

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

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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.

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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% owned by a
19 person who served for at least four years in the United
20 States' active military, naval, or air service and who was
21 discharged or released under conditions other than
22 dishonorable.

23 "(c) In the event a bid is received for the product
24 or service from a person, firm, or corporation deemed to be a
25 responsible bidder and a preferred vendor where any state
26 higher education institution, department, board, bureau,
27 commission, committee, institution, corporation, authority, or

1 office is the awarding authority and the bid is no more than
2 five percent greater than the bid of the lowest responsible
3 bidder, the awarding authority may award the contract to the
4 preferred vendor."

5 "§41-16-21.1.

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

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

1 materials, equipment, supplies, or other personal property
2 that must remain in effect to utilize the materials,
3 equipment, supplies, or other personal property.

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

18 "§41-16-27.

19 "(a) When purchases are required to be made through
20 competitive bidding, award shall, except as provided in
21 subsection (f), be made to the lowest responsible bidder
22 taking into consideration the qualities of the commodities
23 proposed to be supplied, their conformity with specifications,
24 the purposes for which required, the terms of delivery,
25 transportation charges and the dates of delivery provided,
26 that the awarding authority may at any time within 30 days
27 after the bids are opened negotiate and award the contract to

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

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

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

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

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

14 "(e) (1) Contracts for the purchase of personal
15 property or contractual services other than personal services
16 shall be let by competitive bid for periods not greater than
17 five years and current contracts existing on February 28,
18 2006, may be extended or renewed for an additional two years
19 with a 90-day notice of such extension or renewal given to the
20 Legislative Council, however, any contract that generates
21 funds or will reduce annual costs by awarding the contract for
22 a longer term than a period of three years which is let by or
23 on behalf of a state two-year or four-year college or
24 university may be let for periods not greater than 10 years.
25 Any contract awarded pursuant to this section for terms of
26 less than 10 years may be extended for a period not to exceed
27 10 years from the initial awarding of the contract provided

1 that the terms of the contract shall not be altered or
2 renegotiated during the period for which the contract is
3 extended.

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

20 "(3) 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
2 sources, pursuant to the Alabama Administrative Procedure Act.

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

19 Responsiveness to the bid shall be scored for each designated
20 criteria. If, for reasons cited above, the bid selected is not
21 from the lowest bidding contractor, the Alabama Medicaid
22 Agency shall present its reasons for not recommending award to
23 the low bidder to the Medicaid Interim Committee. The
24 committee shall evaluate the findings of the Alabama Medicaid
25 Agency and must, by resolution, approve the action of the
26 awarding authority before final awarding of any such contract.
27 The committee shall also hear any valid appeals against the

1 recommendation of the Alabama Medicaid Agency from the low bid
2 contractor(s) whose bid was not selected.

3 "(g) Notwithstanding the requirements under Sections
4 41-16-20, 41-16-21, and this section, contractual services and
5 purchases of personal property regarding the athletic
6 department, food services, and transit services negotiated on
7 behalf of two-year and four-year colleges and universities may
8 be awarded without competitive bidding provided that no state
9 revenues, appropriations, or other state funds are expended or
10 committed and when it is deemed by the respective board that
11 financial benefits will accrue to the institution, except that
12 in the cases where an Alabama business entity as defined by
13 this section is available to supply the product or service
14 they will have preference unless the product or service
15 supplied by a foreign corporation is substantially different
16 or superior to the product or service supplied by the Alabama
17 business entity. However, the terms and conditions of any of
18 the services or purchases which are contracted through
19 negotiation without being competitively bid and the name and
20 address of the recipient of such a contract shall be
21 advertised in a newspaper of general circulation in the
22 municipality in which the college or university is located
23 once a week for two consecutive weeks commencing no later than
24 10 days after the date of the contract. For the purposes of
25 this section, the term Alabama business entity shall mean any
26 sole proprietorship, partnership, or corporation organized in
27 the State of Alabama.

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

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

25 "(i) When a single invitation-to-bid specifies a set
26 of deliverables that would be capable of division into
27 separate, independent contracts, the awarding authority, at

1 its discretion, may award a secondary contract for any subset
2 of such deliverables, not to exceed 20 percent of the original
3 contract value, to any Alabama business certified under the
4 Federal HUBZone program whose properly submitted responsible
5 bid does not exceed five percent of the lowest responsible
6 bid. In order to make a secondary award under this provision,
7 the awarding authority shall include in the invitation-to-bid
8 a notice that a secondary award may be made."

9 "§41-4-110.

10 "(a) There shall be in the Department of Finance the
11 Division of Purchasing. The functions and duties of the
12 Division of Purchasing shall be as follows:

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

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

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

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

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

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

1 whenever requested so to do, but not more than once every 30
2 days.

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

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

25 "(c) The Purchasing Agent is further authorized to
26 establish and maintain a system for the purchase of personal
27 property and nonprofessional services by state departments,

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

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

22 "(d) The Division of Purchasing is authorized to
23 charge a biannual registration fee to vendors desiring to
24 register with the division to receive invitations-to-bid for
25 any goods or services solicited by the division and to charge
26 departments, boards, bureaus, commissions, agencies, offices,
27 and institutions for their proportionate share of operating

1 costs of the division. Any fee must be set by administrative
2 rule upon the approval of the Director of Finance. Any fees
3 collected under this provision shall be deposited in the State
4 Treasury to the credit of the State Procurement Fund and shall
5 be 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.

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

26 "Any acquisition of personal property pursuant to
27 this subsection shall be purchased solely from vendors

1 physically located within the state, if the purchaser is to
2 take possession of the purchased goods at the vendor's
3 physical location.

4 "The price of any goods or services purchased
5 pursuant to this subsection shall be the market price readily
6 available to the public at large.

7 "Any acquisition of personal property pursuant to
8 this subsection is not exempt from the supervision and
9 administration of the Division of Purchasing."

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