

1 SB182
2 203776-2
3 By Senators Orr, Albritton, Shelnutt, Butler, Melson and Allen
4 RFD: Finance and Taxation General Fund
5 First Read: 13-FEB-20

SYNOPSIS: The bill would abolish the Division of Purchasing in the Department of Finance and replace it with the Office of the Chief Procurement Officer to make or supervise state purchases of supplies or services. The bill would provide for the appointment, qualifications, duties, and authority of the Chief Procurement Officer.

A BILL
TO BE ENTITLED
AN ACT

Relating to the purchase of supplies and services by state government; to repeal Article 5 (commencing with Section 41-4-110) of Chapter 4 of Title 41 of the Code of Alabama 1975, creating the Division of Purchasing in the Department of Finance; and to add Article 5A (commencing with Section 41-4-110A) to Chapter 4 of Title 41 of the Code of Alabama 1975, creating the Office of the Chief Procurement Officer and the position of Chief Procurement Officer to make or supervise

1 the purchase of supplies or services by the state and to
2 provide for the appointment, qualifications, duties, and
3 authority of the Chief Procurement Officer; and to amend
4 Section 41-4-66 of the Code of Alabama 1975, to provide the
5 Chief Procurement Officer with the authority to maintain the
6 state database of each request for proposal for a public
7 contract.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Article 5 (commencing with Section
10 41-4-110) of Chapter 4 of Title 41 of the Code of Alabama
11 1975, is repealed.

12 Section 2. Article 5A (commencing with Section
13 41-4-110A) is added to Chapter 4 of Title 41 of the Code of
14 Alabama 1975, to read as follows:

15 Article 5A. OFFICE OF THE CHIEF PROCUREMENT OFFICER.

16 Division 1. General Provisions.

17 §41-4-110A.

18 (a) This article shall be construed and applied to
19 promote its underlying purposes and policies.

20 (b) The underlying purposes and policies of this
21 article are to do all of the following:

22 (1) Simplify, clarify, and modernize the law
23 governing procurement by the state.

24 (2) Permit the continued development of procurement
25 policies and practices.

26 (3) Make as consistent as possible the procurement
27 laws among the various jurisdictions.

1 (4) Provide for increased public confidence in the
2 procedures followed in public procurement.

3 (5) Ensure the fair and equitable treatment of all
4 persons who deal with the procurement system of this state.

5 (6) Provide increased economy in state procurement
6 activities and maximize to the fullest extent practicable the
7 purchasing value of public funds of the state.

8 (7) Foster effective broad-based competition within
9 the free enterprise system.

10 (8) Provide safeguards for the maintenance of a
11 procurement system of quality and integrity.

12 (9) Obtain in a cost-effective and responsive manner
13 the materials and services required by state agencies in order
14 for those agencies to better serve this state's businesses and
15 residents.

16 §41-4-111A.

17 Unless displaced by the particular provisions of
18 this article, the principles of law and equity, including the
19 Uniform Commercial Code, the law merchant, and law relative to
20 capacity to contract, agency, fraud, misrepresentation,
21 duress, coercion, mistake, and bankruptcy shall supplement the
22 provisions of this article.

23 §41-4-112A.

24 This article requires all parties involved in the
25 negotiation, performance, or administration of state contracts
26 to act in good faith. Good faith means honesty in fact in the
27 conduct or transaction concerned.

1 (1) This article applies to contracts solicited and
2 entered into after October 1, 2021.

3 (2) Except as otherwise provided in this article,
4 this article applies to every expenditure of public funds by a
5 governmental body of this state under a contract for supplies
6 or services.

7 (3) This article does not apply to either of the
8 following:

9 a. Gifts, grants, or contracts between state
10 agencies, between state agencies and political subdivisions,
11 or between the state and other governments.

12 b. Contracts for supplies or services of counties,
13 municipalities, political subdivisions, and other local public
14 agencies and governmental entities of this state whose
15 procurement activities are currently governed by Article 3 of
16 Chapter 16.

17 §41-4-113A.

18 Written determinations required by this article
19 shall be retained in the appropriate official contract file of
20 the Chief Procurement Officer or the purchasing agency.

21 §41-4-114A.

22 For purposes of this article, the following words
23 shall have the following meanings:

24 (1) BUSINESS. Any corporation, partnership,
25 individual, sole proprietorship, joint stock company, joint
26 venture, or other private legal entity.

1 (2) CAPITAL EQUIPMENT. Tangible personal property
2 that can be appraised for value, is not disposable or
3 consumable, is stand alone, and has a useful life of one year
4 or more.

5 (3) CHANGE ORDER. A written order signed by the
6 procurement officer directing the contractor to make changes
7 which the changes clause of the contract authorizes the
8 procurement officer to order without the consent of the
9 contractor.

10 (4) CHIEF PROCUREMENT OFFICER. The person holding
11 the position created in Section 41-4-120A, as the head of the
12 Office of the Chief Procurement Officer.

13 (5) CONTINGENCY FEE CONTRACT. An agreement, express
14 or implied, for litigation legal services of an attorney or
15 attorneys, including any associated counsel, under which
16 compensation is contingent in whole or in part upon the
17 successful accomplishment or disposition of the subject matter
18 of the agreement. The payment may be in an amount which either
19 is fixed or is to be determined under a formula.

20 (6) CONTINGENCY FEE COUNSEL. An attorney or
21 attorneys performing services under a contingency fee
22 contract.

23 (7) CONTRACT. All types of state agreements,
24 regardless of what they may be called, for the procurement of
25 supplies or services.

26 (8) CONTRACT MODIFICATION. Any written alteration in
27 specifications, delivery point, rate of delivery, period of

1 performance, price, quantity, or other provisions of any
2 contract accomplished by mutual action of the parties to the
3 contract.

4 (9) CONTRACTING AGENCY. The Governor, Attorney
5 General, or director of a state agency, department, bureau,
6 commission, authority, public corporation, or instrumentality
7 of the State of Alabama that seeks to enter a contract.

8 (10) CONTRACTOR. Any person having a contract with a
9 governmental body.

10 (11) DATA. Recorded information, regardless of form
11 or characteristic.

12 (12) DESIGNEE. A duly authorized representative of a
13 person.

14 (13) ELECTRONIC. Electrical, digital, magnetic,
15 optical, electromagnetic, or other similar technology.

16 (14) GOVERNMENTAL BODY. Except as otherwise provided
17 in this article, an agency, department, board, bureau,
18 commission, committee, institution, corporation, authority, or
19 office of this state. The term does not include the
20 legislative or judicial departments of the state or a
21 legislative or judicial agency.

22 (15) GRANT. The furnishing by the state or federal
23 government of assistance, whether financial or otherwise, to
24 any person to support a program authorized by law. The term
25 does not include an award with a primary purpose to procure an
26 end product, whether in the form of supplies or services.

1 (16) JUDICIAL AGENCY. Any department, appellate
2 court, trial court, board, body, bureau, commission,
3 committee, institution, corporation, authority, or office
4 created, established, and operating as an agency of the
5 judicial department of this state. The term includes, but is
6 not limited to, the Administrative Office of Courts, the State
7 Law Library, the Court of the Judiciary, and the Sentencing
8 Commission.

9 (17) LEGISLATIVE AGENCY. The Alabama State
10 Legislature and any department, board, body, bureau,
11 commission, committee, institution, corporation, authority, or
12 office created, established, and operating as an agency of the
13 legislative department of this state. The term includes, but
14 is not limited to, the Legislative Services Agency and the
15 Department of Examiners of Public Accounts.

16 (18) PERSON. An individual, corporation,
17 association, partnership, limited liability corporation,
18 union, committee, club, other organization, or group.

19 (19) PROCUREMENT. Buying, purchasing, renting,
20 leasing, or otherwise acquiring any supplies or services. The
21 term includes all functions that pertain to the obtaining of
22 any supply or service, including description of requirements,
23 selection and solicitation of sources, preparation and award
24 of contracts, and all phases of contract administration. The
25 term does not include the leasing of real property.

26 (20) PROCUREMENT OFFICER. Any person duly authorized
27 by the Chief Procurement Officer to enter into and administer

1 contracts and make written determinations with respect to
2 those contracts. The term includes an authorized
3 representative acting within the limits of authority.

4 (21) PROFESSIONAL SERVICES. The services of
5 physicians, architects, engineers, landscape architects, land
6 surveyors, geoscientists, attorneys, teachers, artists,
7 appraisers, and other individuals, or business entities
8 offering the services of those individuals, who possess a high
9 degree of scientific or specialized skill and knowledge where
10 the experience and professional qualifications of the service
11 provider are particularly relevant to the provision of the
12 required service.

13 (22) PUBLIC FUNDS. Money, regardless of its source,
14 that is owned or held by a governmental body.

15 (23) PUBLIC NOTICE. The distribution or
16 dissemination of information to interested parties using
17 methods that are reasonably available, including, but not
18 limited to, publication in newspapers of general circulation,
19 electronic or paper mailing lists, and web sites designated by
20 the state and maintained for that purpose.

21 (24) PURCHASING AGENCY. A governmental body, other
22 than the Office of the Chief Procurement Officer, that is
23 authorized by this article, its implementing rules, or by
24 delegation from the Chief Procurement Officer to enter into
25 contracts.

