

WHAT PASSED IN 2014?

Advertising for Bids (Act 2014-373)

This act amended the advertising requirements in the public works laws (*Ala. Code § 39-2-2(b)*), to provide that an awarding authority may let a public works contract where the newspaper only advertised the bid opening twice provided the awarding authority can provide proof that it submitted the advertisement to the newspaper with instructions to advertise three times. The law took effect on July 1, 2014.

- The act provides the same protection to an awarding authority that requested newspaper advertising of a bid offering under the competitive bid law.
- The new law does *not* require newspaper advertising of bid offerings under the competitive bid law.

ALDOT Project Changes (Act 2014-12)

This new act, which took effect on February 18, 2014, allows the director of the Alabama Department of Transportation to approve certain construction project plan changes without approval of the Governor.

- The director can approve changes up to \$100,000 or 10% of the initial contract amount, whichever is greater, provided the increased amounts in the aggregate do not exceed \$200,000.
- This law will not affect county projects where ALDOT is not the contracting entity.

Storm Water Sewer Systems (Act 2014-439)

This act, which took effect on April 10, 2014, is designed to grant local governments and public corporations created to operate storm water sewer systems the limited powers necessary to comply with regulations of the federal Environmental Protection Agency related to management of storm water sewer systems. The act expresses legislative intent that the Alabama Department of Environmental Management have the main responsibility for permitting and regulating such systems and that local governments play as little a role in the process as possible to comply with unfunded federal mandates.

Planning and Zoning Near Military Installation (Act 2014-13)

This new law, which took effect on February 18, 2014, requires a local government whose territorial boundaries are within two miles of any portion of a military installation to provide written notice to the military of any proposed planning and zoning that may significantly affect any area or airspace within two miles of that military installation.

- This will have very limited application to counties except for those counties that have planning and zoning authority pursuant to local law.

Engineer Licensing Exam (Act 2014-375)

This act alters the provisions for the licensing examination required for professional engineers effective July 1, 2014, to bring Alabama in line with the national testing standards for professional engineers.

The law also changes the method by which land surveyors on the state licensing board are selected to provide that the two land surveyor board members will be selected by the Governor from a list of three names provided for each position by the Alabama Society of Professional Land Surveyors.

- Under the old law, these appointments are made from recommendations of a nominating committee.

Drought Assessment and Planning Team (Act 2014-400)

This act creates the Alabama Drought Assessment and Planning Team to, among other things, provide advice to the Office of Water Resources on development of a statewide drought plan, assess drought conditions in the state, advise the Governor when a drought emergency exists, and make recommendations to the Governor for mandatory water restrictions. Governor Bentley had actually created this team previously by executive order.

- An amendment requested by ACCA authorizes the Governor to invite representatives of county government to serve on the team in a non-voting capacity.

"One-Call" Notification System (Act 2014-220)

This act, which takes effect on January 1, 2015, is designed to strengthen the existing "one-call" notification system for excavating lands that may have underground utility equipment. These changes were sought, in part, to ensure the state would continue to be eligible for certain federal grants that require a state's one-call system to meet federal guidelines. The new act includes language requested by ACCA to make sure state and local governments are still exempt from the law when performing routine roadway maintenance activities carried out by state or local government employees or contractors if the activities occur entirely within the public road or right-of-way and are carried out with reasonable care to protect any utility facilities.

Under *Ala. Code § 37-15-2(8)* in the act, the definition of excavate or excavation specifically does not include routine roadway maintenance activities carried out by state or local government road maintenance employees or contractors, provided:

- The activities occur entirely within the right-of-way of a public road, street, or highway;
- The activities are carried out with reasonable care so as to protect any utility facilities placed in the right-of-way by permit;
- The activities are carried out within the limits of any original excavation on the traveled way, shoulder, or drainage ditches of a public road, street, or highway; and
- If the activities involve the replacement of existing structures, including traffic control devices, replacement occurs in their approximate previous locations and at their approximate previous depth.

Excavate or excavation also does not include routine railroad maintenance activities conducted within the track structure and its adjacent right-of-way, provided the activities are performed by railroad employees or railroad contractors and are carried out with reasonable care so as to protect any underground facilities placed in the railroad right-of-way by agreement with the railroad.

