

1 HB170
2 173361-1
3 By Representatives Patterson, Whorton (R), Pettus, Ledbetter,
4 Sanderford and Hall
5 RFD: State Government
6 First Read: 09-FEB-16

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8 SYNOPSIS: This bill would provide for the length of
9 time certain contracts may be let under the state
10 Competitive Bid Law, would specify requirements for
11 purchases from a sole source, permit purchases from
12 a vendor under a general services administration
13 contract, and permit purchases of services under a
14 competitive bid nationwide cooperative purchasing
15 program.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

21 To amend Section 16-13B-2 and Section 16-13B-7, Code
22 of Alabama 1975, relating to the Competitive Bid Law; to
23 provide for the length of time certain contracts may be let;
24 to specify requirements for purchases from a sole source; to
25 permit purchases from a vendor under a general services
26 administration contract; and to permit purchases of services

1 under a competitive bid nationwide cooperative purchasing
2 program.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 16-13B-2 and 16-13B-7 of the
5 Code of Alabama 1975, are amended to read as follows:

6 "§16-13B-2.

7 "(a) Competitive bids shall not be required for
8 utility services for county or city boards of education, the
9 rates for which are fixed by law, regulation, or ordinance,
10 and the competitive bidding requirements of this chapter shall
11 not apply to:

12 "(1) The purchase of insurance.

13 "(2) Contracts for securing services of attorneys,
14 physicians, architects, teachers, superintendents of
15 construction, artists, appraisers, engineers, consultants,
16 certified public accountants, public accountants, or other
17 individuals possessing a high degree of professional skill
18 where the personality of the individual plays a decisive part.

19 "(3) Contracts of employment in the regular civil
20 service.

21 "(4) Contracts for fiscal or financial advice or
22 services.

23 "(5) Purchases of products made or manufactured by
24 the blind or visually handicapped under the direction or
25 supervision of the Alabama Institute for Deaf and Blind in
26 accordance with Sections 21-2-1 to 21-2-4, inclusive.

1 "(6) Purchases of maps or photographs from any
2 federal agency.

3 "(7) Purchases of manuscripts, books, maps,
4 pamphlets, or periodicals.

5 "(8) The selection of paying agents and trustees for
6 any security issued by a public body.

7 "(9) Existing contracts up for renewal for
8 sanitation or solid waste collection, recycling, or disposal
9 and those providing the service.

10 "(10) Purchases of computer and word processing
11 hardware when the hardware is the only type that is compatible
12 with hardware already owned by the entity taking bids and
13 custom software.

14 "(11) Contractual services and purchases of
15 commodities for which there is only one vendor or supplier and
16 contractual services and purchases of personal property which
17 by their very nature are impossible to award by competitive
18 bidding.

19 "(12) Contractual services and purchases of products
20 related to, or having an impact upon, security plans,
21 procedures, assessments, measures, or systems, or the security
22 or safety of persons, structures, facilities, or
23 infrastructures.

24 "(13) Purchases of goods or services made as a part
25 of any purchasing cooperative sponsored by the National
26 Association of Counties, its successor organization, or any
27 other competitive bid nationwide cooperative purchasing

1 program, or other national or regional governmental
2 cooperative purchasing program. This subdivision shall not
3 apply to ~~goods for which a service or service contract,~~
4 ~~whether subject to competitive bidding under this chapter or~~
5 ~~not, is necessary to utilize the goods~~ voice or wireless
6 communications services. Such purchases may only be made if
7 all of the following occur:

8 "a. The goods or services being purchased are
9 available as a result of a competitive bid process approved by
10 the Department of Examiners of Public Accounts for each bid.

11 "b. The goods or services are either not at the time
12 available to local boards of education on the state purchasing
13 program or are available at a price equal to or less than that
14 on the state purchasing program.

15 "c. The purchase is made through a participating
16 Alabama vendor holding an Alabama business license if such a
17 vendor exists.

18 "(14) Purchases of unprocessed agricultural products
19 as defined in subsection (b) of Section 16-1-46 adding this
20 subdivision and the food is purchased with a cost of one
21 hundred thousand dollars (\$100,000) or less.

22 "(15) Purchase of goods or services from vendors
23 that have been awarded a current and valid general services
24 administration contract. Prices paid for the goods or services
25 may not exceed the lowest competitively bid price for these
26 goods or services and may not exceed the price on an existing
27 state purchasing program.

1 "(b) This chapter shall not apply to:

2 "(1) Any purchases of products where the price of
3 the products is already regulated and established by state
4 law.

5 "(2) Purchases made by individual schools of the
6 county or municipal public school systems from moneys other
7 than those raised by taxation or received through
8 appropriations from state or county sources.

