

1 SB115
2 115130-1
3 By Senators Orr and Butler
4 RFD: Finance and Taxation Education
5 First Read: 12-JAN-10

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, the procurement of
9 professional services by any agency, department,
10 board, bureau, commission, authority, public
11 corporation, or instrumentality of the State of
12 Alabama is conducted through a competitive bid
13 process; however, the Legislature and colleges and
14 universities governed by a board of trustees or the
15 Department of Postsecondary Education are exempt
16 from this provision of law.

17 This bill would remove the exemption granted
18 to the Legislature and colleges and universities
19 governed by a board of trustees or the Department
20 of Postsecondary Education in the procurement of
21 professional services.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 To amend Section 41-16-72, Code of Alabama 1975,
2 relating to procurement of professional services; to remove
3 the exemption granted to the Legislature and colleges and
4 universities governed by a board of trustees or the Department
5 of Postsecondary Education in the procurement of professional
6 services.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Section 41-16-72, Code of Alabama 1975,
9 is amended to read as follows:

10 "§41-16-72.

11 "Any other provision of law notwithstanding, the
12 procurement of professional services by any agency,
13 department, board, bureau, commission, authority, public
14 corporation, or instrumentality of the State of Alabama shall
15 be conducted through the following selection process:

16 "(1)a. Except as otherwise provided herein,
17 attorneys retained to represent the state in litigation shall
18 be appointed by the Attorney General in consultation with the
19 Governor from a listing of attorneys maintained by the
20 Attorney General. All attorneys interested in representing the
21 State of Alabama may apply and shall be included on the
22 listing. The selection of the attorney or law firm shall be
23 based upon the level of skill, experience, and expertise
24 required in the litigation and the fees charged by the
25 attorney or law firm shall be taken into consideration so that
26 the State of Alabama receives the best representation for the
27 funds paid. Fees shall be negotiated and approved by the

1 Governor in consultation with the Attorney General. Maximum
2 fees paid for legal representation may be established by
3 executive order of the Governor.

4 "Nothing in this article and nothing in Chapter 15
5 of Title 36 modifies or repeals the exclusive authority of the
6 governing boards of the public institutions of higher
7 education to direct and control litigation involving their
8 respective universities and to employ and retain legal counsel
9 of their own choice, consistent with their broad powers of
10 management and control set forth in Chapters 47-56 of Title 16
11 and in the constitution. Provided further, nothing in this
12 article modifies or repeals the authority of the Attorney
13 General to direct and control litigation involving the state
14 or any agency, department, or instrumentality of the state, or
15 the authority of the Governor to appear in civil cases in
16 which the state is interested.

17 "b. Attorneys retained by any state purchasing
18 entity to render nonlitigation legal services shall be
19 selected by such entity from a listing of attorneys maintained
20 by the Legal Advisor to the Governor. All attorneys interested
21 in representing any purchasing state entity may apply and
22 shall be included on the listing. The selection of the
23 attorney or law firm shall be based upon the level of skill,
24 experience, and expertise required for the services, but the
25 fees charged by the attorney or law firm shall be taken into
26 consideration so that such state entity shall receive the best
27 representation for the funds paid. Fees for such services

1 shall be negotiated by the state entity requiring the services
2 and shall be subject to the review and approval of the
3 Governor or the Director of Finance when so designated by the
4 Governor.

5 "c. This article shall not apply to the appointment
6 by a court of attorneys or experts.

7 "d. This article shall not apply to the retention of
8 experts by the state for the purposes of litigation, or
9 avoidance of litigation.

10 "e. Nothing in this article shall be construed as
11 altering or amending the Governor's authority to retain
12 attorneys pursuant to Section 36-13-2, however, the Governor
13 shall select such attorneys from three proposals received from
14 attorneys included on the listing maintained by the Attorney
15 General.

16 "(2) Physicians retained to provide medical services
17 to the state shall be selected by the purchasing state entity
18 from a list of qualified physicians maintained by the Alabama
19 Medical Licensure Commission. All physicians interested in
20 providing medical services to the State of Alabama may apply
21 and shall be included on the listing.

