

SB100 ENROLLED



1 U95RXG-2
2 By Senator Orr
3 RFD: Finance and Taxation Education
4 First Read: 21-Mar-23
5 2023 Regular Session



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1 Enrolled, An Act,

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4 Relating to state government; to amend Sections
5 41-4-114, 41-4-120, 41-4-122 as last amended by Act 2022-357
6 of the 2022 Regular Session, 41-4-124, 41-4-125, Section
7 41-4-126 as last amended by Act 2022-357 of the 2022 Regular
8 Session, 41-4-139, 41-4-172, 29-2-41.1 Code of Alabama 1975,
9 to further provide exemptions to the state procurement code;
10 to further provide for the authority to make emergency
11 procurements and the review of those procurements by the
12 Contract Review Legislative Oversight Committee; to provide
13 for the procurement of certain health professionals who
14 provide services to the Medicaid Agency under certain
15 conditions; to further provide for the definition of
16 professional services to include the management and
17 administration of occupational licensing boards; to provide
18 for the procurement of supplies, services, and professional
19 services by district attorneys or sheriffs; to provide for the
20 change of the name of the Office of the Chief Procurement
21 Officer to the Division of Procurement; and to add Section
22 41-4-125.01 to the Code of Alabama 1975, to provide for the
23 procurement of physicians retained to provide medical services
24 to the State of Alabama.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Sections 41-4-114, 41-4-120, 41-4-122 as
27 last amended by Act 2022-357 of the 2022 Regular Session,
28 41-4-124, 41-4-125, Section 41-4-126 as last amended by Act



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29 2022-357 of the 2022 Regular Session, 41-4-139, 41-4-172,
30 29-2-41.1, Code of Alabama 1975, are amended to read as
31 follows:

32 "§41-4-114

33 (a) For purposes of this article, the following words
34 ~~shall~~ have the following meanings:

35 (1) BUSINESS. Any corporation, partnership, individual,
36 sole proprietorship, joint stock company, joint venture, or
37 other private legal entity.

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

41 (3) CHANGE ORDER. A written order signed by the
42 procurement officer directing the contractor to make changes
43 which the changes clause of the contract authorizes the
44 procurement officer to order without the consent of the
45 contractor.

46 (4) CHIEF PROCUREMENT OFFICER. The ~~person~~ individual
47 holding the position created in Section 41-4-120, as the head
48 of the ~~Office of the Chief Procurement Officer~~ Division of
49 Procurement.

50 (5) CONTINGENCY FEE CONTRACT. An agreement, express or
51 implied, for litigation legal services of an attorney or
52 attorneys, including any associated counsel, under which
53 compensation is contingent in whole or in part upon the
54 successful accomplishment or disposition of the subject matter
55 of the agreement. The payment may be in an amount which either
56 is fixed or is to be determined under a formula.



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57 (6) CONTINGENCY FEE COUNSEL. An attorney or attorneys
58 performing services under a contingency fee contract.

59 (7) CONTRACT. All types of state agreements, regardless
60 of what they may be called, for the procurement of supplies or
61 services.

62 (8) CONTRACT MODIFICATION. Any written alteration in
63 specifications, delivery point, rate of delivery, period of
64 performance, price, quantity, or other provisions of any
65 contract accomplished by mutual action of the parties to the
66 contract.

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

71 (10) CONTRACTOR. Any person having a contract with a
72 governmental body.

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

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

77 (13) ELECTRONIC. Electrical, digital, magnetic,
78 optical, electromagnetic, or other similar technology.

79 (14) GOVERNMENTAL BODY. Except as otherwise provided in
80 this article, an agency, department, board, bureau,
81 commission, committee, institution, corporation, authority, or
82 office of this state. The term does not include the
83 legislative or judicial departments of the state or a
84 legislative or judicial agency, the Alabama State Port



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85 Authority, municipalities, or the county commission and
86 governing boards of instrumentalities of counties including
87 waterworks boards, sewer boards, gas boards, and other like
88 utility boards and commissions.

