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3 CONFERENCE COMMITTEE SUBSTITUTE FOR HB88, AS ENGROSSED
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8 SYNOPSIS: Under existing law, preferred vendors are
9 given preference in the awarding of public
10 contracts required to be competitively bid.

11 This bill would give preferred vendor status
12 under the competitive bid laws to those businesses
13 located in the state that are owned by veterans.

14 Also under existing law, the Division of
15 Purchasing is authorized to enter into joint
16 purchasing agreements for the purchase or lease of
17 goods and child support services and is authorized
18 to award multiple purchase contracts for the
19 purchase of certain goods.

20 This bill would extend those authorizations
21 to the purchase of services.

22 Also under existing law, the Division of
23 Purchasing is authorized to maintain a system that
24 allows state agencies to purchase items using
25 approved credit cards.

26 This bill would allow cities and counties to
27 utilize the state fleet fuel card program.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT
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6 To amend Sections 41-16-20, 41-16-21.1, 41-16-27,
7 and 41-4-110 of the Code of Alabama 1975 relating to
8 purchasing; to grant preferred vendor status to any business
9 located in the state that is owned by a veteran; to allow the
10 Division of Purchasing to enter into joint purchase agreements
11 for the purchase of services and to award multiple purchase
12 contracts for the purchase of services; and to allow cities
13 and counties to utilize the fleet fuel card program
14 administered by the Division of Purchasing.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 41-16-20, 41-16-21.1, 41-16-27,
17 and 41-4-110 of the Code of Alabama 1975 are amended to read
18 as follows:

19 "§41-16-20.

20 "(a) With the exception of contracts for public
21 works whose competitive bidding requirements are governed
22 exclusively by Title 39, all contracts of whatever nature for
23 labor, services, work, or for the purchase or lease of
24 materials, equipment, supplies, other personal property or
25 other nonprofessional services, involving fifteen thousand
26 dollars (\$15,000) or more, made by or on behalf of any state
27 department, board, bureau, commission, committee, institution,

1 corporation, authority, or office shall, except as otherwise
2 provided in this article, be let by free and open competitive
3 bidding, on sealed bids, to the lowest responsible bidder.

4 "(b) A "preferred vendor" shall be a person, firm,
5 or corporation which is granted preference priority according
6 to the following:

7 "(1) PRIORITY #1. Produces or manufactures the
8 product within the state.

9 "(2) PRIORITY #2. Has an assembly plant or
10 distribution facility for the product within the state.

11 "(3) PRIORITY #3. Is organized for business under
12 the applicable laws of the state as a corporation,
13 partnership, or professional association and has maintained at
14 least one retail outlet or service center for the product or
15 service within the state for not less than one year prior to
16 the deadline date for the competitive bid.

17 "(4) PRIORITY #4. A business that is physically
18 located in the state and that is more than 50 percent owned by
19 a person who was discharged or released under conditions other
20 than dishonorable and who has at least 24 months' active
21 service in the United States' military, naval, or air service,
22 or who has less than 24 months of active service in any of the
23 foregoing and was separated with a service-connected
24 disability, or a national guardsman or reservist who completed
25 active federal service for purposes other than training or who
26 served at least 180 days of continuous service for purposes
27 other than training.

1 "(c) In the event a bid is received for the product
2 or service from a person, firm, or corporation deemed to be a
3 responsible bidder and a preferred vendor where any state
4 higher education institution, department, board, bureau,
5 commission, committee, institution, corporation, authority, or
6 office is the awarding authority and the bid is no more than
7 five percent greater than the bid of the lowest responsible
8 bidder, the awarding authority may award the contract to the
9 preferred vendor."

10 "§41-16-21.1.

11 "(a) In the event that utility services are no
12 longer exempt from competitive bidding under this article,
13 non-adjointing counties may not purchase utility services by
14 joint agreement under authority granted by this section.

15 "(b) The Division of Purchasing, Department of
16 Finance, is hereby authorized to enter into joint purchasing
17 agreements to purchase, lease, or lease-purchase ~~child support~~
18 ~~services~~, materials, equipment, supplies, ~~or~~ other personal
19 property or services, including child support services, which
20 have been let by competitive bid or competitive solicitation
21 process by any group or consortium of governmental entities
22 within or without the State of Alabama upon a finding by the
23 Purchasing Agent that such joint purchasing agreements are in
24 the best interests of the State of Alabama. Joint purchasing
25 agreements entered into by the Division of Purchasing may be
26 utilized by any governmental entity subject to the
27 requirements of Title 41, Chapter 16, Articles 2 or 3A. This

1 subsection shall not apply to the purchase, lease, or
2 lease-purchase of materials, equipment, supplies, or other
3 personal property which can only be utilized in conjunction
4 with a service or service contract, whether subject to
5 competitive bidding under this article or not, for the
6 materials, equipment, supplies, or other personal property
7 that must remain in effect to utilize the materials,
8 equipment, supplies, or other personal property.

