

1 HB88
2 191948-4
3 By Representative Drake
4 RFD: Military and Veterans Affairs
5 First Read: 09-JAN-18
6 PFD: 01/08/2018

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ENROLLED, An Act,

To amend Sections 41-16-20, 41-16-21.1, 41-16-27, and 41-4-110 of the Code of Alabama 1975 relating to purchasing; to grant preferred vendor status to any business located in the state that is owned by a veteran; to allow the Division of Purchasing to enter into joint purchase agreements for the purchase of services and to award multiple purchase contracts for the purchase of services; and to allow cities and counties to utilize the fleet fuel card program administered by the Division of Purchasing.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 41-16-20, 41-16-21.1, 41-16-27, and 41-4-110 of the Code of Alabama 1975 are amended to read as follows:

"§41-16-20.

"(a) With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all contracts of whatever nature for labor, services, work, or for the purchase or lease of materials, equipment, supplies, other personal property or other nonprofessional services, involving fifteen thousand dollars (\$15,000) or more, made by or on behalf of any state department, board, bureau, commission, committee, institution, corporation, authority, or office shall, except as otherwise

1 provided in this article, be let by free and open competitive
2 bidding, on sealed bids, to the lowest responsible bidder.

3 "(b) A "preferred vendor" shall be a person, firm,
4 or corporation which is granted preference priority according
5 to the following:

6 "(1) PRIORITY #1. Produces or manufactures the
7 product within the state.

8 "(2) PRIORITY #2. Has an assembly plant or
9 distribution facility for the product within the state.

10 "(3) PRIORITY #3. Is organized for business under
11 the applicable laws of the state as a corporation,
12 partnership, or professional association and has maintained at
13 least one retail outlet or service center for the product or
14 service within the state for not less than one year prior to
15 the deadline date for the competitive bid.

16 "(4) PRIORITY #4. A business that is physically
17 located in the state and that is more than 50 percent owned by
18 a person who was discharged or released under conditions other
19 than dishonorable and who has at least 24 months' active
20 service in the United States' military, naval, or air service,
21 or who has less than 24 months of active service in any of the
22 foregoing and was separated with a service-connected
23 disability, or a national guardsman or reservist who completed
24 active federal service for purposes other than training or who

1 served at least 180 days of continuous service for purposes
2 other than training.

3 "(c) In the event a bid is received for the product
4 or service from a person, firm, or corporation deemed to be a
5 responsible bidder and a preferred vendor where any state
6 higher education institution, department, board, bureau,
7 commission, committee, institution, corporation, authority, or
8 office is the awarding authority and the bid is no more than
9 five percent greater than the bid of the lowest responsible
10 bidder, the awarding authority may award the contract to the
11 preferred vendor."

12 "§41-16-21.1.

13 "(a) In the event that utility services are no
14 longer exempt from competitive bidding under this article,
15 non-adjointing counties may not purchase utility services by
16 joint agreement under authority granted by this section.

17 "(b) The Division of Purchasing, Department of
18 Finance, is hereby authorized to enter into joint purchasing
19 agreements to purchase, lease, or lease-purchase ~~child support~~
20 ~~services~~, materials, equipment, supplies, ~~or~~ other personal
21 property or services, including child support services, which
22 have been let by competitive bid or competitive solicitation
23 process by any group or consortium of governmental entities
24 within or without the State of Alabama upon a finding by the
25 Purchasing Agent that such joint purchasing agreements are in

1 the best interests of the State of Alabama. Joint purchasing
2 agreements entered into by the Division of Purchasing may be
3 utilized by any governmental entity subject to the
4 requirements of Title 41, Chapter 16, Articles 2 or 3A. This
5 subsection shall not apply to the purchase, lease, or
6 lease-purchase of materials, equipment, supplies, or other
7 personal property which can only be utilized in conjunction
8 with a service or service contract, whether subject to
9 competitive bidding under this article or not, for the
10 materials, equipment, supplies, or other personal property
11 that must remain in effect to utilize the materials,
12 equipment, supplies, or other personal property.

