

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

1 SB77

2  
3  
4 ENROLLED, An Act,

5 Relating to the purchase of supplies and services by  
6 state government; to repeal Article 2 (commencing with Section  
7 41-16-20) of Chapter 16 of Title 41, Code of Alabama 1975,  
8 relating to competitive bidding on public contracts generally;  
9 to repeal Article 3A (commencing with Section 41-16-70) of  
10 Chapter 16 of Title 41, Code of Alabama 1975, relating to  
11 competitive bidding on contracts for goods and services; to  
12 repeal Division 1 (commencing with Section 41-4-110) of  
13 Article 5 of Chapter 4 of Title 41, Code of Alabama 1975,  
14 relating to the Division of Purchasing in the Department of  
15 Finance; to replace the repealed Division 1 and the previously  
16 repealed Division 2 (commencing with Section 41-4-130, and  
17 repealed by Act 2009-763, 2009 Regular Session) of Article 5  
18 of Chapter 4 of Title 41, Code of Alabama 1975, with a new  
19 Article 5 (commencing with Section 41-4-110), to create the  
20 Office of the Chief Procurement Officer in the Department of  
21 Finance and the position of Chief Procurement Officer; to  
22 authorize the Chief Procurement Officer to make or supervise  
23 the purchase of supplies or services by the state; to provide  
24 for the appointment, qualifications, duties, and authority of  
25 the Chief Procurement Officer; and to amend Sections 41-4-66

1 and 41-16-50, Code of Alabama 1975, to provide the Chief  
2 Procurement Officer with the authority to maintain the state  
3 database of each request for proposal for a public contract  
4 and to delete state trade schools, junior colleges, colleges,  
5 and universities under the supervision and control of the  
6 Alabama Community College System from coverage under the  
7 public bid law in Article 3 of Chapter 16 of Title 40, Code of  
8 Alabama 1975.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Article 2 (commencing with Section  
11 41-16-20) and Article 3A (commencing with Section 41-16-70) of  
12 Chapter 16 of Title 41, Code of Alabama 1975, are repealed.

13 Section 2. Article 5 (commencing with Section  
14 41-4-110) of Chapter 4 of Title 41, Code of Alabama 1975, is  
15 repealed and replaced with a new Article 5, to read as  
16 follows:

17 Article 5. OFFICE OF THE CHIEF PROCUREMENT OFFICER.

18 Division 1. General Provisions.

19 §41-4-110.

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

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

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

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

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

5           (4) Provide for increased public confidence in the  
6 procedures followed in public procurement.

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

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

12           (7) Foster effective broad-based competition within  
13 the free enterprise system.

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

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

20           §41-4-111.

21           Unless displaced by the particular provisions of  
22 this article, the principles of law and equity, including the  
23 Uniform Commercial Code, the law merchant, and law relative to  
24 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.

1 §41-4-113.

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

5 §41-4-114.

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

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

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

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

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

23 (5) CONTINGENCY FEE CONTRACT. An agreement, express  
24 or implied, for litigation legal services of an attorney or  
25 attorneys, including any associated counsel, under which

1 compensation is contingent in whole or in part upon the  
2 successful accomplishment or disposition of the subject matter  
3 of the agreement. The payment may be in an amount which either  
4 is fixed or is to be determined under a formula.

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

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

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

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

20 (10) CONTRACTOR. Any person having a contract with a  
21 governmental body.

22 (11) DATA. Recorded information, regardless of form  
23 or characteristic.

24 (12) DESIGNEE. A duly authorized representative of a  
25 person.

1           (13) ELECTRONIC. Electrical, digital, magnetic,  
2 optical, electromagnetic, or other similar technology.

3           (14) GOVERNMENTAL BODY. Except as otherwise provided  
4 in this article, an agency, department, board, bureau,  
5 commission, committee, institution, corporation, authority, or  
6 office of this state. The term does not include the  
7 legislative or judicial departments of the state or a  
8 legislative or judicial agency, the Alabama State Port  
9 Authority, municipalities, or the county commission and  
10 governing boards of instrumentalities of counties including  
11 waterworks boards, sewer boards, gas boards, and other like  
12 utility boards and commissions.

