

1 SB202
2 204552-1
3 By Senator Barfoot
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 18-FEB-20

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

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

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

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

3
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) Before entering into any contract for a public
18 works involving an amount in excess of fifty thousand dollars
19 (\$50,000), the awarding authority shall advertise for sealed
20 bids. If the awarding authority is the state or a county, or
21 an instrumentality thereof, it shall advertise for sealed bids
22 at least once each week for three consecutive weeks in a
23 newspaper of general circulation in the county or counties in
24 which the improvement or some part thereof, is to be made. If
25 the awarding authority is a municipality, or an
26 instrumentality thereof, it shall advertise for sealed bids at
27 least once in a newspaper of general circulation published in

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

1 public work as defined in this chapter involving a sum in
2 excess of fifty thousand dollars (\$50,000) shall be split into
3 parts involving sums of fifty thousand dollars (\$50,000) or
4 less for the purpose of evading the requirements of this
5 section.

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

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

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

21 "(d) (1) Excluded from the operation of this title
22 shall be contracts with persons who shall perform only
23 architectural, engineering, construction management, program
24 management, or project management services in support of the
25 public works and who shall not engage in actual construction,
26 repair, renovation, or maintenance of the public works with

1 their own forces, by contract, subcontract, purchase order,
2 lease, or otherwise.

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

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

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

23 "c. The entity entering into the contract for the
24 purchase of the heating or air conditioning unit or system has
25 been notified by the Department of Examiners of Public
26 Accounts that the competitive bid process utilized by the

1 cooperative program offering the goods complies with ~~state~~
2 ~~competitive bid laws~~ this subdivision.

3 "d. The exemption from the requirement to utilize
4 sealed bids for the purchase of heating or air conditioning
5 units or systems authorized by Act 2018-413 shall not serve to
6 exempt any public works project from the remaining provisions
7 of this article, including, but not limited to, design and
8 review requirements, compliance with all applicable codes,
9 laws, specifications, and standards, and the compensation of
10 engineers, architects, or others as mandated by state law or
11 rule.

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

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

24 "(1) Except for contracts involving the
25 construction, reconstruction, renovation, or replacement of
26 public roads, bridges, and water and sewer facilities, the
27 awarding authority can document to the satisfaction of the

1 State Building Commission that the sole source product,
2 material, system, or service is of an indispensable nature for
3 the improvement, that there are no other viable alternatives,
4 and that only this particular product, material, system, or
5 service fulfills the function for which it is needed.

6 "(2) The sole source specification has been
7 recommended by the architect or engineer of record as an
8 indispensable item for which there is no other viable
9 alternative.

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

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

26 "(h) If a pre-bid meeting is held, the pre-bid
27 meeting shall be held at least seven days prior to the bid

1 opening except when the project has been declared an emergency
2 in accordance with subsection (e).

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

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.