13 "Nothing in this subsection prohibits or limits
14 public four-year institutions from entering into joint
15 purchasing agreements to purchase, lease, or lease-purchase
16 materials, equipment, supplies, other personal property and
17 services which have been let by competitive bid or competitive
18 solicitation process by any group or consortium of
19 governmental entities or through a group purchasing
20 organization within or without the State of Alabama upon a
21 finding by the institution that such purchasing agreements are
22 in the best interests of the institution; provided, however,
23 this sentence shall not permit agreements to purchase, lease,
24 or lease-purchase wireless communications equipment or

1 services through any group or consortium of governmental
2 entities or through any group purchasing organization."

3 "§41-16-27.

4 "(a) When purchases are required to be made through
5 competitive bidding, award shall, except as provided in
6 subsection (f), be made to the lowest responsible bidder
7 taking into consideration the qualities of the commodities
8 proposed to be supplied, their conformity with specifications,
9 the purposes for which required, the terms of delivery,
10 transportation charges and the dates of delivery provided,
11 that the awarding authority may at any time within 30 days
12 after the bids are opened negotiate and award the contract to
13 anyone, provided he secures a price at least five percent
14 under the low acceptable bid. The award of such a negotiated
15 contract shall be subject to approval by the Director of
16 Finance and the Governor, except in cases where the awarding
17 authority is a two-year or four-year college or university
18 governed by a board. The awarding authority or requisitioning
19 agency shall have the right to reject any bid if the price is
20 deemed excessive or quality of product inferior. Awards are
21 final only after approval of the Purchasing Agent.

22 "(b) The awarding authority may award multiple
23 purchase contracts resulting from a single invitation-to-bid
24 where the specifications of the items of personal property or
25 services intended to be purchased by a requisitioning agency

1 or agencies are determined, in whole or in part, by technical
2 compatibility and operational requirements. In order to make
3 multiple awards under this provision, the awarding authority
4 must include in the invitation-to-bid a notice that multiple
5 awards may be made and the specific technical compatibility or
6 operational requirements necessitating multiple awards.

7 Multiple awards of purchase contracts with unique technical
8 compatibility or operational specifications shall be made to
9 the lowest responsible bidder complying with the unique
10 technical compatibility or operational specifications. The
11 requisitioning agency shall provide the awarding authority
12 with the information necessary for it to determine the
13 necessity for the award of multiple purchase contracts under
14 this provision.

15 "This subsection (b) shall not apply to contracts
16 for the purchase or use of push to talk services, which shall
17 be purchased through a separate competitive bid process.

18 "(c) Each bid, with the name of the bidder, shall be
19 entered on a record. Each record, with the successful bid
20 indicated thereon and with the reasons for the award if not
21 awarded to the lowest bidder shall, after award of the order
22 or contract, be open to public inspection.

23 "(d) The Purchasing Agent in the purchase of or
24 contract for personal property or contractual services shall
25 give preference, provided there is no sacrifice or loss in

1 price or quality, to commodities produced in Alabama or sold
2 by Alabama persons, firms, or corporations.

3 "(e) (1) Contracts for the purchase of personal
4 property or contractual services other than personal services
5 shall be let by competitive bid for periods not greater than
6 five years and current contracts existing on February 28,
7 2006, may be extended or renewed for an additional two years
8 with a 90-day notice of such extension or renewal given to the
9 Legislative Council, however, any contract that generates
10 funds or will reduce annual costs by awarding the contract for
11 a longer term than a period of three years which is let by or
12 on behalf of a state two-year or four-year college or
13 university may be let for periods not greater than 10 years.
14 Any contract awarded pursuant to this section for terms of
15 less than 10 years may be extended for a period not to exceed
16 10 years from the initial awarding of the contract provided
17 that the terms of the contract shall not be altered or
18 renegotiated during the period for which the contract is
19 extended.

20 "(2) For purchases of personal property made on or
21 after January 1, 2010, in instances in which the awarding
22 authority determines that the total cost of ownership over the
23 expected life of the item or items, including acquisition
24 costs plus sustaining costs, and including specifically life
25 cycle costs, can be reasonably ascertained from industry

1 recognized and accepted sources, the lowest responsible bid
2 may be determined to be the bid offering the lowest life cycle
3 costs and otherwise meeting all of the conditions and
4 specifications contained in the invitation to bid. To utilize
5 this provision to determine the lowest responsible bidder, the
6 awarding authority must include a notice in the invitation to
7 bid that the lowest responsible bid may be determined by using
8 life cycle costs and identify the industry recognized and
9 accepted sources that will be applicable to such an
10 evaluation.

