

1 SB77
2 208952-2
3 By Senators Orr and Albritton
4 RFD: Finance and Taxation Education
5 First Read: 02-FEB-21
6 PFD: 01/26/2021

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to the purchase of supplies and services by
12 state government; to repeal Article 2 (commencing with Section
13 41-16-20) of Chapter 16 of Title 41, Code of Alabama 1975,
14 relating to competitive bidding on public contracts generally;
15 to repeal Article 3A (commencing with Section 41-16-70) of
16 Chapter 16 of Title 41, Code of Alabama 1975, relating to
17 competitive bidding on contracts for goods and services; to
18 repeal Division 1 (commencing with Section 41-4-110) of
19 Article 5 of Chapter 4 of Title 41, Code of Alabama 1975,
20 relating to the Division of Purchasing in the Department of
21 Finance; to replace the repealed Division 1 and the previously
22 repealed Division 2 (commencing with Section 41-4-130, and
23 repealed by Act 2009-763, 2009 Regular Session) of Article 5
24 of Chapter 4 of Title 41, Code of Alabama 1975, with a new
25 Article 5 (commencing with Section 41-4-110), to create the
26 Office of the Chief Procurement Officer in the Department of
27 Finance and the position of Chief Procurement Officer; to

1 authorize the Chief Procurement Officer to make or supervise
2 the purchase of supplies or services by the state; to provide
3 for the appointment, qualifications, duties, and authority of
4 the Chief Procurement Officer; and to amend Sections 41-4-66
5 and 41-16-50, Code of Alabama 1975, to provide the Chief
6 Procurement Officer with the authority to maintain the state
7 database of each request for proposal for a public contract
8 and to delete state trade schools, junior colleges, colleges,
9 and universities under the supervision and control of the
10 Alabama Community College System from coverage under the
11 public bid law in Article 3 of Chapter 16 of Title 40, Code of
12 Alabama 1975.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Article 2 (commencing with Section
15 41-16-20) and Article 3A (commencing with Section 41-16-70) of
16 Chapter 16 of Title 41, Code of Alabama 1975, are repealed.

17 Section 2. Article 5 (commencing with Section
18 41-4-110) of Chapter 4 of Title 41, Code of Alabama 1975, is
19 repealed and replaced with a new Article 5, to read as
20 follows:

21 Article 5. OFFICE OF THE CHIEF PROCUREMENT OFFICER.

22 Division 1. General Provisions.

23 §41-4-110.

24 (a) This article shall be construed and applied to
25 promote its underlying purposes and policies.

26 (b) The underlying purposes and policies of this
27 article are to do all of the following:

1 (1) Simplify, clarify, and modernize the law
2 governing procurement by the state.

3 (2) Permit the continued development of procurement
4 policies and practices.

5 (3) Make as consistent as possible the procurement
6 laws among the various jurisdictions.

7 (4) Provide for increased public confidence in the
8 procedures followed in public procurement.

9 (5) Ensure the fair and equitable treatment of all
10 persons who deal with the procurement system of this state.

11 (6) Provide increased economy in state procurement
12 activities and maximize to the fullest extent practicable the
13 purchasing value of public funds of the state.

14 (7) Foster effective broad-based competition within
15 the free enterprise system.

16 (8) Provide safeguards for the maintenance of a
17 procurement system of quality and integrity.

18 (9) Obtain in a cost-effective and responsive manner
19 the materials and services required by state agencies in order
20 for those agencies to better serve this state's businesses and
21 residents.

22 §41-4-111.

23 Unless displaced by the particular provisions of
24 this article, the principles of law and equity, including the
25 Uniform Commercial Code, the law merchant, and law relative to
26 capacity to contract, agency, fraud, misrepresentation,

1 duress, coercion, mistake, and bankruptcy shall supplement the
2 provisions of this article.

3 §41-4-112.

4 This article requires all parties involved in the
5 negotiation, performance, or administration of state contracts
6 to act in good faith. Good faith means honesty in fact in the
7 conduct or transaction concerned.

8 (1) This article applies to contracts solicited and
9 entered into after October 1, 2022.

10 (2) Except as otherwise provided in this article,
11 this article applies to every expenditure of public funds by a
12 governmental body of this state under a contract for supplies
13 or services.

14 (3) This article does not apply to either of the
15 following:

16 a. Gifts, grants, or contracts between state
17 agencies, between state agencies and political subdivisions,
18 or between the state and other governments.

19 b. All expenditures of funds of whatever nature made
20 by or on behalf of the county commissions and the governing
21 boards of instrumentalities of counties, including waterworks
22 boards, sewer boards, gas boards, and other like utility
23 boards, and commissions for which procurement activities are
24 currently governed by Article 3, commencing with Section
25 41-16-50, of Chapter 16.

26 §41-4-113.

1 Written determinations required by this article
2 shall be retained in the appropriate official contract file of
3 the Chief Procurement Officer or the purchasing agency.

4 §41-4-114.

5 (a) For purposes of this article, the following
6 words shall have the following meanings:

7 (1) BUSINESS. Any corporation, partnership,
8 individual, sole proprietorship, joint stock company, joint
9 venture, or other private legal entity.

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

14 (3) CHANGE ORDER. A written order signed by the
15 procurement officer directing the contractor to make changes
16 which the changes clause of the contract authorizes the
17 procurement officer to order without the consent of the
18 contractor.

19 (4) CHIEF PROCUREMENT OFFICER. The person holding
20 the position created in Section 41-4-120, as the head of the
21 Office of the Chief Procurement Officer.

22 (5) CONTINGENCY FEE CONTRACT. An agreement, express
23 or implied, for litigation legal services of an attorney or
24 attorneys, including any associated counsel, under which
25 compensation is contingent in whole or in part upon the
26 successful accomplishment or disposition of the subject matter

1 of the agreement. The payment may be in an amount which either
2 is fixed or is to be determined under a formula.

3 (6) CONTINGENCY FEE COUNSEL. An attorney or
4 attorneys performing services under a contingency fee
5 contract.

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

9 (8) CONTRACT MODIFICATION. Any written alteration in
10 specifications, delivery point, rate of delivery, period of
11 performance, price, quantity, or other provisions of any
12 contract accomplished by mutual action of the parties to the
13 contract.

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

18 (10) CONTRACTOR. Any person having a contract with a
19 governmental body.

20 (11) DATA. Recorded information, regardless of form
21 or characteristic.

22 (12) DESIGNEE. A duly authorized representative of a
23 person.

24 (13) ELECTRONIC. Electrical, digital, magnetic,
25 optical, electromagnetic, or other similar technology.

26 (14) GOVERNMENTAL BODY. Except as otherwise provided
27 in this article, an agency, department, board, bureau,

1 commission, committee, institution, corporation, authority, or
2 office of this state. The term does not include the
3 legislative or judicial departments of the state or a
4 legislative or judicial agency, the Alabama State Port
5 Authority, municipalities, or the county commission and
6 governing boards of instrumentalities of counties including
7 waterworks boards, sewer boards, gas boards, and other like
8 utility boards and commissions.

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

14 (16) JUDICIAL AGENCY. Any department, appellate
15 court, trial court, board, body, bureau, commission,
16 committee, institution, corporation, authority, or office
17 created, established, and operating as an agency of the
18 judicial department of this state. The term includes, but is
19 not limited to, the Administrative Office of Courts, the State
20 Law Library, the Court of the Judiciary, and the Sentencing
21 Commission.

22 (17) LEGISLATIVE AGENCY. The Alabama State
23 Legislature and any department, board, body, bureau,
24 commission, committee, institution, corporation, authority, or
25 office created, established, and operating as an agency of the
26 legislative department of this state. The term includes, but

1 is not limited to, the Legislative Services Agency and the
2 Department of Examiners of Public Accounts.

3 (18) PERSON. An individual, corporation,
4 association, partnership, limited liability corporation,
5 union, committee, club, other organization, or group.

6 (19) PROCUREMENT. Buying, purchasing, renting,
7 leasing, or otherwise acquiring any supplies or services. The
8 term includes all functions that pertain to the obtaining of
9 any supply or service, including description of requirements,
10 selection and solicitation of sources, preparation and award
11 of contracts, and all phases of contract administration. The
12 term does not include the leasing of real property.

