

1 SB174
2 216802-1
3 By Senator Orr
4 RFD: Governmental Affairs
5 First Read: 02-FEB-22

SYNOPSIS: Act 2021-296, effective October 1, 2022, created the Office of the Chief Procurement Officer and provided for the powers and duties of that office.

This bill would amend portions of that act to further provide for certain periodic reporting requirements to the Chief Procurement Officer.

Under the act, certain entities are exempt from the competitive bid requirements of the act, including health care services provided by the Alabama Department of Public Health, purchases of alcoholic beverages by the Alcoholic Beverage Control Board, and contracts for the repair of equipment used in the construction and maintenance of highways by the Alabama Department of Transportation.

This bill would exempt purchases by the Alabama Department of Rehabilitation Services of supplies and services for the department's consumers.

1 Under the act, the Chief Procurement Officer
2 may award multiple purchase contracts resulting
3 from a single invitation to bid where the
4 specifications of the items of supplies or services
5 are determined by technical compatibility and
6 operational requirements. However, this provision
7 does not apply to contracts for push-to-talk
8 services.

9 This bill would delete the exclusion of
10 push-to-talk services from the authority of the
11 Chief Procurement Officer to award multiple
12 purchase contracts.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 Relating to the Office of the Chief Procurement
19 Officer; to amend Section 1 of Act 2021-296, 2021 Regular
20 Session, now appearing as Sections 41-4-122, 41-4-126,
21 41-4-132, 41-4-133, and 41-4-171, Code of Alabama 1975, to
22 further provide for certain periodic reporting requirements;
23 to provide exemptions; and to authorize the Chief Procurement
24 Officer to award multiple purchase contracts for push-to-talk
25 services under certain conditions.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 1 of Act 2021-296, 2021 Regular
2 Session, now appearing as Sections 41-4-122, 41-4-126,
3 41-4-132, 41-4-133, and 41-4-171, Code of Alabama 1975, are
4 amended to read as follows:

5 "§41-4-122.

6 "(a) The Chief Procurement Officer shall serve as
7 the central procurement officer of the state.

8 "(b) Consistent with this article, the Chief
9 Procurement Officer shall adopt operational procedures
10 governing the internal functions of the Office of the Chief
11 Procurement Officer.

12 "(c) Except as otherwise specifically provided in
13 this article, the Chief Procurement Officer, in accordance
14 with rules adopted under this article, shall do all of the
15 following:

16 "(1) Except for alcoholic beverages, which shall be
17 purchased by the Alcoholic Beverage Control Board, procure or
18 supervise the procurement of all supplies and services needed
19 by the state.

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

24 "(3) Require, upon request of the Chief Procurement
25 Officer, the periodic reporting of all procurement by or for
26 counties, the purchase, contract, or lease price of which is
27 one hundred dollars (\$100) or more, and require information in

1 connection therewith; to prescribe forms and fix the time for
2 submitting such reports; and, when requested by any county,
3 municipal corporation, other local public body, including any
4 board of education, to make such purchase contract, or lease
5 for it. It shall be the duty of every county to make the
6 report on forms furnished by the Office of the Chief
7 Procurement Officer, whenever requested to do so, but not more
8 than once every 30 days.

9 "(4) Perform other functions and duties of the
10 Department of Finance as may from time to time be assigned by
11 the Director of Finance.

12 "(d) The Chief Procurement Officer may establish and
13 maintain a system for the purchase of supplies and services by
14 governmental bodies that conduct their procurement activities
15 through the Office of the Chief Procurement Officer, through
16 the utilization of approved credit cards. County and municipal
17 governments and instrumentalities or public corporations
18 thereof may participate in the state fleet fuel card program
19 subject to the terms and conditions of the program related to
20 the utilization of the fleet fuel card; provided, however,
21 that county and municipal governments and instrumentalities or
22 public corporations thereof shall not otherwise be subject to
23 this subsection. The Chief Procurement Officer shall establish
24 by rule a process for the competitive solicitation of credit
25 card providers. The state Comptroller and the Chief
26 Procurement Officer shall adopt fiscal procedures governing
27 the payment of charges incurred by credit card users and the