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

94 (16) JUDICIAL AGENCY. Any department, appellate court,
95 trial court, board, body, bureau, commission, committee,
96 institution, corporation, authority, or office created,
97 established, and operating as an agency of the judicial
98 department of this state. The term includes, but is not
99 limited to, the Administrative Office of Courts, the State Law
100 Library, the Court of the Judiciary, and the Sentencing
101 Commission.

102 (17) LEGISLATIVE AGENCY. The Alabama State Legislature
103 and any department, board, body, bureau, commission,
104 committee, institution, corporation, authority, or office
105 created, established, and operating as an agency of the
106 legislative department of this state. The term includes, but
107 is not limited to, the Legislative Services Agency and the
108 Department of Examiners of Public Accounts.

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

112 (19) PROCUREMENT. Buying, purchasing, renting, leasing,



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113 or otherwise acquiring any supplies or services. The term
114 includes all functions that pertain to the obtaining of any
115 supply or service, including description of requirements,
116 selection and solicitation of sources, preparation and award
117 of contracts, and all phases of contract administration. The
118 term does not include the leasing of real property.

119 (20) PROCUREMENT OFFICER. Any ~~person~~ individual duly
120 authorized by the Chief Procurement Officer to enter into and
121 administer contracts and make written determinations with
122 respect to those contracts. The term includes an authorized
123 representative acting within the limits of authority.

124 (21) PROFESSIONAL SERVICES. The services of physicians,
125 architects, engineers, landscape architects, land surveyors,
126 geoscientists, attorneys, teachers, artists, appraisers, and
127 other individuals, or business entities offering the services
128 of those individuals, who possess a high degree of scientific
129 or specialized skill and knowledge where the experience and
130 professional qualifications of the service provider are
131 particularly relevant to the provision of the required
132 service. The term also includes the management or
133 administration of any occupational licensing board, as defined
134 under Section 41-9A-1, by a person other than a state
135 employee.

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

138 (23) PUBLIC NOTICE. The distribution or dissemination
139 of information to interested parties using methods that are
140 reasonably available, including, but not limited to,



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141 publication in newspapers of general circulation, electronic
142 or paper mailing lists, and websites designated by the state
143 and maintained for that purpose.

144 (24) PURCHASING AGENCY. A governmental body, other than
145 the Office of the Chief Procurement Officer, that is
146 authorized by this article, its implementing rules, or by
147 delegation from the Chief Procurement Officer to enter into
148 contracts.

149 (25) SERVICES. The furnishing of labor, time, or effort
150 by a contractor. The term does not include the delivery of a
151 specific end product, other than reports that are merely
152 incidental to the required performance.

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

155 (27) SOLICITATION. Any request to submit quotes, bids,
156 or offers to the state for the procurement of supplies or
157 services. The term includes invitations to bid and requests
158 for proposals.

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

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

164 (30) WRITTEN or IN WRITING. The product of any method
165 of forming characters on paper, other materials, or viewable
166 screens, which can be read, retrieved, and reproduced,
167 including information that is electronically transmitted and
168 stored.



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169 (b) The terms state, state department, state agency,
170 agency, state entity, instrumentality of the state, and
171 governmental body do not include municipalities, political
172 subdivisions, county commissions, or the governing boards of
173 instrumentalities of counties including waterworks boards,
174 sewer boards, gas boards, and other like utility boards and
175 commissions."

176 "§41-4-120

177 There is created within the Department of Finance the
178 ~~Office of the Chief Procurement Officer~~ Division of
179 Procurement, headed by the Chief Procurement Officer."

180 "§41-4-122

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

183
184 (b) Consistent with this article, the Chief Procurement
185 Officer shall adopt operational procedures governing the
186 internal functions of the ~~Office of the Chief Procurement~~
187 ~~Officer~~ Division of Procurement.

188 (c) Except as otherwise specifically provided in this
189 article, the Chief Procurement Officer, in accordance with
190 rules adopted under this article, shall do all of the
191 following:

192 (1) Except for alcoholic beverages, which shall be
193 purchased by the Alcoholic Beverage Control Board, procure or
194 supervise the procurement of all supplies and services needed
195 by the state.