13 (20) PROCUREMENT OFFICER. Any person duly authorized
14 by the Chief Procurement Officer to enter into and administer
15 contracts and make written determinations with respect to
16 those contracts. The term includes an authorized
17 representative acting within the limits of authority.

18 (21) PROFESSIONAL SERVICES. The services of
19 physicians, architects, engineers, landscape architects, land
20 surveyors, geoscientists, attorneys, teachers, artists,
21 appraisers, and other individuals, or business entities
22 offering the services of those individuals, who possess a high
23 degree of scientific or specialized skill and knowledge where
24 the experience and professional qualifications of the service
25 provider are particularly relevant to the provision of the
26 required service.

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

3 (23) PUBLIC NOTICE. The distribution or
4 dissemination of information to interested parties using
5 methods that are reasonably available, including, but not
6 limited to, publication in newspapers of general circulation,
7 electronic or paper mailing lists, and websites designated by
8 the state and maintained for that purpose.

9 (24) PURCHASING AGENCY. A governmental body, other
10 than the Office of the Chief Procurement Officer, that is
11 authorized by this article, its implementing rules, or by
12 delegation from the Chief Procurement Officer to enter into
13 contracts.

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

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

20 (27) SOLICITATION. Any request to submit quotes,
21 bids, or offers to the state for the procurement of supplies
22 or services. The term includes invitations to bid and requests
23 for proposals.

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

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

3 (30) WRITTEN or IN WRITING. The product of any
4 method of forming characters on paper, other materials, or
5 viewable screens, which can be read, retrieved, and
6 reproduced, including information that is electronically
7 transmitted and stored.

8 (b) The terms state, state department, state agency,
9 agency, state entity, instrumentality of the state, and
10 governmental body do not include municipalities, political
11 subdivisions, county commissions, or the governing boards of
12 instrumentalities of counties including waterworks boards,
13 sewer boards, gas boards, and other like utility boards and
14 commissions.

15 §41-4-115.

16 (a) Except as provided in subsection (b),
17 procurement information is a public record to the extent
18 provided by state law and shall be available to the public.

19 (b) Procurement information that is any of the
20 following is not a public record:

21 (1) Commercial or financial information obtained in
22 response to a solicitation that is designated as privileged or
23 confidential by the person or entity submitting such
24 information in compliance with instructions in the
25 solicitation for marking information exempt from public
26 disclosure. Information not marked as required is a public
27 record.

1 (2) Evaluative documents, bids, or proposals prior
2 to award.

3 (3) When the public disclosure of procurement
4 information would be detrimental to the safety or security of
5 persons or property or to the public interest as determined,
6 in writing, by the Chief Procurement Officer.

7 (4) Any procurement information identified by the
8 Chief Procurement Officer under subsection (c).

9 (c) The Chief Procurement Officer, by rule, shall
10 establish a process for identifying and protecting procurement
11 information that is excepted from disclosure.

12 §41-4-116.

13 The use of electronic media, including acceptance of
14 electronic signatures, is authorized consistent with the
15 state's applicable statutory, regulatory, or other guidance
16 for use of the media, so long as the guidance provides for
17 both of the following:

18 (1) Appropriate security to prevent unauthorized
19 access to the bidding, approval, and award processes.

20 (2) Accurate retrieval or conversion of electronic
21 forms of such information into a medium that permits
22 inspection and copying.

23 Division 2. Procurement Organization.

24 §41-4-120.

25 There is created within the Department of Finance
26 the Office of the Chief Procurement Officer, headed by the
27 Chief Procurement Officer.

1 §41-4-121.

2 The Chief Procurement Officer shall be appointed by
3 the Director of Finance with the approval of the Governor. The
4 Chief Procurement Officer shall have relevant, recent
5 experience in public procurement and shall be a person with
6 demonstrated executive and organizational ability.

7 §41-4-122.

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

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

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

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

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

26 (3) Require the periodic reporting of all
27 procurement by or for counties, the purchase, contract, or

1 lease price of which is one hundred dollars (\$100) or more,
2 and require information in connection therewith, to prescribe
3 forms and fix the time for submitting such reports and, when
4 requested by any county, municipal corporation, and other
5 local public body, including any board of education, to make
6 such purchase contract, or lease for it. It shall be the duty
7 of every county to make the report on forms furnished by the
8 Office of the Chief Procurement Officer, whenever requested to
9 do so, but not more than once every 30 days.

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

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

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

1 or her agency, in accordance with rules established by Alabama
2 fiscal procedures. The Chief Procurement Officer may collect
3 any credit card from any ~~agency~~ governmental body at any time
4 due to improper use. The Chief Procurement Officer shall
5 submit an annual report and accounting regarding the use of
6 credit cards by each governmental body to the Director of
7 Finance and the Governor.

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

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

24 §41-4-123.

25 Subject to rules adopted under this article, the
26 Chief Procurement Officer may delegate his or her authority to
27 designees or to any department, agency, or official.

1 §41-4-124.

2 (a) Except as otherwise provided in this article,
3 all rights, powers, duties, and authority relating to the
4 procurement of supplies and services now vested in, or
5 exercised by, any ~~state~~ governmental body under existing law
6 are transferred to the Chief Procurement Officer.

7 (b) The following governmental bodies are subject to
8 this article except as it relates to the purchase of
9 professional services and the oversight and authority of the
10 Chief Procurement Officer, but shall establish and maintain
11 procurement offices and personnel and shall adopt rules as may
12 be necessary to comply with this article:

13 (1) All educational and eleemosynary institutions
14 governed by a board of trustees or other similar governing
15 body.

16 (2) The Retirement Systems of Alabama.

17 (3) The Department of Mental Health.

18 (c) The Alabama Department of Transportation is
19 subject to this article except as it relates to the purchase
20 of professional services and shall adopt rules governing the
21 purchase of professional services by the department which are
22 consistent with the principles contained in this article and
23 promote fairness, competition, transparency, integrity, and
24 value in the procurement process.

25 (d) The procurement of any supplies or services by a
26 legislative agency or judicial agency shall be solely governed
27 by procedures adopted by the Legislative Council for all

1 legislative agencies and by rules adopted by the Supreme Court
2 of Alabama for all judicial agencies. The procedures adopted
3 shall be consistent with any applicable requirements of the
4 Constitution of Alabama of 1901, and shall be established in
5 accordance with the underlying purposes and policies of
6 promoting responsible and efficient use of public funds
7 dedicated and appropriated to the agencies for their use,
8 providing consistency of application of rules and requirements
9 across all agencies within the applicable branch of state
10 government, and promoting fairness, competition, transparency,
11 integrity, and value in the procurement process. In no case
12 may the legislative and judicial departments of the state
13 adopt procedures that conflict with the laws of this state
14 regarding the public disclosure of the use of public funds and
15 the transparency of public expenditures, or that otherwise
16 conflict with state law regarding public records and public
17 access to those records. Except for the requirement to act in
18 good faith, no other provision of this article shall apply to
19 legislative or judicial agencies; provided, that the
20 legislative and judicial departments may adopt all or any part
21 of this article and its accompanying rules.

22 (e) The procurement of any supplies or services by
23 the Alabama State Port Authority shall be solely governed by
24 procedures adopted by the Board of Directors of the Alabama
25 State Port Authority. The procedures adopted shall be
26 consistent with any applicable requirements of the
27 Constitution of Alabama of 1901, and shall be established in

1 accordance with the underlying purposes and policies of
2 promoting responsible and efficient use of the funds of the
3 Alabama State Port Authority, providing consistency of
4 application of rules and requirements across all agencies
5 within the applicable branch of state government, and
6 promoting fairness, competition, transparency, integrity, and
7 value in the procurement process. Except for the protection of
8 information otherwise legally considered commercially
9 confidential, sensitive, or of a nature that upon release
10 would harm the competitive advantage of itself or its
11 customers, concessionaires, lessees, or suppliers, the Alabama
12 State Port Authority may not adopt procedures that conflict
13 with the laws of this state regarding the public disclosure of
14 the use of its funds and the transparency of its expenditures,
15 or that otherwise conflict with state law regarding public
16 records and public access to those records. Except as provided
17 in this subsection and the requirement to act in good faith,
18 no other provision of this chapter shall apply to the Alabama
19 State Port Authority; provided, however, that the Alabama
20 State Port Authority may adopt all or any part of this chapter
21 and its accompanying rules.

22 §41-4-125.