9 "(c) The city and county boards of education shall
10 establish and maintain such purchasing facilities and
11 procedures as may be necessary to carry out the intent and
12 purpose of this chapter by complying with the requirements for
13 competitive bidding in the operation and management of each
14 city and county board of education.

15 "(d) Contracts entered into in violation of this
16 chapter shall be void, and anyone who violates this chapter
17 shall be guilty of a Class C felony.

18 "§16-13B-7.

19 "(a) When purchases are required to be made through
20 competitive bidding, awards shall be made to the lowest
21 responsible bidder taking into consideration the qualities of
22 the commodities proposed to be supplied, their conformity with
23 specifications, the purposes for which required, the terms of
24 delivery, transportation charges, and the dates of delivery.
25 If at any time after the award has been made the lowest
26 responsible bidder notifies the awarding authority in writing
27 that the bidder will no longer comply with the terms of the

1 award to provide the goods or services to the awarding
2 authority under the terms and conditions of the original
3 award, or the awarding authority documents that the lowest
4 responsible bidder defaults under the terms of the original
5 award, the awarding authority may terminate the award to the
6 defaulting bidder and make an award to the second lowest
7 responsible bidder for the remainder of the award period
8 without rebidding, provided the award to the second lowest
9 responsible bidder is in all respects made under the terms and
10 conditions contained in the original bid specifications and is
11 for the same or a lower price than the bid originally
12 submitted to the awarding authority by the second lowest
13 responsible bidder.

14 "(b) The awarding authority in the purchase of or
15 contract for personal property or contractual services shall
16 give preference, provided there is no sacrifice or loss in
17 price or quality, to commodities produced in Alabama or sold
18 by Alabama persons, firms, or corporations. Notwithstanding
19 the foregoing, no county or city board of education ~~charged~~
20 ~~with the letting of contracts or purchase of materials for the~~
21 ~~construction, modification, alteration, or repair of any~~
22 ~~publicly owned facility~~ may specify the ~~use of materials or~~
23 ~~systems by~~ purchase of goods or services from a sole source,
24 unless:

25 "(1) The board of education can document ~~to the~~
26 ~~satisfaction of the State Building Commission~~ that the sole
27 source product or service is of an indispensable nature, no

1 other product or service can meet its needs, all other viable
2 alternatives have been explored, and it has been determined
3 that only this product or service will fulfill the function
4 for which the product is needed. Frivolous features will not
5 be considered.

6 " (2) ~~The sole source specification has been~~
7 ~~recommended by the architect or engineer of record who also~~
8 ~~documents that there is no other product available and that~~
9 ~~the use of the requirement is of an indispensable nature and~~
10 ~~why.~~ No other vendor offers substantially equivalent goods or
11 services that can accomplish the purpose for which the goods
12 or services are required.

13 " (3) All information substantiating the use of a
14 sole source specification is documented in writing and is
15 filed into the project file.

16 " (c) (1) For purchases of personal property in
17 instances where the awarding authority determines that the
18 total cost of ownership over the expected life of the item or
19 items, including acquisition costs plus sustaining costs or
20 life cycle costs, can be reasonably ascertained from industry
21 recognized and accepted sources, the lowest responsible bid
22 may be determined to be the bid offering the lowest life cycle
23 costs and otherwise meeting all of the conditions and
24 specifications contained in the invitation to bid. To utilize
25 this subdivision to determine the lowest responsible bidder,
26 the awarding authority shall include a notice in the
27 invitation to bid that the lowest responsible bid may be

1 determined by using life cycle costs and identify the industry
2 recognized and accepted sources that will be applicable to
3 such an evaluation.

4 "(2) The Department of Examiners of Public Accounts
5 shall establish procedures for the use of life cycle costs,
6 which shall be distributed to all contracting agencies and
7 shall be used in conducting any audits of the purchasing
8 agency.

9 "(d) The awarding authority or requisitioning agency
10 may reject any bid if the price is deemed excessive or quality
11 of product inferior.

12 "(e) Each record, with the successful bid indicated
13 thereon, and with the reasons for the award if not awarded to
14 the lowest bidder, shall, after award of the order or
15 contract, be open to public inspection.

16 "(f) Contracts for the purchase of personal property
17 or contractual services shall be let for periods not greater
18 than three years. Lease-purchase contracts for capital
19 improvements and repairs to real property shall be let for
20 periods not greater than 10 years and all other lease-purchase
21 contracts shall be let for periods not greater than 10 years."

22 Section 2. This act shall become effective
23 immediately following its passage and approval by the
24 Governor, or its otherwise becoming law.