

1 SB60
2 208501-3
3 By Senator Barfoot
4 RFD: Governmental Affairs
5 First Read: 02-FEB-21
6 PFD: 01/21/2021

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to public works contracts; to amend Section
12 39-2-2, Code of Alabama 1975, to provide further for the
13 exemption from the public works bidding requirements for the
14 purchase of certain heating or air conditioning units or
15 systems by a government entity.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

19 "§39-2-2.

20 "(a) (1) Before entering into any contract for a
21 public works involving an amount in excess of fifty thousand
22 dollars (\$50,000), the awarding authority shall advertise for
23 sealed bids, except as provided in subsection (j).

24 "(2)a. If the awarding authority is the state or a
25 county, or an instrumentality thereof, it shall advertise for
26 sealed bids at least once each week for three consecutive
27 weeks in a newspaper of general circulation in the county or

1 counties in which the improvement, or some part thereof, is to
2 be made.

3 "b. If the awarding authority is a municipality, or
4 an instrumentality thereof, it shall advertise for sealed bids
5 at least once in a newspaper of general circulation published
6 in the municipality where the awarding authority is located.
7 If no newspaper is published in the municipality, the awarding
8 authority shall advertise by posting notice thereof on a
9 bulletin board maintained outside the purchasing office and in
10 any other manner and for the length of time as may be
11 determined. In addition to bulletin board notice, sealed bids
12 shall also be solicited by sending notice by mail to all
13 persons who have filed a request in writing with the official
14 designated by the awarding authority that they be listed for
15 solicitation on bids for the public works contracts indicated
16 in the request. If any person whose name is listed fails to
17 respond to any solicitation for bids after the receipt of
18 three such solicitations, the listing may be canceled.

19 "(3) With the exception of the Department of
20 Transportation, for all public works contracts involving an
21 estimated amount in excess of five hundred thousand dollars
22 (\$500,000), awarding authorities shall also advertise for
23 sealed bids at least once in three newspapers of general
24 circulation throughout the state.

25 "(4) The advertisements shall briefly describe the
26 improvement, state that plans and specifications for the
27 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.

6 "(5) All bids shall be opened publicly at the
7 advertised time and place.

8 "(6) No public work, as defined in this chapter,
9 involving a sum in excess of fifty thousand dollars (\$50,000)
10 shall be split into parts involving sums of fifty thousand
11 dollars (\$50,000) or less for the purpose of evading the
12 requirements of this section.

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

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

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

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

9 "(2) Excluded from operation of the bidding
10 requirements in this title are contracts for the purchase of
11 any heating or air conditioning units or systems by any
12 awarding authority subject to Chapter 13B of Title 16, or
13 Article 3, commencing with Section 41-16-50, of Chapter 16~~7~~ of
14 Title 41, provided the contract is entered into with an
15 Alabama vendor who has been granted approved vendor status for
16 the sale of heating or air conditioning units or systems as a
17 part of a purchasing cooperative, and each of the following
18 occur:

19 "a. The heating or air conditioning unit or system
20 being purchased is available as a result of a competitive bid
21 process conducted by a ~~local governing body~~ governmental
22 entity which has been approved by the Department of Examiners
23 of Public Accounts.

24 "b. The purchase of the heating or air conditioning
25 unit or system is not available on the state purchasing
26 program at the time of the purchase under the purchasing

1 cooperative is available at a price that is equal to or less
2 than that available through the state purchasing program.

3 "c. The entity entering into the contract for the
4 purchase of the heating or air conditioning unit or system has
5 been notified by the Department of Examiners of Public
6 Accounts that the competitive bid process utilized by the
7 cooperative program offering the goods complies with ~~state~~
8 ~~competitive bid laws~~ this subdivision.

9 "d. Upon request, the vendor has provided the
10 purchasing entity with a report of sales made under this
11 subdivision during the previous 12-month period, to include a
12 general description of the heating or air conditioning units
13 and systems sold, the number of units sold per entity, and the
14 purchase price of the units.

15 "~~d.~~ e. The exemption from the requirement to utilize
16 sealed bids for the purchase of heating or air conditioning
17 units or systems authorized by ~~Act 2018-413~~ this section shall
18 not serve to exempt any public works project from the
19 remaining provisions of this article, including, but not
20 limited to, design, installation, and review requirements,
21 compliance with all applicable codes, laws, specifications,
22 and standards, and the compensation of engineers, architects,
23 or others as mandated 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 "(j) Notwithstanding subsection (a), the Department
21 of Transportation may enter into contracts for road
22 construction or road maintenance projects that do not involve
23 more than two hundred fifty thousand dollars (\$250,000)
24 without advertising for sealed bids, provided the project is
25 listed on the department website for at least seven calendar
26 days before entering into the contract. The total cost of all
27 projects not subject to advertising and sealed bids pursuant

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

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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Senate

Read for the first time and referred to the Senate
committee on Governmental Affairs..... 02-FEB-21

Read for the second time and placed on the calen-
dar..... 03-FEB-21

Read for the third time and passed as amended 09-FEB-21

Yeas 28
Nays 0

Patrick Harris,
Secretary.