23 ~~(a) No contract for the services of legal counsel~~
24 ~~for purposes of litigation may be awarded without the approval~~
25 ~~of the Attorney General and the Governor. No contract for the~~
26 ~~services of legal counsel for nonlitigation purposes may be~~
27 ~~awarded without the approval of the Governor.~~

1 ~~(b)~~(a)(1) Except as otherwise provided in this
2 section, attorneys retained to represent the state in
3 litigation shall be appointed by the Attorney General in
4 consultation with the Governor from a list of attorneys
5 maintained by the Attorney General. All attorneys interested
6 in representing the state may apply and shall be included on
7 the list. The selection of the attorney or law firm shall be
8 based upon the level of skill, experience, and expertise
9 required in the litigation and the fees charged by the
10 attorney or law firm shall be taken into consideration so that
11 the state receives the best representation for the funds paid.
12 Fees shall be negotiated and approved by the Governor in
13 consultation with the Attorney General. Maximum fees paid for
14 legal representation that does not involve a contingency fee
15 contract may be established by executive order of the
16 Governor.

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

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

4 ~~(c)~~(b) This section does not apply to either of the
5 following:

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

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

10 ~~(d)~~(c) Nothing in this section shall be construed as
11 altering or amending the Governor's authority to retain
12 attorneys under Section 36-13-2; provided, the Governor shall
13 select the attorneys from three proposals received from
14 attorneys included on the list maintained by the Attorney
15 General.

16 ~~(e)~~(d) (1) A governmental body may not enter into a
17 contingency fee contract with any attorney or law firm unless
18 the contracting agency makes a written determination prior to
19 entering into a contingency fee contract that contingency fee
20 representation is both cost effective and in the public
21 interest. Any written determination shall include specific
22 findings for each of the following factors:

23 a. Whether there are sufficient and appropriate
24 legal and financial resources within the state to handle the
25 matter without a contingency contract.

26 b. The expected time and labor required, the
27 novelty, complexity, and difficulty of the questions involved,

1 and the skill requisite to perform the attorney services
2 properly.

3 c. The geographic area where the attorney services
4 are to be provided.

5 d. The amount of experience desired for the
6 particular kind of attorney services to be provided and the
7 nature of the private attorney's experience with similar
8 issues or cases.

9 (2) Subject to subdivision (3), the state may not
10 enter into a contingency fee contract that provides for the
11 contingency fee counsel to receive an aggregate contingency
12 fee calculated from the gross recovery resulting from a
13 judgment or settlement in each action, exclusive of expenses,
14 in excess of the total of all of the following:

15 a. Twenty-two percent of any recovery of up to ten
16 million dollars (\$10,000,000)~~;~~ plus

17 b. Twenty percent of any portion of the recovery
18 between ten million dollars (\$10,000,000) and twenty-five
19 million dollars (\$25,000,000)~~;~~ plus

20 c. Sixteen percent of any portion of the recovery
21 between twenty-five million dollars (\$25,000,000) and fifty
22 million dollars (\$50,000,000)~~;~~ plus

23 d. Twelve percent of any portion of the recovery
24 between fifty million dollars (\$50,000,000) and seventy-five
25 million dollars (\$75,000,000)~~;~~ plus

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

4 f. Seven and one-tenth (7.1) percent of any portion
5 of the recovery exceeding one hundred million dollars
6 (\$100,000,000).

7 (3) The aggregate fee paid under a contingency fee
8 contract may not exceed seventy-five million dollars
9 (\$75,000,000).

10 (4) All litigation expenses incurred by the
11 contingency fee counsel shall be paid or reimbursed upon
12 approval on a monthly basis upon presentation of documentation
13 of the expenses to the contracting agency.

14 (5) The Attorney General may certify in writing to
15 the Governor that, in the opinion of the Attorney General, an
16 issue affecting the public health, safety, convenience, or
17 economic welfare of the state exists that justifies that the
18 contingency fee limitations set forth in subdivision (2) or
19 (3) be suspended in the case of a particular contingency fee
20 contract. Upon receipt of the written certification, the
21 Governor, by the issuance of an executive order, may waive the
22 limitations with respect to the specified contingency fee
23 contract.

24 (6) A governmental body may not enter into a
25 contingency fee contract unless all of the following
26 requirements are met throughout the entire contract period,
27 including any extensions of the period:

1 a. A government attorney has complete control over
2 the course and conduct of the case.

3 b. A government attorney with supervisory authority
4 is personally involved in overseeing the litigation.

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

7 d. After giving reasonable notice to the contingency
8 fee counsel, any defendant that is the subject of the
9 litigation may contact the lead government attorney directly
10 unless directed to do otherwise by that attorney. Contingency
11 fee counsel shall have the right to participate in the
12 discussion with the lead government attorney or attorneys
13 unless, after consultation with contingency fee counsel, the
14 lead government attorney agrees to the discussion without
15 contingency fee counsel being present.

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

18 f. Decisions regarding settlement of the case shall
19 be reserved exclusively to the discretion of the government
20 attorney and the state.

21 (7) The Attorney General shall develop a standard
22 addendum to every contract for contingent fee attorney
23 services that shall be used in all cases, describing in detail
24 what is expected of both the contingency fee counsel and the
25 state, including, without limitation, the requirements listed
26 in subdivision (6).

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

6 (9) Every contingency fee counsel, from the
7 inception of the contingency fee contract until at least four
8 years after the contract expires or is terminated, shall
9 maintain detailed current records, including documentation of
10 all time records, expenses, disbursements, charges, credits,
11 underlying receipts and invoices, and other financial
12 transactions that concern the provision of the attorney
13 services. The contingency fee counsel shall make all the
14 records available for inspection and copying upon request by
15 the Governor, Attorney General, or contracting agency. In
16 addition, the contingency fee counsel shall maintain detailed
17 contemporaneous time records for the attorneys and paralegals
18 working on the contract in six minute increments and, upon
19 request, shall provide promptly these records to the Governor,
20 Attorney General, or contracting agency.

21 (10) Any contingency fee paid to a private attorney
22 or law firm shall be paid from the State Treasury from the
23 funds recovered as a result of the contingent fee contract
24 within 30 days of receipt of the recovery unless ordered to do
25 otherwise by a court with jurisdiction over the litigation
26 subject to the contingency fee contract.

27 §41-4-126.

1 (a) Unless otherwise ordered by rule, with approval
2 of the Governor, the following supplies and services need not
3 be procured through the Office of the Chief Procurement
4 Officer and are exempt from the competitive requirements of
5 this article:

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

7 (2) Published books in any format such as digital,
8 audio, or hardcopy; maps; periodicals; and technical
9 pamphlets.

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

12 (4) Purchases of alcoholic beverages by the
13 Alcoholic Beverage Control Board.

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

18 (6) Photographs purchased from a federal agency.

19 (7) Barter transactions by the Department of
20 Corrections.

21 (8) The purchase of insurance and supplies or
22 services related to the purchase of insurance.

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

1 (c) Nothing in this article is intended to repeal or
2 limit any provision of Section 23-1-40 or Sections 23-2-140
3 through 23-2-175, relating to the procurement authority of the
4 State Department of Transportation and the Alabama Toll Road,
5 Bridge and Tunnel Authority. To the extent any provision
6 contained in this article conflicts with Section 23-1-40 or
7 Sections 23-2-140 through 23-2-175, the latter governs.

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

13 (e) Nothing in this chapter repeals or limits any
14 provision of Section 14-7-8, relating to the procurement
15 authority of Alabama Correctional Industries. To the extent
16 any provision contained in this chapter conflicts with Section
17 14-7-8, the latter governs.

18 (f) This article does not apply to any state
19 authority, board, or other entity with respect to contracts
20 relating to the issuance of debt which is required to be
21 repaid from sources other than state funds.

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

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

1 ~~(h)~~(i) Except for capital equipment, this article
2 does not apply to the purchase by a public hospital of medical
3 products, medical supplies, medical devices, services,
4 implants, pharmaceuticals, fluids, gases, or any other medical
5 products which are used in the course of treating patients, or
6 to support the treatment of patients.

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

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

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

1 ~~(j)~~(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 ~~(k)~~(l) This article does not apply to public works
6 projects governed by Title 39.

7 ~~(l)~~(m) This article does not apply to the purchase
8 by 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 ~~(m)~~(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 ~~(n)~~(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.