26 (25) SERVICES. The furnishing of labor, time, or
27 effort by a contractor. The term does not include the delivery

1 of a specific end product, other than reports that are merely
2 incidental to the required performance.

3 (26) SIGNATURE. A manual signature or an electronic
4 signature, as defined in Section 8-1A-2.

5 (27) SOLICITATION. Any request to submit quotes,
6 bids, or offers to the state for the procurement of supplies
7 or services. The term includes invitations to bid and requests
8 for proposals.

9 (28) SUPPLIES. All property, including equipment,
10 materials, and printing. The term does not include land or a
11 permanent interest in land.

12 (29) USING AGENCY. A governmental body that utilizes
13 any supplies or services procured under this article.

14 (30) WRITTEN or IN WRITING. The product of any
15 method of forming characters on paper, other materials, or
16 viewable screens, which can be read, retrieved, and
17 reproduced, including information that is electronically
18 transmitted and stored.

19 §41-4-115A.

20 (a) Except as provided in subsection (b),
21 procurement information is a public record to the extent
22 provided by state law and shall be available to the public.

23 (b) Procurement information that is any of the
24 following is not a public record:

25 (1) Commercial or financial information obtained in
26 response to a solicitation that is designated as privileged or
27 confidential by the person or entity submitting such

1 information in compliance with instructions in the
2 solicitation for marking information exempt from public
3 disclosure. Information not marked as required is a public
4 record.

5 (2) Evaluative documents that are pre-decisional in
6 nature.

7 (3) Bids or proposals prior to award.

8 (4) When the public disclosure of procurement
9 information would be detrimental to the safety or security of
10 persons or property or to the public interest as determined,
11 in writing, by the Chief Procurement Officer.

12 (5) Any procurement information identified by the
13 Chief Procurement Officer under subsection (c).

14 (c) The Chief Procurement Officer, by rule, shall
15 establish a process for identifying and protecting procurement
16 information that is excepted from disclosure.

17 §41-4-116A.

18 The use of electronic media, including acceptance of
19 electronic signatures, is authorized consistent with the
20 state's applicable statutory, regulatory, or other guidance
21 for use of the media, so long as the guidance provides for
22 both of the following:

23 (1) Appropriate security to prevent unauthorized
24 access to the bidding, approval, and award processes.

25 (2) Accurate retrieval or conversion of electronic
26 forms of such information into a medium that permits
27 inspection and copying.

1 Division 2. Procurement Organization.

2 §41-4-120A.

3 There is created within the Department of Finance
4 the Office of the Chief Procurement Officer, headed by the
5 Chief Procurement Officer.

6 §41-4-121A.

7 The Chief Procurement Officer shall be appointed by
8 the Director of Finance with the approval of the Governor. The
9 Chief Procurement Officer shall have relevant, recent
10 experience in public procurement and shall be a person with
11 demonstrated executive and organizational ability.

12 §41-4-122A.

13 (a) The Chief Procurement Officer shall serve as the
14 central procurement officer of the state.

15 (b) Consistent with this article, the Chief
16 Procurement Officer shall adopt operational procedures
17 governing the internal functions of the Office of the Chief
18 Procurement Officer.

19 (c) Except as otherwise specifically provided in
20 this article, the Chief Procurement Officer, in accordance
21 with rules adopted under this article, shall do all of the
22 following:

23 (1) Except for alcoholic beverages, which shall be
24 purchased by the Alcoholic Beverage Control Board, procure or
25 supervise the procurement of all supplies and services needed
26 by the state.

1 (2) Ensure compliance with this article and the
2 rules implementing this article by reviewing and monitoring
3 procurements conducted by any designee, department, agency, or
4 official delegated authority under Section 41-4-123A.

5 (3) Require the periodic reporting of all
6 procurement by or for counties, the purchase, contract, or
7 lease price of which is one-hundred dollars (\$100) or more,
8 and require information in connection therewith, to prescribe
9 forms and fix the time for submitting such reports and, when
10 requested by any county, municipal corporation, and other
11 local public body, including any board of education, to make
12 such purchase contract, or lease for it. It shall be the duty
13 of every county to make the report on forms furnished by the
14 Office of the Chief Procurement Officer, whenever requested so
15 to do, but not more than once every 30 days.

16 (4) Perform other functions and duties of the
17 Department of Finance as may from time to time be assigned by
18 the Director of Finance.

19 (d) The Chief Procurement Officer may establish and
20 maintain a system for the purchase of supplies and services by
21 governmental bodies that conduct their procurement activities
22 through the Office of the Chief Procurement Officer, through
23 the utilization of approved credit cards. County and municipal
24 governments and instrumentalities or public corporations
25 thereof may participate in the state fleet fuel card program
26 subject to the terms and conditions of the program related to
27 the utilization of the fleet fuel card; provided, however,

1 that county and municipal governments and instrumentalities or
2 public corporations thereof shall not otherwise be subject to
3 this subsection. The Chief Procurement Officer shall establish
4 by rule a process for the competitive solicitation of credit
5 card providers. The state Comptroller and the Chief
6 Procurement Officer shall adopt fiscal procedures governing
7 the payment of charges incurred by credit card users and the
8 utilization of credit cards. The use of approved credit cards
9 shall be established by the state Comptroller and the Chief
10 Procurement Officer, with the approval of the Director of
11 Finance, and be published through the Alabama fiscal
12 procedures, in which each purchase made using approved credit
13 cards is required to have prior approval by the department
14 head or his or her designee and a record of each purchase and
15 approval is to be maintained. The Chief Procurement Officer
16 may select the provider or providers offering the highest fees
17 to the division for the use of its credit card or credit
18 cards. Fees received by the division for the use of credit
19 cards shall be placed in a special fund entitled the State
20 Procurement Fund in the State Treasury for the use of the
21 division and the funds shall be appropriated, budgeted, and
22 allotted in accordance with Sections 41-4-80 to 41-4-96,
23 inclusive, and 41-19-1 to 41-19-12, inclusive, and only in
24 amounts stipulated in general appropriations bills and other
25 appropriation bills. Approved credit cards may be issued to
26 requisitioning agencies upon the recommendation of the Chief
27 Procurement Officer and the approval of the Director of

1 Finance. Approved credit cards shall be assigned to the
2 department and limited in number. Approved credit cards may be
3 utilized to purchase items of supplies and services, and may
4 not exceed the limitations set forth by rule. The director of
5 the governmental entity utilizing credit cards is responsible
6 for the proper use of credit cards assigned to his or her
7 agency, in accordance with rules established by Alabama fiscal
8 procedures. The Chief Procurement Officer may collect any
9 credit card from any agency at any time due to improper use.
10 The Chief Procurement Officer shall submit an annual report
11 and accounting regarding the use of credit cards by each
12 governmental body to the Director of Finance and the Governor.

13 (e) The Office of the Chief Procurement Officer may
14 charge a biannual registration fee to vendors desiring to
15 register with the office to receive Invitations to Bid for any
16 goods or services solicited by the division and to
17 governmental bodies for their proportionate share of operating
18 costs of the office. Any fee shall be set by administrative
19 rule upon the approval of the Director of Finance. Any fees
20 collected under this subsection shall be deposited in the
21 State Treasury to the credit of the State Procurement Fund and
22 shall be appropriated, budgeted, and allotted in accordance
23 with Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to
24 41-19-12, inclusive, and only in amounts stipulated in general
25 appropriations bills and other appropriation bills.

1 (f) The Chief Procurement Officer shall adopt rules
2 consistent with this article which govern the procurement of
3 supplies and services procured by the state.

4 §41-4-123A.

5 Subject to rules adopted under this article, the
6 Chief Procurement Officer may delegate his or her authority to
7 designees or to any department, agency, or official.

8 §41-4-124A.

9 (a) Except as otherwise provided in this article,
10 all rights, powers, duties, and authority relating to the
11 procurement of supplies and services now vested in, or
12 exercised by, any state governmental body under existing law
13 are transferred to the Chief Procurement Officer.

14 (b) The following governmental bodies are subject to
15 this article except as it relates to the purchase of
16 professional services and the oversight and authority of the
17 Chief Procurement Officer, but shall establish and maintain
18 procurement offices and personnel and shall adopt rules as may
19 be necessary to comply with this article:

20 (1) All educational and eleemosynary institutions
21 governed by a board of trustees or other similar governing
22 body.

23 (2) The Alabama State Port Authority.

24 (3) The Retirement Systems of Alabama.

25 (4) The Department of Mental Health.

26 (c) The Alabama Department of Transportation is
27 subject to this article except as it relates to the purchase

1 of professional services and shall adopt rules governing the
2 purchase of professional services by the department which are
3 consistent with the principles contained in this article and
4 promote fairness, competition, transparency, integrity, and
5 value in the procurement process.