196 (2) Ensure compliance with this article and the rules



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197 implementing this article by reviewing and monitoring
198 procurements conducted by any designee, department, agency, or
199 official delegated authority under Section 41-4-123.

200 ~~(3) Require, upon request of the Chief Procurement~~
201 ~~Officer, the periodic reporting of all procurement by or for~~
202 ~~counties, the purchase, contract, or lease price of which is~~
203 ~~one hundred dollars (\$100) or more, and require information in~~
204 ~~connection therewith; to prescribe forms and fix the time for~~
205 ~~submitting such reports; and, when requested by any county,~~
206 ~~municipal corporation, other local public body, including any~~
207 ~~board of education, to make such purchase contract, or lease~~
208 ~~for it. It shall be the duty of every county to make the~~
209 ~~report on forms furnished by the Office of the Chief~~
210 ~~Procurement Officer whenever requested to do so, but not more~~
211 ~~than once every 30 days.~~

212 ~~(4)~~ (3) Perform other functions and duties of the
213 Department of Finance as may be assigned by the Director of
214 Finance.

215 (d) The Chief Procurement Officer may establish and
216 maintain a system for the purchase of supplies and services by
217 governmental bodies that conduct their procurement activities
218 through the ~~Office of the Chief Procurement Officer~~ Division
219 of Procurement, through the utilization of approved credit
220 cards. County and municipal governments and instrumentalities
221 or public corporations thereof may participate in the state
222 fleet fuel card program subject to the terms and conditions of
223 the program related to the utilization of the fleet fuel card;
224 provided, however, that county and municipal governments and



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225 instrumentalities or public corporations thereof shall not
226 otherwise be subject to this subsection. The Chief Procurement
227 Officer shall establish by rule a process for the competitive
228 solicitation of credit card providers. The state Comptroller
229 and the Chief Procurement Officer shall adopt fiscal
230 procedures governing the payment of charges incurred by credit
231 card users and the utilization of credit cards. The use of
232 approved credit cards shall be established by the state
233 Comptroller and the Chief Procurement Officer, with the
234 approval of the Director of Finance, and be published through
235 the Alabama fiscal procedures, in which each purchase made
236 using approved credit cards is required to have prior approval
237 by the department head or his or her designee and a record of
238 each purchase and approval is to be maintained. The Chief
239 Procurement Officer may select the provider or providers
240 offering the highest fees to the division for the use of its
241 credit card or credit cards. Fees received by the division for
242 the use of credit cards shall be placed in a special fund
243 entitled the State Procurement Fund in the State Treasury for
244 the use of the division and the funds shall be appropriated,
245 budgeted, and allotted in accordance with Sections 41-4-80 to
246 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and
247 only in amounts stipulated in general appropriations bills and
248 other appropriation bills. Approved credit cards may be issued
249 to requisitioning agencies upon the recommendation of the
250 Chief Procurement Officer and the approval of the Director of
251 Finance. Approved credit cards shall be assigned to the
252 department and limited in number. Approved credit cards may be



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253 utilized to purchase items of supplies and services, and may
254 not exceed the limitations set forth by rule. The director of
255 the governmental body utilizing credit cards is responsible
256 for the proper use of credit cards assigned to his or her
257 agency, in accordance with rules established by Alabama fiscal
258 procedures. The Chief Procurement Officer may collect any
259 credit card from any governmental body at any time due to
260 improper use. The Chief Procurement Officer shall submit an
261 annual report and accounting regarding the use of credit cards
262 by each governmental body to the Director of Finance and the
263 Governor.

264 (e) ~~The Office of the Chief Procurement Officer~~
265 Division of Procurement may charge a biannual registration fee
266 to vendors desiring to register with the office to receive
267 invitations to bid for any supplies or services solicited by
268 the division and to governmental bodies for their
269 proportionate share of operating costs of the office. Any fee
270 shall be set by administrative rule upon the approval of the
271 Director of Finance. Any fees collected under this subsection
272 shall be deposited in the State Treasury to the credit of the
273 State Procurement Fund and shall be appropriated, budgeted,
274 and allotted in accordance with Sections 41-4-80 to 41-4-96,
275 inclusive, and 41-19-1 to 41-19-12, inclusive, and only in
276 amounts stipulated in general appropriations bills and other
277 appropriation bills.