11 "(3) Industry recognized and accepted sources may be
12 provided by rules adopted pursuant to the Alabama
13 Administrative Procedure Act by the Green Fleets Review
14 Committee if the review committee is established and enacted
15 at the 2009 Regular Session. If the Green Fleets Review
16 Committee is not enacted at the 2009 Regular Session, the
17 Permanent Joint Legislative Committee on Energy Policy may
18 adopt rules providing industry recognized and accepted
19 sources, pursuant to the Alabama Administrative Procedure Act.

20 "(f) Contracts for the purchase of services for
21 receiving, processing, and paying claims for services rendered
22 recipients of the Alabama Medicaid program authorized under
23 Section 22-6-7 which are required to be competitively bid may
24 be awarded to the bidder whose proposal is most advantageous
25 to the state, taking into consideration cost factors, program

1 suitability factors (technical factors) including
2 understanding of program requirements, management plan,
3 excellence of program design, key personnel, corporate or
4 company resources and designated location, and other factors
5 including financial condition and capability of the bidder,
6 corporate experience and past performance and priority of the
7 business to insure the contract awarded is the best for the
8 purposes required. Each of these criteria shall be given
9 relative weight value as designated in the invitation to bid,
10 with price retaining the most significant weight.

11 Responsiveness to the bid shall be scored for each designated
12 criteria. If, for reasons cited above, the bid selected is not
13 from the lowest bidding contractor, the Alabama Medicaid
14 Agency shall present its reasons for not recommending award to
15 the low bidder to the Medicaid Interim Committee. The
16 committee shall evaluate the findings of the Alabama Medicaid
17 Agency and must, by resolution, approve the action of the
18 awarding authority before final awarding of any such contract.
19 The committee shall also hear any valid appeals against the
20 recommendation of the Alabama Medicaid Agency from the low bid
21 contractor(s) whose bid was not selected.

22 "(g) Notwithstanding the requirements under Sections
23 41-16-20, 41-16-21, and this section, contractual services and
24 purchases of personal property regarding the athletic
25 department, food services, and transit services negotiated on

1 behalf of two-year and four-year colleges and universities may
2 be awarded without competitive bidding provided that no state
3 revenues, appropriations, or other state funds are expended or
4 committed and when it is deemed by the respective board that
5 financial benefits will accrue to the institution, except that
6 in the cases where an Alabama business entity as defined by
7 this section is available to supply the product or service
8 they will have preference unless the product or service
9 supplied by a foreign corporation is substantially different
10 or superior to the product or service supplied by the Alabama
11 business entity. However, the terms and conditions of any of
12 the services or purchases which are contracted through
13 negotiation without being competitively bid and the name and
14 address of the recipient of such a contract shall be
15 advertised in a newspaper of general circulation in the
16 municipality in which the college or university is located
17 once a week for two consecutive weeks commencing no later than
18 10 days after the date of the contract. For the purposes of
19 this section, the term Alabama business entity shall mean any
20 sole proprietorship, partnership, or corporation organized in
21 the State of Alabama.

22 "(h) (1) For purchases of motor vehicles by the state
23 made on or after January 1, 2010, the lowest responsible bid
24 may be determined to be a bid offering the lowest life cycle
25 costs, if it is determined that the total cost of ownership

1 over the expected life of a motor vehicle, including
2 acquisition costs plus maintenance costs, including
3 specifically life cycle costs, can be reasonably ascertained
4 from industry recognized and accepted sources. The lowest
5 responsible bid shall otherwise meet all of the conditions and
6 specifications contained in the invitation to bid. To utilize
7 this provision to determine the lowest responsible bidder, the
8 state must include a notice in the invitation to bid that the
9 lowest responsible bid may be determined by using life cycle
10 costs and identify the industry recognized and accepted
11 sources that will be applicable to such an evaluation.

12 "(2) Industry recognized and accepted sources may be
13 provided by rules adopted pursuant to the Alabama
14 Administrative Procedure Act by the Green Fleets Review
15 Committee if the review committee is established and enacted
16 at the 2009 Regular Session. If the Green Fleets Review
17 Committee is not enacted at the 2009 Regular Session, the
18 Permanent Joint Legislative Committee on Energy Policy may
19 adopt rules providing industry recognized and accepted sources
20 pursuant to the Alabama Administrative Procedure Act.

