

1 SB80  
2 187891-1  
3 By Senator Dial  
4 RFD: Fiscal Responsibility and Economic Development  
5 First Read: 09-JAN-18

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8 SYNOPSIS: Under existing law, preferred vendors are  
9 given preference in the awarding of public  
10 contracts required to be competitively bid.

11 This bill would give preferred vendor status  
12 under the competitive bid laws to those businesses  
13 located in the state that are owned by veterans.

14 Also under existing law, the Division of  
15 Purchasing is authorized to enter into joint  
16 purchasing agreements for the purchase or lease of  
17 goods and child support services and is authorized  
18 to award multiple purchase contracts for the  
19 purchase of certain goods.

20 This bill would extend those authorizations  
21 to the purchase of services.

22 Also under existing law, the Division of  
23 Purchasing is authorized to maintain a system that  
24 allows state agencies to purchase items using  
25 approved credit cards.

26 This bill would allow cities and counties to  
27 utilize the state fleet fuel card program.

1  
2 A BILL  
3 TO BE ENTITLED  
4 AN ACT  
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6 To amend Sections 41-16-20, 41-16-21.1, 41-16-27,  
7 and 41-4-110 of the Code of Alabama 1975 relating to  
8 purchasing; to grant preferred vendor status to any business  
9 located in the state that is owned by a veteran; to allow the  
10 Division of Purchasing to enter into joint purchase agreements  
11 for the purchase of services and to award multiple purchase  
12 contracts for the purchase of services; and to allow cities  
13 and counties to utilize the fleet fuel card program  
14 administered by the Division of Purchasing.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 41-16-20, 41-16-21.1, 41-16-27,  
17 and 41-4-110 of the Code of Alabama 1975 are amended to read  
18 as follows:

19 "§41-16-20.

20 "(a) With the exception of contracts for public  
21 works whose competitive bidding requirements are governed  
22 exclusively by Title 39, all contracts of whatever nature for  
23 labor, services, work, or for the purchase or lease of  
24 materials, equipment, supplies, other personal property or  
25 other nonprofessional services, involving fifteen thousand  
26 dollars (\$15,000) or more, made by or on behalf of any state  
27 department, board, bureau, commission, committee, institution,

1 corporation, authority, or office shall, except as otherwise  
2 provided in this article, be let by free and open competitive  
3 bidding, on sealed bids, to the lowest responsible bidder.

4 "(b) A "preferred vendor" shall be a person, firm,  
5 or corporation which is granted preference priority according  
6 to the following:

7 "(1) PRIORITY #1. Produces or manufactures the  
8 product within the state.

9 "(2) PRIORITY #2. Has an assembly plant or  
10 distribution facility for the product within the state.

11 "(3) PRIORITY #3. Is organized for business under  
12 the applicable laws of the state as a corporation,  
13 partnership, or professional association and has maintained at  
14 least one retail outlet or service center for the product or  
15 service within the state for not less than one year prior to  
16 the deadline date for the competitive bid.

17 "(4) PRIORITY #4. A business that is physically  
18 located in the state and that is more than 50% owned by a  
19 person who served for at least four years in the United  
20 States' active military, naval, or air service and who was  
21 discharged or released under conditions other than  
22 dishonorable.

23 "(c) In the event a bid is received for the product  
24 or service from a person, firm, or corporation deemed to be a  
25 responsible bidder and a preferred vendor where any state  
26 higher education institution, department, board, bureau,  
27 commission, committee, institution, corporation, authority, or

1 office is the awarding authority and the bid is no more than  
2 five percent greater than the bid of the lowest responsible  
3 bidder, the awarding authority may award the contract to the  
4 preferred vendor."

5 "§41-16-21.1.

6 "(a) In the event that utility services are no  
7 longer exempt from competitive bidding under this article,  
8 non-adjointing counties may not purchase utility services by  
9 joint agreement under authority granted by this section.

10 "(b) The Division of Purchasing, Department of  
11 Finance, is hereby authorized to enter into joint purchasing  
12 agreements to purchase, lease, or lease-purchase ~~child support~~  
13 ~~services~~, materials, equipment, supplies, ~~or~~ other personal  
14 property or services, including child support services, which  
15 have been let by competitive bid or competitive solicitation  
16 process by any group or consortium of governmental entities  
17 within or without the State of Alabama upon a finding by the  
18 Purchasing Agent that such joint purchasing agreements are in  
19 the best interests of the State of Alabama. Joint purchasing  
20 agreements entered into by the Division of Purchasing may be  
21 utilized by any governmental entity subject to the  
22 requirements of Title 41, Chapter 16, Articles 2 or 3A. This  
23 subsection shall not apply to the purchase, lease, or  
24 lease-purchase of materials, equipment, supplies, or other  
25 personal property which can only be utilized in conjunction  
26 with a service or service contract, whether subject to  
27 competitive bidding under this article or not, for the

1 materials, equipment, supplies, or other personal property  
2 that must remain in effect to utilize the materials,  
3 equipment, supplies, or other personal property.

