

1 SB263
2 136630-3
3 By Senators Holtzclaw, Sanford, Orr and Irons
4 RFD: Fiscal Responsibility and Accountability
5 First Read: 09-FEB-12

1 SB263

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4 ENROLLED, An Act,

5 Relating to personal and professional services
6 contracts pursuant to the Contract Review Permanent
7 Legislative Oversight Committee; amending Section 29-2-41.1
8 and Section 41-16-72, as last amended by Act 2011-577, 2011
9 Regular Session, Code of Alabama 1975, to provide further for
10 emergency contracts.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Section 29-2-41.1 and Section 41-16-72,
13 as last amended by Act 2011-577, 2011 Regular Session, Code of
14 Alabama 1975, are amended to read as follows:

15 "§29-2-41.1.

16 "In case of an emergency adversely affecting public
17 health, safety, security, or the economic welfare of the
18 state, so declared in writing to the Governor by the head of
19 the institution or agency involved, setting forth the nature
20 of the danger to public health, safety, security or the
21 economic welfare of the state, contracts may be let to the
22 extent necessary to meet the emergency without review by the
23 committee. Any contract let pursuant to this section involving
24 an emergency state shall be let for a period of not more than
25 60 days, or 120 days if the committee has not been formed due

1 to the end of the quadrennium, during which time the committee
2 shall review a contract for a longer period of time if such
3 services are required beyond the 60-day limit hereby imposed.
4 The institution or agency may not enter a second identical or
5 substantially similar emergency contract for those particular
6 services within one calendar year of the commencement of the
7 initial emergency contract.

8 "Immediately upon the letting of an emergency
9 contract that will be followed by a subsequent contract of
10 longer duration, the head of the institution or agency
11 involved shall notify the committee, if the committee has been
12 formed, of the emergency contract and the subsequent contract,
13 and the terms, purpose, duration, and other information as
14 requested by the committee regarding the contracts. If the
15 contract is let between quadrenniums, the committee shall be
16 notified as soon as is practicable. In instances when this
17 notification is received, the committee's 60-day review of the
18 subsequent contract will run concurrently with the term of the
19 emergency contract.

20 "§41-16-72.

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

1 "(1)a. Except as otherwise provided herein,
2 attorneys retained to represent the state in litigation shall
3 be appointed by the Attorney General in consultation with the
4 Governor from a listing of attorneys maintained by the
5 Attorney General. All attorneys interested in representing the
6 State of Alabama may apply and shall be included on the
7 listing. The selection of the attorney or law firm shall be
8 based upon the level of skill, experience, and expertise
9 required in the litigation and the fees charged by the
10 attorney or law firm shall be taken into consideration so that
11 the State of Alabama receives the best representation for the
12 funds paid. Fees shall be negotiated and approved by the
13 Governor in consultation with the Attorney General. Maximum
14 fees paid for legal representation may be established by
15 executive order of the Governor.

16 "Nothing in this article and nothing in Chapter 15
17 of Title 36 modifies or repeals the exclusive authority of the
18 governing boards of the public institutions of higher
19 education to direct and control litigation involving their
20 respective universities and to employ and retain legal counsel
21 of their own choice, consistent with their broad powers of
22 management and control set forth in Chapters 47-56 of Title 16
23 and in the constitution. Provided further, nothing in this
24 article modifies or repeals the authority of the Attorney
25 General to direct and control litigation involving the state

1 or any agency, department, or instrumentality of the state, or
2 the authority of the Governor to appear in civil cases in
3 which the state is interested.

4 "b. Attorneys retained by any state purchasing
5 entity to render nonlitigation legal services shall be
6 selected by such entity from a listing of attorneys maintained
7 by the Legal Advisor to the Governor. All attorneys interested
8 in representing any purchasing state entity may apply and
9 shall be included on the listing. The selection of the
10 attorney or law firm shall be based upon the level of skill,
11 experience, and expertise required for the services, but the
12 fees charged by the attorney or law firm shall be taken into
13 consideration so that such state entity shall receive the best
14 representation for the funds paid. Fees for such services
15 shall be negotiated by the state entity requiring the services
16 and shall be subject to the review and approval of the
17 Governor or the Director of Finance when so designated by the
18 Governor.

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

21 "d. This article shall not apply to the retention of
22 experts by the state for the purposes of litigation, or
23 avoidance of litigation.

24 "e. Nothing in this article shall be construed as
25 altering or amending the Governor's authority to retain

1 attorneys pursuant to Section 36-13-2, however, the Governor
2 shall select such attorneys from three proposals received from
3 attorneys included on the listing maintained by the Attorney
4 General.

5 "(2) Physicians retained to provide medical services
6 to the state shall be selected by the purchasing state entity
7 from a list of qualified physicians maintained by the Alabama
8 Medical Licensure Commission. All physicians interested in
9 providing medical services to the State of Alabama may apply
10 and shall be included on the listing.

11 "(3) Professional services of architects, landscape
12 architects, engineers, land surveyors, geoscience, and other
13 similar professionals shall be procured in accordance with
14 competitive, qualification-based selection policies and
15 procedures. Selection shall be based on factors to be
16 developed by the procuring state entity which may include,
17 among others, the following:

18 "a. Specialized expertise, capabilities, and
19 technical competence, as demonstrated by the proposed approach
20 and methodology to meet project requirements.

