

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

1
2 ENROLLED, An Act,

3 To amend Sections 39-1-5 and 39-2-2, Code of Alabama
4 1975, to provide an exception to the public works law for
5 certain contracts for the purchase and installation of heating
6 or air conditioning units or systems that have been
7 competitively bid pursuant to a purchasing cooperative if the
8 bid process has been approved by the Department of Examiners
9 of Public Accounts.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

13 "§39-1-5.

14 "Notwithstanding any other laws to the contrary, ~~Act~~
15 ~~97-225~~ this title shall control all public works contracts on
16 the state, county, and municipal levels of government in the
17 State of Alabama.

18 "§39-2-2.

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

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

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

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

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

23 "(c) All contracts for public works entered into in
24 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 a~~
24 purchasing cooperative, and each of the following occur:

1 "a. The heating or air conditioning unit or system
2 being purchased and installed is available as a result of a
3 competitive bid process conducted by a local governing body
4 which has been approved by the Department of Examiners of
5 Public Accounts.

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

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

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

1 compensation of engineers, architects, or others as mandated
2 by state law or rule.

3 "(e) In case of an emergency affecting public
4 health, safety, or convenience, as declared in writing by the
5 awarding authority, setting forth the nature of the danger to
6 the public health, safety, or convenience which would result
7 from delay, contracts may be let to the extent necessary to
8 meet the emergency without public advertisement. The action
9 and the reasons for the action taken shall immediately be made
10 public by the awarding authority upon request.

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

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

24 "(2) The sole source specification has been
25 recommended by the architect or engineer of record as an

1 indispensable item for which there is no other viable
2 alternative.

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

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

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

23 "(i) The awarding authority may not offer a contract
24 for bidding unless confirmation of any applicable grant has

1 been received and any required matching funds have been
2 secured by or are available to the awarding authority."

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 20-FEB-18, as amended.

Jeff Woodard
Clerk

Senate	<hr/> 21-MAR-18 <hr/>	Amended and Passed
House	<hr/> 22-MAR-18 <hr/>	Concurred in Senate Amendment