278 (f) The Chief Procurement Officer may make purchases,
279 contracts, or leases for any county, instrumentality of a
280 county, municipal corporation, local board of education, or
281 other local public body upon the request of the local public
282 body.

283 ~~(f)~~ (g) The Chief Procurement Officer shall adopt rules
284 consistent with this article to govern the procurement of
285 supplies and services procured by the state."



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286 "§41-4-124

287 (a) Except as otherwise provided in this article, all
288 rights, powers, duties, and authority relating to the
289 procurement of supplies and services now vested in, or
290 exercised by, any governmental body under existing law are
291 transferred to the Chief Procurement Officer.

292 (b) The following governmental bodies are subject to
293 this article except as it relates to the purchase of
294 professional services and the oversight and authority of the
295 Chief Procurement Officer, but shall establish and maintain
296 procurement offices and personnel and shall adopt rules as may
297 be necessary to comply with this article:

298 (1) All educational and eleemosynary institutions
299 governed by a board of trustees or other similar governing
300 body.

301 (2) The Retirement Systems of Alabama.

302 (3) The Department of Mental Health.

303 (c) The Alabama Department of Transportation is subject
304 to this article except as it relates to the purchase of
305 professional services and shall adopt rules governing the
306 purchase of professional services by the department which are
307 consistent with the principles contained in this article and
308 promote fairness, competition, transparency, integrity, and
309 value in the procurement process.

310 (d) The procurement of any supplies, services, or
311 professional services by a district attorney or sheriff shall
312 be solely governed by Article 3, commencing with Section
313 41-16-50 of Chapter 16.



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314 ~~(d)~~ (e) The procurement of any supplies or services by a
315 legislative agency or judicial agency shall be solely governed
316 by procedures adopted by the Legislative Council for all
317 legislative agencies and by rules adopted by the Supreme Court
318 of Alabama for all judicial agencies. The procedures adopted
319 shall be consistent with any applicable requirements of the
320 Constitution of Alabama of ~~1901~~ 2022, and shall be established
321 in accordance with the underlying purposes and policies of
322 promoting responsible and efficient use of public funds
323 dedicated and appropriated to the agencies for their use,
324 providing consistency of application of rules and requirements
325 across all agencies within the applicable branch of state
326 government, and promoting fairness, competition, transparency,
327 integrity, and value in the procurement process. In no case
328 may the legislative and judicial departments of the state
329 adopt procedures that conflict with the laws of this state
330 regarding the public disclosure of the use of public funds and
331 the transparency of public expenditures, or that otherwise
332 conflict with state law regarding public records and public
333 access to those records. Except for the requirement to act in
334 good faith, no other provision of this article shall apply to
335 legislative or judicial agencies; provided, that the
336 legislative and judicial departments may adopt all or any part
337 of this article and its accompanying rules.

338 ~~(e)~~ (f) The procurement of any supplies or services by
339 the Alabama State Port Authority shall be solely governed by
340 procedures adopted by the Board of Directors of the Alabama
341 State Port Authority. The procedures adopted shall be



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342 consistent with any applicable requirements of the
343 Constitution of Alabama of ~~1901~~ 2022, and shall be established
344 in accordance with the underlying purposes and policies of
345 promoting responsible and efficient use of the funds of the
346 Alabama State Port Authority, providing consistency of
347 application of rules and requirements across all agencies
348 within the applicable branch of state government, and
349 promoting fairness, competition, transparency, integrity, and
350 value in the procurement process. Except for the protection of
351 information otherwise legally considered commercially
352 confidential, sensitive, or of a nature that upon release
353 would harm the competitive advantage of itself or its
354 customers, concessionaires, lessees, or suppliers, the Alabama
355 State Port Authority may not adopt procedures that conflict
356 with the laws of this state regarding the public disclosure of
357 the use of its funds and the transparency of its expenditures,
358 or that otherwise conflict with state law regarding public
359 records and public access to those records. Except as provided
360 in this subsection and the requirement to act in good faith,
361 no other provision of this article shall apply to the Alabama
362 State Port Authority; provided, however, that the Alabama
363 State Port Authority may adopt all or any part of this article
364 and its accompanying rules."