21 "b. Resources available to perform the work,
22 including any specialized services within the specified time
23 limits for the project.

1 "c. Record of past performance, quality of work,
2 ability to meet schedules, cost control, and contract
3 administration.

4 "d. Availability to and familiarity with the project
5 locale.

6 "e. Proposed project management techniques.

7 "f. Ability and proven history in handling special
8 project contracts.

9 "Notice of need for professional services shall be
10 widely disseminated to the professional community in a full
11 and open manner. Procuring state entities shall evaluate such
12 professionals that respond to the notice of need based on such
13 state entity's qualification-based selection process criteria.
14 Any such procuring state entity shall then make a good faith
15 effort to negotiate a contract for professional services from
16 the selected professional after first discussing and refining
17 the scope of services for the project with such professional.
18 Where the Alabama Building Commission has set a fee schedule
19 for the professional services sought, fees shall not exceed
20 the schedule without approval of the Director of the Alabama
21 Building Commission and the Governor.

22 "(4) The Director of Finance, through the Division
23 of Purchasing of the Department of Finance, shall establish
24 and maintain lists of professional service providers, other
25 than those specifically named in this section, which may be

1 required from time to time by any state agency, department,
2 board, bureau, commission, authority, public corporation, or
3 instrumentality. When such professional services are needed,
4 the purchasing state entity shall solicit proposals from the
5 professional service providers desiring to receive requests
6 for proposals. The purchasing state entity shall select the
7 professional service provider that best meets the needs of the
8 purchasing entity as expressed in the request for proposals.
9 Price shall be taken into consideration. In the event the fees
10 paid to the selected professional service provider exceed by
11 10 percent the professional service fee offered by the lowest
12 qualified proposal, the reasons for selecting a professional
13 service provider shall be stated in writing, signed by the
14 director of the purchasing state entity, and made a part of
15 the selection record.

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

21 "(6) Should an emergency affecting the public
22 health, safety, or the economic welfare of the State of
23 Alabama so declared in writing under oath to the Governor and
24 the Attorney General by the state entity requiring the
25 professional services arise, the professional services

1 required to alleviate the emergency situation may be procured
2 from any qualified professional service provider without
3 following the process or procedure required by this article.
4 Any contract let pursuant to this subdivision involving an
5 emergency as herein specified may not be let for a period of
6 more than 60 days, or 120 days if the committee has not been
7 formed due to the end of the quadrennium. During this time, if
8 the contract would otherwise be subject to review by the
9 Contract Review Permanent Legislative Oversight Committee, the
10 committee shall review a subsequent contract for a longer
11 period of time if such services are required beyond the 60-day
12 limit. The institution or agency may not enter a second
13 identical or substantially similar emergency contract for
14 those particular services within one calendar year of the
15 commencement of the initial emergency contract.

16 "Immediately upon the letting of an emergency
17 contract that will be followed by a subsequent contract of
18 longer duration, the state entity shall notify the committee,
19 if the committee has been formed, of the emergency contract
20 and the subsequent contract, and the terms, purpose, duration,
21 and other information as requested by the committee regarding
22 the contracts. If the contract is let between quadrenniums,
23 the committee shall be notified as soon as is practicable. In
24 instances when this notification is received, the committee's

1 60-day review of the subsequent contract will run concurrently
2 with the term of the emergency contract.

3 "(7) The process set forth herein for the selection
4 of professional service providers shall not apply to the
5 Legislature, the Alabama State Port Authority, or to colleges
6 and universities governed by a board of trustees or by the
7 Department of Postsecondary Education. The State Department of
8 Education 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, except for the
11 future acquisition of professional services in support of
12 computer technology on a statewide basis which exceeds the
13 amount of expenditures set forth within this chapter. However,
14 if a state agency or department is able to provide the
15 necessary computer networking services, then the services
16 shall be provided by the agency or department without being
17 contracted to an outside provider. In the event the State
18 Department of Education has intervened into the financial
19 operations of a local board of education, the State Department
20 of Education shall follow the provisions of law applicable to
21 local boards of education for services related to the local
22 board of education subject to intervention. The Alabama
23 Medicaid Agency shall not be subject to the provisions of this
24 article requiring the process set forth herein for the
25 selection of professional service providers for contracts with

1 physicians, pharmacists, dentists, optometrists, opticians,
2 nurses, and other health professionals which involve only
3 service on agency task forces, boards, or committees.

4 "(8) Under any contract letting process in this
5 section, all requests for proposals from any state entity
6 purchasing professional services shall be sent to all
7 professional service providers regardless of race that have
8 notified the state of their interest in receiving state
9 business.

10 "(9) Under any contract letting process in this
11 section, all lists containing professional service providers
12 and contractors for contracts under the provisions of this
13 article shall seek the racial and ethnic diversity of the
14 state."

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB263
Senate 23-FEB-12
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Passed: 08-MAY-12

By: Senator Holtzclaw