

# 2023

## 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  
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Alabama Examiners of Public Accounts



[www.alalm.org/AAMA.html](http://www.alalm.org/AAMA.html)  
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# Alabama's Public Works Law: Changes from 2023 Leg. Session

November 3, 2023



Jason Paulk, Chief Legal Counsel  
Alabama Department of Examiners of Public Accounts

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## 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](http://www.alabamaag.gov)
    - [www.ethics.alabama.gov](http://www.ethics.alabama.gov)
  - Contact the Department of Examiners' Legal Counsel



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3

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**Public Works Law**  
November 3, 2023



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4

**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

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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.”

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## 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."



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## 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."



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## Bid Negotiation

- § 39-2-6(c), Ala. Code 1975
- "With the exception of the Department of Transportation, when two or more bids are received, and all bids exceed available funding for the contract, the awarding authority may negotiate for the work with the lowest responsible and responsive bidder, provided that the awarding authority can document the shortage of funding, that time is of the essence, and that the negotiated changes are in the public interest and do not materially alter the scope and nature of the project."



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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.
- 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, the listing may be canceled.
- **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
- 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.



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12

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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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13

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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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## Project Completion Cont.

- § 39-2-2(i)(1) and (2), Ala. Code 1975
- Notwithstanding any other provision of the law, any entity subject to this chapter that is an awarding authority of a contract for public works, by resolution or board action, may purchase materials or equipment pursuant to subdivisions (14), (15), (17), (18), or (19) of Section 41-16-51(a), even when those materials or equipment are otherwise part of the contract for public works subject to the requirements of this title.
- Except for those materials or equipment described [above], the remaining portion of the public works project shall be subject to the requirements of [Title 39], even if the remaining portion would involve an amount less than \$100,000 as a result of the exclusion of the purchase of the materials or equipment as described [above].
- § 41-16-51(a)
  - (14) Purchases of dirt, sand, or gravel by a county governing body from in-county property owners in order to supply a county project in which the materials will be used;
  - (15) Purchases, leases, or leases/purchases of goods or services, other than voice or data wireless communication services, from an approved national or regional coop...
  - (17) Purchases of goods or services, other than wireless communication services, whether voice or data, from vendors that have been awarded a current and valid Government Services Administration contract;
  - (18) Purchases of goods or services from vendors that have been awarded a current and valid statewide contract listed on the Alabama Buy e-procurement system;
  - (19) Purchases of goods or services between governmental entities of the state, as authorized by Section 11-1-10



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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.
- 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.



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16

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## Questions?



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