365 "§41-4-125

366 (a) (1) Except as otherwise provided in this section,
367 attorneys retained to represent the state in litigation shall
368 be appointed by the Attorney General in consultation with the
369 Governor from a list of attorneys maintained by the Attorney



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370 General. All attorneys interested in representing the state
371 may apply and shall be included on the list. The selection of
372 the attorney or law firm shall be based upon the level of
373 skill, experience, and expertise required in the litigation
374 and the fees charged by the attorney or law firm shall be
375 taken into consideration so that the state receives the best
376 representation for the funds paid. Fees shall be negotiated
377 and approved by the Governor in consultation with the Attorney
378 General. Maximum fees paid for legal representation that does
379 not involve a contingency fee contract may be established by
380 executive order of the Governor.

381 (2) Attorneys retained by any state purchasing entity
382 to render nonlitigation legal services shall be selected by
383 the entity from a list of attorneys maintained by the Legal
384 Advisor to the Governor. All attorneys interested in
385 representing any purchasing state entity may apply and shall
386 be included on the list. The selection of the attorney or law
387 firm shall be based upon the level of skill, experience, and
388 expertise required for the services, but the fees charged by
389 the attorney or law firm shall be taken into consideration so
390 that the state entity shall receive the best representation
391 for the funds paid. Fees for the services shall be negotiated
392 by the state entity requiring the services and shall be
393 subject to the review and approval of the Governor or the
394 Director of Finance when so designated by the Governor.

395 (b) This ~~section~~article does not apply to either of
396 the following:

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



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

400 (c) Nothing in this section shall be construed as
401 altering or amending the Governor's authority to retain
402 attorneys under Section 36-13-2; provided, the Governor shall
403 select the attorneys from ~~three proposals received from~~
404 ~~attorneys included on~~ the list maintained by the Attorney
405 General.

406 (d) (1) A governmental body may not enter into a
407 contingency fee contract with any attorney or law firm unless
408 the contracting agency makes a written determination prior to
409 entering into a contingency fee contract that contingency fee
410 representation is both cost effective and in the public
411 interest. Any written determination shall include specific
412 findings for each of the following factors:

413 a. Whether there are sufficient and appropriate legal
414 and financial resources within the state to handle the matter
415 without a contingency contract.

416 b. The expected time and labor required, the novelty,
417 complexity, and difficulty of the questions involved, and the
418 skill requisite to perform the attorney services properly.

419 c. The geographic area where the attorney services are
420 to be provided.

421 d. The amount of experience desired for the particular
422 kind of attorney services to be provided and the nature of the
423 private attorney's experience with similar issues or cases.

424 (2) Subject to subdivision (3), the state may not enter
425 into a contingency fee contract that provides for the



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426 contingency fee counsel to receive an aggregate contingency
427 fee calculated from the gross recovery resulting from a
428 judgment or settlement in each action, exclusive of expenses,
429 in excess of the total of all of the following:

430 a. Twenty-two percent of any recovery ~~of up to that~~
431 does not exceed ten million dollars (\$10,000,000); plus

432 b. Twenty percent of any portion of the recovery
433 ~~between that exceeds~~ ten million dollars (\$10,000,000) ~~and but~~
434 does not exceed twenty-five million dollars (\$25,000,000);
435 plus

436 c. Sixteen percent of any portion of the recovery
437 ~~between that exceeds~~ twenty-five million dollars (\$25,000,000)
438 ~~and but does not exceed~~ fifty million dollars (\$50,000,000);
439 plus

440 d. Twelve percent of any portion of the recovery
441 ~~between that exceeds~~ fifty million dollars (\$50,000,000) ~~and~~
442 but does not exceed seventy-five million dollars
443 (\$75,000,000); plus

444 e. Eight percent of any portion of the recovery between
445 seventy-five million dollars (\$75,000,000) and one hundred
446 million dollars (\$100,000,000); plus

447 f. Seven and one-tenth (7.1) percent of any portion of
448 the recovery exceeding one hundred million dollars
449 (\$100,000,000).