26 ~~(o)~~(p) Governmental bodies may purchase supplies
27 from any vendor that offers the item at a price at least ten

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

21 ~~(p)~~(q) Nothing in this article is intended to repeal
22 or limit any provision of Chapter 61E of Title 16, relating to
23 the powers and authority of the Department of Education to
24 enter into joint purchasing agreements on behalf of
25 educational institutions. To the extent any provision
26 contained in this article conflicts with Chapter 61E of Title
27 16, the latter governs.

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

3 §41-4-127.

4 (a) The Chief Procurement Officer, with approval of
5 the Director of Finance and the Governor, shall adopt rules to
6 implement and administer this article. The rules shall be made
7 in accordance with the applicable provisions of the
8 Administrative Procedure Act.

9 (b) The Chief Procurement Officer may not delegate
10 the power to adopt rules.

11 (c) A rule may not change any commitment, right, or
12 obligation of the state or of a contractor under a contract in
13 existence on the effective date of the adoption of the rule.

14 §41-4-128.

15 The Chief Procurement Officer shall collect and
16 prepare statistical data concerning the procurement of all
17 supplies and services and employ trained personnel as may be
18 necessary to carry out this function. All using agencies shall
19 furnish reports as required by the Chief Procurement Officer
20 concerning usage, needs, and stocks on hand. The Chief
21 Procurement Officer may prescribe forms to be used by the
22 using agencies in the requisitioning, ordering, and reporting
23 of supplies and services.

24 §41-4-129.

25 (a) The Chief Procurement Officer may establish a
26 Procurement Advisory Council. If created, the council, upon
27 adequate public notice, shall meet at least once a year for

1 the discussion of problems and recommendations for improvement
2 of the procurement process. When requested by the Chief
3 Procurement Officer, the council shall conduct studies,
4 research, analyses, and make reports and recommendations with
5 respect to subjects or matters within the jurisdiction of the
6 Chief Procurement Officer. The council shall consist of
7 qualified representatives of state and local government and
8 other persons selected by the Chief Procurement Officer.

9 (b) The Chief Procurement Officer may appoint
10 advisory groups to assist with specifications or procurement
11 in specific areas and to assist with any other matter within
12 the authority of the Chief Procurement Officer.

13 Division 3. Source Selection and Contract Formation.

14 §41-4-130.

15 As used in this division, the following terms shall
16 have the following meanings:

17 (1) COST-REIMBURSEMENT CONTRACT. A contract under
18 which a contractor is reimbursed for costs that are allowable
19 and allocable in accordance with the contract terms and the
20 provisions of this chapter, and a fee, if any.

21 (2) ESTABLISHED CATALOGUE PRICE. The price included
22 in a catalogue, price list, schedule, or other form that does
23 all of the following:

24 a. Is regularly maintained by a manufacturer or
25 contractor.

26 b. Is either published or otherwise available for
27 inspection by customers.

1 c. States prices at which sales are currently or
2 were last made to a significant number of any category of
3 buyers or buyers constituting the general buying public for
4 the supplies or services involved.

5 (3) INVITATION TO BID. All documents, whether
6 attached or incorporated by reference, utilized for soliciting
7 bids.

8 (4) PREFERRED VENDOR. A person that is granted
9 preference priority according to the following:

10 a. PRIORITY #1. Produces or manufactures the product
11 within the state.

12 b. PRIORITY #2. Has an assembly plant or
13 distribution facility for the product within the state.

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

20 d. PRIORITY #4. Is physically located in the state
21 and that is more than 50 percent owned by a person who was
22 discharged or released under conditions other than
23 dishonorable and who has at least 24 months of active service
24 in the United States military, naval, or air service, or who
25 has less than 24 months of active service in any of the
26 foregoing and was separated with a service-connected
27 disability, or a national guardsman or reservist who completed

1 active federal service for purposes other than training or who
2 served at least 180 days of continuous service for purposes
3 other than training.

4 (5) PURCHASE DESCRIPTION. The words used in a
5 solicitation to describe the supplies or services to be
6 purchased. The term includes any specifications attached to,
7 or made a part of, the solicitation.

8 (6) REQUEST FOR PROPOSALS. All documents, whether
9 attached or incorporated by reference, that are used for
10 soliciting proposals.

11 (7) RESPONSIBLE BIDDER or OFFEROR. A person who has
12 the capability in all respects to perform fully the contract
13 requirements and who has the integrity and reliability to
14 assure good faith performance.

15 (8) RESPONSIVE BIDDER or OFFEROR. A person who has
16 submitted a bid or offer that conforms in all material
17 respects to the invitation for bid or request for proposal.

18 §41-4-131.

19 (a) Unless otherwise authorized by law, all state
20 contracts shall be awarded by the use of one of the following
21 methods:

22 (1) Competitive sealed bids, pursuant to Section
23 41-4-132.

24 (2) Competitive sealed proposals, pursuant to
25 Section 41-4-133.

26 (3) Small purchase procedures pursuant to Section
27 41-4-134.

1 (4) A sole source procurement pursuant to Section
2 41-4-135.

3 (5) An emergency procurement pursuant to Section
4 41-4-136.

5 (6) A special procurement pursuant to Section
6 41-4-137.

7 (b) In the event a bid or offer is received for the
8 supplies or service from a person deemed to be a responsible
9 bidder or offeror and a preferred vendor and the bid is no
10 more than five percent greater than the bid of the lowest
11 responsible bidder or offeror who is not deemed to be a
12 preferred vendor, the Chief Procurement Officer or purchasing
13 agency may award the contract to the preferred vendor.

14 §41-4-132.

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

17 (b) An invitation to bid shall be issued and shall
18 include a purchase description and all contractual terms and
19 conditions applicable to the procurement.

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

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

1 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.

26 (g) (1) Unless there is a compelling reason to reject
27 bids, as prescribed by rules, notice of intent to award to the

1 lowest responsive and responsible bidder whose bid meets the
2 requirements set forth in the invitation to bid shall be given
3 by posting the notice at a location specified in the
4 invitation to bid. Before posting the notice of intent to
5 award, the Chief Procurement Officer or head of the purchasing
6 agency, may negotiate with the lowest responsive and
7 responsible bidder to lower the bid price within the scope of
8 the invitation to bid. The invitation to bid and notice of
9 intent to award shall contain a statement of the bidder's
10 right to protest.

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

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

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

23 (2) After receipt of the responses to the request
24 for qualifications from prospective bidders, all qualified
25 bidders, as determined by the Chief Procurement Officer, shall
26 have an opportunity to bid. The determination regarding which
27 bidders are qualified is not subject to review.

1 §41-4-133.

2 (a) (1) A contract may be entered into by competitive
3 sealed proposals when the Chief Procurement Officer or the
4 head of a purchasing agency, in accordance with rules,
5 determines that the use of competitive sealed bidding is
6 either not practicable or not advantageous to the state.
7 Unless determined otherwise by the Chief Procurement Officer,
8 professional services shall be procured by competitive sealed
9 proposals.

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

14 (b) Proposals shall be solicited through a request
15 for proposals.

16 (c) Adequate public notice of the request for
17 proposals shall be given in the same manner as provided in
18 subsection (c) of Section 41-4-132.

19 (d) Proposals shall be opened so as to avoid
20 disclosure of contents to competing offerors prior to contract
21 award. A register of proposals shall be prepared in accordance
22 with rules and shall be open for public inspection after award
23 of the contract.

24 (e) A request for proposals shall state the relative
25 importance of price and other factors and subfactors, if any.

26 (f) Discussions may be conducted with responsible
27 offerors who submit proposals determined by the Chief

1 Procurement Officer or purchasing agency to be reasonably
2 competitive for award to assure full understanding of, and
3 responsiveness to, the solicitation requirements. The
4 determination of the Chief Procurement Officer is not subject
5 to review. Offerors shall be accorded fair and equal treatment
6 with respect to any opportunity for discussion and revision of
7 proposals. Revisions of proposals may be permitted after
8 submissions and prior to award for the purpose of obtaining
9 best and final offers. In conducting discussions, there may
10 not be disclosure of any information derived from proposals
11 submitted by competing offerors.

12 (g) Contracts shall be awarded to the responsible
13 offeror whose proposal conforms to the solicitation and is
14 determined in writing to be the most advantageous to the
15 state, taking into consideration price and the evaluation
16 factors set forth in the request for proposals. No other
17 factors or criteria shall be used in the evaluation. Public
18 notice of the award of a contract shall be promptly given.

