

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

1 SB174

2
3
4 ENROLLED, An Act,

5 Relating to the Office of the Chief Procurement
6 Officer; to amend Section 1 of Act 2021-296, 2021 Regular
7 Session, now appearing as Sections 41-4-122, 41-4-126,
8 41-4-132, 41-4-133, and 41-4-171, Code of Alabama 1975, to
9 further provide for certain periodic reporting requirements;
10 to provide exemptions; and to authorize the Chief Procurement
11 Officer to award multiple purchase contracts for push-to-talk
12 services under certain conditions.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Section 1 of Act 2021-296, 2021 Regular
15 Session, now appearing as Sections 41-4-122, 41-4-126,
16 41-4-132, 41-4-133, and 41-4-171, Code of Alabama 1975, are
17 amended to read as follows:

18 "§41-4-122.

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

21 "(b) Consistent with this article, the Chief
22 Procurement Officer shall adopt operational procedures
23 governing the internal functions of the Office of the Chief
24 Procurement Officer.

1 "(c) Except as otherwise specifically provided in
2 this article, the Chief Procurement Officer, in accordance
3 with rules adopted under this article, shall do all of the
4 following:

5 "(1) Except for alcoholic beverages, which shall be
6 purchased by the Alcoholic Beverage Control Board, procure or
7 supervise the procurement of all supplies and services needed
8 by the state.

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

13 "(3) Require, upon request of the Chief Procurement
14 Officer, the periodic reporting of all procurement by or for
15 counties, the purchase, contract, or lease price of which is
16 one hundred dollars (\$100) or more, and require information in
17 connection therewith; to prescribe forms and fix the time for
18 submitting such reports; and, when requested by any county,
19 municipal corporation, other local public body, including any
20 board of education, to make such purchase contract, or lease
21 for it. It shall be the duty of every county to make the
22 report on forms furnished by the Office of the Chief
23 Procurement Officer, whenever requested to do so, but not more
24 than once every 30 days.

1 "(4) Perform other functions and duties of the
2 Department of Finance as may from time to time be assigned by
3 the Director of Finance.

4 "(d) The Chief Procurement Officer may establish and
5 maintain a system for the purchase of supplies and services by
6 governmental bodies that conduct their procurement activities
7 through the Office of the Chief Procurement Officer, through
8 the utilization of approved credit cards. County and municipal
9 governments and instrumentalities or public corporations
10 thereof may participate in the state fleet fuel card program
11 subject to the terms and conditions of the program related to
12 the utilization of the fleet fuel card; provided, however,
13 that county and municipal governments and instrumentalities or
14 public corporations thereof shall not otherwise be subject to
15 this subsection. The Chief Procurement Officer shall establish
16 by rule a process for the competitive solicitation of credit
17 card providers. The state Comptroller and the Chief
18 Procurement Officer shall adopt fiscal procedures governing
19 the payment of charges incurred by credit card users and the
20 utilization of credit cards. The use of approved credit cards
21 shall be established by the state Comptroller and the Chief
22 Procurement Officer, with the approval of the Director of
23 Finance, and be published through the Alabama fiscal
24 procedures, in which each purchase made using approved credit
25 cards is required to have prior approval by the department

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

1 by each governmental body to the Director of Finance and the
2 Governor.

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

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

19 "§41-4-126.

20 "(a) Unless otherwise ordered by rule, with approval
21 of the Governor, the following supplies and services need not
22 be procured through the Office of the Chief Procurement
23 Officer and are exempt from the competitive requirements of
24 this article:

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

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

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

6 "(4) Purchases of alcoholic beverages by the
7 Alcoholic Beverage Control Board.

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

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

13 "(7) Barter transactions by the Department of
14 Corrections.

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

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

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

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

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

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

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

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

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

23 "(i) Except for capital equipment, this article does
24 not apply to the purchase by a public hospital of medical
25 products, medical supplies, medical devices, services,

1 implants, pharmaceuticals, fluids, gases, or any other medical
2 products which are used in the course of treating patients, or
3 to support the treatment of patients.

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

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

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

1 "(k) This article does not apply to purchases and
2 contracts for the repair of equipment used in the construction
3 and maintenance of highways by the Department of
4 Transportation.

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

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

16 "(n) This article does not apply to purchases of
17 supplies and services for the maintenance and operation of
18 highway infrastructure and right-of-way by the Department of
19 Transportation.

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

1 "(p) Governmental bodies may purchase supplies from
2 any vendor that offers the item at a price at least ten
3 percent below the price established on a statewide contract by
4 the Office of the Chief Procurement Officer for the same item,
5 provided that each purchase, whether for a single item or
6 multiple items, does not exceed an amount established by rules
7 of the Chief Procurement Officer. The Office of the Chief
8 Procurement Officer shall confirm that the terms and
9 conditions of the purchases are substantially similar to those
10 of the statewide contract for the same item prior to the
11 approval of any purchase under this subsection. Any purchase
12 that would be directly connected to any information technology
13 network used by the state shall require prior approval by the
14 Secretary of Information Technology. If the purchaser is to
15 take possession of the purchased supplies at the vendor's
16 physical location, any acquisition of supplies under this
17 subsection may be purchased only from vendors physically
18 located within the state. The price of any supplies purchased
19 under this subsection shall be the market price readily
20 available to the public at large. The acquisition of supplies
21 under this subsection is subject to the supervision and
22 administration of the Office of the Chief Procurement Officer.

23 "(q) Nothing in this article is intended to repeal
24 or limit any provision of Chapter 61E of Title 16, relating to
25 the powers and authority of the Department of Education to

1 enter into joint purchasing agreements on behalf of
2 educational institutions. To the extent any provision
3 contained in this article conflicts with Chapter 61E of Title
4 16, the latter governs.