9 "Nothing in this subsection prohibits or limits
10 public four-year institutions from entering into joint
11 purchasing agreements to purchase, lease, or lease-purchase
12 materials, equipment, supplies, other personal property and
13 services which have been let by competitive bid or competitive
14 solicitation process by any group or consortium of
15 governmental entities or through a group purchasing
16 organization within or without the State of Alabama upon a
17 finding by the institution that such purchasing agreements are
18 in the best interests of the institution; provided, however,
19 this sentence shall not permit agreements to purchase, lease,
20 or lease-purchase wireless communications equipment or
21 services through any group or consortium of governmental
22 entities or through any group purchasing organization."

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 or
18 services intended to be purchased by a requisitioning agency
19 or 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 or use of push to talk services, which shall
8 be purchased through a separate competitive bid process.

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

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

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

1 on behalf of a state two-year or four-year college or
2 university may be let for periods not greater than 10 years.
3 Any contract awarded pursuant to this section for terms of
4 less than 10 years may be extended for a period not to exceed
5 10 years from the initial awarding of the contract provided
6 that the terms of the contract shall not be altered or
7 renegotiated during the period for which the contract is
8 extended.

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

25 "(3) 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
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
26 Agency shall present its reasons for not recommending award to
27 the low bidder to the Medicaid Interim Committee. The

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

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

1 10 days after the date of the contract. For the purposes of
2 this section, the term Alabama business entity shall mean any
3 sole proprietorship, partnership, or corporation organized in
4 the State of Alabama.

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

20 "(2) Industry recognized and accepted sources may be
21 provided by rules adopted pursuant to the Alabama
22 Administrative Procedure Act by the Green Fleets Review
23 Committee if the review committee is established and enacted
24 at the 2009 Regular Session. If the Green Fleets Review
25 Committee is not enacted at the 2009 Regular Session, the
26 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 "§41-4-110.

15 "(a) There shall be in the Department of Finance the
16 Division of Purchasing. The functions and duties of the
17 Division of Purchasing shall be as follows:

18 "(1) To purchase all personal property and
19 nonprofessional services, except alcoholic beverages, which
20 shall be purchased by the Alcoholic Beverage Control Board and
21 except as otherwise provided by law, for the state and each
22 department, board, bureau, commission, agency, office, and
23 institution thereof, except as provided in subsection (e).

24 "(2) To make and supervise the execution of all
25 contracts and leases for the use or acquisition of any
26 personal property and nonprofessional services unless
27 otherwise provided by law.

1 "(3) To fix standards of quality and quantity and to
2 develop standard specifications for all personal property and
3 nonprofessional services acquired by the state or any
4 department, board, bureau, commission, agency, office, or
5 institution thereof.

6 "(4) To maintain records as to prices and sources of
7 supply of such personal property and nonprofessional services,
8 such records to be open to the inspection of any state,
9 county, municipal, or other public officer or employee charged
10 with the duty of acquiring any such property and
11 nonprofessional services or article for his or her department,
12 board, bureau, commission, agency, office, institution,
13 county, municipal corporation, or local public body.

14 "(5) To manage, supervise, and control all printing
15 and binding for the state and for each department, board,
16 bureau, commission, agency, office, and institution thereof
17 and the distribution of all printed matter and to make and
18 supervise the execution of all contracts with respect thereto,
19 unless otherwise provided by law.

20 "(6) To require the periodic reporting of all
21 purchases of furniture, fixtures, supplies, material,
22 equipment, and other personal property, except printing, and
23 all contracts and leases for the use or acquisition thereof by
24 or for counties, the purchase, contract or lease price of
25 which is \$100.00 or more, and to require information in
26 connection therewith, to prescribe forms and fix the time for
27 submitting such reports, and, when requested by any county,

1 municipal corporation, and other local public body (including
2 any board of education) to make such purchases, contracts, or
3 leases for it. It shall be the duty of every county to make
4 such report on forms furnished by the Department of Finance,
5 whenever requested so to do, but not more than once every 30
6 days.

7 "(7) To perform such other functions and duties of
8 the Department of Finance as may from time to time be assigned
9 by the Director of Finance.

10 "(b) As long as the constitution so requires, all
11 stationery, printing, paper, and fuel used in the legislative
12 and other departments of the government shall be furnished,
13 and the printing, binding, and distribution of the laws,
14 journals, departmental reports, and all other printing,
15 binding, and repairing and furnishing the halls and rooms used
16 for the meetings of the Legislature and its committees shall
17 be performed under contract, to be given to the lowest
18 responsible bidder below a maximum price, under such
19 regulations as have been or may be prescribed by law and as
20 may be promulgated by the Director of Finance. No member or
21 officer of any department of the government shall be in any
22 way interested in such contracts, and all such contracts shall
23 be subject to the approval of the Governor, the Auditor and
24 the Treasurer. All contracts not required to be approved by a
25 named officer or officers by the Constitution shall be subject
26 to the approval of the Director of Finance, who may, however,

1 provide for the automatic approval thereof by compliance with
2 the general rules or regulations promulgated by him or her.