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

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

1           (17) LEGISLATIVE AGENCY. The Alabama State  
2           Legislature and any department, board, body, bureau,  
3           commission, committee, institution, corporation, authority, or  
4           office created, established, and operating as an agency of the  
5           legislative department of this state. The term includes, but  
6           is not limited to, the Legislative Services Agency and the  
7           Department of Examiners of Public Accounts.

8           (18) PERSON. An individual, corporation,  
9           association, partnership, limited liability corporation,  
10          union, committee, club, other organization, or group.

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

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

23          (21) PROFESSIONAL SERVICES. The services of  
24          physicians, architects, engineers, landscape architects, land  
25          surveyors, geoscientists, attorneys, teachers, artists,

1 appraisers, and other individuals, or business entities  
2 offering the services of those individuals, who possess a high  
3 degree of scientific or specialized skill and knowledge where  
4 the experience and professional qualifications of the service  
5 provider are particularly relevant to the provision of the  
6 required service.

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

9 (23) PUBLIC NOTICE. The distribution or  
10 dissemination of information to interested parties using  
11 methods that are reasonably available, including, but not  
12 limited to, publication in newspapers of general circulation,  
13 electronic or paper mailing lists, and websites designated by  
14 the state and maintained for that purpose.

15 (24) PURCHASING AGENCY. A governmental body, other  
16 than the Office of the Chief Procurement Officer, that is  
17 authorized by this article, its implementing rules, or by  
18 delegation from the Chief Procurement Officer to enter into  
19 contracts.

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

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

1           (27) SOLICITATION. Any request to submit quotes,  
2 bids, or offers to the state for the procurement of supplies  
3 or services. The term includes invitations to bid and requests  
4 for proposals.

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

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

10           (30) WRITTEN or IN WRITING. The product of any  
11 method of forming characters on paper, other materials, or  
12 viewable screens, which can be read, retrieved, and  
13 reproduced, including information that is electronically  
14 transmitted and stored.

15           (b) The terms state, state department, state agency,  
16 agency, state entity, instrumentality of the state, and  
17 governmental body do not include municipalities, political  
18 subdivisions, county commissions, or the governing boards of  
19 instrumentalities of counties including waterworks boards,  
20 sewer boards, gas boards, and other like utility boards and  
21 commissions.

22           §41-4-115.

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

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

3 (1) Commercial or financial information obtained in  
4 response to a solicitation that is designated as privileged or  
5 confidential by the person or entity submitting such  
6 information in compliance with instructions in the  
7 solicitation for marking information exempt from public  
8 disclosure. Information not marked as required is a public  
9 record.

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

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

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

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

21 §41-4-116.

22 The use of electronic media, including acceptance of  
23 electronic signatures, is authorized consistent with the  
24 state's applicable statutory, regulatory, or other guidance

1 for use of the media, so long as the guidance provides for  
2 both of the following:

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

5 (2) Accurate retrieval or conversion of electronic  
6 forms of such information into a medium that permits  
7 inspection and copying.

8 Division 2. Procurement Organization.

9 §41-4-120.

10 There is created within the Department of Finance  
11 the Office of the Chief Procurement Officer, headed by the  
12 Chief Procurement Officer.

13 §41-4-121.

14 The Chief Procurement Officer shall be appointed by  
15 the Director of Finance with the approval of the Governor. The  
16 Chief Procurement Officer shall have relevant, recent  
17 experience in public procurement and shall be a person with  
18 demonstrated executive and organizational ability.

19 §41-4-122.

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

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

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

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

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

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

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

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

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

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

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

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

19 §41-4-123.

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

23 §41-4-124.

24 (a) Except as otherwise provided in this article,  
25 all rights, powers, duties, and authority relating to the

1 procurement of supplies and services now vested in, or  
2 exercised by, any ~~state~~ governmental body under existing law  
3 are transferred to the Chief Procurement Officer.

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

10 (1) All educational and eleemosynary institutions  
11 governed by a board of trustees or other similar governing  
12 body.

13 (2) The Retirement Systems of Alabama.

14 (3) The Department of Mental Health.