19 (h) The Chief Procurement Officer may provide
20 debriefings that furnish the basis for the source selection
21 decision and contract award.

22 (i) (1) Before soliciting proposals, the Chief
23 Procurement Officer may authorize issuance of a request for
24 qualifications from prospective offerors. The request shall
25 contain, at a minimum, a description of the scope of work to
26 be solicited by the request for proposals, the deadline for
27 submission of information, and how prospective offerors may

1 apply for consideration. The request shall require information
2 concerning the prospective offeror's product specifications,
3 qualifications, experience, and ability to perform the
4 requirements of the contract. Adequate public notice of the
5 request for qualifications shall be given in the same manner
6 as provided in subsection (c) of Section 41-4-132.

7 (2) After receipt of the responses to the request
8 for qualifications from prospective offerors, all qualified
9 offerors, as determined by the Chief Procurement Officer,
10 shall have an opportunity to submit proposals. The
11 determination regarding which offerors are qualified is not
12 subject to review.

13 (3) If a professional service provider is prohibited
14 by law or policy from submitting proposals in response to a
15 request for proposals, the Chief Procurement Officer or
16 purchasing agency may utilize the request for qualifications
17 process to determine the awardee.

18 §41-4-134.

19 Any procurement not exceeding the small purchase
20 amount established by rule may be made in accordance with
21 small purchase procedures. A procurement may not be
22 artificially divided so as to constitute a small purchase
23 under this section.

24 §41-4-135.

25 A contract may be awarded for a supply or service
26 without competition when the Chief Procurement Officer
27 determines in writing that there is only one source for the

1 required supply or service. In any event, sole source
2 contracts may not exceed one year unless the Chief Procurement
3 Officer determines in writing that there continues to be only
4 one source for the required supply or service.

5 §41-4-136.

6 Notwithstanding any other provision of this article,
7 the Chief Procurement Officer or the head of a purchasing
8 agency may make emergency procurements when there is a threat
9 to public health, welfare, or safety under emergency
10 conditions, as defined by rule. Emergency procurements made
11 under this section shall be made with as much competition as
12 is practicable under the circumstances. The authority to make
13 emergency procurements may not be delegated. A written
14 determination of the basis for the emergency and for the
15 selection of the particular contractor shall be included in
16 the contract file.

17 §41-4-137.

18 Notwithstanding any other provision of this article,
19 the Chief Procurement Officer or the head of a purchasing
20 agency, with prior public notice, may initiate a procurement
21 above the small purchase amount specified in Section 41-4-134
22 when the officer or agency head determines that an unusual or
23 unique situation exists that makes the application of all
24 requirements of competitive sealed bidding or competitive
25 sealed proposals contrary to the public interest. Any special
26 procurement under this section shall be made with as much
27 competition as is practicable under the circumstances. A

1 written determination of the basis for the procurement and for
2 the selection of the particular contractor shall be included
3 by the Chief Procurement Officer or the head of the purchasing
4 agency in the contract file. The Chief Procurement Officer
5 shall publish an annual report, subject to Section 41-4-115,
6 that describes all determinations made under this section
7 during the prior calendar year.

8 §41-4-138.

9 When it is determined to be in the best interest of
10 the state, as specified by rule, an invitation to bid, a
11 request for proposals, or other solicitation under this
12 article may be cancelled, and any or all bids or proposals
13 received may be rejected.

14 §41-4-139.

15 (a) A written determination of nonresponsibility of
16 a bidder or offeror shall be made in accordance with rules
17 adopted by the Chief Procurement Officer. The unreasonable
18 failure of a bidder or offeror to promptly supply information
19 in connection with an inquiry with respect to responsibility
20 may be grounds for a determination of nonresponsibility with
21 respect to the bidder or offeror.

22 (b) Confidential information furnished by a bidder
23 or offeror under this section may not be disclosed outside of
24 the Office of the Chief Procurement Officer or the purchasing
25 agency without the prior written consent of the bidder or
26 offeror.

27 §41-4-140.

1 Prospective suppliers may be prequalified for
2 particular types of supplies or services. The method of
3 submitting prequalification information and the information
4 required in order to be prequalified shall be determined by
5 the Chief Procurement Officer.

6 §41-4-141.

7 The Chief Procurement Officer may request factual
8 information reasonably available to the bidder or offeror to
9 substantiate that the price or cost offered, or some portion
10 of it, is reasonable when either of the following occur:

11 (1) The price is not any of the following:

12 a. Based on adequate price competition.

13 b. Based on established catalogue or market prices.

14 c. Set by law or rule.

15 (2) The price or cost exceeds an amount established
16 by rule.

17 §41-4-142.

18 (a) For the purpose of this section, the following
19 terms shall have the respective meanings ascribed by this
20 section:

21 (1) AFFILIATE. A related party as defined in
22 subsection (b) of Section 40-23-190 as that provision exists
23 on January 1, 2004.

24 (2) STATE DEPARTMENT or AGENCY. Every state office,
25 department, division, bureau, board, or commission of the
26 State of Alabama.

1 (b) A state department or agency may not contract
2 for the purchase or lease of supplies from a vendor,
3 contractor, or an affiliate of a vendor or contractor, unless
4 that vendor, contractor, and all of its affiliates that make
5 sales for delivery into Alabama or leases for use in Alabama
6 are properly registered, collecting, and remitting Alabama
7 state and local and use tax, or simplified sellers use tax,
8 and lease tax, as provided for by Article 4 of Chapter 12 of
9 Title 40 and Articles 1, 2, and 4 of Chapter 23 of Title 40,
10 or by any local act or ordinance.

11 (c) Each vendor, contractor, or affiliate of a
12 vendor or contractor that is offered a contract to do business
13 with a state department or state agency shall be required to
14 certify that the vendor or affiliate is appropriately
15 registered to collect and remit sales and use tax, or
16 simplified sellers use tax and lease tax as required by this
17 section and submit to that state department or agency
18 certification required by the Alabama Department of Revenue.

19 (d) Every bid submitted and contract executed by the
20 state shall contain a certification by the bidder or
21 contractor that the bidder or contractor is not barred from
22 bidding for or entering into a contract under this section and
23 that the bidder or contractor acknowledges that the
24 contracting state agency may declare the contract void if the
25 certification completed is false.

26 (e) Each vendor or contractor that sells or leases
27 supplies to a state department or agency, and each affiliate

1 of that vendor or contractor that makes sales for delivery
2 into Alabama, shall be required to collect and remit the
3 Alabama sales and use tax, or simplified sellers use tax, and
4 lease tax on all its sales and leases into the state.

5 §41-4-143.

6 (a) Subject to the limitations of subsection (b),
7 any type of contract that will promote the best interests of
8 the state may be used under this article.

9 (b) (1) The use of a cost-plus-a-percentage-of-cost
10 contract is prohibited.

11 (2) A cost-reimbursement contract may be used only
12 when a determination is made in writing that either of the
13 following apply:

14 a. The cost-reimbursement contract is likely to be
15 less costly to the state than any other type of contract.

16 b. It is impracticable to obtain the supplies or
17 services required except under a cost-reimbursement contract.

18 §41-4-144.

19 (a) Unless otherwise provided by law, a contract for
20 supplies or services may be entered into for any period of
21 time that is in the best interests of the state, so long as
22 the terms of the contract and the conditions of renewal or
23 extension, if any, are included in the solicitation and funds
24 are available for the first fiscal year at the time of
25 contracting. Payment and performance obligations for
26 succeeding fiscal periods shall be subject to the availability
27 and appropriation of funds.

1 (b) A multi-year contract may be used when the
2 estimated requirements cover the period of the contract and
3 are reasonably firm and continuing, and the contract will
4 serve the best interests of the state by encouraging effective
5 competition or otherwise promoting economies in state
6 procurement.

7 (c) When funds are not appropriated or otherwise
8 made available to support continuation of performance in a
9 subsequent fiscal period, the contract shall be cancelled and
10 the contractor shall be reimbursed for the reasonable value of
11 any non-recurring costs incurred but not amortized in the
12 price of the supplies or services delivered under the
13 contract. The cost of cancellation may be paid from any
14 appropriations available for that purpose.

15 §41-4-145.

16 The Chief Procurement Officer or his or her
17 designee, at reasonable times, may inspect a part of the
18 plant, the place of business, or the logical and physical
19 electronic systems of a contractor or any subcontractor that
20 is related to the performance of any contract awarded or to be
21 awarded by the state.

