 League of Cities, or their successor organizations, if the bid
15 process has been approved by the Department of Examiners of
16 Public Accounts.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 39-1-5 and 39-2-2 of the Code of
19 Alabama 1975, are amended to read as follows:

20 "§39-1-5.

21 "Notwithstanding any other laws to the contrary, ~~Act~~
22 ~~97-225~~ this title shall control all public works contracts on
23 the state, county, and municipal levels of government in the
24 State of Alabama.

25 "§39-2-2.

26 "(a) Before entering into any contract for a public
27 works involving an amount in excess of fifty thousand dollars

1 (\$50,000), the awarding authority shall advertise for sealed
2 bids. If the awarding authority is the state or a county, or
3 an instrumentality thereof, it shall advertise for sealed bids
4 at least once each week for three consecutive weeks in a
5 newspaper of general circulation in the county or counties in
6 which the improvement or some part thereof, is to be made. If
7 the awarding authority is a municipality, or an
8 instrumentality thereof, it shall advertise for sealed bids at
9 least once in a newspaper of general circulation published in
10 the municipality where the awarding authority is located. If
11 no newspaper is published in the municipality, the awarding
12 authority shall advertise by posting notice thereof on a
13 bulletin board maintained outside the purchasing office and in
14 any other manner and for the length of time as may be
15 determined. In addition to bulletin board notice, sealed bids
16 shall also be solicited by sending notice by mail to all
17 persons who have filed a request in writing with the official
18 designated by the awarding authority that they be listed for
19 solicitation on bids for the public works contracts indicated
20 in the request. If any person whose name is listed fails to
21 respond to any solicitation for bids after the receipt of
22 three such solicitations, the listing may be canceled. With
23 the exception of the Department of Transportation, for all
24 public works contracts involving an estimated amount in excess
25 of five hundred thousand dollars (\$500,000), awarding
26 authorities shall also advertise for sealed bids at least once
27 in three newspapers of general circulation throughout the

1 state. The advertisements shall briefly describe the
2 improvement, state that plans and specifications for the
3 improvement are on file for examination in a designated office
4 of the awarding authority, state the procedure for obtaining
5 plans and specifications, state the time and place in which
6 bids shall be received and opened, and identify whether
7 prequalification is required and where all written
8 prequalification information is available for review. All bids
9 shall be opened publicly at the advertised time and place. No
10 public work as defined in this chapter involving a sum in
11 excess of fifty thousand dollars (\$50,000) shall be split into
12 parts involving sums of fifty thousand dollars (\$50,000) or
13 less for the purpose of evading the requirements of this
14 section.

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

18 "(2) An awarding authority may enter into a contract
19 for public works if an advertisement for sealed bids for the
20 contract was submitted by the awarding authority to a
21 newspaper and the newspaper only published the advertisement
22 for two weeks if the authority can provide proof that it in
23 good faith submitted the advertisement to the newspaper with
24 instructions to publish the notice in accordance with the
25 provisions of this section.

26 "(c) All contracts for public works entered into in
27 violation of this title shall be null, void, and violative of

1 public policy. Anyone who willfully violates this article
2 concerning public works shall be guilty of a Class C felony.

3 "(d) (1) Excluded from the operation of this title
4 shall be contracts with persons who shall perform only
5 architectural, engineering, construction management, program
6 management, or project management services in support of the
7 public works and who shall not engage in actual construction,
8 repair, renovation, or maintenance of the public works with
9 their own forces, by contract, subcontract, purchase order,
10 lease, or otherwise.

11 ~~"(2) Also excluded from operation of this title are
12 contracts for the purchase and installation of any heating or~~

13 (2) Excluded from operation of the bidding requirements in
14 this title are contracts for the purchase of any heating or
15 air conditioning units or systems by any awarding authority
16 subject to Chapter 13B of Title 16, or Article 3, commencing
17 with Section 41-16-50, of Chapter 16, Title 41, provided the
18 contract is entered into with an Alabama vendor who has been
19 granted approved vendor status for the sale and installation
20 of heating or air conditioning units or systems as a part of
21 the purchasing cooperative sponsored by the National
22 Association of Counties and the National League of Cities, or
23 their successor organizations, and each of the following
24 occur:

25 "a. The heating or air conditioning unit or system
26 being purchased and installed is available as a result of a
27 competitive bid process conducted by a local governing body

1 which has been approved by the Department of Examiners of
2 Public Accounts.

3 "b. The purchase and installation of the heating or
4 air conditioning unit or system is not available on the state
5 purchasing program at the time of the purchase and
6 installation under the purchasing cooperative is available at
7 a price that is equal to or less than that available through
8 the state purchasing program.

9 "c. The entity entering into the contract for the
10 purchase and installation of the heating or air conditioning
11 unit or system has been notified by the Department of
12 Examiners of Public Accounts that the competitive bid process
13 utilized by the cooperative program offering the goods and
14 installation complies with state competitive bid laws.

15 "d. The exemption from the requirement to utilize
16 sealed bids for the purchase of heating or air conditioning
17 units or systems authorized by this amendatory act shall not
18 serve to exempt any public works project from the remaining
19 provisions of this article, including, but not limited to,
20 design and review requirements, compliance with all applicable
21 codes, laws, specifications, and standards, and the
22 compensation of engineers, architects, or others as mandated
23 by state law or rule.

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on State Government
..... 09-JAN-18

Read for the second time and placed
on the calendar 1 amendment 25-JAN-18

Read for the third time and passed
as amended..... 20-FEB-18

Yeas 97, Nays 2, Abstains 0

Jeff Woodard
Clerk