21 "(i) When a single invitation-to-bid specifies a set
22 of deliverables that would be capable of division into
23 separate, independent contracts, the awarding authority, at
24 its discretion, may award a secondary contract for any subset
25 of such deliverables, not to exceed 20 percent of the original

1 contract value, to any Alabama business certified under the
2 Federal HUBZone program whose properly submitted responsible
3 bid does not exceed five percent of the lowest responsible
4 bid. In order to make a secondary award under this provision,
5 the awarding authority shall include in the invitation-to-bid
6 a notice that a secondary award may be made."

7 "§41-4-110.

8 "(a) There shall be in the Department of Finance the
9 Division of Purchasing. The functions and duties of the
10 Division of Purchasing shall be as follows:

11 "(1) To purchase all personal property and
12 nonprofessional services, except alcoholic beverages, which
13 shall be purchased by the Alcoholic Beverage Control Board and
14 except as otherwise provided by law, for the state and each
15 department, board, bureau, commission, agency, office, and
16 institution thereof, except as provided in subsection (e).

17 "(2) To make and supervise the execution of all
18 contracts and leases for the use or acquisition of any
19 personal property and nonprofessional services unless
20 otherwise provided by law.

21 "(3) To fix standards of quality and quantity and to
22 develop standard specifications for all personal property and
23 nonprofessional services acquired by the state or any
24 department, board, bureau, commission, agency, office, or
25 institution thereof.

1 "(4) To maintain records as to prices and sources of
2 supply of such personal property and nonprofessional services,
3 such records to be open to the inspection of any state,
4 county, municipal, or other public officer or employee charged
5 with the duty of acquiring any such property and
6 nonprofessional services or article for his or her department,
7 board, bureau, commission, agency, office, institution,
8 county, municipal corporation, or local public body.

9 "(5) To manage, supervise, and control all printing
10 and binding for the state and for each department, board,
11 bureau, commission, agency, office, and institution thereof
12 and the distribution of all printed matter and to make and
13 supervise the execution of all contracts with respect thereto,
14 unless otherwise provided by law.

15 "(6) To require the periodic reporting of all
16 purchases of furniture, fixtures, supplies, material,
17 equipment, and other personal property, except printing, and
18 all contracts and leases for the use or acquisition thereof by
19 or for counties, the purchase, contract or lease price of
20 which is \$100.00 or more, and to require information in
21 connection therewith, to prescribe forms and fix the time for
22 submitting such reports, and, when requested by any county,
23 municipal corporation, and other local public body (including
24 any board of education) to make such purchases, contracts, or
25 leases for it. It shall be the duty of every county to make

1 such report on forms furnished by the Department of Finance,
2 whenever requested so to do, but not more than once every 30
3 days.

4 "(7) To perform such other functions and duties of
5 the Department of Finance as may from time to time be assigned
6 by the Director of Finance.

7 "(b) As long as the constitution so requires, all
8 stationery, printing, paper, and fuel used in the legislative
9 and other departments of the government shall be furnished,
10 and the printing, binding, and distribution of the laws,
11 journals, departmental reports, and all other printing,
12 binding, and repairing and furnishing the halls and rooms used
13 for the meetings of the Legislature and its committees shall
14 be performed under contract, to be given to the lowest
15 responsible bidder below a maximum price, under such
16 regulations as have been or may be prescribed by law and as
17 may be promulgated by the Director of Finance. No member or
18 officer of any department of the government shall be in any
19 way interested in such contracts, and all such contracts shall
20 be subject to the approval of the Governor, the Auditor and
21 the Treasurer. All contracts not required to be approved by a
22 named officer or officers by the Constitution shall be subject
23 to the approval of the Director of Finance, who may, however,
24 provide for the automatic approval thereof by compliance with
25 the general rules or regulations promulgated by him or her.