1 utilization of credit cards. The use of approved credit cards
2 shall be established by the state Comptroller and the Chief
3 Procurement Officer, with the approval of the Director of
4 Finance, and be published through the Alabama fiscal
5 procedures, in which each purchase made using approved credit
6 cards is required to have prior approval by the department
7 head or his or her designee and a record of each purchase and
8 approval is to be maintained. The Chief Procurement Officer
9 may select the provider or providers offering the highest fees
10 to the division for the use of its credit card or credit
11 cards. Fees received by the division for the use of credit
12 cards shall be placed in a special fund entitled the State
13 Procurement Fund in the State Treasury for the use of the
14 division and the funds shall be appropriated, budgeted, and
15 allotted in accordance with Sections 41-4-80 to 41-4-96,
16 inclusive, and 41-19-1 to 41-19-12, inclusive, and only in
17 amounts stipulated in general appropriations bills and other
18 appropriation bills. Approved credit cards may be issued to
19 requisitioning agencies upon the recommendation of the Chief
20 Procurement Officer and the approval of the Director of
21 Finance. Approved credit cards shall be assigned to the
22 department and limited in number. Approved credit cards may be
23 utilized to purchase items of supplies and services, and may
24 not exceed the limitations set forth by rule. The director of
25 the governmental body utilizing credit cards is responsible
26 for the proper use of credit cards assigned to his or her
27 agency, in accordance with rules established by Alabama fiscal

1 procedures. The Chief Procurement Officer may collect any
2 credit card from any governmental body at any time due to
3 improper use. The Chief Procurement Officer shall submit an
4 annual report and accounting regarding the use of credit cards
5 by each governmental body to the Director of Finance and the
6 Governor.

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

20 "(f) The Chief Procurement Officer shall adopt rules
21 consistent with this article to govern the procurement of
22 supplies and services procured by the state.

23 "§41-4-126.

24 "(a) Unless otherwise ordered by rule, with approval
25 of the Governor, the following supplies and services need not
26 be procured through the Office of the Chief Procurement

1 Officer and are exempt from the competitive requirements of
2 this article:

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

4 "(2) Published books in any format such as digital,
5 audio, or hardcopy; maps; periodicals; and technical
6 pamphlets.

7 "(3) Utility services where no competition exists or
8 where rates are fixed by law.

9 "(4) Purchases of alcoholic beverages by the
10 Alcoholic Beverage Control Board.

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

15 "(6) Photographs purchased from a federal agency.

16 "(7) Barter transactions by the Department of
17 Corrections.

18 "(8) The purchase of insurance and supplies or
19 services related to the purchase of insurance.

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

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

1 Bridge and Tunnel Authority. To the extent any provision
2 contained in this article conflicts with Section 23-1-40 or
3 Sections 23-2-140 through 23-2-175, the latter governs.

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

9 "(e) Nothing in this article repeals or limits any
10 provision of Section 14-7-8, relating to the procurement
11 authority of Alabama Correctional Industries. To the extent
12 any provision contained in this article conflicts with Section
13 14-7-8, the latter governs.

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

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

21 "(h) Nothing in this article applies to the
22 administration of health benefit plans by a governmental body
23 and supplies or services related thereto.

24 "(i) Except for capital equipment, this article does
25 not apply to the purchase by a public hospital of medical
26 products, medical supplies, medical devices, services,
27 implants, pharmaceuticals, fluids, gases, or any other medical

1 products which are used in the course of treating patients, or
2 to support the treatment of patients.

3 "(j) (1) Except as provided in subdivision (2), the
4 purchase of supplies or services negotiated on behalf of
5 two-year and four-year colleges and universities may be
6 awarded without competitive bidding, provided that no state
7 revenues, appropriations, or other state funds are expended or
8 committed and when it is determined by the respective board
9 that financial benefits will accrue to the institution.

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

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

24 "(k) This article does not apply to purchases and
25 contracts for the repair of equipment used in the construction
26 and maintenance of highways by the Department of
27 Transportation.

1 "(l) This article does not apply to public works
2 projects governed by Title 39.

3 "(m) This article does not apply to the purchase by
4 the Department of Transportation of road building materials
5 for transportation infrastructure in the state. Road building
6 materials may be purchased from private land owners or
7 commercial providers from the nearest or most cost-effective
8 source available for the particular application. Road building
9 materials include dirt, gravel, stone, slag, or borrow
10 materials, in natural state or processed by crushing, grading,
11 or screening processes.

12 "(n) This article does not apply to purchases of
13 supplies and services for the maintenance and operation of
14 highway infrastructure and right-of-way by the Department of
15 Transportation.

16 "(o) Nothing in this article is intended to repeal
17 or limit any provision of Article 2, Chapter 1, Title 23,
18 relating to the powers and authority of the Department of
19 Transportation. To the extent any provision contained in this
20 article conflicts with Article 2, Chapter 1, Title 23, the
21 latter governs.

22 "(p) Governmental bodies may purchase supplies from
23 any vendor that offers the item at a price at least ten
24 percent below the price established on a statewide contract by
25 the Office of the Chief Procurement Officer for the same item,
26 provided that each purchase, whether for a single item or
27 multiple items, does not exceed an amount established by rules

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

17 "(q) Nothing in this article is intended to repeal
18 or limit any provision of Chapter 61E of Title 16, relating to
19 the powers and authority of the Department of Education to
20 enter into joint purchasing agreements on behalf of
21 educational institutions. To the extent any provision
22 contained in this article conflicts with Chapter 61E of Title
23 16, the latter governs.