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

22 (d) The procurement of any supplies or services by a  
23 legislative agency or judicial agency shall be solely governed  
24 by procedures adopted by the Legislative Council for all  
25 legislative agencies and by rules adopted by the Supreme Court

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

21 (e) The procurement of any supplies or services by  
22 the Alabama State Port Authority shall be solely governed by  
23 procedures adopted by the Board of Directors of the Alabama  
24 State Port Authority. The procedures adopted shall be  
25 consistent with any applicable requirements of the

1 Constitution of Alabama of 1901, and shall be established in  
2 accordance with the underlying purposes and policies of  
3 promoting responsible and efficient use of the funds of the  
4 Alabama State Port Authority, providing consistency of  
5 application of rules and requirements across all agencies  
6 within the applicable branch of state government, and  
7 promoting fairness, competition, transparency, integrity, and  
8 value in the procurement process. Except for the protection of  
9 information otherwise legally considered commercially  
10 confidential, sensitive, or of a nature that upon release  
11 would harm the competitive advantage of itself or its  
12 customers, concessionaires, lessees, or suppliers, the Alabama  
13 State Port Authority may not adopt procedures that conflict  
14 with the laws of this state regarding the public disclosure of  
15 the use of its funds and the transparency of its expenditures,  
16 or that otherwise conflict with state law regarding public  
17 records and public access to those records. Except as provided  
18 in this subsection and the requirement to act in good faith,  
19 no other provision of this chapter shall apply to the Alabama  
20 State Port Authority; provided, however, that the Alabama  
21 State Port Authority may adopt all or any part of this chapter  
22 and its accompanying rules.

23 §41-4-125.

24 ~~(a) No contract for the services of legal counsel~~  
25 ~~for purposes of litigation may be awarded without the approval~~

1 ~~of the Attorney General and the Governor. No contract for the~~  
2 ~~services of legal counsel for nonlitigation purposes may be~~  
3 ~~awarded without the approval of the Governor.~~

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

20           (2) Attorneys retained by any state purchasing  
21 entity to render nonlitigation legal services shall be  
22 selected by such entity from a list of attorneys maintained by  
23 the Legal Advisor to the Governor. All attorneys interested in  
24 representing any purchasing state entity may apply and shall  
25 be included on the list. The selection of the attorney or law

1 firm shall be based upon the level of skill, experience, and  
2 expertise required for the services, but the fees charged by  
3 the attorney or law firm shall be taken into consideration so  
4 that such state entity shall receive the best representation  
5 for the funds paid. Fees for such services shall be negotiated  
6 by the state entity requiring the services and shall be  
7 subject to the review and approval of the Governor or the  
8 Director of Finance when so designated by the Governor.

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

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

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

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

21 ~~(e)~~(d) (1) A governmental body may not enter into a  
22 contingency fee contract with any attorney or law firm unless  
23 the contracting agency makes a written determination prior to  
24 entering into a contingency fee contract that contingency fee  
25 representation is both cost effective and in the public

1 interest. Any written determination shall include specific  
2 findings for each of the following factors:

3 a. Whether there are sufficient and appropriate  
4 legal and financial resources within the state to handle the  
5 matter without a contingency contract.

6 b. The expected time and labor required, the  
7 novelty, complexity, and difficulty of the questions involved,  
8 and the skill requisite to perform the attorney services  
9 properly.

10 c. The geographic area where the attorney services  
11 are to be provided.

12 d. The amount of experience desired for the  
13 particular kind of attorney services to be provided and the  
14 nature of the private attorney's experience with similar  
15 issues or cases.

16 (2) Subject to subdivision (3), the state may not  
17 enter into a contingency fee contract that provides for the  
18 contingency fee counsel to receive an aggregate contingency  
19 fee calculated from the gross recovery resulting from a  
20 judgment or settlement in each action, exclusive of expenses,  
21 in excess of the total of all of the following:

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

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

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

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

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

13          f. Seven and one-tenth (7.1) percent of any portion  
14 of the recovery exceeding one hundred million dollars  
15 (\$100,000,000).

16               (3) The aggregate fee paid under a contingency fee  
17 contract may not exceed seventy-five million dollars  
18 (\$75,000,000).

19               (4) All litigation expenses incurred by the  
20 contingency fee counsel shall be paid or reimbursed upon  
21 approval on a monthly basis upon presentation of documentation  
22 of the expenses to the contracting agency.

