

1 HB518
2 158977-4
3 By Representative Williams (P)
4 RFD: State Government
5 First Read: 20-FEB-14

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ENROLLED, An Act,

To amend Section 41-16-27, Code of Alabama 1975, to expand the ability of the State of Alabama to award multiple contracts pursuant to a single invitation-to-bid.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 41-16-27, Code of Alabama 1975, is amended to read as follows:

"§41-16-27.

"(a) When purchases are required to be made through competitive bidding, award shall, except as provided in subsection (f), be made to the lowest responsible bidder taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purposes for which required, the terms of delivery, transportation charges and the dates of delivery provided, that the awarding authority may at any time within 30 days after the bids are opened negotiate and award the contract to anyone, provided he secures a price at least five percent under the low acceptable bid. The award of such a negotiated contract shall be subject to approval by the Director of Finance and the Governor, except in cases where the awarding authority is a two-year or four-year college or university governed by a board. The awarding authority or requisitioning agency shall have the right to reject any bid if the price is

1 deemed excessive or quality of product inferior. Awards are
2 final only after approval of the Purchasing Agent.

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

21 "This subsection (b) shall not apply to ~~contracts~~
22 ~~for the purchase of personal property for which a service or~~
23 ~~service contract, whether subject to competitive bidding under~~
24 ~~this article or not, is necessary to utilize the personal~~
25 ~~property throughout the period of utilization of the personal~~

1 ~~property the purchase of Integrated Digital Enhanced Network~~
2 ~~equipment and related services property contracts for the~~
3 ~~purchase or use of push to talk services, which shall be~~
4 ~~purchased through a separate competitive bid process.~~

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

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

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

1 Any contract awarded pursuant to this section for terms of
2 less than 10 years may be extended for a period not to exceed
3 10 years from the initial awarding of the contract provided
4 that the terms of the contract shall not be altered or
5 renegotiated during the period for which the contract is
6 extended.

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

23 "(3) Industry recognized and accepted sources may be
24 provided by rules adopted pursuant to the Alabama
25 Administrative Procedure Act by the Green Fleets Review

1 Committee if the review committee is established and enacted
2 at the 2009 Regular Session. If the Green Fleets Review
3 Committee is not enacted at the 2009 Regular Session, the
4 Permanent Joint Legislative Committee on Energy Policy may
5 adopt rules providing industry recognized and accepted
6 sources, pursuant to the Alabama Administrative Procedure Act.

7 "(f) Contracts for the purchase of services for
8 receiving, processing, and paying claims for services rendered
9 recipients of the Alabama Medicaid program authorized under
10 Section 22-6-7 which are required to be competitively bid may
11 be awarded to the bidder whose proposal is most advantageous
12 to the state, taking into consideration cost factors, program
13 suitability factors (technical factors) including
14 understanding of program requirements, management plan,
15 excellence of program design, key personnel, corporate or
16 company resources and designated location, and other factors
17 including financial condition and capability of the bidder,
18 corporate experience and past performance and priority of the
19 business to insure the contract awarded is the best for the
20 purposes required. Each of these criteria shall be given
21 relative weight value as designated in the invitation to bid,
22 with price retaining the most significant weight.
23 Responsiveness to the bid shall be scored for each designated
24 criteria. If, for reasons cited above, the bid selected is not
25 from the lowest bidding contractor, the Alabama Medicaid

1 Agency shall present its reasons for not recommending award to
2 the low bidder to the Medicaid Interim Committee. The
3 committee shall evaluate the findings of the Alabama Medicaid
4 Agency and must, by resolution, approve the action of the
5 awarding authority before final awarding of any such contract.
6 The committee shall also hear any valid appeals against the
7 recommendation of the Alabama Medicaid Agency from the low bid
8 contractor(s) whose bid was not selected.

9 "(g) Notwithstanding the requirements under Sections
10 41-16-20, 41-16-21, and this section, contractual services and
11 purchases of personal property regarding the athletic
12 department, food services, and transit services negotiated on
13 behalf of two-year and four-year colleges and universities may
14 be awarded without competitive bidding provided that no state
15 revenues, appropriations, or other state funds are expended or
16 committed and when it is deemed by the respective board that
17 financial benefits will accrue to the institution, except that
18 in the cases where an Alabama business entity as defined by
19 this section is available to supply the product or service
20 they will have preference unless the product or service
21 supplied by a foreign corporation is substantially different
22 or superior to the product or service supplied by the Alabama
23 business entity. However, the terms and conditions of any of
24 the services or purchases which are contracted through
25 negotiation without being competitively bid and the name and

1 address of the recipient of such a contract shall be
2 advertised in a newspaper of general circulation in the
3 municipality in which the college or university is located
4 once a week for two consecutive weeks commencing no later than
5 10 days after the date of the contract. For the purposes of
6 this section, the term Alabama business entity shall mean any
7 sole proprietorship, partnership, or corporation organized in
8 the State of Alabama.

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

24 "(2) Industry recognized and accepted sources may be
25 provided by rules adopted pursuant to the Alabama

1 Administrative Procedure Act by the Green Fleets Review
2 Committee if the review committee is established and enacted
3 at the 2009 Regular Session. If the Green Fleets Review
4 Committee is not enacted at the 2009 Regular Session, the
5 Permanent Joint Legislative Committee on Energy Policy may
6 adopt rules providing industry recognized and accepted sources
7 pursuant to the Alabama Administrative Procedure Act.

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

19 Section 2. This act shall become effective
20 immediately following its passage and approval by the
21 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 13-MAR-14, as amended.

Jeff Woodard
Clerk

Senate

01-APR-14

Passed