6 (d) The procurement of any supplies or services by a
7 legislative agency or judicial agency shall be solely governed
8 by procedures adopted by the Legislative Council for all
9 legislative agencies and by rules adopted by the Supreme Court
10 of Alabama for all judicial agencies. The procedures adopted
11 shall be consistent with any applicable requirements of the
12 Constitution of Alabama of 1901 and shall be established in
13 accordance with the underlying purposes and policies of
14 promoting responsible and efficient use of public funds
15 dedicated and appropriated to the agencies for their use,
16 providing consistency of application of rules and requirements
17 across all agencies within the applicable branch of state
18 government, and promoting fairness, competition, transparency,
19 integrity, and value in the procurement process. In no case
20 may the legislative and judicial departments of the state
21 adopt procedures that conflict with the laws of this state
22 regarding the public disclosure of the use of public funds and
23 the transparency of public expenditures, or that otherwise
24 conflict with state law regarding public records and public
25 access to those records. Except for the requirement to act in
26 good faith, no other provision of this article shall apply to
27 legislative or judicial agencies; provided, that the

1 legislative and judicial departments may adopt all or any part
2 of this article and its accompanying rules.

3 §41-4-125A.

4 (a) No contract for the services of legal counsel
5 for purposes of litigation may be awarded without the approval
6 of the Attorney General and the Governor. No contract for the
7 services of legal counsel for nonlitigation purposes may be
8 awarded without the approval of the Governor.

9 (b) (1) Except as otherwise provided in this section,
10 attorneys retained to represent the state in litigation shall
11 be appointed by the Attorney General in consultation with the
12 Governor from a list of attorneys maintained by the Attorney
13 General. All attorneys interested in representing the state
14 may apply and shall be included on the list. The selection of
15 the attorney or law firm shall be based upon the level of
16 skill, experience, and expertise required in the litigation
17 and the fees charged by the attorney or law firm shall be
18 taken into consideration so that the state receives the best
19 representation for the funds paid. Fees shall be negotiated
20 and approved by the Governor in consultation with the Attorney
21 General. Maximum fees paid for legal representation that does
22 not involve a contingency fee contract may be established by
23 executive order of the Governor.

24 (2) Attorneys retained by any state purchasing
25 entity to render nonlitigation legal services shall be
26 selected by such entity from a list of attorneys maintained by
27 the Legal Advisor to the Governor. All attorneys interested in

1 representing any purchasing state entity may apply and shall
2 be included on the list. The selection of the attorney or law
3 firm shall be based upon the level of skill, experience, and
4 expertise required for the services, but the fees charged by
5 the attorney or law firm shall be taken into consideration so
6 that such state entity shall receive the best representation
7 for the funds paid. Fees for such services shall be negotiated
8 by the state entity requiring the services and shall be
9 subject to the review and approval of the Governor or the
10 Director of Finance when so designated by the Governor.

11 (c) This section does not apply to either of the
12 following:

13 (1) The appointment of attorneys or experts by a
14 court.

15 (2) The retention of experts by the state for the
16 purposes of litigation or avoidance of litigation.

17 (d) Nothing in this section shall be construed as
18 altering or amending the Governor's authority to retain
19 attorneys under Section 36-13-2; provided, the Governor shall
20 select the attorneys from three proposals received from
21 attorneys included on the list maintained by the Attorney
22 General.

23 (e) (1) A governmental body may not enter into a
24 contingency fee contract with any attorney or law firm unless
25 the contracting agency makes a written determination prior to
26 entering into a contingency fee contract that contingency fee
27 representation is both cost effective and in the public

1 interest. Any written determination shall include specific
2 findings for each of the following factors:

3 a. Whether there are sufficient and appropriate
4 legal and financial resources within the state to handle the
5 matter without a contingency contract.

6 b. The expected time and labor required, the
7 novelty, complexity, and difficulty of the questions involved,
8 and the skill requisite to perform the attorney services
9 properly.

10 c. The geographic area where the attorney services
11 are to be provided.

12 d. The amount of experience desired for the
13 particular kind of attorney services to be provided and the
14 nature of the private attorney's experience with similar
15 issues or cases.

16 (2) Subject to subdivision (3), the state may not
17 enter into a contingency fee contract that provides for the
18 contingency fee counsel to receive an aggregate contingency
19 fee calculated from the gross recovery resulting from a
20 judgment or settlement in each action, exclusive of expenses,
21 in excess of the total of all of the following:

22 a. Twenty-two percent of any recovery of up to ten
23 million dollars (\$10,000,000).

24 b. Twenty percent of any portion of the recovery
25 between ten million dollars (\$10,000,000) and twenty-five
26 million dollars (\$25,000,000).

1 c. Sixteen percent of any portion of the recovery
2 between twenty-five million dollars (\$25,000,000) and fifty
3 million dollars (\$50,000,000).

4 d. Twelve percent of any portion of the recovery
5 between fifty million dollars (\$50,000,000) and seventy-five
6 million dollars (\$75,000,000).

7 e. Eight percent of any portion of the recovery
8 between seventy-five million dollars (\$75,000,000) and one
9 hundred million dollars (\$100,000,000).

10 f. Seven and one-tenth (7.1) percent of any portion
11 of the recovery exceeding one hundred million dollars
12 (\$100,000,000).

13 (3) The aggregate fee paid under a contingency fee
14 contract may not exceed seventy-five million dollars
15 (\$75,000,000).

16 (4) All litigation expenses incurred by the
17 contingency fee counsel shall be paid or reimbursed upon
18 approval on a monthly basis upon presentation of documentation
19 of the expenses to the contracting agency.

20 (5) The Attorney General may certify in writing to
21 the Governor that, in the opinion of the Attorney General, an
22 issue affecting the public health, safety, convenience, or
23 economic welfare of the state exists that justifies that the
24 contingency fee limitations set forth in subdivision (2) or
25 (3) be suspended in the case of a particular contingency fee
26 contract. Upon receipt of the written certification, the
27 Governor, by the issuance of an executive order, may waive the

1 limitations with respect to the specified contingency fee
2 contract.

3 (6) A governmental body may not enter into a
4 contingency fee contract unless all of the following
5 requirements are met throughout the entire contract period,
6 including any extensions of the period:

7 a. A government attorney has complete control over
8 the course and conduct of the case.

9 b. A government attorney with supervisory authority
10 is personally involved in overseeing the litigation.

11 c. A government attorney retains veto power over any
12 decisions made by the contingency fee counsel.

13 d. After giving reasonable notice to the contingency
14 fee counsel, any defendant that is the subject of the
15 litigation may contact the lead government attorney directly
16 unless directed to do otherwise by that attorney. Contingency
17 fee counsel shall have the right to participate in the
18 discussion with the lead government attorney or attorneys
19 unless, after consultation with contingency fee counsel, the
20 lead government attorney agrees to the discussion without
21 contingency fee counsel being present.

22 e. A government attorney with supervisory authority
23 for the case shall attend all settlement conferences.

24 f. Decisions regarding settlement of the case shall
25 be reserved exclusively to the discretion of the government
26 attorney and the state.

1 (7) The Attorney General shall develop a standard
2 addendum to every contract for contingent fee attorney
3 services that shall be used in all cases, describing in detail
4 what is expected of both the contingency fee counsel and the
5 state, including, without limitation, the requirements listed
6 in subdivision (6).

7 (8) Copies of any executed contingency fee contract
8 and the contracting agency's written determination to enter
9 into the contingency fee contract with the contingency fee
10 counsel and any payment of any contingency fees shall be
11 posted online as provided in Section 41-4-65.

12 (9) Every contingency fee counsel, from the
13 inception of the contingency fee contract until at least four
14 years after the contract expires or is terminated, shall
15 maintain detailed current records, including documentation of
16 all time records, expenses, disbursements, charges, credits,
17 underlying receipts and invoices, and other financial
18 transactions that concern the provision of the attorney
19 services. The contingency fee counsel shall make all the
20 records available for inspection and copying upon request by
21 the Governor, Attorney General, or contracting agency. In
22 addition, the contingency fee counsel shall maintain detailed
23 contemporaneous time records for the attorneys and paralegals
24 working on the contract in six minute increments and, upon
25 request, shall provide promptly these records to the Governor,
26 Attorney General, or contracting agency.

1 (10) Any contingency fee paid to a private attorney
2 or law firm shall be paid from the State Treasury from the
3 funds recovered as a result of the contingent fee contract
4 within 30 days of receipt of the recovery unless ordered to do
5 otherwise by a court with jurisdiction over the litigation
6 subject to the contingency fee contract.

7 §41-4-126A.

8 (a) Unless otherwise ordered by rule, with approval
9 of the Governor, the following supplies and services need not
10 be procured through the Office of the Chief Procurement
11 Officer and are exempt from the competitive requirements of
12 this article:

13 (1) Works of art for museum and public display.

14 (2) Published books in any format such as digital,
15 audio, or hardcopy; maps; periodicals; and technical
16 pamphlets.

17 (3) Utility services where no competition exists or
18 where rates are fixed by law.

19 (4) Purchases of alcoholic beverages by the
20 Alcoholic Beverage Control Board.

21 (5) Purchases of products made or manufactured by
22 the blind or visually handicapped under the direction or
23 supervision of the Alabama Institute for Deaf and Blind in
24 accordance with Sections 21-2-1 to 21-2-4, inclusive.

25 (6) Photographs purchased from a federal agency.

26 (7) Barter transactions by the Department of
27 Corrections.

