

1 SB81
2 128526-3
3 By Senators Coleman, Beasley and Marsh
4 RFD: Fiscal Responsibility and Accountability
5 First Read: 01-MAR-11

1 SB81

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend Section 41-16-27 of the Code of Alabama
12 1975, relating to the manner of awarding public contracts; to
13 allow the awarding authority to issue a secondary award to
14 certain companies owned and operated by certain individuals
15 certified under the federal HUBZone program or any small
16 business enterprise located within the state not to exceed 20
17 percent of the original contract value; and to provide for
18 exceptions.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. The Legislature hereby finds and declares
21 that this amendatory act will help foster and develop
22 businesses throughout the state by allowing small businesses
23 to grow incrementally and contribute to the local economy
24 while adding jobs in the marketplace.

25 Section 2. Section 41-16-27 of the Code of Alabama
26 1975, is amended to read as follows:

1 "§41-16-27.

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

20 "(b) The awarding authority may award multiple
21 purchase contracts resulting from a single invitation-to-bid
22 where the specifications of the items of personal property
23 intended to be purchased by a requisitioning agency or
24 agencies are determined, in whole or in part, by technical
25 compatibility and operational requirements. In order to make
26 multiple awards under this provision, the awarding authority

1 must include in the invitation-to-bid a notice that multiple
2 awards may be made and the specific technical compatibility or
3 operational requirements necessitating multiple awards.
4 Multiple awards of purchase contracts with unique technical
5 compatibility or operational specifications shall be made to
6 the lowest responsible bidder complying with the unique
7 technical compatibility or operational specifications. The
8 requisitioning agency shall provide the awarding authority
9 with the information necessary for it to determine the
10 necessity for the award of multiple purchase contracts under
11 this provision.

12 "This subsection (b) shall not apply to contracts
13 for the purchase of personal property for which a service or
14 service contract, whether subject to competitive bidding under
15 this article or not, is necessary to utilize the personal
16 property throughout the period of utilization of the personal
17 property.

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
26 recognized and accepted sources, the lowest responsible bid

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

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

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

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

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

20 "(g) Notwithstanding the requirements under Sections
21 41-16-20, 41-16-21, and this section, contractual services and
22 purchases of personal property regarding the athletic
23 department, food services, and transit services negotiated on
24 behalf of two-year and four-year colleges and universities may
25 be awarded without competitive bidding provided that no state
26 revenues, appropriations, or other state funds are expended or

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

19 "(h) (1) For purchases of motor vehicles by the state
20 made on or after January 1, 2010, the lowest responsible bid
21 may be determined to be a bid offering the lowest life cycle
22 costs, if it is determined that the total cost of ownership
23 over the expected life of a motor vehicle, including
24 acquisition costs plus maintenance costs, including
25 specifically life cycle costs, can be reasonably ascertained
26 from industry recognized and accepted sources. The lowest

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

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

17 "(i) When a single invitation-to-bid specifies a set
18 of deliverables that would be capable of division into
19 separate, independent contracts, the awarding authority, at
20 its discretion, may award a secondary contract for any subset
21 of such deliverables, not to exceed 20 percent of the original
22 contract value, to any Alabama business certified under the
23 Federal HUBZone program whose properly submitted responsible
24 bid does not exceed five percent of the lowest responsible
25 bid. In order to make a secondary award under this provision,

1 the awarding authority shall include in the invitation-to-bid
2 a notice that a secondary award may be made."

3 Section 3. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Fiscal Responsibility and Account-
ability..... 01-MAR-11

Read for the second time and placed on the calen-
dar..... 22-MAR-11

Read for the third time and passed as amended 05-APR-11

Yeas 21
Nays 4
Abstaining 2

Patrick Harris
Secretary