4 "Nothing in this subsection prohibits or limits  
5 public four-year institutions from entering into joint  
6 purchasing agreements to purchase, lease, or lease-purchase  
7 materials, equipment, supplies, other personal property and  
8 services which have been let by competitive bid or competitive  
9 solicitation process by any group or consortium of  
10 governmental entities or through a group purchasing  
11 organization within or without the State of Alabama upon a  
12 finding by the institution that such purchasing agreements are  
13 in the best interests of the institution; provided, however,  
14 this sentence shall not permit agreements to purchase, lease,  
15 or lease-purchase wireless communications equipment or  
16 services through any group or consortium of governmental  
17 entities or through any group purchasing organization."

18 "§41-16-27.

19 "(a) When purchases are required to be made through  
20 competitive bidding, award shall, except as provided in  
21 subsection (f), be made to the lowest responsible bidder  
22 taking into consideration the qualities of the commodities  
23 proposed to be supplied, their conformity with specifications,  
24 the purposes for which required, the terms of delivery,  
25 transportation charges and the dates of delivery provided,  
26 that the awarding authority may at any time within 30 days  
27 after the bids are opened negotiate and award the contract to

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

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

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

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

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

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



1 that the terms of the contract shall not be altered or  
2 renegotiated during the period for which the contract is  
3 extended.

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

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

1 adopt rules providing industry recognized and accepted  
2 sources, pursuant to the Alabama Administrative Procedure Act.

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

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

1 recommendation of the Alabama Medicaid Agency from the low bid  
2 contractor(s) whose bid was not selected.

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

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

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

25           "(i) When a single invitation-to-bid specifies a set  
26 of deliverables that would be capable of division into  
27 separate, independent contracts, the awarding authority, at

1 its discretion, may award a secondary contract for any subset  
2 of such deliverables, not to exceed 20 percent of the original  
3 contract value, to any Alabama business certified under the  
4 Federal HUBZone program whose properly submitted responsible  
5 bid does not exceed five percent of the lowest responsible  
6 bid. In order to make a secondary award under this provision,  
7 the awarding authority shall include in the invitation-to-bid  
8 a notice that a secondary award may be made."

9 "§41-4-110.

10 "(a) There shall be in the Department of Finance the  
11 Division of Purchasing. The functions and duties of the  
12 Division of Purchasing shall be as follows:

13 "(1) To purchase all personal property and  
14 nonprofessional services, except alcoholic beverages, which  
15 shall be purchased by the Alcoholic Beverage Control Board and  
16 except as otherwise provided by law, for the state and each  
17 department, board, bureau, commission, agency, office, and  
18 institution thereof, except as provided in subsection (e).

19 "(2) To make and supervise the execution of all  
20 contracts and leases for the use or acquisition of any  
21 personal property and nonprofessional services unless  
22 otherwise provided by law.

23 "(3) To fix standards of quality and quantity and to  
24 develop standard specifications for all personal property and  
25 nonprofessional services acquired by the state or any  
26 department, board, bureau, commission, agency, office, or  
27 institution thereof.

1           "(4) To maintain records as to prices and sources of  
2 supply of such personal property and nonprofessional services,  
3 such records to be open to the inspection of any state,  
4 county, municipal, or other public officer or employee charged  
5 with the duty of acquiring any such property and  
6 nonprofessional services or article for his or her department,  
7 board, bureau, commission, agency, office, institution,  
8 county, municipal corporation, or local public body.

9           "(5) To manage, supervise, and control all printing  
10 and binding for the state and for each department, board,  
11 bureau, commission, agency, office, and institution thereof  
12 and the distribution of all printed matter and to make and  
13 supervise the execution of all contracts with respect thereto,  
14 unless otherwise provided by law.

15           "(6) To require the periodic reporting of all  
16 purchases of furniture, fixtures, supplies, material,  
17 equipment, and other personal property, except printing, and  
18 all contracts and leases for the use or acquisition thereof by  
19 or for counties, the purchase, contract or lease price of  
20 which is \$100.00 or more, and to require information in  
21 connection therewith, to prescribe forms and fix the time for  
22 submitting such reports, and, when requested by any county,  
23 municipal corporation, and other local public body (including  
24 any board of education) to make such purchases, contracts, or  
25 leases for it. It shall be the duty of every county to make  
26 such report on forms furnished by the Department of Finance,

1 whenever requested so to do, but not more than once every 30  
2 days.

3 "(7) To perform such other functions and duties of  
4 the Department of Finance as may from time to time be assigned  
5 by the Director of Finance.

6 "(b) As long as the constitution so requires, all  
7 stationery, printing, paper, and fuel used in the legislative  
8 and other departments of the government shall be furnished,  
9 and the printing, binding, and distribution of the laws,  
10 journals, departmental reports, and all other printing,  
11 binding, and repairing and furnishing the halls and rooms used  
12 for the meetings of the Legislature and its committees shall  
13 be performed under contract, to be given to the lowest  
14 responsible bidder below a maximum price, under such  
15 regulations as have been or may be prescribed by law and as  
16 may be promulgated by the Director of Finance. No member or  
17 officer of any department of the government shall be in any  
18 way interested in such contracts, and all such contracts shall  
19 be subject to the approval of the Governor, the Auditor and  
20 the Treasurer. All contracts not required to be approved by a  
21 named officer or officers by the Constitution shall be subject  
22 to the approval of the Director of Finance, who may, however,  
23 provide for the automatic approval thereof by compliance with  
24 the general rules or regulations promulgated by him or her.