"Routine roadway maintenance" is defined in *Ala. Code § 37-15-2(8)*, as, "Maintenance work on a roadway that is not done pursuant to a contract awarded by a state or local government through a bid process for which plan drawings have been developed in advance or work for which detailed and specific scheduling is not possible or feasible."

There is some current discussion about whether these changes are adequate to address the concern about continued availability of federal grants. At this time, there is not a plan to further amend this law but to address concerns through negotiation. ACCA staff will keep counties posted on developments.

ACT 2014-404

PUBLIC WORKS "PROMPT PAY" CHANGES

Act 2014-404 amends the public works law to reduce time frames for payment of invoices from 45 days to 35 days after acceptance of the invoice by the awarding authority.

Partial Payment Procedures

For partial payments in ongoing projects *other than those funded by grants*, a person designated in the contract to review the progress of completed work and invoices shall have 10 days to review a submission and respond in writing either acknowledging acceptance of the invoice or outlining errors or disputes.

- If errors or disputes are transmitted to the contractor, the invoice may be resubmitted once those errors or disputes are resolved
- Where there is no error or dispute, the awarding authority has 10 days for payment of the invoice

Final Payment Procedures

Procedures for final payment of projects not funded by grant monies or the like were not altered in *Act 2014-404*, except that, as with partial payments, an approved invoice shall be paid within 35 (*instead of 45*) days after all requirements such as advertising and release of all liens have been fulfilled.

- And interest accrues following the 35th day

Procedures for Grant Projects

There are new and important procedures to follow under *Act 2014-404* for projects funded with a grant, award or direct reimbursement from the state, federal government or other source.

First of all, the awarding authority cannot begin the bidding process unless it has received confirmation of funding and any required matching funds have been secured or are available. *See, Ala. Code § 39-2-2(i).*

Additionally, where the funds will not become available until after the contract is executed, the bid specifications – and the contract -- must specifically state that fact. *See, Ala. Code § 39-2-12(l)*.

- ACCA has developed sample bid and contract language, which is attached

The invoice review process outlined above applies to grant projects as well, except that once an invoice for partial payment is approved, the awarding authority shall forward the request to the entity or agency that is the source of funding for the project.

Additionally – and most importantly – payment on the project shall not be due until the awarding authority is in receipt of the funds.

- Once funds are received, the awarding authority shall process payment to the contractor within ten days.

Pre-bid Meetings

There is one other minor change in law under *Act 2014-404*. *Ala. Code § 39-2-2(h)* now provides that if a pre-bid meeting will be held, it must occur at least seven (7) days before the bid opening except when an emergency has been declared.

- This new requirement may actually benefit counties and other awarding authorities.

SAMPLE BID AND CONTRACT LANGUAGE FOR PUBLIC WORKS PROJECTS WITH GRANT OR OTHER OUTSIDE FUNDING

For Bid Document

The public works project which is the subject of this invitation to bid shall be funded (*in whole or in part*) from a (*grant or other funding source*) awarded to the county by _____ (*insert entity providing the project funding*). A copy of the (*grant or other funding source*) award letter (*or other award documentation*) is (*attached or shall be provided upon request*). Pursuant to the terms of the (*grant or other funding source agreement*), the county will be responsible for payment of _____ (*insert percentage or dollar amount county required to pay*), which funds have been secured by or are available to the county. (*Delete this sentence if there is no county match.*) Additionally, under the terms of the (*grant or other funding source agreement*), the funds to be paid by the grantor will not be made available to the county until completion of the project (*or other contingency, if applicable*). Therefore, pursuant to Ala. Code § 39-2-12(l), as amended by Act 2014-404, payment for work invoiced by the successful bidder and approved by the county shall be processed by the county within 10 days of receipt of the funds from the (*grantor or other payor*).

For Contract

The parties to this contract understand and acknowledge that this project is funded (*in whole or in part*) from a grant (*or other funding source, if applicable*) in the amount of _____ (*insert project cost percentage or dollar amount of grant*), and that under the terms of the grant (*or other funding agreement*), the funds to be paid by the (*grantor or other payor*) will not be made available to the county until completion of the project (*or other contingency, if applicable*). The parties further understand and agree that, due to these circumstances, payment for work invoiced by _____ (*contractor*) and approved by the county shall be processed by the county within 10 days of receipt of the funds from the (*grantor or other payor*) as provided in Ala. Code § 39-2-12(l), as amended by Act 2014-404.