1 "(c) The Purchasing Agent is further authorized to
2 establish and maintain a system for the purchase of personal
3 property and nonprofessional services by state departments,
4 agencies, boards, and institutions that conduct their
5 purchasing activities through the Division of Purchasing,
6 through the utilization of approved credit cards. County and
7 municipal governments and instrumentalities or public
8 corporations thereof may participate in the state fleet fuel
9 card program subject to the terms and conditions of the
10 program related to the utilization of the fleet fuel card;
11 provided, however, that county and municipal governments and
12 instrumentalities or public corporations thereof shall not
13 otherwise be subject to the provisions of this subsection. The
14 Purchasing Agent shall establish by administrative rule a
15 process for the competitive solicitation of credit card
16 providers. The state Comptroller and the Purchasing Agent
17 shall promulgate fiscal procedures governing the payment of
18 charges incurred by credit card users and the utilization of
19 credit cards. The use of approved credit cards shall be
20 established by the state Comptroller and the State Purchasing
21 Agent, with the approval of the Director of Finance, and be
22 published through the Alabama fiscal procedures, in which each
23 purchase made using approved credit cards is required to have
24 prior approval by the department head or his or her designee
25 and a record of such purchases and approvals is to be

1 maintained. The Purchasing Agent may select the provider or
2 providers offering the highest fees to the division for the
3 use of its credit card or credit cards. Fees received by the
4 division for the use of credit cards shall be placed in a
5 special fund entitled the State Procurement Fund in the State
6 Treasury for the use of the division and such funds shall be
7 appropriated, budgeted, and allotted in accordance with
8 Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to
9 41-19-12, inclusive, and only in amounts stipulated in general
10 appropriations bills and other appropriation bills. Approved
11 credit cards may be issued to requisitioning agencies upon the
12 recommendation of the Purchasing Agent and the approval of the
13 Director of Finance. Approved credit cards will be assigned to
14 the department and will be in limited number. Such credit
15 cards may be utilized to purchase items of personal property
16 and nonprofessional services, and shall not exceed the
17 limitations set forth in subsection (a) of Section 41-16-24.
18 The director of the governmental entity utilizing credit cards
19 is responsible for the proper use of credit cards assigned to
20 his or her agency, in accordance with rules established by
21 Alabama fiscal procedures. The Purchasing Agent may collect
22 any credit card from any agency at any time due to improper
23 use. The Purchasing Agent shall submit an annual report and
24 accounting regarding the use of credit cards by each

1 governmental entity to the Director of Finance and the
2 Governor.

3 "(d) The Division of Purchasing is authorized to
4 charge a biannual registration fee to vendors desiring to
5 register with the division to receive invitations-to-bid for
6 any goods or services solicited by the division and to charge
7 departments, boards, bureaus, commissions, agencies, offices,
8 and institutions for their proportionate share of operating
9 costs of the division. Any fee must be set by administrative
10 rule upon the approval of the Director of Finance. Any fees
11 collected under this provision shall be deposited in the State
12 Treasury to the credit of the State Procurement Fund and shall
13 be appropriated, budgeted, and allotted in accordance with
14 Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to
15 41-19-12, inclusive, and only in amounts stipulated in general
16 appropriations bills and other appropriation bills.

17 "(e) Notwithstanding any law to the contrary, state
18 departments, agencies, boards, and institutions may purchase
19 personal property from any vendor that offers the item at a
20 price at least ten percent below the price established on a
21 statewide contract by the Division of Purchasing for the same
22 item, provided that each acquisition of personal property
23 pursuant to this subsection, whether for a single item or
24 multiple items, does not exceed fifteen thousand dollars
25 (\$15,000). The Division of Purchasing shall confirm that the

1 terms and conditions of such purchase are substantially
2 similar to those of the statewide contract for the same item
3 prior to the approval of any purchase pursuant to this
4 subsection. This subsection shall not apply to construction or
5 road-building materials, as identified by the Purchasing
6 Agent. Any purchase that would be directly connected to any IT
7 network used by the state shall require prior approval by the
8 Secretary of Information Technology.

9 "Any acquisition of personal property pursuant to
10 this subsection shall be purchased solely from vendors
11 physically located within the state, if the purchaser is to
12 take possession of the purchased goods at the vendor's
13 physical location.

14 "The price of any goods or services purchased
15 pursuant to this subsection shall be the market price readily
16 available to the public at large.

17 "Any acquisition of personal property pursuant to
18 this subsection is not exempt from the supervision and
19 administration of the Division of Purchasing."

20 Section 2. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 16-JAN-18, as amended.

Jeff Woodard
Clerk

Senate	15-FEB-18	Amended and Passed
House	01-MAR-18	Passed, as amended by Conference Com- mittee Report
Senate	06-MAR-18	Passed, as amended by Conference Com- mittee Report