22 "(3) Professional services of architects, landscape
23 architects, engineers, land surveyors, geoscience, and other
24 similar professionals shall be procured in accordance with
25 competitive, qualification-based selection policies and
26 procedures. Selection shall be based on factors to be

1 developed by the procuring state entity which may include,
2 among others, the following:

3 "a. Specialized expertise, capabilities, and
4 technical competence, as demonstrated by the proposed approach
5 and methodology to meet project requirements.

6 "b. Resources available to perform the work,
7 including any specialized services within the specified time
8 limits for the project.

9 "c. Record of past performance, quality of work,
10 ability to meet schedules, cost control, and contract
11 administration.

12 "d. Availability to and familiarity with the project
13 locale.

14 "e. Proposed project management techniques.

15 "f. Ability and proven history in handling special
16 project contracts.

17 "Notice of need for professional services shall be
18 widely disseminated to the professional community in a full
19 and open manner. Procuring state entities shall evaluate such
20 professionals that respond to the notice of need based on such
21 state entity's qualification-based selection process criteria.
22 Any such procuring state entity shall then make a good faith
23 effort to negotiate a contract for professional services from
24 the selected professional after first discussing and refining
25 the scope of services for the project with such professional.
26 Where the Alabama Building Commission has set a fee schedule
27 for the professional services sought, fees shall not exceed

1 the schedule without approval of the Director of the Alabama
2 Building Commission and the Governor.

3 "(4) The Director of Finance, through the Division
4 of Purchasing of the Department of Finance, shall establish
5 and maintain lists of professional service providers, other
6 than those specifically named in this section, which may be
7 required from time to time by any state agency, department,
8 board, bureau, commission, authority, public corporation, or
9 instrumentality. When such professional services are needed,
10 the purchasing state entity shall solicit proposals from the
11 professional service providers desiring to receive requests
12 for proposals. The purchasing state entity shall select the
13 professional service provider that best meets the needs of the
14 purchasing entity as expressed in the request for proposals.
15 Price shall be taken into consideration. In the event the fees
16 paid to the selected professional service provider exceed by
17 10 percent the professional service fee offered by the lowest
18 qualified proposal, the reasons for selecting a professional
19 service provider must be stated in writing, signed by the
20 director of the purchasing state entity, and made a part of
21 the selection record.

22 "(5) Contracts for professional services shall be
23 limited only to that portion of a contract relating to the
24 professional service provided. Goods purchased by the state in
25 conjunction with the contract for professional services shall
26 be purchased pursuant to Section 41-16-20.

1 "(6) Should an emergency affecting the public
2 health, safety, convenience, or the economic welfare of the
3 State of Alabama so declared in writing under oath to the
4 Governor and the Attorney General by the state entity
5 requiring the professional services arise, the professional
6 services required to alleviate the emergency situation may be
7 procured from any qualified professional service provider
8 without following the process or procedure required by this
9 article.

10 "(7) The process set forth herein for the selection
11 of professional service providers shall not apply to ~~the~~
12 ~~Legislature, the Alabama State Port Authority, or to colleges~~
13 ~~and universities governed by a board of trustees or by the~~
14 ~~Department of Postsecondary Education. The State Department of~~
15 ~~Education shall not be subject to the provisions of this~~
16 ~~article, requiring the process set forth herein for the~~
17 ~~selection of professional service providers, except for the~~
18 ~~future acquisition of professional services in support of~~
19 ~~computer technology on a statewide basis which exceeds the~~
20 ~~amount of expenditures set forth within this chapter. However,~~
21 ~~if a state agency or department is able to provide the~~
22 ~~necessary computer networking services, then the services~~
23 ~~shall be provided by the agency or department without being~~
24 ~~contracted to an outside provider. In the event the State~~
25 ~~Department of Education has intervened into the financial~~
26 ~~operations of a local board of education, the State Department~~
27 ~~of Education shall follow the provisions of law applicable to~~

1 ~~local boards of education for services related to the local~~
2 ~~board of education subject to intervention.~~

3 "(8) Under any contract letting process in this
4 section, all requests for proposals from any state entity
5 purchasing professional services shall be sent to all
6 professional service providers regardless of race that have
7 notified the state of their interest in receiving state
8 business.

9 "(9) Under any contract letting process in this
10 section, all lists containing professional service providers
11 and contractors for contracts under the provisions of this
12 article shall seek the racial and ethnic diversity of the
13 state."

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