

## **Fall Municipal Law Conference**

The Lodge at Gulf State Park, Gulf Shores, Alabama November 2 - 4, 2023

# Alabama Public Works Law: Changes from the 2023 Legislative Session

Presented by Jason Paulk, Chief Legal Counsel, Alabama Examiners of Public Accounts



www.alalm.org/AAMA.html www.alalm.org/AMJA.html

#### Alabama's Public Works Law: Changes from 2023 Leg. Session November 3, 2023

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Jason Paulk, Chief Legal Counsel

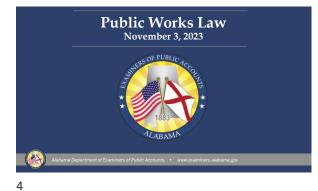
WARNING!!! This presentation: -CANNOT cover every situation or fact pattern you will encounter -Is NOT all inclusive of every aspect of the law -Is a general overview If you have a question... Seek Advice from your Legal Counsel -Seek Advice or an Opinion from the Attorney General's Office or the Alabama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

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#### **Contact Info.**

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- § 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

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## 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."

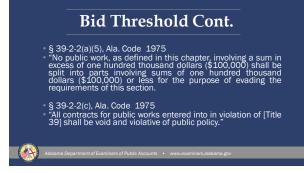
#### **Bid Threshold**

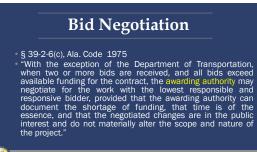
- § 39-2-2(a), Ala. Code 1975. "Before entering into any contract for a public works involving an amount in excess of one hundred thousand dollars (\$100,000), the awarding authority shall advertise for sealed bids..."

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§ 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."

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## 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.

determined. Use on an any outer mainter and for the length of time as may be in addition to bulletin board notice, sealed bids shall also be solicited by sending notice by mail to all persons who have filed a request in writing with the official designated by the awarding authority that they be listed for solicitation on bids for the public works contracts indicated in the request. If any person whose name is listed fails to respond to any solicitation for bids after the receipt of three such solicitations, additional advantaged. Additional notice for projects in excess of \$500k no longer required.

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## **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.

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### **Project Completion**

- § 39-1-1(f)(1), Ala. Code 1975
- S of a log(a), 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.

  - or counties in which the work, or some portion thereof, has been done On a website utilized by the awarding authority for publishing notices.

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#### **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.

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#### **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.

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## 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.
- Example recessary to meet the emergency without public advertisement of bidding. In case of an emergency affecting public health, safety, or convenience, as dealered in writing by the awarding authority, setting forth the nature of the dealered in writing by the awarding authority, setting forth the nature of the dealered in writing by the awarding authority 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.

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