450 (3) The aggregate fee paid under a contingency fee
451 contract may not exceed seventy-five million dollars
452 (\$75,000,000).

453 (4) All litigation expenses incurred by the contingency



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454 fee counsel shall be paid or reimbursed upon approval on a
455 monthly basis upon presentation of documentation of the
456 expenses to the contracting agency.

457 (5) The Attorney General may certify in writing to the
458 Governor that, in the opinion of the Attorney General, an
459 issue affecting the public health, safety, convenience, or
460 economic welfare of the state exists that justifies that the
461 contingency fee limitations set forth in subdivision (2) or
462 (3) be suspended in the case of a particular contingency fee
463 contract. Upon receipt of the written certification, the
464 Governor, by the issuance of an executive order, may waive the
465 limitations with respect to the specified contingency fee
466 contract.

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

471 a. A government attorney has complete control over the
472 course and conduct of the case.

473 b. A government attorney with supervisory authority is
474 personally involved in overseeing the litigation.

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

477 d. After giving reasonable notice to the contingency
478 fee counsel, any defendant that is the subject of the
479 litigation may contact the lead government attorney directly
480 unless directed to do otherwise by that attorney. Contingency
481 fee counsel ~~shall have the right to~~ may participate in the



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482 discussion with the lead government attorney or attorneys
483 unless, after consultation with contingency fee counsel, the
484 lead government attorney agrees to the discussion without
485 contingency fee counsel being present.

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

488 f. Decisions regarding settlement of the case shall be
489 reserved exclusively to the discretion of the government
490 attorney and the state.

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

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

502 (9) Every contingency fee counsel, from the inception
503 of the contingency fee contract until at least four years
504 after the contract expires or is terminated, shall maintain
505 detailed current records, including documentation of all time
506 records, expenses, disbursements, charges, credits, underlying
507 receipts and invoices, and other financial transactions that
508 concern the provision of the attorney services. The
509 contingency fee counsel shall make all the records available



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510 for inspection and copying upon request by the Governor,
511 Attorney General, or contracting agency. In addition, the
512 contingency fee counsel shall maintain detailed
513 contemporaneous time records for the attorneys and paralegals
514 working on the contract in six minute increments and, upon
515 request, shall provide promptly these records to the Governor,
516 Attorney General, or contracting agency.

517 (10) Any contingency fee paid to a private attorney or
518 law firm shall be paid from the State Treasury from the funds
519 recovered as a result of the ~~contingent~~ contingency fee
520 contract within 30 days of receipt of the recovery unless
521 ordered to do otherwise by a court with jurisdiction over the
522 litigation subject to the contingency fee contract."

523 "§41-4-126

524 (a) Unless otherwise ordered by rule, with approval of
525 the Governor, the following supplies and services need not be
526 procured through the ~~Office of the Chief Procurement Officer~~
527 Division of Procurement and are exempt from the competitive
528 requirements of this article:

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

530 (2) Published books in any format such as digital,
531 audio, or hardcopy; maps; periodicals; and technical
532 pamphlets.

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

535 (4) Purchases of alcoholic beverages by the Alcoholic
536 Beverage Control Board.

537 (5) Purchases of products made or manufactured by the



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538 blind or visually handicapped under the direction or
539 supervision of the Alabama Institute for Deaf and Blind in
540 accordance with ~~Sections 21-2-1 to 21-2-4, inclusive~~ Chapter 2
541 of Title 21.

542 (6) Photographs purchased from a federal agency.

543 (7) Barter transactions by the Department of
544 Corrections.

545 (8) The purchase of insurance and supplies or services
546 related to the purchase of insurance.

547 (9) Supplies and services that by their very nature are
548 impossible to award by competitive process, as determined by
549 the Chief Procurement Officer.

550 (b) Any state department or agency whose principal
551 business is honorariums is exempted from this chapter on
552 purchases and contracts for services made by that department
553 or agency.

