

1 HB88  
2 187891-2  
3 By Representative Drake  
4 RFD: Military and Veterans Affairs  
5 First Read: 09-JAN-18  
6 PFD: 01/08/2018



1 dollars (\$15,000) or more, made by or on behalf of any state  
2 department, board, bureau, commission, committee, institution,  
3 corporation, authority, or office shall, except as otherwise  
4 provided in this article, be let by free and open competitive  
5 bidding, on sealed bids, to the lowest responsible bidder.

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

9 "(1) PRIORITY #1. Produces or manufactures the  
10 product within the state.

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

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

19 "(4) PRIORITY #4. A business that is physically  
20 located in the state and that is more than 50% owned by a  
21 person who served for at least four years in the United  
22 States' active military, naval, or air service, or a national  
23 guardsman who has served at least 180 days of continuous  
24 active federal service and who was discharged or released  
25 under conditions other than dishonorable.

26 "(c) In the event a bid is received for the product  
27 or service from a person, firm, or corporation deemed to be a

1 responsible bidder and a preferred vendor where any state  
2 higher education institution, department, board, bureau,  
3 commission, committee, institution, corporation, authority, or  
4 office is the awarding authority and the bid is no more than  
5 five percent greater than the bid of the lowest responsible  
6 bidder, the awarding authority may award the contract to the  
7 preferred vendor."

8 "§41-16-21.1.

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

13 "(b) The Division of Purchasing, Department of  
14 Finance, is hereby authorized to enter into joint purchasing  
15 agreements to purchase, lease, or lease-purchase ~~child support~~  
16 ~~services~~, materials, equipment, supplies, ~~or~~ other personal  
17 property or services, including child support services, which  
18 have been let by competitive bid or competitive solicitation  
19 process by any group or consortium of governmental entities  
20 within or without the State of Alabama upon a finding by the  
21 Purchasing Agent that such joint purchasing agreements are in  
22 the best interests of the State of Alabama. Joint purchasing  
23 agreements entered into by the Division of Purchasing may be  
24 utilized by any governmental entity subject to the  
25 requirements of Title 41, Chapter 16, Articles 2 or 3A. This  
26 subsection shall not apply to the purchase, lease, or  
27 lease-purchase of materials, equipment, supplies, or other

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

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

21 "§41-16-27.

22 "(a) When purchases are required to be made through  
23 competitive bidding, award shall, except as provided in  
24 subsection (f), be made to the lowest responsible bidder  
25 taking into consideration the qualities of the commodities  
26 proposed to be supplied, their conformity with specifications,  
27 the purposes for which required, the terms of delivery,

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

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

1 with the information necessary for it to determine the  
2 necessity for the award of multiple purchase contracts under  
3 this provision.

4 "This subsection (b) shall not apply to contracts  
5 for the purchase or use of push to talk services, which shall  
6 be purchased through a separate competitive bid process.

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

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

17 "(e) (1) Contracts for the purchase of personal  
18 property or contractual services other than personal services  
19 shall be let by competitive bid for periods not greater than  
20 five years and current contracts existing on February 28,  
21 2006, may be extended or renewed for an additional two years  
22 with a 90-day notice of such extension or renewal given to the  
23 Legislative Council, however, any contract that generates  
24 funds or will reduce annual costs by awarding the contract for  
25 a longer term than a period of three years which is let by or  
26 on behalf of a state two-year or four-year college or  
27 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  
26 Committee if the review committee is established and enacted  
27 at the 2009 Regular Session. If the Green Fleets Review



1 Committee is not enacted at the 2009 Regular Session, the  
2 Permanent Joint Legislative Committee on Energy Policy may  
3 adopt rules providing industry recognized and accepted  
4 sources, pursuant to the Alabama Administrative Procedure Act.

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

21 Responsiveness to the bid shall be scored for each designated  
22 criteria. If, for reasons cited above, the bid selected is not  
23 from the lowest bidding contractor, the Alabama Medicaid  
24 Agency shall present its reasons for not recommending award to  
25 the low bidder to the Medicaid Interim Committee. The  
26 committee shall evaluate the findings of the Alabama Medicaid  
27 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  
27      this section, the term Alabama business entity shall mean any

1 sole proprietorship, partnership, or corporation organized in  
2 the State of Alabama.

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

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

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

12           "§41-4-110.

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

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

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

26           "(3) To fix standards of quality and quantity and to  
27 develop standard specifications for all personal property and

1 nonprofessional services acquired by the state or any  
2 department, board, bureau, commission, agency, office, or  
3 institution thereof.

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

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

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

1 leases for it. It shall be the duty of every county to make  
2 such report on forms furnished by the Department of Finance,  
3 whenever requested so to do, but not more than once every 30  
4 days.

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

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

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

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

25 "(d) The Division of Purchasing is authorized to  
26 charge a biannual registration fee to vendors desiring to  
27 register with the division to receive invitations-to-bid for



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

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

1 network used by the state shall require prior approval by the  
2 Secretary of Information Technology.

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

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

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

14 Section 2. 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.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Military and  
Veterans Affairs..... 09-JAN-18

Read for the second time and placed  
on the calendar 1 amendment ..... 11-JAN-18

Read for the third time and passed  
as amended..... 16-JAN-18

Yeas 99, Nays 0, Abstains 0

Jeff Woodard  
Clerk