

1 HB494
2 129169-3
3 By Representative Johnson (R)
4 RFD: State Government
5 First Read: 12-APR-11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ENROLLED, An Act,

To amend Section 41-16-72 of the Code of Alabama 1975, relating to procurement of professional services, to exempt certain contracts with health professionals which involve only service on agency task forces, boards, or committees.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 41-16-72 of the Code of Alabama 1975, is amended to read as follows:

"§41-16-72.

"Any other provision of law notwithstanding, the procurement of professional services by any agency, department, board, bureau, commission, authority, public corporation, or instrumentality of the State of Alabama shall be conducted through the following selection process:

"(1)a. Except as otherwise provided herein, attorneys retained to represent the state in litigation shall be appointed by the Attorney General in consultation with the Governor from a listing of attorneys maintained by the Attorney General. All attorneys interested in representing the State of Alabama may apply and shall be included on the listing. The selection of the attorney or law firm shall be based upon the level of skill, experience, and expertise required in the litigation and the fees charged by the

1 attorney or law firm shall be taken into consideration so that
2 the State of Alabama receives the best representation for the
3 funds paid. Fees shall be negotiated and approved by the
4 Governor in consultation with the Attorney General. Maximum
5 fees paid for legal representation may be established by
6 executive order of the Governor.

7 "Nothing in this article and nothing in Chapter 15
8 of Title 36 modifies or repeals the exclusive authority of the
9 governing boards of the public institutions of higher
10 education to direct and control litigation involving their
11 respective universities and to employ and retain legal counsel
12 of their own choice, consistent with their broad powers of
13 management and control set forth in Chapters 47-56 of Title 16
14 and in the constitution. Provided further, nothing in this
15 article modifies or repeals the authority of the Attorney
16 General to direct and control litigation involving the state
17 or any agency, department, or instrumentality of the state, or
18 the authority of the Governor to appear in civil cases in
19 which the state is interested.

20 "b. Attorneys retained by any state purchasing
21 entity to render nonlitigation legal services shall be
22 selected by such entity from a listing of attorneys maintained
23 by the Legal Advisor to the Governor. All attorneys interested
24 in representing any purchasing state entity may apply and
25 shall be included on the listing. The selection of the

1 attorney or law firm shall be based upon the level of skill,
2 experience, and expertise required for the services, but the
3 fees charged by the attorney or law firm shall be taken into
4 consideration so that such state entity shall receive the best
5 representation for the funds paid. Fees for such services
6 shall be negotiated by the state entity requiring the services
7 and shall be subject to the review and approval of the
8 Governor or the Director of Finance when so designated by the
9 Governor.

10 "c. This article shall not apply to the appointment
11 by a court of attorneys or experts.

12 "d. This article shall not apply to the retention of
13 experts by the state for the purposes of litigation, or
14 avoidance of litigation.

15 "e. Nothing in this article shall be construed as
16 altering or amending the Governor's authority to retain
17 attorneys pursuant to Section 36-13-2, however, the Governor
18 shall select such attorneys from three proposals received from
19 attorneys included on the listing maintained by the Attorney
20 General.

21 "(2) Physicians retained to provide medical services
22 to the state shall be selected by the purchasing state entity
23 from a list of qualified physicians maintained by the Alabama
24 Medical Licensure Commission. All physicians interested in

1 providing medical services to the State of Alabama may apply
2 and shall be included on the listing.

3 "(3) Professional services of architects, landscape
4 architects, engineers, land surveyors, geoscience, and other
5 similar professionals shall be procured in accordance with
6 competitive, qualification-based selection policies and
7 procedures. Selection shall be based on factors to be
8 developed by the procuring state entity which may include,
9 among others, the following:

10 "a. Specialized expertise, capabilities, and
11 technical competence, as demonstrated by the proposed approach
12 and methodology to meet project requirements.

13 "b. Resources available to perform the work,
14 including any specialized services within the specified time
15 limits for the project.

16 "c. Record of past performance, quality of work,
17 ability to meet schedules, cost control, and contract
18 administration.