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

7 "(s) This article does not apply to purchases by the
8 Alabama Department of Rehabilitation Services of supplies and
9 services for the Alabama Department of Rehabilitation Services
10 consumers.

11 "§41-4-132.

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

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

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

21 "(d) Bids shall be opened publicly in the presence
22 of one or more witnesses at the time and place designated in
23 the invitation to bid. The amount of each bid, the name of
24 each bidder, and any other information required by rule shall

1 be recorded. The record and each bid shall be open to public
2 inspection to the extent required by Section 41-4-115.

3 "(e) Bids shall be unconditionally accepted without
4 alteration or correction, except as authorized in this
5 article. Bids shall be evaluated based on the requirements set
6 forth in the invitation to bid, which may include criteria to
7 determine acceptability, such as inspection, testing, quality,
8 workmanship, delivery, and suitability for a particular
9 purpose. Any criteria that will affect the bid price and will
10 be considered in evaluation for award shall be objectively
11 measurable, such as discounts, transportation costs, and total
12 or life cycle costs. The invitation to bid shall set forth the
13 evaluation criteria to be used. No criteria may be used in bid
14 evaluations that are not set forth in the invitation to bid.

15 "(f) (1) When a bid is submitted that contains an
16 error, the Chief Procurement Officer or head of a purchasing
17 agency may authorize the correction or withdrawal of the bid
18 or may cancel the award of the contract. The authorization of
19 the correction or withdrawal shall be done in accordance with
20 rules adopted by the Chief Procurement Officer.

21 "(2) After a bid has been opened, with the exception
22 of price negotiations with the lowest responsible bidder, no
23 changes in bid prices or other provisions of bids prejudicial
24 to the interest of the state or fair competition shall be
25 permitted.

1 "(g) (1) Unless there is a compelling reason to
2 reject bids, as prescribed by rules, notice of intent to award
3 to the lowest responsive and responsible bidder whose bid
4 meets the requirements set forth in the invitation to bid
5 shall be given by posting the notice at a location specified
6 in the invitation to bid. Before posting the notice of intent
7 to award, the Chief Procurement Officer or head of the
8 purchasing agency may negotiate with the lowest responsive and
9 responsible bidder to lower the bid price within the scope of
10 the invitation to bid. The invitation to bid and notice of
11 intent to award shall contain a statement of the bidder's
12 right to protest.

13 "(2) The Chief Procurement Officer may award
14 multiple purchase contracts resulting from a single invitation
15 to bid where the specifications of the items of supplies or
16 services intended to be purchased by a requisitioning agency
17 or agencies are determined, in whole or in part, by technical
18 compatibility and operational requirements. In order to make
19 multiple awards under this subdivision, the awarding authority
20 shall include in the invitation to bid a notice that multiple
21 awards may be made and the specific technical compatibility or
22 operational requirements necessitating multiple awards.
23 Multiple awards of purchase contracts with unique technical
24 compatibility or operational specifications shall be made to
25 the lowest responsible bidder complying with the unique

1 technical compatibility or operational specifications. The
2 requisitioning agency shall provide the awarding authority
3 with the information necessary for it to determine the
4 necessity for the award of multiple purchase contracts under
5 this subdivision. ~~This subdivision does not apply to contracts
6 for the purchase or use of push-to-talk services, which shall
7 be purchased through a separate competitive bid process.~~

8 "(h) When it is considered impractical by the Chief
9 Procurement Officer to initially prepare a purchase
10 description to support an award based on price, an invitation
11 to bid may be issued requesting the submission of unpriced
12 offers to be followed by an invitation to bid limited to those
13 bidders whose offers have been qualified under the criteria
14 set forth in the first solicitation.

15 "(i) (1) Before soliciting bids, the Chief
16 Procurement Officer may authorize issuance of a request for
17 qualifications from prospective bidders. The request shall
18 contain, at a minimum, a description of the scope of work to
19 be solicited by the invitation for bids, the deadline for
20 submission of information, and how prospective bidders may
21 apply for consideration. The request shall require information
22 concerning the prospective bidders' product specifications,
23 qualifications, experience, and ability to perform the
24 requirements of the contract. Adequate public notice of the

1 request for qualifications shall be given in the manner
2 provided in subsection (c).

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

8 "§41-4-133.

9 "(a) (1) A contract may be entered into by
10 competitive sealed proposals when the Chief Procurement
11 Officer or the head of a purchasing agency, in accordance with
12 rules, determines that the use of competitive sealed bidding
13 is either not practicable or not advantageous to the state.
14 Unless determined otherwise by the Chief Procurement Officer,
15 professional services shall be procured by competitive sealed
16 proposals.

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

21 "(b) Proposals shall be solicited through a request
22 for proposals.

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

1 "(d) Proposals shall be opened so as to avoid
2 disclosure of contents to competing offerors prior to contract
3 award. A register of proposals shall be prepared in accordance
4 with rules and shall be open for public inspection after award
5 of the contract.

6 "(e) A request for proposals shall state the
7 relative importance of price and other factors and subfactors,
8 if any.

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

22 "(g) Contracts shall be awarded to the responsible
23 offeror whose proposal conforms to the solicitation and is
24 determined in writing to be the most advantageous to the
25 state, taking into consideration price and the evaluation

1 factors set forth in the request for proposals. No other
2 factors or criteria shall be used in the evaluation. Public
3 notice of the award of a contract shall be promptly given.

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

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

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

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

6 "§41-4-171.

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

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

22 Section 2. This act shall become effective October
23 1, 2022, following its passage and approval by the Governor,
24 or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB174

Senate 09-FEB-22

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

Patrick Harris,
Secretary.

House of Representatives
Passed: 07-APR-22

By: Senator Orr