

1 SB450
2 151989-1
3 By Senator Orr
4 RFD: Finance and Taxation General Fund
5 First Read: 16-APR-13

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8 SYNOPSIS: Under existing law an awarding authority may
9 let contracts for public works involving \$50,000 or
10 less with or without advertising or sealed bids.

11 This bill would allow an awarding authority
12 to let a contract for public works if a newspaper
13 to which an advertisement for sealed bids for the
14 contract was submitted by the awarding authority
15 did not publish the advertisement for one or more
16 weeks, if the authority can provide proof that it
17 submitted the advertisement to the newspaper.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
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23 To amend Section 39-2-2 of the Code of Alabama 1975,
24 relating to a contract for public works; to allow an awarding
25 authority to let a contract for public works if a newspaper to
26 which an advertisement for sealed bids for the contract was
27 submitted by the awarding authority did not publish the

1 advertisement for one or more weeks, if the authority can
2 provide proof that it submitted the advertisement to the
3 newspaper.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Section 39-2-2 of the Code of Alabama
6 1975, is amended to read as follows:

7 "§39-2-2.

8 "(a) Before entering into any contract for a public
9 works involving an amount in excess of fifty thousand dollars
10 (\$50,000), the awarding authority shall advertise for sealed
11 bids. If the awarding authority is the state or a county, or
12 an instrumentality thereof, it shall advertise for sealed bids
13 at least once each week for three consecutive weeks in a
14 newspaper of general circulation in the county or counties in
15 which the improvement or some part thereof, is to be made. If
16 the awarding authority is a municipality, or an
17 instrumentality thereof, it shall advertise for sealed bids at
18 least once in a newspaper of general circulation published in
19 the municipality where the awarding authority is located. If
20 no newspaper is published in the municipality, the awarding
21 authority shall advertise by posting notice thereof on a
22 bulletin board maintained outside the purchasing office and in
23 any other manner and for the length of time as may be
24 determined. In addition to bulletin board notice, sealed bids
25 shall also be solicited by sending notice by mail to all
26 persons who have filed a request in writing with the official
27 designated by the awarding authority that they be listed for

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

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

1 "(2) An awarding authority may enter into a contract
2 for public works if a newspaper to which an advertisement for
3 sealed bids for the contract was submitted by the awarding
4 authority did not publish the advertisement for one or more
5 weeks if the authority can provide proof that it submitted the
6 advertisement to the newspaper.

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

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

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

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

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

14 "(2) The sole source specification has been
15 recommended by the architect or engineer of record as an
16 indispensable item for which there is no other viable
17 alternative.

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

23 "(g) In the event of a proposed public works
24 project, acknowledged in writing by the Alabama Homeland
25 Security Department as (1) having a direct impact on the
26 security or safety of persons or facilities and (2) requiring
27 confidential handling for the protection of such persons or

1 facilities, contracts may be let without public advertisement
2 but with the taking of informal bids otherwise consistent with
3 the requirements of this title and the requirements of
4 maintaining confidentiality. Records of bidding and award
5 shall not be disclosed to the public, and shall remain
6 confidential."

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