1 (8) Purchases, contracts, or repairs by the Alabama
2 State Port Authority when it is determined by the Director of
3 the Alabama State Port Authority and the Secretary-Treasurer
4 of the Alabama State Port Authority that the purchases,
5 contracts, or repairs are impractical of award by competitive
6 bidding due to the exigencies of time or interference with the
7 flow of commerce. The Director of the Alabama State Port
8 Authority and the Secretary-Treasurer of the Alabama State
9 Port Authority shall place a sworn statement in writing in the
10 permanent file or records setting out the emergency or
11 exigency relied upon and the necessity for negotiation instead
12 of proceeding by competitive bidding in that particular
13 instance, and the sworn statement shall be open to public
14 inspection. A copy of the sworn statement shall be promptly
15 furnished to the Governor and Attorney General.

16 (9) The purchase of insurance and supplies or
17 services related to the purchase of insurance.

18 (b) Any state department or agency whose principal
19 business is honorariums is exempted from this chapter on
20 purchases and contracts for services made by that department
21 or agency.

22 (c) Nothing in this article is intended to repeal
23 or limit any provision of Section 23-1-40 or Sections 23-2-140
24 through 23-2-175, relating to the procurement authority of the
25 State Department of Transportation and the Alabama Toll Road,
26 Bridge and Tunnel Authority. To the extent any provision

1 contained in this article conflicts with Section 23-1-40 or
2 Sections 23-2-140 through 23-2-175, the latter governs.

3 (d) Nothing in this article repeals or limits any
4 provision of Section 41-4-400, relating to the procurement
5 authority of the Division of Construction Management. To the
6 extent any provision contained in this article conflicts with
7 Section 41-4-400, the latter governs.

8 (e) Nothing in this chapter repeals or limits any
9 provision of Section 14-7-8, relating to the procurement
10 authority of Alabama Correctional Industries. To the extent
11 any provision contained in this chapter conflicts with Section
12 14-7-8, the latter governs.

13 (f) This article does not apply to any state
14 authority, board, or other entity with respect to contracts
15 relating to the issuance of debt which is required to be
16 repaid from sources other than state funds.

17 (g) This article does not apply to direct health
18 care services provided by the Alabama Department of Public
19 Health.

20 (h) Except for capital equipment, this article does
21 not apply to the purchase by a public hospital of medical
22 products, medical supplies, medical devices, services,
23 implants, pharmaceuticals, fluids, gases, and any other
24 medical products which are used in the course of treating
25 patients, or to support the treatment of patients.

26 (i) (1) Except as provided in subdivision (2), the
27 purchase of supplies or services negotiated on behalf of

1 two-year and four-year colleges and universities may be
2 awarded without competitive bidding, provided that no state
3 revenues, appropriations, or other state funds are expended or
4 committed and when it is determined by the respective board
5 that financial benefits will accrue to the institution.

6 (2) When an Alabama business entity organized under
7 the laws of this state is available to supply the product or
8 service purchased or negotiated under subdivision (1), the
9 Alabama business entity shall have preference unless the
10 product or service supplied by a foreign corporation is
11 substantially different or superior to the product or service
12 supplied by the Alabama business entity.

13 (3) Public notice shall be provided by the
14 purchasing agency within 10 days of the execution of a
15 contract under this subsection. The public notice shall
16 include, at a minimum, the terms and conditions of any of the
17 supplies or services that are contracted through negotiation
18 without being competitively bid and the name and address of
19 the recipient of the contract.

20 (j) This article does not apply to purchases and
21 contracts for the repair of equipment used in the construction
22 and maintenance of highways by the Department of
23 Transportation.

24 (k) This article does not apply to public works
25 projects governed by Title 39.

26 (l) This article does not apply to the purchase by
27 the Department of Transportation of road building materials

1 for transportation infrastructure in the state. Road building
2 materials may be purchased from private land owners or
3 commercial providers from the nearest or most cost-effective
4 source available for the particular application. Road building
5 materials include dirt, gravel, stone, slag, or borrow
6 materials, in natural state or processed by crushing, grading
7 or screening processes.

8 (m) This article does not apply to purchases of
9 materials, goods, and services for the maintenance and
10 operation of highway infrastructure and right-of-way by the
11 Department of Transportation.

12 (n) Nothing in this article is intended to repeal or
13 limit any provision of Article 2, Chapter 1, Title 23,
14 relating to the powers and authority of the Department of
15 Transportation. To the extent any provision contained in this
16 article conflicts with Article 2, Chapter 1, Title 23, the
17 latter governs.

18 (o) Governmental bodies may purchase supplies from
19 any vendor that offers the item at a price at least ten
20 percent below the price established on a statewide contract by
21 the Office of the Chief Procurement Officer for the same item,
22 provided that each purchase, whether for a single item or
23 multiple items, does not exceed an amount established by rules
24 of the Chief Procurement Officer. The Office of the Chief
25 Procurement Officer shall confirm that the terms and
26 conditions of the purchases are substantially similar to those
27 of the statewide contract for the same item prior to the

1 approval of any purchase under this subsection. Any purchase
2 that would be directly connected to any information technology
3 network used by the state shall require prior approval by the
4 Secretary of Information Technology. If the purchaser is to
5 take possession of the purchased goods at the vendor's
6 physical location, any acquisition of supplies under this
7 subsection may be purchased only from vendors physically
8 located within the state. The price of any supplies purchased
9 under this subsection shall be the market price readily
10 available to the public at large. The acquisition of supplies
11 under this subsection is subject to the supervision and
12 administration of the Office of the Chief Procurement Officer.

13 §41-4-127A.

14 (a) The Chief Procurement Officer, with approval of
15 the Director of Finance and the Governor, shall adopt rules to
16 implement and administer this article. The rules shall be made
17 in accordance with the applicable provisions of the
18 Administrative Procedure Act.

19 (b) The Chief Procurement Officer may not delegate
20 the power to adopt rules.

21 (c) A rule may not change any commitment, right, or
22 obligation of the state or of a contractor under a contract in
23 existence on the effective date of the adoption of the rule.

24 §41-4-128A.

25 The Chief Procurement Officer shall collect and
26 prepare statistical data concerning the procurement of all
27 supplies and services and employ trained personnel as may be

1 necessary to carry out this function. All using agencies shall
2 furnish reports as required by the Chief Procurement Officer
3 concerning usage, needs, and stocks on hand. The Chief
4 Procurement Officer may prescribe forms to be used by the
5 using agencies in the requisitioning, ordering, and reporting
6 of supplies and services.

7 §41-4-129A.

8 (a) The Chief Procurement Officer may establish a
9 Procurement Advisory Council. If created, the council, upon
10 adequate public notice, shall meet at least once a year for
11 the discussion of problems and recommendations for improvement
12 of the procurement process. When requested by the Chief
13 Procurement Officer, the council shall conduct studies,
14 research, analyses, and make reports and recommendations with
15 respect to subjects or matters within the jurisdiction of the
16 Chief Procurement Officer. The council shall consist of
17 qualified representatives of state and local government and
18 other persons selected by the Chief Procurement Officer.

19 (b) The Chief Procurement Officer may appoint
20 advisory groups to assist with specifications or procurement
21 in specific areas and to assist with any other matter within
22 the authority of the Chief Procurement Officer.

23 Division 3. Source Selection and Contract Formation.

24 §41-4-130A.

25 As used in this division, the following terms shall
26 have the following meanings:

1 (1) COST-REIMBURSEMENT CONTRACT. A contract under
2 which a contractor is reimbursed for costs that are allowable
3 and allocable in accordance with the contract terms and the
4 provisions of this chapter, and a fee, if any.

5 (2) ESTABLISHED CATALOGUE PRICE. The price included
6 in a catalogue, price list, schedule, or other form that does
7 all of the following:

8 a. Is regularly maintained by a manufacturer or
9 contractor.

10 b. Is either published or otherwise available for
11 inspection by customers.

12 c. States prices at which sales are currently or
13 were last made to a significant number of any category of
14 buyers or buyers constituting the general buying public for
15 the supplies or services involved.

16 (3) INVITATION TO BID. All documents, whether
17 attached or incorporated by reference, utilized for soliciting
18 bids.

19 (4) PREFERRED VENDOR. A person that is granted
20 preference priority according to the following:

21 a. PRIORITY #1. Produces or manufactures the product
22 within the state.

23 b. PRIORITY #2. Has an assembly plant or
24 distribution facility for the product within the state.

25 c. PRIORITY #3. Is organized for business under the
26 applicable laws of the state as a corporation, partnership, or
27 professional association and has maintained at least one

1 retail outlet or service center for the product or service
2 within the state for not less than one year prior to the
3 deadline date for the competitive bid.

4 d. PRIORITY #4. Is physically located in the state
5 and that is more than 50 percent owned by a person who was
6 discharged or released under conditions other than
7 dishonorable and who has at least 24 months' active service in
8 the United States' military, naval, or air service, or who has
9 less than 24 months of active service in any of the foregoing
10 and was separated with a service-connected disability, or a
11 national guardsman or reservist who completed active federal
12 service for purposes other than training or who served at
13 least 180 days of continuous service for purposes other than
14 training.