24 "(r) Nothing in this article shall be construed as
25 repealing Section 9-2-106 or Section 9-2-107.

26 "(s) This article does not apply to purchases by the
27 Alabama Department of Rehabilitation Services of supplies and

1 services for the Alabama Department of Rehabilitation Services
2 consumers.

3 "§41-4-132.

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

6 "(b) An invitation to bid shall be issued and shall
7 include a purchase description and all contractual terms and
8 conditions applicable to the procurement.

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

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

19 "(e) Bids shall be unconditionally accepted without
20 alteration or correction, except as authorized in this
21 article. Bids shall be evaluated based on the requirements set
22 forth in the invitation to bid, which may include criteria to
23 determine acceptability, such as inspection, testing, quality,
24 workmanship, delivery, and suitability for a particular
25 purpose. Any criteria that will affect the bid price and will
26 be considered in evaluation for award shall be objectively
27 measurable, such as discounts, transportation costs, and total

1 or life cycle costs. The invitation to bid shall set forth the
2 evaluation criteria to be used. No criteria may be used in bid
3 evaluations that are not set forth in the invitation to bid.

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

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

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

1 "(2) The Chief Procurement Officer may award
2 multiple purchase contracts resulting from a single invitation
3 to bid where the specifications of the items of supplies or
4 services intended to be purchased by a requisitioning agency
5 or agencies are determined, in whole or in part, by technical
6 compatibility and operational requirements. In order to make
7 multiple awards under this subdivision, the awarding authority
8 shall include in the invitation to bid a notice that multiple
9 awards may be made and the specific technical compatibility or
10 operational requirements necessitating multiple awards.
11 Multiple awards of purchase contracts with unique technical
12 compatibility or operational specifications shall be made to
13 the lowest responsible bidder complying with the unique
14 technical compatibility or operational specifications. The
15 requisitioning agency shall provide the awarding authority
16 with the information necessary for it to determine the
17 necessity for the award of multiple purchase contracts under
18 this subdivision. ~~This subdivision does not apply to contracts
19 for the purchase or use of push-to-talk services, which shall
20 be purchased through a separate competitive bid process.~~

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

1 "(i) (1) Before soliciting bids, the Chief
2 Procurement Officer may authorize issuance of a request for
3 qualifications from prospective bidders. The request shall
4 contain, at a minimum, a description of the scope of work to
5 be solicited by the invitation for bids, the deadline for
6 submission of information, and how prospective bidders may
7 apply for consideration. The request shall require information
8 concerning the prospective bidders' product specifications,
9 qualifications, experience, and ability to perform the
10 requirements of the contract. Adequate public notice of the
11 request for qualifications shall be given in the manner
12 provided in subsection (c).

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

18 "§41-4-133.

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

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

5 "(b) Proposals shall be solicited through a request
6 for proposals.

7 "(c) Adequate public notice of the request for
8 proposals shall be given in the same manner as provided in
9 subsection (c) of Section 41-4-132.

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

15 "(e) A request for proposals shall state the
16 relative importance of price and other factors and subfactors,
17 if any.

18 "(f) Discussions may be conducted with responsible
19 offerors who submit proposals determined by the Chief
20 Procurement Officer or purchasing agency to be reasonably
21 competitive for award to assure full understanding of, and
22 responsiveness to, the solicitation requirements. The
23 determination of the Chief Procurement Officer or purchasing
24 agency is not subject to review. Offerors shall be accorded
25 fair and equal treatment with respect to any opportunity for
26 discussion and revision of proposals. Revisions of proposals
27 may be permitted after submissions and prior to award for the

1 purpose of obtaining best and final offers. In conducting
2 discussions, there may not be disclosure of any information
3 derived from proposals submitted by competing offerors.

4 "(g) Contracts shall be awarded to the responsible
5 offeror whose proposal conforms to the solicitation and is
6 determined in writing to be the most advantageous to the
7 state, taking into consideration price and the evaluation
8 factors set forth in the request for proposals. No other
9 factors or criteria shall be used in the evaluation. Public
10 notice of the award of a contract shall be promptly given.

11 "(h) The Chief Procurement Officer may provide
12 debriefings that furnish the basis for the source selection
13 decision and contract award.

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

26 "(2) After receipt of the responses to the request
27 for qualifications from prospective offerors, all qualified

1 offerors, as determined by the Chief Procurement Officer,
2 shall have an opportunity to submit proposals. The
3 determination regarding which offerors are qualified is not
4 subject to review.

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

10 "§41-4-171.

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

22 "(b) All cooperative purchasing conducted under this
23 division shall be through contracts awarded using source
24 selection methods substantially equivalent to those specified
25 in Division 3."

1 Section 2. This act shall become effective October
2 1, 2022, following its passage and approval by the Governor,
3 or its otherwise becoming law.