22 §41-4-146.

23 In addition to the authority of the Department of
24 Examiners of Public Accounts, as set forth under Chapter 5A of
25 Title 41, the Department of Finance, at reasonable times and
26 places, may audit or examine the books and records of any
27 person who has submitted data in substantiation of offered

1 prices under Section 41-4-141 to the extent that the books and
2 records relate to that data. Any person who receives a
3 contract, change order, or contract modification for which
4 data is required under Section 41-4-141, shall maintain the
5 books and records that relate to the cost or pricing data for
6 three years from the date of final payment under the contract,
7 unless a shorter period is otherwise authorized in writing.

8 §41-4-147.

9 The determinations required by subsection (f) of
10 Section 41-4-132, subsection (a) or (g) of Section 41-4-133,
11 Section 41-4-135, Section 41-4-136, Section 41-4-137,
12 subsection (a) of Section 41-4-139, Section 41-4-141, Section
13 41-4-143, and subsection (b) of Section 41-4-144 are final and
14 conclusive unless they are clearly erroneous, arbitrary,
15 capricious, or contrary to law.

16 §41-4-148.

17 When for any reason collusion or other
18 anti-competitive practices are suspected during the
19 procurement process, a notice of the relevant facts shall be
20 transmitted to the Attorney General and, if applicable, to the
21 Ethics Commission.

22 §41-4-149.

23 (a) The Chief Procurement Officer shall maintain a
24 record listing all contracts made under Section 41-4-135,
25 41-4-136, or 41-4-137 for a minimum of one year. The record
26 shall contain all of the following:

27 (1) Each contractor's name.

1 (2) The amount and type of each contract.

2 (3) A listing of the supplies or services procured
3 under each contract.

4 (b) A copy of the record shall be available for
5 public inspection, except where disclosure would be
6 detrimental to the safety or security of persons or property
7 or to the public interest as determined by the Chief
8 Procurement Officer.

9 Division 4. Specifications.

10 §41-4-150.

11 As used in this division, the term specification
12 means any description of the physical or functional
13 characteristics, or of the nature of a supply or service, and
14 may include a description of any requirement for inspecting,
15 testing, or preparing a supply or service for delivery.

16 §41-4-151.

17 (a) The Chief Procurement Officer, by rule, may set
18 standards for the preparation, maintenance, and content of
19 specifications for supplies or services required by the state.

20 (b) The Chief Procurement Officer shall monitor the
21 use of specifications for supplies or services required by a
22 purchasing agency.

23 (c) The Chief Procurement Officer shall obtain
24 expert advice and assistance from personnel of using agencies
25 in the development of specifications and may delegate in
26 writing to a using agency the authority to prepare and utilize
27 its own specifications.

1 (d) All specifications shall seek to promote overall
2 economy for the purposes intended and encourage competition in
3 satisfying the state's needs and shall not be unduly
4 restrictive.

5 (e) Specifications may be prepared by persons other
6 than state employees when necessary. The Chief Procurement
7 Officer shall exercise diligence to assure that any third
8 party who prepares specifications or requirements does not
9 have a conflict of interest or an unfair competitive advantage
10 in any subsequent procurement. Vendors that participate in the
11 drafting of specifications for the state shall disclose the
12 same on its vendor disclosure statement required by Section
13 41-16-82.

14 Division 5. Modification and Termination of
15 Contracts for Supplies and Services.

16 §41-4-155.

17 (a) The Chief Procurement Officer may adopt rules
18 permitting or requiring the inclusion of clauses providing for
19 adjustments in prices, time of performance, or other contract
20 provisions as appropriate covering both of the following
21 subjects:

22 (1) The unilateral right of the state to order in
23 writing both of the following:

24 a. Changes in the work within the scope of the
25 contract.

26 b. The temporary stopping of work or delaying
27 performance.

1 (2) Variations occurring between estimated
2 quantities of work in a contract and actual quantities.

3 (b) (1) Adjustments in price pursuant to clauses
4 adopted under subsection (a) shall be computed in one or more
5 of the following ways:

6 a. By agreement on a fixed-price adjustment before
7 commencement of the performance or as soon as practicable.

8 b. By unit prices specified in the contract or
9 subsequently agreed upon.

10 c. By the costs attributable to the events or
11 situations under the clauses with adjustment of profit or fee,
12 all as specified in the contract or subsequently agreed upon.

13 d. In any other manner as the contracting parties
14 may mutually agree.

15 e. In the absence of agreement by the parties, by a
16 unilateral determination by the state of the costs
17 attributable to the events or situations under the clauses
18 with adjustment of profit or fee.

19 (2) A contractor shall be required to submit cost or
20 pricing data if any adjustment in the contract price is
21 subject to Section 41-4-141.

22 (c) The Chief Procurement Officer may adopt rules to
23 implement this division, including rules permitting or
24 requiring the inclusion in state contracts of clauses
25 providing for appropriate remedies covering all of the
26 following subjects:

27 (1) Specified excuses for delay or nonperformance.

1 (2) Termination of the contract for default.

2 (3) Termination of the contract in whole or in part
3 for the convenience of the state.

4 (d) The Chief Procurement Officer may vary the
5 clauses adopted by rule under subsection (a) and (c) for
6 inclusion in any particular state contract, so long as any
7 variation is supported by a written determination that states
8 the circumstances justifying the variation. Notice of any
9 material variation shall be stated in the invitation to bid or
10 request for proposals.

11 Division 6. Legal and Contractual Remedies.

12 Part A. Resolution of Controversies.

13 §41-4-160

14 (a) Contracts of a governmental body listed under
15 subsection (b) of Section 41-4-124 are not subject to this
16 part as it relates to the authority of the Chief Procurement
17 Officer and Director of Finance.

18 (b) The governmental bodies listed under subsection
19 (b) of Section 41-4-124 shall establish written procedures
20 keeping with the spirit and intent of this part to do all of
21 the following:

22 (1) Resolve protested solicitations and awards.

23 (2) Establish criteria and review procedures for
24 suspension and debarment of persons or entities.

25 (3) Resolve contract disputes.

26 §41-4-161.

1 (a) (1) A bona fide prospective bidder or offeror who
2 is aggrieved in connection with the solicitation of a contract
3 may protest to the Chief Procurement Officer within 14 days of
4 the date of issuance of the solicitation or any amendment to
5 it, if the amendment is at issue.

6 (2)a. Except as provided in paragraph b., a bona
7 fide actual bidder or offeror who is aggrieved in connection
8 with the intended award or award of a contract may protest to
9 the Chief Procurement Officer within 14 days of the date of
10 the award or notification of intent to award, whichever is
11 earlier, is posted in accordance with this article.

12 b. A matter that could have been raised under
13 subdivision (1) as a protest of the solicitation may not be
14 raised as a protest of the award or intended award of a
15 contract.

16 (3) A protest filed under subdivision (1) or (2)
17 shall be in writing, be filed with the Chief Procurement
18 Officer, and set forth the grounds of the protest and the
19 relief requested with enough particularity to give notice of
20 the issues to be decided.

21 (b) The Chief Procurement Officer, or his or her
22 designee, may settle and resolve the protest of a bona fide
23 actual or prospective bidder or offeror concerning the
24 solicitation or award of a contract in accordance with rules
25 adopted under this article.

26 (c) If the protest is not resolved by mutual
27 agreement within 10 days after the protest is filed, the Chief

1 Procurement Officer shall commence an administrative review of
2 the protest and issue a decision in writing within 14 days of
3 the review.

4 (d) A copy of the decision under subsection (c)
5 shall be mailed or otherwise furnished immediately to the
6 protestor and any other party intervening.

7 (e) A decision under subsection (c) shall be final
8 and conclusive, unless fraudulent, or a party adversely
9 affected by the decision appeals administratively to the
10 Director of Finance in accordance with Section 41-4-164.

11 (f) In the event of a timely protest under
12 subsection (a) or an appeal under Section 41-4-164, the state
13 may not proceed further with the solicitation or with the
14 award of the contract until five days after notice of the
15 final decision is provided to the protestor, except that
16 solicitation or award of a protested contract is not stayed if
17 the Chief Procurement Officer, after consultation with the
18 head of the using agency or the head of a purchasing agency,
19 makes a written determination that the solicitation or award
20 of the contract without further delay is necessary to protect
21 the best interests of the state.