15 (5) PURCHASE DESCRIPTION. The words used in a
16 solicitation to describe the supplies or services to be
17 purchased. The term includes any specifications attached to,
18 or made a part of, the solicitation.

19 (6) REQUEST FOR PROPOSALS. All documents, whether
20 attached or incorporated by reference, that are used for
21 soliciting proposals.

22 (7) RESPONSIBLE BIDDER or OFFEROR. A person who has
23 the capability in all respects to perform fully the contract
24 requirements and who has the integrity and reliability to
25 assure good faith performance.

1 (8) RESPONSIVE BIDDER or OFFEROR. A person who has
2 submitted a bid or offer that conforms in all material
3 respects to the invitation for bid or request for proposal.

4 §41-4-131A.

5 (a) Unless otherwise authorized by law, all state
6 contracts shall be awarded by the use of one of the following
7 methods:

8 (1) Competitive sealed bids, pursuant to Section
9 41-4-132A.

10 (2) Competitive sealed proposals, pursuant to
11 Section 41-4-133A.

12 (3) Small purchase procedures pursuant to Section
13 41-4-134A.

14 (4) A sole source procurement pursuant to Section
15 41-4-135A.

16 (5) An emergency procurement pursuant to Section
17 41-4-136A.

18 (6) A special procurement pursuant to Section
19 41.4.137A.

20 (b) In the event a bid or offer is received for the
21 supplies or service from a person deemed to be a responsible
22 bidder or offeror and a preferred vendor and the bid is no
23 more than five percent greater than the bid of the lowest
24 responsible bidder or offeror who is not deemed to be a
25 preferred vendor, the Chief Procurement Officer or purchasing
26 agency may award the contract to the preferred vendor.

27 §41-4-132A.

1 (a) Except as otherwise provided in this division,
2 contracts shall be awarded by competitive sealed bidding.

3 (b) An invitation to bid shall be issued and shall
4 include a purchase description and all contractual terms and
5 conditions applicable to the procurement.

6 (c) Adequate public notice of the invitation to bid
7 shall be given a reasonable time prior to the date set forth
8 in the invitation for the opening of bids, in accordance with
9 rules adopted under this article.

10 (d) Bids shall be opened publicly in the presence of
11 one or more witnesses at the time and place designated in the
12 invitation to bid. The amount of each bid, the name of each
13 bidder, and any other information required by rule shall be
14 recorded. The record and each bid shall be open to public
15 inspection to the extent required by Section 41-4-115A.

16 (e) Bids shall be unconditionally accepted without
17 alteration or correction, except as authorized in this
18 article. Bids shall be evaluated based on the requirements set
19 forth in the invitation to bid, which may include criteria to
20 determine acceptability, such as inspection, testing, quality,
21 workmanship, delivery, and suitability for a particular
22 purpose. Any criteria that will affect the bid price and will
23 be considered in evaluation for award shall be objectively
24 measurable, such as discounts, transportation costs, and total
25 or life cycle costs. The invitation to bid shall set forth the
26 evaluation criteria to be used. No criteria may be used in bid
27 evaluations that are not set forth in the invitation to bid.

1 (f) (1) When a bid is submitted that contains an
2 error, the Chief Procurement Officer or head of a purchasing
3 agency may authorize the correction or withdrawal of the bid
4 or may cancel the award of the contract. The authorization of
5 the correction or withdrawal shall be done in accordance with
6 rules adopted by the Chief Procurement Officer.

7 (2) After a bid has been opened, with the exception
8 of price negotiations with the lowest responsible bidder, no
9 changes in bid prices or other provisions of bids prejudicial
10 to the interest of the state or fair competition shall be
11 permitted.

12 (g) (1) Unless there is a compelling reason to reject
13 bids, as prescribed by rules, notice of intent to award to the
14 lowest responsive and responsible bidder whose bid meets the
15 requirements set forth in the invitation to bid shall be given
16 by posting the notice at a location specified in the
17 invitation to bid. Before posting the notice of intent to
18 award, the Chief Procurement Officer or head of the purchasing
19 agency, may negotiate with the lowest responsive and
20 responsible bidder to lower the bid price within the scope of
21 the invitation to bid. The invitation to bid and notice of
22 intent to award shall contain a statement of the bidder's
23 right to protest.

24 (2) The Chief Procurement Officer may award multiple
25 purchase contracts resulting from a single invitation to bid
26 where the specifications of the items of personal property or
27 services intended to be purchased by a requisitioning agency

1 or agencies are determined, in whole or in part, by technical
2 compatibility and operational requirements. In order to make
3 multiple awards under this subdivision, the awarding authority
4 shall include in the invitation to bid a notice that multiple
5 awards may be made and the specific technical compatibility or
6 operational requirements necessitating multiple awards.

7 Multiple awards of purchase contracts with unique technical
8 compatibility or operational specifications shall be made to
9 the lowest responsible bidder complying with the unique
10 technical compatibility or operational specifications. The
11 requisitioning agency shall provide the awarding authority
12 with the information necessary for it to determine the
13 necessity for the award of multiple purchase contracts under
14 this subdivision. This subdivision does not apply to contracts
15 for the purchase or use of push-to-talk services, which shall
16 be purchased through a separate competitive bid process.

17 (h) When it is considered impractical by the Chief
18 Procurement Officer to initially prepare a purchase
19 description to support an award based on price, an invitation
20 to bid may be issued requesting the submission of unpriced
21 offers to be followed by an invitation to bid limited to those
22 bidders whose offers have been qualified under the criteria
23 set forth in the first solicitation.

24 (i) (1) Before soliciting bids, the Chief Procurement
25 Officer may authorize issuance of a request for qualifications
26 from prospective bidders. The request shall contain, at a
27 minimum, a description of the scope of work to be solicited by

1 the invitation for bids, the deadline for submission of
2 information, and how prospective bidders may apply for
3 consideration. The request shall require information
4 concerning the prospective bidders' product specifications,
5 qualifications, experience, and ability to perform the
6 requirements of the contract. Adequate public notice of the
7 request for qualifications shall be given in the manner
8 provided in subsection (c).

9 (2) After receipt of the responses to the request
10 for qualifications from prospective bidders, all qualified
11 bidders, as determined by the Chief Procurement Officer, shall
12 have an opportunity to bid. The determination regarding which
13 bidders are qualified is not subject to review.

14 §41-4-133A.

15 (a) (1) A contract may be entered into by competitive
16 sealed proposals when the Chief Procurement Officer or the
17 head of a purchasing agency, in accordance with rules,
18 determines that the use of competitive sealed bidding is
19 either not practicable or not advantageous to the state.
20 Unless determined otherwise by the Chief Procurement Officer,
21 professional services shall be procured by competitive sealed
22 proposals.

23 (2) The Chief Procurement Officer may determine by
24 rule when it is either not practicable or advantageous to the
25 state to procure specified types of supplies or services by
26 competitive sealed bidding.

1 (b) Proposals shall be solicited through a request
2 for proposals.

3 (c) Adequate public notice of the request for
4 proposals shall be given in the same manner as provided in
5 subsection (c) of Section 41-4-132A.

6 (d) Proposals shall be opened so as to avoid
7 disclosure of contents to competing offerors prior to contract
8 award. A register of proposals shall be prepared in accordance
9 with rules and shall be open for public inspection after award
10 of the contract.

11 (e) A request for proposals shall state the relative
12 importance of price and other factors and subfactors, if any.

13 (f) Discussions may be conducted with responsible
14 offerors who submit proposals determined by the Chief
15 Procurement Officer or purchasing agency to be reasonably
16 competitive for award to assure full understanding of, and
17 responsiveness to, the solicitation requirements. The
18 determination of the Chief Procurement Officer is not subject
19 to review. Offerors shall be accorded fair and equal treatment
20 with respect to any opportunity for discussion and revision of
21 proposals. Revisions of proposals may be permitted after
22 submissions and prior to award for the purpose of obtaining
23 best and final offers. In conducting discussions, there may
24 not be disclosure of any information derived from proposals
25 submitted by competing offerors.

26 (g) Contracts shall be awarded to the responsible
27 offeror whose proposal conforms to the solicitation and is

1 determined in writing to be the most advantageous to the
2 state, taking into consideration price and the evaluation
3 factors set forth in the request for proposals. No other
4 factors or criteria shall be used in the evaluation. Public
5 notice of the award of a contract shall be promptly given.

6 (h) The Chief Procurement Officer may provide
7 debriefings that furnish the basis for the source selection
8 decision and contract award.

9 (i) (1) Before soliciting proposals, the Chief
10 Procurement Officer may authorize issuance of a request for
11 qualifications from prospective offerors. The request shall
12 contain, at a minimum, a description of the scope of work to
13 be solicited by the request for proposals, the deadline for
14 submission of information, and how prospective offerors may
15 apply for consideration. The request shall require information
16 concerning the prospective offeror's product specifications,
17 qualifications, experience, and ability to perform the
18 requirements of the contract. Adequate public notice of the
19 request for qualifications shall be given in the same manner
20 as provided in subsection (c) of Section 41-4-132A.

21 (2) After receipt of the responses to the request
22 for qualifications from prospective offerors, all qualified
23 offerors, as determined by the Chief Procurement Officer,
24 shall have an opportunity to submit proposals. The
25 determination regarding which offerors are qualified is not
26 subject to review.