19 "d. Availability to and familiarity with the project
20 locale.

21 "e. Proposed project management techniques.

22 "f. Ability and proven history in handling special
23 project contracts.

24 "Notice of need for professional services shall be
25 widely disseminated to the professional community in a full

1 and open manner. Procuring state entities shall evaluate such
2 professionals that respond to the notice of need based on such
3 state entity's qualification-based selection process criteria.
4 Any such procuring state entity shall then make a good faith
5 effort to negotiate a contract for professional services from
6 the selected professional after first discussing and refining
7 the scope of services for the project with such professional.
8 Where the Alabama Building Commission has set a fee schedule
9 for the professional services sought, fees shall not exceed
10 the schedule without approval of the Director of the Alabama
11 Building Commission and the Governor.

12 "(4) The Director of Finance, through the Division
13 of Purchasing of the Department of Finance, shall establish
14 and maintain lists of professional service providers, other
15 than those specifically named in this section, which may be
16 required from time to time by any state agency, department,
17 board, bureau, commission, authority, public corporation, or
18 instrumentality. When such professional services are needed,
19 the purchasing state entity shall solicit proposals from the
20 professional service providers desiring to receive requests
21 for proposals. The purchasing state entity shall select the
22 professional service provider that best meets the needs of the
23 purchasing entity as expressed in the request for proposals.
24 Price shall be taken into consideration. In the event the fees
25 paid to the selected professional service provider exceed by

1 10 percent the professional service fee offered by the lowest
2 qualified proposal, the reasons for selecting a professional
3 service provider must be stated in writing, signed by the
4 director of the purchasing state entity, and made a part of
5 the selection record.

6 "(5) Contracts for professional services shall be
7 limited only to that portion of a contract relating to the
8 professional service provided. Goods purchased by the state in
9 conjunction with the contract for professional services shall
10 be purchased pursuant to Section 41-16-20.

11 "(6) Should an emergency affecting the public
12 health, safety, convenience, or the economic welfare of the
13 State of Alabama so declared in writing under oath to the
14 Governor and the Attorney General by the state entity
15 requiring the professional services arise, the professional
16 services required to alleviate the emergency situation may be
17 procured from any qualified professional service provider
18 without following the process or procedure required by this
19 article.

20 "(7) The process set forth herein for the selection
21 of professional service providers shall not apply to the
22 Legislature, the Alabama State Port Authority, or to colleges
23 and universities governed by a board of trustees or by the
24 Department of Postsecondary Education. The State Department of
25 Education shall not be subject to the provisions of this

1 article, requiring the process set forth herein for the
2 selection of professional service providers, except for the
3 future acquisition of professional services in support of
4 computer technology on a statewide basis which exceeds the
5 amount of expenditures set forth within this chapter. However,
6 if a state agency or department is able to provide the
7 necessary computer networking services, then the services
8 shall be provided by the agency or department without being
9 contracted to an outside provider. In the event the State
10 Department of Education has intervened into the financial
11 operations of a local board of education, the State Department
12 of Education shall follow the provisions of law applicable to
13 local boards of education for services related to the local
14 board of education subject to intervention. The Alabama
15 Medicaid Agency shall not be subject to the provisions of this
16 article requiring the process set forth herein for the
17 selection of professional service providers for contracts with
18 physicians, pharmacists, dentists, optometrists, opticians,
19 nurses, and other health professionals which involve only
20 service on agency task forces, boards, or committees.

21 "(8) Under any contract letting process in this
22 section, all requests for proposals from any state entity
23 purchasing professional services shall be sent to all
24 professional service providers regardless of race that have

1 notified the state of their interest in receiving state
2 business.

3 "(9) Under any contract letting process in this
4 section, all lists containing professional service providers
5 and contractors for contracts under the provisions of this
6 article shall seek the racial and ethnic diversity of the
7 state."

8 Section 2. All laws or parts of laws which conflict
9 with this act are repealed.

10 Section 3. This act shall become effective
11 immediately following its passage and approval by the
12 Governor, or its otherwise becoming law.

