

1 HB423
2 210438-1
3 By Representative Treadaway
4 RFD: State Government
5 First Read: 23-FEB-21

8 SYNOPSIS: Under existing law, public awarding
9 authorities may award multiple purchase contracts
10 resulting from a single invitation-to-bid where the
11 specifications of the items of personal property or
12 services intended to be purchased by the
13 requisitioning agency are determined, in whole or
14 in part, by technical compatibility and operational
15 requirements. Also under existing law, push-to-talk
16 services may not be awarded in this manner, and
17 must be purchased through a separate competitive
18 bid process.

19 This bill would allow push-to-talk services
20 to be awarded through multiple purchase contracts
21 resulting from a single invitation-to-bid.

22 Under existing law, purchases of goods or
23 services made as part of a governmental cooperative
24 purchasing program and purchases of goods or
25 services from vendors that have been awarded a
26 current Government Services Administration
27 contract, excluding voice or data wireless

1 communications services, are exempt from the state
2 competitive bidding requirements.

3 This bill would delete the exclusion of
4 voice or data wireless communications services from
5 the exemption.

6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to public contracts; to amend Sections
12 41-16-27 and 41-16-51, Code of Alabama 1975, to further
13 provide for the award of push-to-talk contracts by public
14 entities.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 41-16-27 and 41-16-51, Code of
17 Alabama 1975, are amended to read as follows:

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

11 " (b) ~~(1)~~ The awarding authority may award multiple
12 purchase contracts resulting from a single invitation-to-bid
13 where the specifications of the items of personal property or
14 services intended to be purchased by a requisitioning agency
15 or agencies are determined, in whole or in part, by technical
16 compatibility and operational requirements. In order to make
17 multiple awards under this provision, the awarding authority
18 must include in the invitation-to-bid a notice that multiple
19 awards may be made and the specific technical compatibility or
20 operational requirements necessitating multiple awards.
21 Multiple awards of purchase contracts with unique technical
22 compatibility or operational specifications shall be made to
23 the lowest responsible bidder complying with the unique
24 technical compatibility or operational specifications. The
25 requisitioning agency shall provide the awarding authority
26 with the information necessary for it to determine the

1 necessity for the award of multiple purchase contracts under
2 this provision.

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

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

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

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

1 less than 10 years may be extended for a period not to exceed
2 10 years from the initial awarding of the contract provided
3 that the terms of the contract shall not be altered or
4 renegotiated during the period for which the contract is
5 extended.

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

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

1 Permanent Joint Legislative Committee on Energy Policy may
2 adopt rules providing industry recognized and accepted
3 sources, pursuant to the Alabama Administrative Procedure Act.

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

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

1 The committee shall also hear any valid appeals against the
2 recommendation of the Alabama Medicaid Agency from the low bid
3 contractor(s) whose bid was not selected.

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

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

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

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

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

12 "§41-16-51.

13 "(a) Competitive bids for entities subject to this
14 article shall not be required for utility services, the rates
15 for which are fixed by law, regulation, or ordinance, and the
16 competitive bidding requirements of this article shall not
17 apply to:

18 "(1) The purchase of insurance.

19 "(2) The purchase of ballots and supplies for
20 conducting any primary, general, special, or municipal
21 election.

22 "(3) Contracts for securing services of attorneys,
23 physicians, architects, teachers, superintendents of
24 construction, artists, appraisers, engineers, consultants,
25 certified public accountants, public accountants, or other
26 individuals possessing a high degree of professional skill
27 where the personality of the individual plays a decisive part.

1 "(4) Contracts of employment in the regular civil
2 service.

3 "(5) Contracts for fiscal or financial advice or
4 services.

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

9 "(7) Purchases of maps or photographs from any
10 federal agency.

11 "(8) Purchases of manuscripts, books, maps,
12 pamphlets, periodicals, and library/research electronic data
13 bases of manuscripts, books, maps, pamphlets, or periodicals.

14 "(9) The selection of paying agents and trustees for
15 any security issued by a public body.

16 "(10) Existing contracts up for renewal for
17 sanitation or solid waste collection, recycling, and disposal
18 between municipalities or counties, or both, and those
19 providing the service.

20 "(11) Purchases of computer and word processing
21 hardware when the hardware is the only type that is compatible
22 with hardware already owned by the entity taking bids and
23 custom software.

24 "(12) Professional services contracts for
25 codification and publication of the laws and ordinances of
26 municipalities and counties.

1 "(13) Contractual services and purchases of
2 commodities for which there is only one vendor or supplier and
3 contractual services and purchases of personal property which
4 by their very nature are impossible to award by competitive
5 bidding.

6 "(14) Purchases of dirt, sand, or gravel by a county
7 governing body from in-county property owners in order to
8 supply a county road or bridge project in which the materials
9 will be used. The material shall be delivered to the project
10 site by county employees and equipment used only on projects
11 conducted exclusively by county employees.