22 §41-4-162.

23 (a) After reasonable notice to the person or entity
24 involved and reasonable opportunity for that person or entity
25 to be heard, the Chief Procurement Officer, after consultation
26 with the using agency, may do either of the following:

1 (1) Terminate existing contracts and debar a person
2 or entity for cause from consideration for award of contracts.
3 The debarment may not be for a period of more than three
4 years.

5 (2) Suspend a person or entity from consideration
6 for award of contracts if there is probable cause for
7 debarment. The suspension may not be for a period exceeding
8 three months.

9 (b) The Chief Procurement Officer may suspend or
10 debar a person from consideration for award of contracts under
11 subsection (a) for any of the following:

12 (1) Conviction of a criminal offense that is in
13 connection with obtaining or attempting to obtain a public or
14 private contract or subcontract, or in the performance of the
15 contract or subcontract.

16 (2) Conviction under state or federal law of
17 embezzlement, theft, forgery, bribery, falsification or
18 destruction of records, receiving stolen property, or any
19 other offense indicating a lack of business integrity or
20 business honesty as a state contractor.

21 (3) Conviction under state or federal antitrust law
22 arising out of the submission of bids or proposals.

23 (4) Violation of a contract provision of a character
24 that is regarded by the Chief Procurement Officer to be so
25 serious as to justify debarment action, including either of
26 the following:

1 a. Deliberate failure, without good cause, to
2 perform in accordance with the specifications or within the
3 time limit provided in the contract.

4 b. A recent record of failure to perform or of
5 unsatisfactory performance in accordance with the terms of one
6 or more contracts that was not caused by acts beyond the
7 control of the contractor.

8 (5) Violation of the ethical standards set forth in
9 Chapter 25 of Title 36.

10 (6) Violation of an order of the Chief Procurement
11 Officer.

12 (7) Any other cause the Chief Procurement Officer
13 determines to be serious and egregious misconduct.

14 (c) Any decision by the Chief Procurement Officer to
15 debar or suspend a person shall be in writing. The writing
16 shall state the reasons for the action taken.

17 (d) (1) A copy of the decision made under subsection
18 (c) shall be mailed or otherwise furnished immediately to all
19 of the following:

20 a. The debarred or suspended person.

21 b. Any other party intervening.

22 c. All state procurement officials governed by this
23 article with contracting authority who shall decide whether
24 the suspension or debarment warrants termination of existing
25 contracts with the suspended or debarred person or entity.

1 (2) Contracts may not be awarded to the suspended or
2 debarred person during the suspension or debarment period
3 established by the Chief Procurement Officer.

4 (e) A decision under subsection (c) shall be final
5 and conclusive, unless fraudulent, or the debarred or
6 suspended person appeals administratively to the Director of
7 Finance in accordance with Section 41-4-163.

8 (f) The Chief Procurement Officer shall maintain a
9 list of suspended or debarred persons or entities and make it
10 reasonably available for inspection.

11 §41-4-163.

12 The Chief Procurement Officer, by rule, shall
13 establish procedures to resolve disputes between the state and
14 a contractor that arise under, or by virtue of, a contract
15 between them, including disputes based upon breach of
16 contract, mistake, misrepresentation, or other cause for
17 contract modification or rescission.

18 §41-4-164.

19 (a) A party that receives an adverse decision from
20 the Chief Procurement Officer under subsection (c) of Section
21 41-4-161 or subsection (c) of Section 41-4-162 may appeal the
22 decision to the Director of Finance.

23 (b) An appeal to the Director of Finance shall be
24 made in writing within five days of receipt of the adverse
25 decision from the Chief Procurement Officer.

26 (c) The Director of Finance shall hold unlawful and
27 set aside any decision issued by the Chief Procurement Officer

1 that the director finds to be arbitrary, capricious, an abuse
2 of discretion, or otherwise not in accordance with law.

3 (d) The Director of Finance shall issue a written
4 decision within 14 days of receipt of the appeal.

5 (e) A copy of the decision under subsection (d)
6 shall be mailed or otherwise furnished immediately to the
7 parties.

8 (f) A decision under subsection (d) shall be final
9 and conclusive unless fraudulent.

10 Part B. Solicitations or Awards in Violation of Law.

11 §41-4-165.

12 This part applies when a determination is made that
13 a solicitation or award of a contract is in violation of law.

14 §41-4-166.

15 If, prior to an award, a solicitation or proposed
16 award of a contract is determined to be in violation of law,
17 the solicitation or proposed award shall be cancelled or
18 revised to comply with the law.

19 §41-4-167.

20 If, after an award, a solicitation or award of a
21 contract is determined to be in violation of law, then:

22 (1) If the person awarded the contract has not acted
23 fraudulently or in bad faith, the contract may be ratified and
24 affirmed by the Chief Procurement Officer, so long as doing so
25 is in the best interests of the state, or the contract may be
26 terminated by the Chief Procurement Officer and the person
27 awarded the contract shall be compensated for the supplies

1 provided or services rendered under the contract prior to
2 termination.

3 (2) If the person awarded the contract has acted
4 fraudulently or in bad faith, the contract may be declared
5 void by the Chief Procurement Officer or the contract may be
6 ratified and affirmed by the Chief Procurement Officer, so
7 long as the action is in the best interests of the state. A
8 contract ratified and affirmed under this subdivision does not
9 prejudice the state's right to any available damages.

10 §41-4-168.

11 A bona fide unsuccessful bidder or offeror on a
12 particular contract who has exhausted the administrative
13 remedies contained in this division and any taxpayer of the
14 area within the jurisdiction of the awarding authority may
15 bring a civil action in the Circuit Court of Montgomery County
16 to enjoin execution of any contract entered into in violation
17 of this article.

18 Division 7. Intergovernmental Relations.

19 §41-4-170.

20 As used in this division, the following terms shall
21 have the following meanings:

22 (1) COOPERATIVE PURCHASING. Procurement conducted
23 by, or on behalf of, one or more public procurement units.

24 (2) EXTERNAL PROCUREMENT ACTIVITY. A buying
25 organization not located in this state which, if located in
26 this state, would qualify as a public procurement unit. The

1 term includes agencies of the United States and of any other
2 state.

3 (3) LOCAL PUBLIC PROCUREMENT UNIT. Any of the
4 following:

5 ~~a. A county, municipality, or other political~~
6 ~~subdivision of the state~~ a. A unit that is governed by this
7 article and is also a municipality or other political
8 subdivision of the state.

9 b. An agency of any political subdivision, public
10 authority, or educational, health, or other institution.

11 c. Any nonprofit corporation operating a charitable
12 hospital.

13 d. To the extent provided by law, any entity that
14 expends public funds for the procurement of supplies or
15 services and is governed by this article.

16 (4) PUBLIC PROCUREMENT UNIT. Any one of the
17 following:

18 a. A local public procurement unit.

19 b. An external procurement activity.

20 c. A state public procurement unit.

21 d. Any not-for-profit entity comprised of more than
22 one unit or activity listed in paragraph a., b., or c.

23 (5) STATE PUBLIC PROCUREMENT UNIT. The Office of the
24 Chief Procurement Officer or the equivalent officer of any
25 other state and any purchasing agency of this state or any
26 other state.

27 §41-4-171.

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

12 (b) All cooperative purchasing conducted under this
13 division shall be through contracts awarded using source
14 selection methods substantially equivalent to those specified
15 in Article 3.

16 §41-4-172.

17 A public procurement unit may sell to, acquire from,
18 or use any supplies belonging to another public procurement
19 unit without regard to the requirements of Division 3.

20 §41-4-173.

21 A public procurement unit may enter into an
22 agreement, without regard to the requirements of Division 3,
23 with any other public procurement unit for the cooperative
24 purchase or use of supplies or services under the terms agreed
25 upon between the parties.

26 §41-4-174.

1 (a) When a public procurement unit administering a
2 cooperative purchase complies with the requirements of this
3 article, a public procurement unit participating in the
4 purchase shall be deemed to have complied with this article.

5 (b) Public procurement units may not enter into a
6 cooperative purchasing agreement for the purpose of
7 circumventing this article.

8 §41-4-175.

9 To the extent possible, the chief procurement
10 officer of any public procurement unit may collect information
11 concerning the type, cost, quality, and quantity of commonly
12 used supplies or services being procured or used by public
13 procurement units and make the collected information available
14 to any other public procurement unit upon request.

