

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

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8 SYNOPSIS: Under existing law, purchases of certain
9 property by the state must be made in compliance
10 with state public bid laws.

11 This bill would allow the awarding authority
12 to issue a secondary award to certain companies
13 owned and operated by certain individuals certified
14 under the federal HUBZone program or any small
15 business enterprise located within the state not to
16 exceed 20 percent of the original contract value
17 with exceptions.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To amend Section 41-16-27 of the Code of Alabama
24 1975, relating to the manner of awarding public contracts; to
25 allow the awarding authority to issue a secondary award to
26 certain companies owned and operated by certain individuals

1 certified under the federal HUBZone program or any small
2 business enterprise located within the state not to exceed 20
3 percent of the original contract value; and to provide for
4 exceptions.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. The Legislature hereby finds and declares
7 that this amendatory act will help foster and develop
8 businesses throughout the state by allowing small businesses
9 to grow incrementally and contribute to the local economy
10 while adding jobs in the marketplace.

11 Section 2. Section 41-16-27 of the Code of Alabama
12 1975, is amended to read as follows:

13 "§41-16-27.

14 "(a) When purchases are required to be made through
15 competitive bidding, award shall, except as provided in
16 subsection (f), be made to the lowest responsible bidder
17 taking into consideration the qualities of the commodities
18 proposed to be supplied, their conformity with specifications,
19 the purposes for which required, the terms of delivery,
20 transportation charges and the dates of delivery provided,
21 that the awarding authority may at any time within 30 days
22 after the bids are opened negotiate and award the contract to
23 anyone, provided he secures a price at least five percent
24 under the low acceptable bid. The award of such a negotiated
25 contract shall be subject to approval by the Director of
26 Finance and the Governor, except in cases where the awarding

1 authority is a two-year or four-year college or university
2 governed by a board. The awarding authority or requisitioning
3 agency shall have the right to reject any bid if the price is
4 deemed excessive or quality of product inferior. Awards are
5 final only after approval of the Purchasing Agent.

6 "(b) The awarding authority may award multiple
7 purchase contracts resulting from a single invitation-to-bid
8 where the specifications of the items of personal property
9 intended to be purchased by a requisitioning agency or
10 agencies are determined, in whole or in part, by technical
11 compatibility and operational requirements. In order to make
12 multiple awards under this provision, the awarding authority
13 must include in the invitation-to-bid a notice that multiple
14 awards may be made and the specific technical compatibility or
15 operational requirements necessitating multiple awards.
16 Multiple awards of purchase contracts with unique technical
17 compatibility or operational specifications shall be made to
18 the lowest responsible bidder complying with the unique
19 technical compatibility or operational specifications. The
20 requisitioning agency shall provide the awarding authority
21 with the information necessary for it to determine the
22 necessity for the award of multiple purchase contracts under
23 this provision.

24 "This subsection (b) shall not apply to contracts
25 for the purchase of personal property for which a service or
26 service contract, whether subject to competitive bidding under

1 this article or not, is necessary to utilize the personal
2 property throughout the period of utilization of the personal
3 property.

4 "(c) Each bid, with the name of the bidder, shall be
5 entered on a record. Each record, with the successful bid
6 indicated thereon and with the reasons for the award if not
7 awarded to the lowest bidder shall, after award of the order
8 or contract, be open to public inspection.

9 "(d) The Purchasing Agent in the purchase of or
10 contract for personal property or contractual services shall
11 give preference, provided there is no sacrifice or loss in
12 price or quality, to commodities produced in Alabama or sold
13 by Alabama persons, firms, or corporations.

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

1 10 years from the initial awarding of the contract provided
2 that the terms of the contract shall not be altered or
3 renegotiated during the period for which the contract is
4 extended.

5 "(2) For purchases of personal property made on or
6 after January 1, 2010, in instances in which the awarding
7 authority determines that the total cost of ownership over the
8 expected life of the item or items, including acquisition
9 costs plus sustaining costs, and including specifically life
10 cycle costs, can be reasonably ascertained from industry
11 recognized and accepted sources, the lowest responsible bid
12 may be determined to be the bid offering the lowest life cycle
13 costs and otherwise meeting all of the conditions and
14 specifications contained in the invitation to bid. To utilize
15 this provision to determine the lowest responsible bidder, the
16 awarding authority must include a notice in the invitation to
17 bid that the lowest responsible bid may be determined by using
18 life cycle costs and identify the industry recognized and
19 accepted sources that will be applicable to such an
20 evaluation.

