

1 SB34
2 208501-1
3 By Senator Barfoot
4 RFD: Governmental Affairs
5 First Read: 02-FEB-21
6 PFD: 01/05/2021

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8 SYNOPSIS: Under existing law, contracts for a public
9 works involving an amount in excess of \$50,000 are
10 required to be advertised for sealed bids at least
11 once each week for three consecutive weeks in a
12 newspaper of general circulation in the county or
13 counties in which the public works is located.

14 Also under existing law, certain contracts
15 for the purchase of any heating or air conditioning
16 units or systems are exempt from the public works
17 bidding requirements if the purchase of the heating
18 or air conditioning unit or system is by a local
19 governing body that used a competitive bid process
20 approved by the Department of Examiners of Public
21 Accounts.

22 This bill would provide that purchases of
23 heating or air conditioning units or systems are
24 exempt from the public works bidding requirements
25 if the purchase is by any governmental entity and
26 the governmental entity uses a competitive bid

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

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

7
8 Relating to public works contracts; to amend Section
9 39-2-2, Code of Alabama 1975, to provide further for the
10 exemption from the public works bidding requirements for the
11 purchase of certain heating or air conditioning units or
12 systems by a government entity.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

16 "§39-2-2.

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

21 "(2)a. If the awarding authority is the state or a
22 county, or an instrumentality thereof, it shall advertise for
23 sealed bids at least once each week for three consecutive
24 weeks in a newspaper of general circulation in the county or
25 counties in which the improvement, l or some part thereof, is to
26 be made.

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

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

23 "(4) 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
26 of the awarding authority, state the procedure for obtaining
27 plans and specifications, state the time and place in which

1 bids shall be received and opened, and identify whether
2 prequalification is required and where all written
3 prequalification information is available for review.

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

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

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

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

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

26 "(d) (1) Excluded from the operation of this title
27 shall be contracts with persons who shall perform only

1 architectural, engineering, construction management, program
2 management, or project management services in support of the
3 public works and who shall not engage in actual construction,
4 repair, renovation, or maintenance of the public works with
5 their own forces, by contract, subcontract, purchase order,
6 lease, or otherwise.

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

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

22 "b. The purchase of the heating or air conditioning
23 unit or system is not available on the state purchasing
24 program at the time or the purchase under the purchasing
25 cooperative is available at a price that is equal to or less
26 than that available through the state purchasing program.

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

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

13 "~~d.~~ e. The exemption from the requirement to utilize
14 sealed bids for the purchase of heating or air conditioning
15 units or systems authorized by ~~Act 2018-413~~ this section shall
16 not serve to exempt any public works project from the
17 remaining provisions of this article, including, but not
18 limited to, design and review requirements, compliance with
19 all applicable codes, laws, specifications, and standards, and
20 the compensation of engineers, architects, or others as
21 mandated by state law or rule.

22 "(e) In case of an emergency affecting public
23 health, safety, or convenience, as declared in writing by the
24 awarding authority, setting forth the nature of the danger to
25 the public health, safety, or convenience which would result
26 from delay, contracts may be let to the extent necessary to
27 meet the emergency without public advertisement. The action

1 and the reasons for the action taken shall immediately be made
2 public by the awarding authority upon request.

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

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

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

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

25 "(g) In the event of a proposed public works
26 project, acknowledged in writing by the Alabama Homeland
27 Security Department as: (1) having a direct impact on the

1 security or safety of persons or facilities; and (2) requiring
2 confidential handling for the protection of such persons or
3 facilities, contracts may be let without public advertisement
4 but with the taking of informal bids otherwise consistent with
5 the requirements of this title and the requirements of
6 maintaining confidentiality. Records of bidding and award
7 shall not be disclosed to the public, and shall remain
8 confidential.

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

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

17 "(j) Notwithstanding subsection (a), the Department
18 of Transportation may enter into contracts for road
19 construction or road maintenance projects that do not involve
20 more than two hundred fifty thousand dollars (\$250,000)
21 without advertising for sealed bids, provided the project is
22 listed on the department website for at least seven calendar
23 days before entering into the contract. The total cost of all
24 projects not subject to advertising and sealed bids pursuant
25 to this subsection may not exceed one million dollars
26 (\$1,000,000) in the aggregate per year."

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