3 "(c) The Purchasing Agent is further authorized to
4 establish and maintain a system for the purchase of personal
5 property and nonprofessional services by state departments,
6 agencies, boards, and institutions that conduct their
7 purchasing activities through the Division of Purchasing,
8 through the utilization of approved credit cards. County and
9 municipal governments and instrumentalities or public
10 corporations thereof may participate in the state fleet fuel
11 card program subject to the terms and conditions of the
12 program related to the utilization of the fleet fuel card;
13 provided, however, that county and municipal governments and
14 instrumentalities or public corporations thereof shall not
15 otherwise be subject to the provisions of this subsection. The
16 Purchasing Agent shall establish by administrative rule a
17 process for the competitive solicitation of credit card
18 providers. The state Comptroller and the Purchasing Agent
19 shall promulgate fiscal procedures governing the payment of
20 charges incurred by credit card users and the utilization of
21 credit cards. The use of approved credit cards shall be
22 established by the state Comptroller and the State Purchasing
23 Agent, with the approval of the Director of Finance, and be
24 published through the Alabama fiscal procedures, in which each
25 purchase made using approved credit cards is required to have
26 prior approval by the department head or his or her designee
27 and a record of such purchases and approvals is to be

1 maintained. The Purchasing Agent may select the provider or
2 providers offering the highest fees to the division for the
3 use of its credit card or credit cards. Fees received by the
4 division for the use of credit cards shall be placed in a
5 special fund entitled the State Procurement Fund in the State
6 Treasury for the use of the division and such funds shall be
7 appropriated, budgeted, and allotted in accordance with
8 Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to
9 41-19-12, inclusive, and only in amounts stipulated in general
10 appropriations bills and other appropriation bills. Approved
11 credit cards may be issued to requisitioning agencies upon the
12 recommendation of the Purchasing Agent and the approval of the
13 Director of Finance. Approved credit cards will be assigned to
14 the department and will be in limited number. Such credit
15 cards may be utilized to purchase items of personal property
16 and nonprofessional services, and shall not exceed the
17 limitations set forth in subsection (a) of Section 41-16-24.
18 The director of the governmental entity utilizing credit cards
19 is responsible for the proper use of credit cards assigned to
20 his or her agency, in accordance with rules established by
21 Alabama fiscal procedures. The Purchasing Agent may collect
22 any credit card from any agency at any time due to improper
23 use. The Purchasing Agent shall submit an annual report and
24 accounting regarding the use of credit cards by each
25 governmental entity to the Director of Finance and the
26 Governor.

1 "(d) The Division of Purchasing is authorized to
2 charge a biannual registration fee to vendors desiring to
3 register with the division to receive invitations-to-bid for
4 any goods or services solicited by the division and to charge
5 departments, boards, bureaus, commissions, agencies, offices,
6 and institutions for their proportionate share of operating
7 costs of the division. Any fee must be set by administrative
8 rule upon the approval of the Director of Finance. Any fees
9 collected under this provision shall be deposited in the State
10 Treasury to the credit of the State Procurement Fund and shall
11 be appropriated, budgeted, and allotted in accordance with
12 Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to
13 41-19-12, inclusive, and only in amounts stipulated in general
14 appropriations bills and other appropriation bills.

15 "(e) Notwithstanding any law to the contrary, state
16 departments, agencies, boards, and institutions may purchase
17 personal property from any vendor that offers the item at a
18 price at least ten percent below the price established on a
19 statewide contract by the Division of Purchasing for the same
20 item, provided that each acquisition of personal property
21 pursuant to this subsection, whether for a single item or
22 multiple items, does not exceed fifteen thousand dollars
23 (\$15,000). The Division of Purchasing shall confirm that the
24 terms and conditions of such purchase are substantially
25 similar to those of the statewide contract for the same item
26 prior to the approval of any purchase pursuant to this
27 subsection. This subsection shall not apply to construction or

1 road-building materials, as identified by the Purchasing
2 Agent. Any purchase that would be directly connected to any IT
3 network used by the state shall require prior approval by the
4 Secretary of Information Technology.

5 "Any acquisition of personal property pursuant to
6 this subsection shall be purchased solely from vendors
7 physically located within the state, if the purchaser is to
8 take possession of the purchased goods at the vendor's
9 physical location.

10 "The price of any goods or services purchased
11 pursuant to this subsection shall be the market price readily
12 available to the public at large.

13 "Any acquisition of personal property pursuant to
14 this subsection is not exempt from the supervision and
15 administration of the Division of Purchasing."

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