21 "(3) Industry recognized and accepted sources may be
22 provided by rules adopted pursuant to the Alabama
23 Administrative Procedure Act by the Green Fleets Review
24 Committee if the review committee is established and enacted
25 at the 2009 Regular Session. If the Green Fleets Review
26 Committee is not enacted at the 2009 Regular Session, the

1 Permanent Joint Legislative Committee on Energy Policy may
2 adopt rules providing industry recognized and accepted
3 sources, pursuant to the Alabama Administrative Procedure Act.

4 "(f) Contracts for the purchase of services for
5 receiving, processing, and paying claims for services rendered
6 recipients of the Alabama Medicaid program authorized under
7 Section 22-6-7 which are required to be competitively bid may
8 be awarded to the bidder whose proposal is most advantageous
9 to the state, taking into consideration cost factors, program
10 suitability factors (technical factors) including
11 understanding of program requirements, management plan,
12 excellence of program design, key personnel, corporate or
13 company resources and designated location, and other factors
14 including financial condition and capability of the bidder,
15 corporate experience and past performance and priority of the
16 business to insure the contract awarded is the best for the
17 purposes required. Each of these criteria shall be given
18 relative weight value as designated in the invitation to bid,
19 with price retaining the most significant weight.

20 Responsiveness to the bid shall be scored for each designated
21 criteria. If, for reasons cited above, the bid selected is not
22 from the lowest bidding contractor, the Alabama Medicaid
23 Agency shall present its reasons for not recommending award to
24 the low bidder to the Medicaid Interim Committee. The
25 committee shall evaluate the findings of the Alabama Medicaid
26 Agency and must, by resolution, approve the action of the

1 awarding authority before final awarding of any such contract.
2 The committee shall also hear any valid appeals against the
3 recommendation of the Alabama Medicaid Agency from the low bid
4 contractor(s) whose bid was not selected.

5 "(g) Notwithstanding the requirements under Sections
6 41-16-20, 41-16-21, and this section, contractual services and
7 purchases of personal property regarding the athletic
8 department, food services, and transit services negotiated on
9 behalf of two-year and four-year colleges and universities may
10 be awarded without competitive bidding provided that no state
11 revenues, appropriations, or other state funds are expended or
12 committed and when it is deemed by the respective board that
13 financial benefits will accrue to the institution, except that
14 in the cases where an Alabama business entity as defined by
15 this section is available to supply the product or service
16 they will have preference unless the product or service
17 supplied by a foreign corporation is substantially different
18 or superior to the product or service supplied by the Alabama
19 business entity. However, the terms and conditions of any of
20 the services or purchases which are contracted through
21 negotiation without being competitively bid and the name and
22 address of the recipient of such a contract shall be
23 advertised in a newspaper of general circulation in the
24 municipality in which the college or university is located
25 once a week for two consecutive weeks commencing no later than
26 10 days after the date of the contract. For the purposes of

1 this section, the term Alabama business entity shall mean any
2 sole proprietorship, partnership, or corporation organized in
3 the State of Alabama.

4 "(h) (1) For purchases of motor vehicles by the state
5 made on or after January 1, 2010, the lowest responsible bid
6 may be determined to be a bid offering the lowest life cycle
7 costs, if it is determined that the total cost of ownership
8 over the expected life of a motor vehicle, including
9 acquisition costs plus maintenance costs, including
10 specifically life cycle costs, can be reasonably ascertained
11 from industry recognized and accepted sources. The lowest
12 responsible bid shall otherwise meet all of the conditions and
13 specifications contained in the invitation to bid. To utilize
14 this provision to determine the lowest responsible bidder, the
15 state must include a notice in the invitation to bid that the
16 lowest responsible bid may be determined by using life cycle
17 costs and identify the industry recognized and accepted
18 sources that will be applicable to such an evaluation.

19 "(2) Industry recognized and accepted sources may be
20 provided by rules adopted pursuant to the Alabama
21 Administrative Procedure Act by the Green Fleets Review
22 Committee if the review committee is established and enacted
23 at the 2009 Regular Session. If the Green Fleets Review
24 Committee is not enacted at the 2009 Regular Session, the
25 Permanent Joint Legislative Committee on Energy Policy may

1 adopt rules providing industry recognized and accepted sources
2 pursuant to the Alabama Administrative Procedure Act.

3 "(i) When a single invitation-to-bid specifies a set
4 of deliverables that would be capable of division into
5 separate, independent contracts, the awarding authority, at
6 its discretion, may award a secondary contract for any subset
7 of such deliverables, not to exceed 20 percent of the original
8 contract value, to any Alabama business certified under the
9 Federal HUBZone program whose properly submitted responsible
10 bid does not exceed five percent of the lowest responsible
11 bid. In order to make a secondary award under this provision,
12 the awarding authority shall include in the invitation-to-bid
13 a notice that a secondary award may be made."

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