554 (c) Nothing in this article is intended to repeal or
555 limit any provision of Section 23-1-40 or ~~Sections 23-2-140~~
556 ~~through 23-2-175~~ Article 5 or Article 6 of Chapter 2 of Title
557 23, commencing with Section 23-2-140, relating to the
558 procurement authority of the State Department of
559 Transportation and the Alabama Toll Road, Bridge and Tunnel
560 Authority. To the extent any provision contained in this
561 article conflicts with Section 23-1-40 or ~~Sections 23-2-140~~
562 ~~through 23-2-175~~ Article 5 or Article 6 of Chapter 2 of Title
563 23, the latter governs.

564 (d) Nothing in this article repeals or limits any
565 provision of Section 41-4-400, relating to the procurement



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566 authority of the Division of Construction Management. To the
567 extent any provision contained in this article conflicts with
568 Section 41-4-400, the latter governs.

569 (e) Nothing in this article repeals or limits any
570 provision of Section 14-7-8, relating to the procurement
571 authority of Alabama Correctional Industries. To the extent
572 any provision contained in this article conflicts with Section
573 14-7-8, the latter governs.

574 (f) This article does not apply to any state authority,
575 board, or other entity with respect to contracts relating to
576 the issuance of debt that is required to be repaid from
577 sources other than state funds.

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

580 (h) Nothing in this article applies to the
581 administration of health benefit plans by a governmental body
582 and supplies or services related thereto.

583 (i) Except for capital equipment, this article does not
584 apply to the purchase by a public hospital of medical
585 products, medical supplies, medical devices, services,
586 implants, pharmaceuticals, fluids, gases, or any other medical
587 products which are used in the course of treating patients, or
588 to support the treatment of patients.

589 (j) (1) Except as provided in subdivision (2), the
590 purchase of supplies or services negotiated on behalf of
591 two-year and four-year colleges and universities may be
592 awarded without competitive bidding, provided that no state
593 revenues, appropriations, or other state funds are expended or



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594 committed and when it is determined by the respective board
595 that financial benefits will accrue to the institution.

596 (2) When an Alabama business entity organized under the
597 laws of this state is available to supply the product or
598 service purchased or negotiated under subdivision (1), the
599 Alabama business entity shall have preference unless the
600 product or service supplied by a foreign corporation is
601 substantially different or superior to the product or service
602 supplied by the Alabama business entity.

603 (3) Public notice shall be provided by the purchasing
604 agency within 10 days of the execution of a contract under
605 this subsection. The public notice shall include, at a
606 minimum, the terms and conditions of any of the supplies or
607 services that are contracted through negotiation without being
608 competitively bid and the name and address of the recipient of
609 the contract.

610 (k) This article does not apply to purchases and
611 contracts for the repair of equipment used in the construction
612 and maintenance of highways by the Department of
613 Transportation.

614 (l) This article does not apply to public works
615 projects governed by Title 39.

616 (m) This article does not apply to the purchase by the
617 Department of Transportation of road building materials for
618 transportation infrastructure in the state. Road building
619 materials may be purchased from private land owners or
620 commercial providers from the nearest or most cost-effective
621 source available for the particular application. Road building



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622 materials include dirt, gravel, stone, slag, or borrow
623 materials, in natural state or processed by crushing, grading,
624 or screening processes.

625 (n) This article does not apply to purchases of
626 supplies and services for the maintenance and operation of
627 highway infrastructure and right-of-way by the Department of
628 Transportation.

629 (o) Nothing in this article is intended to repeal or
630 limit any provision of Article 2, Chapter 1, Title 23,
631 relating to the powers and authority of the Department of
632 Transportation. To the extent any provision contained in this
633 article conflicts with Article 2, Chapter 1, Title 23, the
634 latter governs.

