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MEMORANDUM

DATE: February 1, 2024

TO: PROJECT OWNERS, ARCHITECTS, & ENGINEERS

FROM: MICKEY ALLEN, ASSISTANT FINANCE DIRECTOR *M.A.*
ALABAMA REAL PROPERTY MANAGEMENT (RPM)

LEE DESMOND, DIRECTOR *JLD*
ALABAMA DIVISION OF CONSTRUCTION MANAGEMENT (DCM)

SUBJECT: PUBLIC WORKS LAW UPDATES IN ACT 2023-497 / HB168

This memo replaces the August 18, 2023, memo of the same subject and provides additional overview information of changes in the Public Works law, Title 39, Alabama Code of 1975, which became effective September 1, 2023, due to passing of recent legislation, Act 2023-497, formerly HB168. DCM's Manual of Procedures (MOP), Forms, and website updates to reflect the changes will be published in early February.

1. Informal competitive bidding threshold: The informal threshold dollar amount for competitive bidding is increased from \$50,000 to \$100,000. *Alabama Code §39-1-1(e).*
2. Contract completion notices: Upon completion of a contract, the contractor's period for publication of notice decreased from four (4) consecutive weeks to a minimum of three (3) consecutive weeks. *Alabama Code §39-1-1(f)(1).*
3. Authorization of public notice by electronic means: Upon completion of the contract, the contractor can publish a notice in one or more of the following ways:
 - a. In a newspaper in the county or counties in which the work was done.
 - b. On a website maintained by a newspaper in the county or counties in which the work was

done.

- c. On a website utilized by the awarding authority for publishing notices.

If a newspaper is not published in the county where the work was done and the awarding authority does not utilize a website for publishing a notice, then notice may be given by posting at the county courthouse for 30 days, and proof of posting shall be given to the awarding authority and contractor. *Alabama Code §39-1-1(f)*.

4. Expands emergency purposes: In addition to an emergency affecting public health, safety, or convenience where contracts may be let without public advertising, contracts may also now be let without public advertising or bidding when there is an emergency for which a delay in remedying would cause immediate harm to a person or property. Any action taken for emergency purposes and the reasons for the action must be made public by the awarding authority and published in writing. *Ala. Code §39-2-2(e)*. For additional guidance refer to DCM's website at <https://dcm.alabama.gov/emergency.aspx>.
5. Authorizes the use of electronic sealed bids: Sealed bids may be solicited and submitted through electronic means. If electronic sealed bids will be utilized, the awarding authority must adopt rules and policies to ensure all electronic transmissions are secure and that bids remain sealed until bid opening. *Alabama Code §39-2-2(k)*. **Note, the electronic procedures in this provision are only for bid submission. Advertisements for sealed bids must comply with *Ala. Code §39-2-2(a)*, which still requires advertisement in a newspaper of general circulation.**
6. Permits certain purchase orders pursuant to Title 41: An awarding authority of a contract for public works, by resolution or board action, may purchase materials or equipment pursuant to §41-16-51(a)(14), or (16) through (19), subject to the requirements of Title 39. This includes purchases of the following:
 - a. Purchases of dirt, sand, or gravel by a county governing body from in-county property owners in order to supply a county project.
 - b. Purchases, leases, or lease/purchases of goods or services, other than voice or data wireless communication services, made as a part of the purchasing cooperative sponsored by the National Association of Counties, its successor organization, or any other governmental cooperative purchasing program.
 - c. 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.

- d. Purchases of goods or services from vendors that have been awarded a current and valid statewide contract listed on the Alabama Buys e-procurement system.
- e. Purchases of goods or services between governmental entities of the state.

Except for the materials or equipment specified above, the remaining portion of the public works project will be subject to Title 39, even if the remaining portion is less than the threshold amount of \$100,000. *Alabama Code §39-2-2(1)*.

This section only applies to counties and municipalities that are governed by § 41-16-50, et seq.; it does not apply to state government entities that are instead subject to §41-4-110, et seq., nor city or county boards of education that are governed by §16-13B-1, et seq.

- 7. Authorizes negotiation when bids exceed available funding: When two or more bids are received and all bids exceed available funding for the contract, the awarding authority (with the exception of ALDOT) may negotiate with the lowest responsible and responsive bidder provided that awarding authority can document the shortage of funds, that time is of the essence, and that negotiated changes are in the public interest and do not materially alter the scope and nature of the project. *Alabama Code §39-2-6(c)*.