
BOE Comp. Bid and Public Works Law: Update from 2023 Leg. Session

September 21, 2023



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Alabama Department of Examiners of Public Accounts

WARNING!!!

- This presentation:
 - CANNOT cover every situation or fact pattern you will encounter
 - Is NOT all inclusive of every aspect of the law
 - Is a general overview
- If you have a question...
 - Seek Advice from your Legal Counsel
 - Seek Advice or an Opinion from the Attorney General's Office or the Alabama Ethics Commission
 - www.alabamaag.gov
 - www.ethics.alabama.gov
 - Contact the Department of Examiners' Legal Counsel



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Competitive Bid Law: BOE

September 21, 2023



2023 Legislation:

- Act 2023-203-Rep. Collins (effective August 1, 2023)
 - Increases the bid threshold for goods and nonprofessional services from \$15,000 to \$40,000.
 - Beginning Oct. 1, 2027, and every 3 years thereafter, the bid thresholds in Chapter 16-13B will be reviewed for an increase based upon the percentage increase in the Consumer Price Index for the immediately preceding 3 year period, if any, rounded to the nearest thousand dollars.



Legal Authority and Application

- § 16-13B-1, et seq., Ala. Code 1975.
- Applies to County and City Boards of Education
- Bid provisions apply to all expenditures of funds of whatever nature for labor, services, and work involving \$40,000 or more
- Bid provisions apply to all expenditures of funds for the purchase or lease of materials, equipment, supplies, or other personal property involving \$40,000 or more



Legal Requirement

- § 16-13B-1(a)(1), Ala. Code 1975.
- If expenditure is in excess of \$40,000, the law requires a contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.



Splitting of Contracts

- § 16-13B-4(e), Ala. Code 1975.
- No purchase or contract in excess of \$40,000 shall be divided into parts involving amounts of \$40,000 or less for the purpose of avoiding the requirements of the competitive bid law
- Any such contracts shall be void



Advertising Requirements

- § 16-13B-4(a), Ala. Code 1975.
- Post notice on bulletin board maintained outside the purchasing office and in any other manner and for any length of time as may be determined.
- Can do more...BUT not required.



Questions?



Public Works Law

September 21, 2023



Legal Authority and Application

- § 39-1-1, et seq., Ala. Code 1975.
- Applies to all public works contracts on the state, county, and municipal levels of government within the State of Alabama. § 39-1-1, Ala. Code 1975



What is a “Public Work?”

- § 39-2-1(6), Ala. Code 1975.
- “Public work” is defined as “[t]he construction, installation, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, installed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise.”



Bid Threshold

- § 39-2-2(a), Ala. Code 1975.
- “Before entering into any contract for a public works involving an amount in excess of one hundred thousand dollars (\$100,000), the awarding authority shall advertise for sealed bids...”
- § 39-2-2(b)(1), Ala. Code 1975
- “An awarding authority may let contracts for public works involving one hundred thousand dollars (\$100,000) or less with or without advertising or sealed bids.”



Bid Threshold Cont.

- § 39-2-2(a)(5), Ala. Code 1975
- “No public work, as defined in this chapter, involving a sum in excess of one hundred thousand dollars (\$100,000) shall be split into parts involving sums of one hundred thousand dollars (\$100,000) or less for the purpose of evading the requirements of this section.
- § 39-2-2(c), Ala. Code 1975
- “All contracts for public works entered into in violation of [Title 39] shall be void and violative of public policy.”



Advertising Requirements

- § 39-2-2(a)(2)a, Ala. Code 1975.
- “If the awarding authority is the state or a county, or an instrumentality thereof, it shall advertise 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 improvement, or some part thereof, is to be made.”
- Additional notice for projects in excess of \$500k no longer required.



Advertising Requirements

- § 39-2-2(a)(2)b, Ala. Code 1975.
- “If the awarding authority is a municipality, or an instrumentality thereof, it shall advertise for sealed bids at least once in a newspaper of general circulation published in the municipality where the awarding authority is located. If no newspaper is published in the municipality, the awarding authority shall advertise by posting notice thereof on a bulletin board maintained outside the purchasing office and in any other manner and for the length of time as may be determined. “



Electronic Means

- § 39-2-2(k), Ala. Code 1975
 - Sealed bids may also be solicited and submitted through electronic means including, but not limited to, electrical, digital, magnetic, optical, electromagnetic, or any other similar technology, provided that the awarding authority adopts rules and policies to ensure that all electronic submissions are transmitted securely and bids remained sealed until bid opening. Can also give notice of award by email.



Project Completion

- § 39-1-1(f)(1), Ala. Code 1975
- For contracts \$100,000 or more, the contractor shall give notice of completion of a project by publishing the notice for a minimum of 3 weeks using one or more of the following methods:
 - In a newspaper of general circulation in the county or counties in which the work, or some portion thereof, has been done.
 - On a website that is maintained by a newspaper of general circulation in the county or counties in which the work, or some portion thereof, has been done.
 - On a website utilized by the awarding authority for publishing notices.



Project Completion Cont.

- § 39-1-1(f)(2), Ala. Code 1975
- If no newspaper is published in the county in which the work was done, and if the awarding authority does not utilize a website for the purpose of publishing notices, the notice may be given by posting at the courthouse for 30 days, and proof of the posting of the notice shall be given by the awarding authority and the contractor.



Project Completion Cont.

- § 39-1-1(f)(3) Ala. Code 1975
- Final settlement on the contract shall not be made until 30 days after completion of the notice.
- The contractor must provide proof of publication by affidavit of publisher or website owner to the awarding authority and a printed copy of the notice published.
- § 39-1-1(g), Ala. Code 1975
- The “project completion” advertising shall not apply to contractors performing contract less than \$100,000.



Emergencies

- § 39-2-2(e), Ala. Code 1975
- In case of an emergency for which a delay in remedying would cause immediate harm to a person or public property, contracts may be let to the extent necessary to meet the emergency without public advertisement or bidding.
- In case of an emergency affecting public health, safety, or convenience, as declared in writing by the awarding authority, setting forth the nature of the danger to the public health, safety, or convenience which would result from delay, contracts may be let to the extent necessary to meet the emergency without public advertisement.
- Any action taken under the provisions above and the reasons for the action taken, shall immediately be made public by the awarding authority and published in writing.



Questions?

