

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

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8 SYNOPSIS: This bill would amend Section 41-16-27, Code  
9 of Alabama 1975, to expand the ability of the State  
10 of Alabama to award multiple contracts pursuant to  
11 a single invitation-to-bid.

12  
13 A BILL  
14 TO BE ENTITLED  
15 AN ACT  
16

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

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

23 "§41-16-27.

24 "(a) When purchases are required to be made through  
25 competitive bidding, award shall, except as provided in  
26 subsection (f), be made to the lowest responsible bidder  
27 taking into consideration the qualities of the commodities

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

15 "(b) The awarding authority may award multiple  
16 purchase contracts resulting from a single invitation-to-bid  
17 where the specifications of the items of personal property  
18 intended to be purchased by a requisitioning agency or  
19 agencies are determined, in whole or in part, by technical  
20 compatibility and operational requirements. In order to make  
21 multiple awards under this provision, the awarding authority  
22 must include in the invitation-to-bid a notice that multiple  
23 awards may be made and the specific technical compatibility or  
24 operational requirements necessitating multiple awards.  
25 Multiple awards of purchase contracts with unique technical  
26 compatibility or operational specifications shall be made to  
27 the lowest responsible bidder complying with the unique

1 technical compatibility or operational specifications. The  
2 requisitioning agency shall provide the awarding authority  
3 with the information necessary for it to determine the  
4 necessity for the award of multiple purchase contracts under  
5 this provision.

6 "This subsection (b) shall not apply to ~~contracts~~  
7 ~~for the purchase of personal property for which a service or~~  
8 ~~service contract, whether subject to competitive bidding under~~  
9 ~~this article or not, is necessary to utilize the personal~~  
10 ~~property throughout the period of utilization of the personal~~  
11 ~~property~~the purchase of Integrated Digital Enhanced Network  
12 equipment and related services.

13 "(c) Each bid, with the name of the bidder, shall be  
14 entered on a record. Each record, with the successful bid  
15 indicated thereon and with the reasons for the award if not  
16 awarded to the lowest bidder shall, after award of the order  
17 or contract, be open to public inspection.

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

23 "(e) (1) Contracts for the purchase of personal  
24 property or contractual services other than personal services  
25 shall be let by competitive bid for periods not greater than  
26 five years and current contracts existing on February 28,  
27 2006, may be extended or renewed for an additional two years

1 with a 90-day notice of such extension or renewal given to the  
2 Legislative Council, however, any contract that generates  
3 funds or will reduce annual costs by awarding the contract for  
4 a longer term than a period of three years which is let by or  
5 on behalf of a state two-year or four-year college or  
6 university may be let for periods not greater than 10 years.  
7 Any contract awarded pursuant to this section for terms of  
8 less than 10 years may be extended for a period not to exceed  
9 10 years from the initial awarding of the contract provided  
10 that the terms of the contract shall not be altered or  
11 renegotiated during the period for which the contract is  
12 extended.

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

1 accepted sources that will be applicable to such an  
2 evaluation.

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

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

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

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

1 negotiation without being competitively bid and the name and  
2 address of the recipient of such a contract shall be  
3 advertised in a newspaper of general circulation in the  
4 municipality in which the college or university is located  
5 once a week for two consecutive weeks commencing no later than  
6 10 days after the date of the contract. For the purposes of  
7 this section, the term Alabama business entity shall mean any  
8 sole proprietorship, partnership, or corporation organized in  
9 the State of Alabama.

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

25 "(2) Industry recognized and accepted sources may be  
26 provided by rules adopted pursuant to the Alabama  
27 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 sources  
6 pursuant to the Alabama Administrative Procedure Act.

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

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