1 (3) If a professional service provider is prohibited
2 by law or policy from submitting proposals in response to a
3 request for proposals, the Chief Procurement Officer or
4 purchasing agency may utilize the request for qualifications
5 process to determine the awardee.

6 §41-4-134A.

7 Any procurement not exceeding the small purchase
8 amount established by rule may be made in accordance with
9 small purchase procedures. A procurement may not be
10 artificially divided so as to constitute a small purchase
11 under this section.

12 §41-4-135A.

13 A contract may be awarded for a supply or service
14 without competition when the Chief Procurement Officer
15 determines in writing that there is only one source for the
16 required supply or service. In any event, sole source
17 contracts may not exceed one year unless the Chief Procurement
18 Officer determines in writing that there continues to be only
19 one source for the required supply or service.

20 §41-4-136A.

21 Notwithstanding any other provision of this article,
22 the Chief Procurement Officer or the head of a purchasing
23 agency may make emergency procurements when there is a threat
24 to public health, welfare, or safety under emergency
25 conditions, as defined by rule. Emergency procurements made
26 under this section shall be made with as much competition as
27 is practicable under the circumstances. The authority to make

1 emergency procurements may not be delegated. A written
2 determination of the basis for the emergency and for the
3 selection of the particular contractor shall be included in
4 the contract file.

5 §41-4-137A.

6 Notwithstanding any other provision of this article,
7 the Chief Procurement Officer or the head of a purchasing
8 agency, with prior public notice, may initiate a procurement
9 above the small purchase amount specified in Section 41-4-134A
10 when the officer or agency head determines that an unusual or
11 unique situation exists that makes the application of all
12 requirements of competitive sealed bidding or competitive
13 sealed proposals contrary to the public interest. Any special
14 procurement under this section shall be made with as much
15 competition as is practicable under the circumstances. A
16 written determination of the basis for the procurement and for
17 the selection of the particular contractor shall be included
18 by the Chief Procurement Officer or the head of the purchasing
19 agency in the contract file. The Chief Procurement Officer
20 shall publish an annual report, subject to Section 41-4-115A,
21 that describes all determinations made under this section
22 during the prior calendar year.

23 §41-4-138A.

24 When it is determined to be in the best interests of
25 the state, as specified by rule, an invitation to bid, a
26 request for proposals, or other solicitation under this

1 article may be cancelled, and any or all bids or proposals
2 received may be rejected.

3 §41-4-139A.

4 (a) A written determination of nonresponsibility of
5 a bidder or offeror shall be made in accordance with rules
6 adopted by the Chief Procurement Officer. The unreasonable
7 failure of a bidder or offeror to promptly supply information
8 in connection with an inquiry with respect to responsibility
9 may be grounds for a determination of nonresponsibility with
10 respect to the bidder or offeror.

11 (b) Confidential information furnished by a bidder
12 or offeror under this section may not be disclosed outside of
13 the Office of the Chief Procurement Officer or the purchasing
14 agency without the prior written consent of the bidder or
15 offeror.

16 §41-4-140A.

17 Prospective suppliers may be prequalified for
18 particular types of supplies or services. The method of
19 submitting prequalification information and the information
20 required in order to be prequalified shall be determined by
21 the Chief Procurement Officer.

22 §41-4-141A.

23 The Chief Procurement Officer may request factual
24 information reasonably available to the bidder or offeror to
25 substantiate that the price or cost offered, or some portion
26 of it, is reasonable when either of the following occur:

27 (1) The price is not any of the following:

- 1 a. Based on adequate price competition.
- 2 b. Based on established catalogue or market prices.
- 3 c. Set by law or rule.

4 (2) The price or cost exceeds an amount established
5 by rule.

6 §41-4-142A. (a) For the purpose of this section, the
7 following terms shall have the respective meanings ascribed by
8 this section:

9 (1) AFFILIATE. A related party as defined in
10 subsection (b) of Section 40-23-190 as that provision exists
11 on January 1, 2004.

12 (2) STATE DEPARTMENT or AGENCY. Every state office,
13 department, division, bureau, board, or commission of the
14 State of Alabama

15 (b) A state department or agency may not contract
16 for the purchase or lease of supplies from a vendor,
17 contractor, or an affiliate of a vendor or contractor, unless
18 that vendor, contractor, and all of its affiliates that make
19 sales for delivery into Alabama or leases for use in Alabama
20 are properly registered, collecting, and remitting Alabama
21 state and local sales, use, and lease tax, as provided for by
22 Chapter 12, Article 4, and Chapter 23, Articles 1 and 2 of
23 Title 40 or by any local act or ordinance.

24 (c) Each vendor, contractor, or affiliate of a
25 vendor or contractor that is offered a contract to do business
26 with a state department or state agency shall be required to
27 certify that the vendor or affiliate is appropriately

1 registered to collect and remit sales, use, and lease tax as
2 required by this section and submit to that state department
3 or agency certification required by the Alabama Department of
4 Revenue.

5 (d) Every bid submitted and contract executed by the
6 state shall contain a certification by the bidder or
7 contractor that the bidder or contractor is not barred from
8 bidding for or entering into a contract under this section and
9 that the bidder or contractor acknowledges that the
10 contracting state agency may declare the contract void if the
11 certification completed is false.

12 (e) Each vendor or contractor that sells or leases
13 supplies to a state department or agency, and each affiliate
14 of that vendor or contractor that makes sales for delivery
15 into Alabama, shall be required to collect and remit the
16 Alabama sales, use, or lease tax on all its sales and leases
17 into the state.

18 §41-4-143A.

19 (a) Subject to the limitations of subsection (b),
20 any type of contract that will promote the best interests of
21 the state may be used under this article.

22 (b) (1) The use of a cost-plus-a-percentage-of-cost
23 contract is prohibited.

24 (2) A cost-reimbursement contract may be used only
25 when a determination is made in writing that either of the
26 following apply:

1 a. The cost-reimbursement contract is likely to be
2 less costly to the state than any other type of contract.

3 b. It is impracticable to obtain the supplies or
4 services required except under a cost-reimbursement contract.

5 §41-4-144A.

6 (a) Unless otherwise provided by law, a contract for
7 supplies or services may be entered into for any period of
8 time that is in the best interests of the state, so long as
9 the terms of the contract and the conditions of renewal or
10 extension, if any, are included in the solicitation and funds
11 are available for the first fiscal year at the time of
12 contracting. Payment and performance obligations for
13 succeeding fiscal periods shall be subject to the availability
14 and appropriation of funds.

15 (b) A multi-year contract may be used when the
16 estimated requirements cover the period of the contract and
17 are reasonably firm and continuing; and the contract will
18 serve the best interests of the state by encouraging effective
19 competition or otherwise promoting economies in state
20 procurement.

21 (c) When funds are not appropriated or otherwise
22 made available to support continuation of performance in a
23 subsequent fiscal period, the contract shall be cancelled and
24 the contractor shall be reimbursed for the reasonable value of
25 any non-recurring costs incurred but not amortized in the
26 price of the supplies or services delivered under the

1 contract. The cost of cancellation may be paid from any
2 appropriations available for that purpose.

3 §41-4-145A.

4 The Chief Procurement Officer or his or her
5 designee, at reasonable times, may inspect a part of the
6 plant, the place of business, or the logical and physical
7 electronic systems of a contractor or any subcontractor that
8 is related to the performance of any contract awarded or to be
9 awarded by the state.

10 §41-4-146A.

11 In addition to the authority of the Department of
12 Examiners of Public Accounts, as set forth under Chapter 5A of
13 Title 41, the Department of Finance, at reasonable times and
14 places, may audit or examine the books and records of any
15 person who has submitted data in substantiation of offered
16 prices under Section 41-4-141A to the extent that the books
17 and records relate to that data. Any person who receives a
18 contract, change order, or contract modification for which
19 data is required under Section 41-4-141A, shall maintain the
20 books and records that relate to the cost or pricing data for
21 three years from the date of final payment under the contract,
22 unless a shorter period is otherwise authorized in writing.

23 §41-4-147A.

24 The determinations required by subsection (f) of
25 Section 41-4-132A, subsection (a) or (g) of Section 41-4-133A,
26 Section 41-4-135A, Section 41-4-136A, Section 41-4-137A,
27 subsection (a) of Section 41-4-139A, Section 41-4-141A,

1 Section 41-4-143A, and subsection (b) of Section 41-4-144A are
2 final and conclusive unless they are clearly erroneous,
3 arbitrary, capricious, or contrary to law.

4 §41-4-148A.

5 When for any reason collusion or other
6 anti-competitive practices are suspected during the
7 procurement process, a notice of the relevant facts shall be
8 transmitted to the Attorney General and, if applicable, to the
9 Ethics Commission.

10 §41-4-149A.

11 (a) The Chief Procurement Officer shall maintain a
12 record listing all contracts made under Section 41-4-135A,
13 41-4-136A, or 41-4-137A for a minimum of one year. The record
14 shall contain all of the following:

15 (1) Each contractor's name.

16 (2) The amount and type of each contract.

17 (3) A listing of the supplies or services procured
18 under each contract.