12 "(15) Contractual services and purchases of products
13 related to, or having an impact upon, security plans,
14 procedures, assessments, measures, or systems, or the security
15 or safety of persons, structures, facilities, or
16 infrastructures.

17 "(16) Subject to the limitations in this
18 subdivision, purchases of goods or services, ~~other than voice~~
19 ~~or data wireless communication services,~~ made as a part of the
20 purchasing cooperative sponsored by the National Association
21 of Counties, its successor organization, or any other national
22 or regional governmental cooperative purchasing program. Such
23 purchases may only be made if all of the following occur:

24 "a. The goods or services being purchased are
25 available as a result of a competitive bid process conducted
26 by a governmental entity and approved by the Alabama
27 Department of Examiners of Public Accounts for each bid.

1 "b. The goods or services are either not at the time
2 available to counties on the state purchasing program or are
3 available at a price equal to or less than that on the state
4 purchasing program.

5 "c. The purchase is made through a participating
6 Alabama vendor holding an Alabama business license if such a
7 vendor exists.

8 "d. The entity purchasing goods or services under
9 this subdivision has been notified by the Department of
10 Examiners of Public Accounts that the competitive bid process
11 utilized by the cooperative program offering the goods
12 complies with this subdivision.

13 "(17) Purchase of goods or services, ~~other than~~
14 ~~wireless communication services, whether voice or data,~~ from
15 vendors that have been awarded a current and valid Government
16 Services Administration contract. Any purchase made pursuant
17 to this subdivision shall be under the same terms and
18 conditions as provided in the Government Services
19 Administration contract. Prices paid for such goods and
20 ~~services, other than wireless communication services, whether~~
21 ~~voice or data,~~ may not exceed the amount provided in the
22 Government Services Administration contract.

23 "(b) This article shall not apply to:

24 "(1) Any purchases of products where the price of
25 the products is already regulated and established by state
26 law.

1 "(2) Purchases made by individual schools of the
2 county or municipal public school systems from moneys other
3 than those raised by taxation or received through
4 appropriations from state or county sources.

5 "(3) The purchase, lease, sale, construction,
6 installation, acquisition, improvement, enlargement, or
7 expansion of any building or structure or other facility
8 designed or intended for lease or sale by a medical clinic
9 board organized under Sections 11-58-1 to 11-58-14, inclusive.

10 "(4) The purchase, lease, or other acquisition of
11 machinery, equipment, supplies, and other personal property or
12 services by a medical clinic board organized under Sections
13 11-58-1 to 11-58-14, inclusive.

14 "(5) Purchases for public hospitals and nursing
15 homes operated by the governing boards of instrumentalities of
16 the state, counties, and municipalities.

17 "(6) Contracts for the purchase, lease, sale,
18 construction, installation, acquisition, improvement,
19 enlargement, or extension of any plant, building, structure,
20 or other facility or any machinery, equipment, furniture, or
21 furnishings therefor designed or intended for lease or sale
22 for industrial development, other than public utilities, under
23 Sections 11-54-80 to 11-54-99, inclusive, or Sections 11-54-20
24 to 11-54-28, inclusive, or any other statute or amendment to
25 the Constitution of Alabama authorizing the construction of
26 plants or other facilities for industrial development or for
27 the construction and equipment of buildings for public

1 building authorities under Sections 11-56-1 to 11-56-22,
2 inclusive.

3 "(7) The purchase of equipment, supplies, or
4 materials needed, used, and consumed in the normal and routine
5 operation of any waterworks system, sanitary sewer system, gas
6 system, or electric system, or any two or more thereof, that
7 are owned by municipalities, counties, or public corporations,
8 boards, or authorities that are agencies, departments, or
9 instrumentalities of municipalities or counties and no part of
10 the operating expenses of which system or systems have, during
11 the then current fiscal year, been paid from revenues derived
12 from taxes or from appropriations of the state, a county, or a
13 municipality.

14 "(8) Purchases made by local housing authorities,
15 organized and existing under Chapter 1 of Title 24, from
16 moneys other than those raised by state, county, or city
17 taxation or received through appropriations from state,
18 county, or city sources.

19 "(c) The state trade schools, state junior colleges,
20 state colleges, and universities under the supervision and
21 control of the State Board of Education, the district boards
22 of education of independent school districts, the county
23 commissions, and the governing bodies of the municipalities of
24 the state shall establish and maintain such purchasing
25 facilities and procedures as may be necessary to carry out the
26 intent and purpose of this article by complying with the
27 requirements for competitive bidding in the operation and

1 management of each state trade school, state junior college,
2 state college, or university under the supervision and control
3 of the State Board of Education, the district boards of
4 education of independent school districts, the county
5 commissions, and the governing bodies of the municipalities of
6 the state and the governing boards of instrumentalities of
7 counties and municipalities, including waterworks boards,
8 sewer boards, gas boards, and other like utility boards and
9 commissions.

10 "(d) Contracts entered into in violation of this
11 article shall be void and anyone who violates the provisions
12 of this article shall be guilty of a Class C felony."

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