23               (5) The Attorney General may certify in writing to  
24 the Governor that, in the opinion of the Attorney General, an  
25 issue affecting the public health, safety, convenience, or

1 economic welfare of the state exists that justifies that the  
2 contingency fee limitations set forth in subdivision (2) or  
3 (3) be suspended in the case of a particular contingency fee  
4 contract. Upon receipt of the written certification, the  
5 Governor, by the issuance of an executive order, may waive the  
6 limitations with respect to the specified contingency fee  
7 contract.

8 (6) A governmental body may not enter into a  
9 contingency fee contract unless all of the following  
10 requirements are met throughout the entire contract period,  
11 including any extensions of the period:

12 a. A government attorney has complete control over  
13 the course and conduct of the case.

14 b. A government attorney with supervisory authority  
15 is personally involved in overseeing the litigation.

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

18 d. After giving reasonable notice to the contingency  
19 fee counsel, any defendant that is the subject of the  
20 litigation may contact the lead government attorney directly  
21 unless directed to do otherwise by that attorney. Contingency  
22 fee counsel shall have the right to participate in the  
23 discussion with the lead government attorney or attorneys  
24 unless, after consultation with contingency fee counsel, the

1 lead government attorney agrees to the discussion without  
2 contingency fee counsel being present.

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

5 f. Decisions regarding settlement of the case shall  
6 be reserved exclusively to the discretion of the government  
7 attorney and the state.

8 (7) The Attorney General shall develop a standard  
9 addendum to every contract for contingent fee attorney  
10 services that shall be used in all cases, describing in detail  
11 what is expected of both the contingency fee counsel and the  
12 state, including, without limitation, the requirements listed  
13 in subdivision (6).

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

19 (9) Every contingency fee counsel, from the  
20 inception of the contingency fee contract until at least four  
21 years after the contract expires or is terminated, shall  
22 maintain detailed current records, including documentation of  
23 all time records, expenses, disbursements, charges, credits,  
24 underlying receipts and invoices, and other financial  
25 transactions that concern the provision of the attorney

1 services. The contingency fee counsel shall make all the  
2 records available for inspection and copying upon request by  
3 the Governor, Attorney General, or contracting agency. In  
4 addition, the contingency fee counsel shall maintain detailed  
5 contemporaneous time records for the attorneys and paralegals  
6 working on the contract in six minute increments and, upon  
7 request, shall provide promptly these records to the Governor,  
8 Attorney General, or contracting agency.

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

15 §41-4-126.

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

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

22 (2) Published books in any format such as digital,  
23 audio, or hardcopy; maps; periodicals; and technical  
24 pamphlets.

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

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

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

9           (6) Photographs purchased from a federal agency.

10          (7) Barter transactions by the Department of  
11 Corrections.

12          (8) The purchase of insurance and supplies or  
13 services related to the purchase of insurance.

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

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

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

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

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

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

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

21           ~~(h)~~(i) Except for capital equipment, this article  
22 does not apply to the purchase by a public hospital of medical  
23 products, medical supplies, medical devices, services,  
24 implants, pharmaceuticals, fluids, gases, or any other medical

1 products which are used in the course of treating patients, or  
2 to support the treatment of patients.

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

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

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

24 ~~(j)~~(k) This article does not apply to purchases and  
25 contracts for the repair of equipment used in the construction

1 and maintenance of highways by the Department of  
2 Transportation.

3 ~~(k)~~(l) This article does not apply to public works  
4 projects governed by Title 39.

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

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

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

24 ~~(o)~~(p) Governmental bodies may purchase supplies  
25 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

1 contained in this article conflicts with Chapter 61E of Title  
2 16, the latter governs.

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

5 §41-4-127.

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

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

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

16 §41-4-128.

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

1 §41-4-129.

2 (a) The Chief Procurement Officer may establish a  
3 Procurement Advisory Council. If created, the council, upon  
4 adequate public notice, shall meet at least once a year for  
5 the discussion of problems and recommendations for improvement  
6 of the procurement process. When requested by the Chief  
7 Procurement Officer, the council shall conduct studies,  
8 research, analyses, and make reports and recommendations with  
9 respect to subjects or matters within the jurisdiction of the  
10 Chief Procurement Officer. The council shall consist of  
11 qualified representatives of state and local government and  
12 other persons selected by the Chief Procurement Officer.