15 §41-4-176.

16 Under a cooperative purchasing agreement,
17 controversies arising between an administering public
18 procurement unit and its bidders, offerors, or contractors
19 shall be resolved between the ordering public procurement unit
20 and the supplying bidders, offerors, or contractors in
21 accordance with Division 6.

22 Division 8. Assistance to Small and Disadvantaged
23 Businesses; Federal Assistance or Contract Procurement
24 Requirements.

25 §41-4-177.

26 (a) It is the policy of the state that the Chief
27 Procurement Officer shall provide reasonable procurement

1 assistance to small and disadvantaged businesses in this
2 state.

3 (b) The Chief Procurement Officer shall identify
4 programs designed to assist small and disadvantaged businesses
5 in procurement activities governed by this article, which may
6 include staff assistance, special publications, source lists,
7 solicitation mailing lists, and training programs.

8 (c) The Chief Procurement Officer may reduce the
9 level or change the types of bonding normally required, or
10 accept alternative forms of security to the extent necessary,
11 to encourage procurement from small and disadvantaged
12 businesses.

13 (d) The Chief Procurement Officer may make special
14 provisions for progress payments as he or she determines to be
15 reasonably necessary to encourage procurement from small and
16 disadvantaged businesses.

17 §41-4-178.

18 When a procurement involves the expenditure of
19 federal assistance or contract funds, the Chief Procurement
20 Officer shall comply with any applicable federal law and
21 regulations.

22 Section 3. Section 41-4-66, Code of Alabama 1975, is
23 amended to read as follows:

24 "§41-4-66.

25 "~~(a) The Division of Control and Accounts with the~~
26 ~~State Department of Finance~~ Chief Procurement Officer shall
27 establish and maintain and post on the state's website a

1 statewide database of each request for a proposal for a public
2 contract by the State of Alabama, any agency, board,
3 commission, or department of the state which receives state or
4 federally appropriated funds, the State Board of Education, a
5 public college or trade school, or a public university.

6 "(b) The ~~Division of Control and Accounts~~ Chief
7 Procurement Officer shall establish procedures and adopt rules
8 to implement this section.

9 "(c) Each agency, board, commission, department,
10 State Board of Education, public college ~~or~~ trade school, and
11 public university shall cooperate with and provide information
12 to the ~~Division of Control and Accounts~~ Chief Procurement
13 Officer as necessary to implement and administer the section.

14 "(d) Beginning ~~on October 1, 2013~~ October 1, 2021,
15 the ~~Division of Control and Accounts~~ Chief Procurement Officer
16 may charge any agency, board, commission, or department of the
17 state which receives state or federally appropriated funds for
18 this and any other services provided to them by this division.

19 "(e) The database shall be a public record and may
20 be viewed by any citizen, either in person or via the state's
21 website.

22 "(f) Each request for a proposal shall remain
23 available on the website until the last posting date required
24 by law has expired.

25 "(g) There shall not be a charge for access to the
26 database."

1 Section 4. Section 41-16-50, Code of Alabama 1975,
2 is amended to read as follows:

3 "§41-16-50.

4 "(a) With the exception of contracts for public
5 works whose competitive bidding requirements are governed
6 exclusively by Title 39, all expenditure of funds of whatever
7 nature for labor, services, work, or for the purchase of
8 materials, equipment, supplies, or other personal property
9 involving fifteen thousand dollars (\$15,000) or more, and the
10 lease of materials, equipment, supplies, or other personal
11 property where the lessee is, or becomes legally and
12 contractually, bound under the terms of the lease, to pay a
13 total amount of fifteen thousand dollars (\$15,000) or more,
14 made by or on behalf of ~~any state trade school, state junior~~
15 ~~college, state college, or university under the supervision~~
16 ~~and control of the Alabama Community College System, the~~
17 Alabama Fire College, the district boards of education of
18 independent school districts, the county commissions, the
19 governing bodies of the municipalities of the state, and the
20 governing boards of instrumentalities of counties and
21 municipalities, including waterworks boards, sewer boards, gas
22 boards, and other like utility boards and commissions, except
23 as hereinafter provided, shall be made under contractual
24 agreement entered into by free and open competitive bidding,
25 on sealed bids, to the lowest responsible bidder. Prior to
26 advertising for bids for an item of personal property or
27 services, where a county, a municipality, or an

1 instrumentality thereof is the awarding authority, the
2 awarding authority may establish a local preference zone
3 consisting of either the legal boundaries or jurisdiction of
4 the awarding authority, or the boundaries of the county in
5 which the awarding authority is located, or the boundaries of
6 the Core Based Statistical Area in which the awarding
7 authority is located. If no such action is taken by the
8 awarding authority, the boundaries of the local preference
9 zone shall be deemed to be the same as the legal boundaries or
10 jurisdiction of the awarding authority. In the event a bid is
11 received for an item of personal property or services to be
12 purchased or contracted for from a person, firm, or
13 corporation deemed to be a responsible bidder, having a place
14 of business within the local preference zone where the county,
15 a municipality, or an instrumentality thereof is the awarding
16 authority, and the bid is no more than five percent greater
17 than the bid of the lowest responsible bidder, the awarding
18 authority may award the contract to the resident responsible
19 bidder. In the event only one bidder responds to the
20 invitation to bid, the awarding authority may reject the bid
21 and negotiate the purchase or contract, providing the
22 negotiated price is lower than the bid price.

23 "(b) The governing bodies of two or more contracting
24 agencies, as enumerated in subsection (a), or the governing
25 bodies of two or more counties, or the governing bodies of two
26 or more city or county boards of education, may provide, by
27 joint agreement, for the purchase of labor, services, or work,

1 or for the purchase or lease of materials, equipment,
2 supplies, or other personal property for use by their
3 respective agencies. The agreement shall be entered into by
4 similar ordinances, in the case of municipalities, or
5 resolutions, in the case of other contracting agencies,
6 adopted by each of the participating governing bodies, which
7 shall set forth the categories of labor, services, or work, or
8 for the purchase or lease of materials, equipment, supplies,
9 or other personal property to be purchased, the manner of
10 advertising for bids and the awarding of contracts, the method
11 of payment by each participating contracting agency, and other
12 matters deemed necessary to carry out the purposes of the
13 agreement. Each contracting agency's share of expenditures for
14 purchases under any agreement shall be appropriated and paid
15 in the manner set forth in the agreement and in the same
16 manner as for other expenses of the contracting agency. The
17 contracting agencies entering into a joint agreement, as
18 herein permitted, may designate a joint purchasing or bidding
19 agent, and the agent shall comply with this article.

20 Purchases, contracts, or agreements made pursuant to a joint
21 purchasing or bidding agreement shall be subject to all terms
22 and conditions of this article.

23 "In the event that utility services are no longer
24 exempt from competitive bidding under this article,
25 non-adjointing counties may not purchase utility services by
26 joint agreement under authority granted by this subsection.

1 "(c) The awarding authority may require bidders to
2 furnish a bid bond for a particular bid solicitation if the
3 bonding requirement applies to all bidders, is included in the
4 written bid specifications, and if bonding is available for
5 the services, equipment, or materials.

6 "(d) Notwithstanding subsection (a), in the event
7 the lowest bid for an item of personal property or services to
8 be purchased or contracted for is received from a foreign
9 entity, where the county, a municipality, or an
10 instrumentality thereof is the awarding authority, the
11 awarding authority may award the contract to a responsible
12 bidder whose bid is no more than 10 percent greater than the
13 foreign entity if the bidder has a place of business within
14 the local preference zone or is a responsible bidder from a
15 business within the state that is a woman-owned enterprise, an
16 enterprise of small business, as defined in Section 25-10-3, a
17 minority-owned business enterprise, a veteran-owned business
18 enterprise, or a disadvantaged-owned business enterprise. For
19 the purposes of this subsection, foreign entity means a
20 business entity that does not have a place of business within
21 the state."

22 Section 5. This act shall become effective October
23 1, 2022, following its passage and approval by the Governor,
24 or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Finance and Taxation Education 02-FEB-21

Read for the second time and placed on the calen-
dar 1 amendment..... 03-FEB-21

Read for the third time and passed as amended 09-FEB-21

Yeas 29
Nays 0

Patrick Harris,
Secretary.