

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

1 listing. The selection of the attorney or law firm shall be
2 based upon the level of skill, experience, and expertise
3 required in the litigation and the fees charged by the
4 attorney or law firm shall be taken into consideration so that
5 the State of Alabama receives the best representation for the
6 funds paid. Fees shall be negotiated and approved by the
7 Governor in consultation with the Attorney General. Maximum
8 fees paid for legal representation may be established by
9 executive order of the Governor.

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

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

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

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

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

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

22 "(2) Physicians retained to provide medical services
23 to the state shall be selected by the purchasing state entity
24 from a list of qualified physicians maintained by the Alabama
25 Medical Licensure Commission. All physicians interested in
26 providing medical services to the State of Alabama may apply
27 and shall be included on the listing.

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

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

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

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

17 "d. Availability to and familiarity with the project
18 locale.

19 "e. Proposed project management techniques.

20 "f. Ability and proven history in handling special
21 project contracts.

22 "Notice of need for professional services shall be
23 widely disseminated to the professional community in a full
24 and open manner. Procuring state entities shall evaluate such
25 professionals that respond to the notice of need based on such
26 state entity's qualification-based selection process criteria.
27 Any such procuring state entity shall then make a good faith

1 effort to negotiate a contract for professional services from
2 the selected professional after first discussing and refining
3 the scope of services for the project with such professional.
4 Where the Alabama Building Commission has set a fee schedule
5 for the professional services sought, fees shall not exceed
6 the schedule without approval of the Director of the Alabama
7 Building Commission and the Governor.

8 "(4) The Director of Finance, through the Division
9 of Purchasing of the Department of Finance, shall establish
10 and maintain lists of professional service providers, other
11 than those specifically named in this section, which may be
12 required from time to time by any state agency, department,
13 board, bureau, commission, authority, public corporation, or
14 instrumentality. When such professional services are needed,
15 the purchasing state entity shall solicit proposals from the
16 professional service providers desiring to receive requests
17 for proposals. The purchasing state entity shall select the
18 professional service provider that best meets the needs of the
19 purchasing entity as expressed in the request for proposals.
20 Price shall be taken into consideration. In the event the fees
21 paid to the selected professional service provider exceed by
22 10 percent the professional service fee offered by the lowest
23 qualified proposal, the reasons for selecting a professional
24 service provider must be stated in writing, signed by the
25 director of the purchasing state entity, and made a part of
26 the selection record.

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

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

15 "(7) The process set forth herein for the selection
16 of professional service providers shall not apply to the
17 Legislature, the Alabama State Port Authority, or to colleges
18 and universities governed by a board of trustees or by the
19 Department of Postsecondary Education. The State Department of
20 Education shall not be subject to the provisions of this
21 article, requiring the process set forth herein for the
22 selection of professional service providers, except for the
23 future acquisition of professional services in support of
24 computer technology on a statewide basis which exceeds the
25 amount of expenditures set forth within this chapter. However,
26 if a state agency or department is able to provide the
27 necessary computer networking services, then the services

1 shall be provided by the agency or department without being
2 contracted to an outside provider. In the event the State
3 Department of Education has intervened into the financial
4 operations of a local board of education, the State Department
5 of Education shall follow the provisions of law applicable to
6 local boards of education for services related to the local
7 board of education subject to intervention. The Alabama
8 Medicaid Agency shall not be subject to the provisions of this
9 article requiring the process set forth herein for the
10 selection of professional service providers for contracts with
11 physicians, pharmacists, dentists, optometrists, opticians,
12 nurses, and other health professionals which involve only
13 service on agency task forces, boards, or committees.

14 "(8) Under any contract letting process in this
15 section, all requests for proposals from any state entity
16 purchasing professional services shall be sent to all
17 professional service providers regardless of race that have
18 notified the state of their interest in receiving state
19 business.

20 "(9) Under any contract letting process in this
21 section, all lists containing professional service providers
22 and contractors for contracts under the provisions of this
23 article shall seek the racial and ethnic diversity of the
24 state."

25 Section 2. All laws or parts of laws which conflict
26 with this act are repealed.

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

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House of Representatives

Read for the first time and re-ferred to the House of Representatives committee on State Government 12-APR-11

Read for the second time and placed on the calendar 1 amendment 19-APR-11

Read for the third time and passed as amended..... 26-APR-11

Yeas 95, Nays 0, Abstains 0

Greg Pappas
Clerk