635 (p) Governmental bodies may purchase supplies from any
636 vendor that offers the item at a price at least ten percent
637 below the price established on a statewide contract by the
638 ~~Office of the Chief Procurement Officer~~ Division of
639 Procurement for the same item, provided that each purchase,
640 whether for a single item or multiple items, does not exceed
641 an amount established by rules of the Chief Procurement
642 Officer. The ~~Office of the Chief Procurement Officer~~ Division
643 of Procurement shall confirm that the terms and conditions of
644 the purchases are substantially similar to those of the
645 statewide contract for the same item prior to the approval of
646 any purchase under this subsection. Any purchase that would be
647 directly connected to any information technology network used
648 by the state shall require prior approval by the Secretary of
649 Information Technology. If the purchaser is to take possession



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650 of the purchased supplies at the vendor's physical location,
651 any acquisition of supplies under this subsection may be
652 purchased only from vendors physically located within the
653 state. The price of any supplies purchased under this
654 subsection shall be the market price readily available to the
655 public at large. The acquisition of supplies under this
656 subsection is subject to the supervision and administration of
657 the ~~Office of the Chief Procurement Officer~~ Division of
658 Procurement.

659 (q) Nothing in this article is intended to repeal or
660 limit any provision of Chapter 61E of Title 16, relating to
661 the powers and authority of the Department of Education to
662 enter into joint purchasing agreements on behalf of
663 educational institutions. To the extent any provision
664 contained in this article conflicts with Chapter 61E of Title
665 16, the latter governs.

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

668 (s) This article does not apply to purchases by the
669 Alabama Department of Rehabilitation Services of supplies and
670 services for the Alabama Department of Rehabilitation Services
671 consumers.

672 (t) This article does not apply to the Alabama Medicaid
673 Agency for purposes of the selection of professional service
674 providers for contracts with physicians, pharmacists,
675 dentists, optometrists, opticians, nurses, and other health
676 professionals which involve only service on agency task
677 forces, boards, or committees."



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678 "§41-4-139

679 (a) A written determination of nonresponsibility of a
680 bidder or offeror shall be made in accordance with rules
681 adopted by the Chief Procurement Officer. The unreasonable
682 failure of a bidder or offeror to promptly supply information
683 in connection with an inquiry with respect to responsibility
684 may be grounds for a determination of nonresponsibility with
685 respect to the bidder or offeror.

686 (b) Confidential information furnished by a bidder or
687 offeror under this section may not be disclosed outside of the
688 ~~Office of the Chief Procurement Officer~~ Division of
689 Procurement or the purchasing agency without the prior written
690 consent of the bidder or offeror."

691 "§41-4-172

692 A public procurement unit may sell to, acquire from, or
693 use any supplies or services belonging to another public
694 procurement unit without regard to the requirements of
695 Division 3."

696 "§29-2-41.1

697 In case of an emergency adversely affecting public
698 health, public safety, ~~security~~, or ~~the economic~~ public
699 welfare of the state, so declared in writing ~~to the Governor~~
700 by the Chief Procurement Officer or the head of ~~the~~
701 ~~institution or a purchasing~~ agency ~~involved~~, as defined under
702 Section 41-4-114, setting forth the nature of the danger to
703 public health, public safety, ~~security~~ or ~~the economic~~ public
704 welfare of the state, contracts may be let to the extent
705 necessary to meet the emergency without review by the



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706 committee. Any contract let pursuant to this section involving
707 an emergency adversely affecting the ~~economic~~ public welfare
708 of the state shall be let for a period of not more than 60
709 days during which time the committee shall review a contract
710 for a longer period of time if such services are required
711 beyond the 60-day limit hereby imposed."

712 Section 2. Section 41-4-125.01 is added to the Code of
713 Alabama 1975, to read as follows:

714 41-4-125.01

715 Physicians retained to provide medical services to the
716 State of Alabama shall be selected by the purchasing state
717 entity from a list of qualified physicians maintained by the
718 Alabama Medical Licensure Commission. All physicians
719 interested in providing medical services to the State of
720 Alabama may apply and shall be included on the listing.

721 Section 3. This act shall become effective immediately
722 following its passage and approval by the Governor, or its
723 otherwise becoming law.



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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB100

Senate 03-May-23

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,
Secretary.

House of Representatives
Amended and passed: 06-Jun-23

Senate concurred in House amendment 06-Jun-23

By: Senator Orr