25 "(c) The Purchasing Agent is further authorized to  
26 establish and maintain a system for the purchase of personal  
27 property and nonprofessional services by state departments,

1 agencies, boards, and institutions that conduct their  
2 purchasing activities through the Division of Purchasing,  
3 through the utilization of approved credit cards. County and  
4 municipal governments and instrumentalities or public  
5 corporations thereof may participate in the state fleet fuel  
6 card program subject to the terms and conditions of the  
7 program related to the utilization of the fleet fuel card;  
8 provided, however, that county and municipal governments and  
9 instrumentalities or public corporations thereof shall not  
10 otherwise be subject to the provisions of this subsection. The  
11 Purchasing Agent shall establish by administrative rule a  
12 process for the competitive solicitation of credit card  
13 providers. The state Comptroller and the Purchasing Agent  
14 shall promulgate fiscal procedures governing the payment of  
15 charges incurred by credit card users and the utilization of  
16 credit cards. The use of approved credit cards shall be  
17 established by the state Comptroller and the State Purchasing  
18 Agent, with the approval of the Director of Finance, and be  
19 published through the Alabama fiscal procedures, in which each  
20 purchase made using approved credit cards is required to have  
21 prior approval by the department head or his or her designee  
22 and a record of such purchases and approvals is to be  
23 maintained. The Purchasing Agent may select the provider or  
24 providers offering the highest fees to the division for the  
25 use of its credit card or credit cards. Fees received by the  
26 division for the use of credit cards shall be placed in a  
27 special fund entitled the State Procurement Fund in the State



1 Treasury for the use of the division and such funds shall be  
2 appropriated, budgeted, and allotted in accordance with  
3 Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to  
4 41-19-12, inclusive, and only in amounts stipulated in general  
5 appropriations bills and other appropriation bills. Approved  
6 credit cards may be issued to requisitioning agencies upon the  
7 recommendation of the Purchasing Agent and the approval of the  
8 Director of Finance. Approved credit cards will be assigned to  
9 the department and will be in limited number. Such credit  
10 cards may be utilized to purchase items of personal property  
11 and nonprofessional services, and shall not exceed the  
12 limitations set forth in subsection (a) of Section 41-16-24.  
13 The director of the governmental entity utilizing credit cards  
14 is responsible for the proper use of credit cards assigned to  
15 his or her agency, in accordance with rules established by  
16 Alabama fiscal procedures. The Purchasing Agent may collect  
17 any credit card from any agency at any time due to improper  
18 use. The Purchasing Agent shall submit an annual report and  
19 accounting regarding the use of credit cards by each  
20 governmental entity to the Director of Finance and the  
21 Governor.

22 "(d) The Division of Purchasing is authorized to  
23 charge a biannual registration fee to vendors desiring to  
24 register with the division to receive invitations-to-bid for  
25 any goods or services solicited by the division and to charge  
26 departments, boards, bureaus, commissions, agencies, offices,  
27 and institutions for their proportionate share of operating

1 costs of the division. Any fee must be set by administrative  
2 rule upon the approval of the Director of Finance. Any fees  
3 collected under this provision shall be deposited in the State  
4 Treasury to the credit of the State Procurement Fund and shall  
5 be appropriated, budgeted, and allotted in accordance with  
6 Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to  
7 41-19-12, inclusive, and only in amounts stipulated in general  
8 appropriations bills and other appropriation bills.

9 "(e) Notwithstanding any law to the contrary, state  
10 departments, agencies, boards, and institutions may purchase  
11 personal property from any vendor that offers the item at a  
12 price at least ten percent below the price established on a  
13 statewide contract by the Division of Purchasing for the same  
14 item, provided that each acquisition of personal property  
15 pursuant to this subsection, whether for a single item or  
16 multiple items, does not exceed fifteen thousand dollars  
17 (\$15,000). The Division of Purchasing shall confirm that the  
18 terms and conditions of such purchase are substantially  
19 similar to those of the statewide contract for the same item  
20 prior to the approval of any purchase pursuant to this  
21 subsection. This subsection shall not apply to construction or  
22 road-building materials, as identified by the Purchasing  
23 Agent. Any purchase that would be directly connected to any IT  
24 network used by the state shall require prior approval by the  
25 Secretary of Information Technology.

26 "Any acquisition of personal property pursuant to  
27 this subsection shall be purchased solely from vendors

1 physically located within the state, if the purchaser is to  
2 take possession of the purchased goods at the vendor's  
3 physical location.

4 "The price of any goods or services purchased  
5 pursuant to this subsection shall be the market price readily  
6 available to the public at large.

7 "Any acquisition of personal property pursuant to  
8 this subsection is not exempt from the supervision and  
9 administration of the Division of Purchasing."

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