19 (b) A copy of the record shall be available for
20 public inspection, except where disclosure would be
21 detrimental to the safety or security of persons or property
22 or to the public interest as determined by the Chief
23 Procurement Officer.

24 Division 4. Specifications.

25 §41-4-150A.

26 As used in this division, the term specification
27 means any description of the physical or functional

1 characteristics, or of the nature of a supply or service, and
2 may include a description of any requirement for inspecting,
3 testing, or preparing a supply or service for delivery.

4 §41-4-151A.

5 (a) The Chief Procurement Officer, by rule, may set
6 standards for the preparation, maintenance, and content of
7 specifications for supplies or services required by the state.

8 (b) The Chief Procurement Officer shall monitor the
9 use of specifications for supplies or services required by a
10 purchasing agency.

11 (c) The Chief Procurement Officer shall obtain
12 expert advice and assistance from personnel of using agencies
13 in the development of specifications and may delegate in
14 writing to a using agency the authority to prepare and utilize
15 its own specifications.

16 (d) All specifications shall seek to promote overall
17 economy for the purposes intended and encourage competition in
18 satisfying the state's needs and shall not be unduly
19 restrictive.

20 (e) Specifications may be prepared by persons other
21 than state employees when necessary. The Chief Procurement
22 Officer shall exercise diligence to assure that any third
23 party who prepares specifications or requirements does not
24 have a conflict of interest or an unfair competitive advantage
25 in any subsequent procurement. Vendors that participate in the
26 drafting of specifications for the state shall disclose the

1 same on its vendor disclosure statement required by Section 41-16-82.

2 Division 5. Modification and Termination of
3 Contracts for Supplies and Services.

4 §41-4-155A.

5 (a) The Chief Procurement Officer may adopt rules
6 permitting or requiring the inclusion of clauses providing for
7 adjustments in prices, time of performance, or other contract
8 provisions as appropriate covering both of the following
9 subjects:

10 (1) The unilateral right of the state to order in
11 writing both of the following:

12 a. Changes in the work within the scope of the
13 contract.

14 b. The temporary stopping of work or delaying
15 performance.

16 (2) Variations occurring between estimated
17 quantities of work in a contract and actual quantities.

18 (b) (1) Adjustments in price pursuant to clauses
19 adopted under subsection (a) shall be computed in one or more
20 of the following ways:

21 a. By agreement on a fixed-price adjustment before
22 commencement of the performance or as soon as practicable.

23 b. By unit prices specified in the contract or
24 subsequently agreed upon.

25 c. By the costs attributable to the events or
26 situations under the clauses with adjustment of profit or fee,
27 all as specified in the contract or subsequently agreed upon.

1 d. In any other manner as the contracting parties
2 may mutually agree.

3 e. In the absence of agreement by the parties, by a
4 unilateral determination by the state of the costs
5 attributable to the events or situations under the clauses
6 with adjustment of profit or fee.

7 (2) A contractor shall be required to submit cost or
8 pricing data if any adjustment in the contract price is
9 subject to Section 41-4-141A.

10 (c) The Chief Procurement Officer may adopt rules to
11 implement this division, including rules permitting or
12 requiring the inclusion in state contracts of clauses
13 providing for appropriate remedies covering all of the
14 following subjects:

15 (1) Specified excuses for delay or nonperformance.

16 (2) Termination of the contract for default.

17 (3) Termination of the contract in whole or in part
18 for the convenience of the state.

19 (d) The Chief Procurement Officer may vary the
20 clauses adopted by rule under subsection (a) and (c) for
21 inclusion in any particular state contract, so long as any
22 variation is supported by a written determination that states
23 the circumstances justifying the variation. Notice of any
24 material variation shall be stated in the invitation to bid or
25 request for proposals.

26 Division 6. Legal and Contractual Remedies.

27 Part A. Resolution of Controversies.

1 §41-4-160A

2 (a) Contracts of a governmental body listed under
3 subsection (b) of Section 41-4-121A are not subject to this
4 part as it relates to the authority of the Chief Procurement
5 Officer and Director of Finance.

6 (b) The governmental bodies listed under subsection
7 (b) of Section 41-4-121A shall establish written procedures
8 keeping with the spirit and intent of this part to do all of
9 the following:

10 (1) Resolve protested solicitations and awards.

11 (2) Establish criteria and review procedures for
12 suspension and debarment of persons or entities

13 (3) Resolve contract disputes.

14 §41-4-161A.

15 (a) (1) A bona fide prospective bidder or offeror who
16 is aggrieved in connection with the solicitation of a contract
17 may protest to the Chief Procurement Officer within 14 days of
18 the date of issuance of the solicitation or any amendment to
19 it, if the amendment is at issue.

20 (2)a. Except as provided in paragraph b., a bona
21 fide actual bidder or offeror who is aggrieved in connection
22 with the intended award or award of a contract may protest to
23 the Chief Procurement Officer within 14 days of the date of
24 the award or notification of intent to award, whichever is
25 earlier, is posted in accordance with this article.

26 b. A matter that could have been raised under
27 subdivision (1) as a protest of the solicitation may not be

1 raised as a protest of the award or intended award of a
2 contract.

3 (3) A protest filed under subdivision (1) or (2)
4 shall be in writing, be filed with the Chief Procurement
5 Officer, and set forth the grounds of the protest and the
6 relief requested with enough particularity to give notice of
7 the issues to be decided.

8 (b) The Chief Procurement Officer, or his or her
9 designee, may settle and resolve the protest of a bona fide
10 actual or prospective bidder or offeror concerning the
11 solicitation or award of a contract in accordance with rules
12 adopted under this article.

13 (c) If the protest is not resolved by mutual
14 agreement within 10 days after the protest is filed, the Chief
15 Procurement Officer shall commence an administrative review of
16 the protest and issue a decision in writing within 14 days the
17 review.

18 (d) A copy of the decision under subsection (c)
19 shall be mailed or otherwise furnished immediately to the
20 protestor and any other party intervening.

21 (e) A decision under subsection (c) shall be final
22 and conclusive, unless fraudulent, or a party adversely
23 affected by the decision appeals administratively to the
24 Director of Finance in accordance with Section 41-4-164A.

25 (f) In the event of a timely protest under
26 subsection (a) or an appeal under Section 41-4-164A, the state
27 may not proceed further with the solicitation or with the

1 award of the contract until five days after notice of the
2 final decision is provided to the protestor, except that
3 solicitation or award of a protested contract is not stayed if
4 the Chief Procurement Officer, after consultation with the
5 head of the using agency or the head of a purchasing agency,
6 makes a written determination that the solicitation or award
7 of the contract without further delay is necessary to protect
8 the best interests of the state.

9 §41-4-162A.

10 (a) After reasonable notice to the person or entity
11 involved and reasonable opportunity for that person or entity
12 to be heard, the Chief Procurement Officer, after consultation
13 with the using agency, may do either of the following:

14 (1) Terminate existing contracts and debar a person
15 or entity for cause from consideration for award of contracts.
16 The debarment may not be for a period of more than three
17 years.

18 (2) Suspend a person or entity from consideration
19 for award of contracts if there is probable cause for
20 debarment. The suspension may not be for a period exceeding
21 three months.

22 (b) The Chief Procurement Officer may suspend or
23 debar a person from consideration for award of contracts under
24 subsection (a) for any of the following:

25 (1) Conviction of a criminal offense that is in
26 connection with obtaining or attempting to obtain a public or

1 private contract or subcontract, or in the performance of the
2 contract or subcontract.

3 (2) Conviction under state or federal law of
4 embezzlement, theft, forgery, bribery, falsification or
5 destruction of records, receiving stolen property, or any
6 other offense indicating a lack of business integrity or
7 business honesty as a state contractor.

8 (3) Conviction under state or federal antitrust law
9 arising out of the submission of bids or proposals.

10 (4) Violation of a contract provision of a character
11 that is regarded by the Chief Procurement Officer to be so
12 serious as to justify debarment action, including either of
13 the following:

14 a. Deliberate failure, without good cause, to
15 perform in accordance with the specifications or within the
16 time limit provided in the contract.

17 b. A recent record of failure to perform or of
18 unsatisfactory performance in accordance with the terms of one
19 or more contracts that was not caused by acts beyond the
20 control of the contractor.

21 (5) Violation of the ethical standards set forth in
22 Chapter 25 (commencing with Section 36-25-1) of Title 36.

23 (6) Violation of an order of the Chief Procurement
24 Officer.

25 (7) Any other cause the Chief Procurement Officer
26 determines to be serious and egregious misconduct.

1 (c) Any decision by the Chief Procurement Officer to
2 debar or suspend a person shall be in writing. The writing
3 shall state the reasons for the action taken.

4 (d) (1) A copy of the decision made under subsection
5 (c) shall be mailed or otherwise furnished immediately to all
6 of the following:

7 a. The debarred or suspended person.

8 b. Any other party intervening.

9 c. All state procurement officials governed by this
10 article with contracting authority who shall decide whether
11 the suspension or debarment warrants termination of existing
12 contracts with the suspended or debarred person or entity.

13 (2) Contracts may not be awarded to the suspended or
14 debarred person during the suspension or debarment period
15 established by the Chief Procurement Officer.

16 (e) A decision under subsection (c) shall be final
17 and conclusive, unless fraudulent, or the debarred or
18 suspended person appeals administratively to the Director of
19 Finance in accordance with Section 41-4-163A.

20 (f) The Chief Procurement Officer shall maintain a
21 list of suspended or debarred persons or entities and make it
22 reasonably available for inspection.

23 §41-4-163A.

24 The Chief Procurement Officer, by rule, shall
25 establish procedures to resolve disputes between the state and
26 a contractor that arise under, or by virtue of, a contract
27 between them, including disputes based upon breach of

1 contract, mistake, misrepresentation, or other cause for
2 contract modification or rescission.

3 §41-4-164A.

4 (a) A party that receives an adverse decision from
5 the Chief Procurement Officer under subsection (c) of Section
6 41-4-161A or subsection (c) of Section 41-4-162A may appeal
7 the decision to the Director of Finance.

8 (b) An appeal to the Director of Finance shall be
9 made in writing within five days of receipt of the adverse
10 decision from the Chief Procurement Officer.

11 (c) The Director of Finance shall hold unlawful and
12 set aside any decision issued by the Chief Procurement Officer
13 that the director finds to be arbitrary, capricious, an abuse
14 of discretion, or otherwise not in accordance with law.

15 (d) The Director of Finance shall issue a written
16 decision within 14 days of receipt of the appeal.

17 (e) A copy of the decision under subsection (d)
18 shall be mailed or otherwise furnished immediately to the
19 parties.

20 (f) A decision under subsection (d) shall be final
21 and conclusive unless fraudulent.

22 Part B. Solicitations or Awards in Violation of Law.

23 §41-4-165A.

24 This part applies when a determination is made that
25 a solicitation or award of a contract is in violation of law.

26 §41-4-166A.

1 If, prior to an award, a solicitation or proposed
2 award of a contract is determined to be in violation of law,
3 the solicitation or proposed award shall be cancelled or
4 revised to comply with the law.

5 §41-4-167A.

6 If, after an award, a solicitation or award of a
7 contract is determined to be in violation of law, then:

8 (1) If the person awarded the contract has not acted
9 fraudulently or in bad faith, the contract may be ratified and
10 affirmed by the Chief Procurement Officer, so long as doing so
11 is in the best interests of the state, or the contract may be
12 terminated by the Chief Procurement Officer and the person
13 awarded the contract shall be compensated for the supplies
14 provided or services rendered under the contract prior to
15 termination.

16 (2) If the person awarded the contract has acted
17 fraudulently or in bad faith, the contract may be declared
18 void by the Chief Procurement Officer or the contract may be
19 ratified and affirmed by the Chief Procurement Officer, so
20 long as the action is in the best interests of the state. A
21 contract ratified and affirmed under this subdivision does not
22 prejudice the state's right to any available damages.

23 §41-4-168A.

24 A bona fide unsuccessful bidder or offeror on a
25 particular contract who has exhausted the administrative
26 remedies contained in this division and any taxpayer of the
27 area within the jurisdiction of the awarding authority may

1 bring a civil action in the Circuit Court of Montgomery County
2 to enjoin execution of any contract entered into in violation
3 of this article.

4 Division 7. Intergovernmental Relations.

5 §41-4-170A.

6 As used in this division, the following terms shall
7 have the following meanings:

8 (1) COOPERATIVE PURCHASING. Procurement conducted
9 by, or on behalf of, one or more public procurement units.

10 (2) EXTERNAL PROCUREMENT ACTIVITY. A buying
11 organization not located in this state which, if located in
12 this state, would qualify as a public procurement unit. The
13 term includes agencies of the United States and of any other
14 state.

15 (3) LOCAL PUBLIC PROCUREMENT UNIT. A county,
16 municipality or other political subdivision of the state or
17 agency of any the political subdivision; public authority;
18 educational, health, or other institution; to the extent
19 provided by law, any entity that expends public funds for the
20 procurement of supplies or services and is governed by this
21 article; and any nonprofit corporation operating a charitable
22 hospital.

23 (4) PUBLIC PROCUREMENT UNIT. Any one of the
24 following:

- 25 a. A local public procurement unit.
- 26 b. An external procurement activity.
- 27 c. A state public procurement unit.

1 d. Any not-for-profit entity comprised of more than
2 one unit or activity listed in paragraph a., b., or c.

3 (e) STATE PUBLIC PROCUREMENT UNIT. The Office of the
4 Chief Procurement Officer or the equivalent officer of any
5 other state and any purchasing agency of this state or any
6 other state.

7 §41-4-171A.

8 (a) A public procurement unit that is governed by
9 this article may either participate in, sponsor, conduct, or
10 administer a cooperative purchasing agreement for the
11 procurement of any supplies or services with one or more
12 public procurement units in accordance with an agreement
13 entered into between the participants. The cooperative
14 purchasing may include joint or multi-party contracts between
15 public procurement units and open-ended public procurement
16 unit contracts that are made available to other public
17 procurement units.

18 (b) All cooperative purchasing conducted under this
19 division shall be through contracts awarded using source
20 selection methods substantially equivalent to those specified
21 in Article 3.

22 §41-4-172A.

23 A public procurement unit may sell to, acquire from,
24 or use any supplies belonging to another public procurement
25 unit without regard to the requirements of Division 3.

26 §41-4-173A.

1 A public procurement unit may enter into an
2 agreement, without regard to the requirements of Division 3,
3 with any other public procurement unit for the cooperative
4 purchase or use of supplies or services under the terms agreed
5 upon between the parties.

6 §41-4-174A.

7 (a) When a public procurement unit administering a
8 cooperative purchase complies with the requirements of this
9 article, a public procurement unit participating in the
10 purchase shall be deemed to have complied with this article.

11 (b) Public procurement units may not enter into a
12 cooperative purchasing agreement for the purpose of
13 circumventing this article.

14 §41-4-175A.

15 To the extent possible, the chief procurement
16 officer of any public procurement unit may collect information
17 concerning the type, cost, quality, and quantity of commonly
18 used supplies or services being procured or used by public
19 procurement units and make the collected information available
20 to any other public procurement unit upon request.

21 §41-4-176A.

22 Under a cooperative purchasing agreement,
23 controversies arising between an administering public
24 procurement unit and its bidders, offerors, or contractors
25 shall be resolved between the ordering public procurement unit
26 and the supplying bidders, offerors, or contractors in
27 accordance with Division 6.

1 Division 8. Assistance to Small and Disadvantaged
2 Businesses; Federal Assistance or Contract Procurement
3 Requirements.

4 §41-4-177A.

5 (a) It is the policy of the state that the Chief
6 Procurement Officer shall provide reasonable procurement
7 assistance to small and disadvantaged businesses in this
8 state.

9 (b) The Chief Procurement Officer shall identify
10 programs designed to assist small and disadvantaged businesses
11 in procurement activities governed by this article, which may
12 include staff assistance, special publications, source lists,
13 solicitation mailing lists, and training programs.

14 (c) The Chief Procurement Officer may reduce the
15 level or change the types of bonding normally required, or
16 accept alternative forms of security to the extent necessary,
17 to encourage procurement from small and disadvantaged
18 businesses.

19 (d) The Chief Procurement Officer may make special
20 provisions for progress payments as he or she determines to be
21 reasonably necessary to encourage procurement from small and
22 disadvantaged businesses.

23 §41-4-178A.

24 When a procurement involves the expenditure of
25 federal assistance or contract funds, the Chief Procurement
26 Officer shall comply with any applicable federal law and
27 regulations.

1 Section 3. Section 41-4-66, Code of Alabama 1975, is
2 amended to read as follows:

3 "§41-4-66.

4 "~~The Division of Control and Accounts with the~~
5 ~~State Department of Finance~~ Chief Procurement Officer shall
6 establish and maintain and post on the state's website a
7 statewide database of each request for a proposal for a public
8 contract by the State of Alabama, any agency, board,
9 commission, or department of the state which receives state or
10 federally appropriated funds, the State Board of Education, a
11 public college or trade school, or a public university.

12 "(b) ~~The Division of Control and Accounts~~ Chief
13 Procurement Officer shall establish procedures and adopt rules
14 to implement this section.

15 "(c) Each agency, board, commission, department,
16 State Board of Education, public college or trade school and
17 public university shall cooperate with and provide information
18 to the ~~Division of Control and Accounts~~ Chief Procurement
19 Officer as necessary to implement and administer the section.

20 "(d) Beginning ~~on October 1, 2013~~ October 1, 2021,
21 the ~~Division of Control and Accounts~~ Chief Procurement Officer
22 may charge any agency, board, commission, or department of the
23 state which receives state or federally appropriated funds for
24 this and any other services provided to them by this division.

25 "(e) The database shall be a public record and may
26 be viewed by any citizen, either in person or via the state's
27 website.

1 "(f) Each request for a proposal shall remain
2 available on the website until the last posting date required
3 by law has expired.

4 "(g) There shall not be a charge for access to the
5 database."

6 Section 4. This act shall become effective October
7 1, 2021, following its passage and approval by the Governor,
8 or its otherwise becoming law.