13 (b) The Chief Procurement Officer may appoint  
14 advisory groups to assist with specifications or procurement  
15 in specific areas and to assist with any other matter within  
16 the authority of the Chief Procurement Officer.

17 Division 3. Source Selection and Contract Formation.

18 §41-4-130.

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

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

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

4           a. Is regularly maintained by a manufacturer or  
5 contractor.

6           b. Is either published or otherwise available for  
7 inspection by customers.

8           c. States prices at which sales are currently or  
9 were last made to a significant number of any category of  
10 buyers or buyers constituting the general buying public for  
11 the supplies or services involved.

12           (3) INVITATION TO BID. All documents, whether  
13 attached or incorporated by reference, utilized for soliciting  
14 bids.

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

17           a. PRIORITY #1. Produces or manufactures the product  
18 within the state.

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

21           c. PRIORITY #3. Is organized for business under the  
22 applicable laws of the state as a corporation, partnership, or  
23 professional association and has maintained at least one  
24 retail outlet or service center for the product or service

1 within the state for not less than one year prior to the  
2 deadline date for the competitive bid.

3 d. PRIORITY #4. Is physically located in the state  
4 and that is more than 50 percent owned by a person who was  
5 discharged or released under conditions other than  
6 dishonorable and who has at least 24 months of active service  
7 in the United States military, naval, or air service, or who  
8 has less than 24 months of active service in any of the  
9 foregoing and was separated with a service-connected  
10 disability, or a national guardsman or reservist who completed  
11 active federal service for purposes other than training or who  
12 served at least 180 days of continuous service for purposes  
13 other than training.

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

18 (6) REQUEST FOR PROPOSALS. All documents, whether  
19 attached or incorporated by reference, that are used for  
20 soliciting proposals.

21 (7) RESPONSIBLE BIDDER or OFFEROR. A person who has  
22 the capability in all respects to perform fully the contract  
23 requirements and who has the integrity and reliability to  
24 assure good faith performance.

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

4           §41-4-131.

5           (a) Unless otherwise authorized by law, all state  
6 contracts shall be awarded by the use of one of the following  
7 methods:

8           (1) Competitive sealed bids, pursuant to Section  
9 41-4-132.

10           (2) Competitive sealed proposals, pursuant to  
11 Section 41-4-133.

12           (3) Small purchase procedures pursuant to Section  
13 41-4-134.

14           (4) A sole source procurement pursuant to Section  
15 41-4-135.

16           (5) An emergency procurement pursuant to Section  
17 41-4-136.

18           (6) A special procurement pursuant to Section  
19 41-4-137.

20           (b) In the event a bid or offer is received for the  
21 supplies or service from a person deemed to be a responsible  
22 bidder or offeror and a preferred vendor and the bid is no  
23 more than five percent greater than the bid of the lowest  
24 responsible bidder or offeror who is not deemed to be a

1 preferred vendor, the Chief Procurement Officer or purchasing  
2 agency may award the contract to the preferred vendor.

3 §41-4-132.

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

6 (b) An invitation to bid shall be issued and shall  
7 include a purchase description and all contractual terms and  
8 conditions applicable to the procurement.

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

13 (d) Bids shall be opened publicly in the presence of  
14 one or more witnesses at the time and place designated in the  
15 invitation to bid. The amount of each bid, the name of each  
16 bidder, and any other information required by rule shall be  
17 recorded. The record and each bid shall be open to public  
18 inspection to the extent required by Section 41-4-115.

19 (e) Bids shall be unconditionally accepted without  
20 alteration or correction, except as authorized in this  
21 article. Bids shall be evaluated based on the requirements set  
22 forth in the invitation to bid, which may include criteria to  
23 determine acceptability, such as inspection, testing, quality,  
24 workmanship, delivery, and suitability for a particular  
25 purpose. Any criteria that will affect the bid price and will

1 be considered in evaluation for award shall be objectively  
2 measurable, such as discounts, transportation costs, and total  
3 or life cycle costs. The invitation to bid shall set forth the  
4 evaluation criteria to be used. No criteria may be used in bid  
5 evaluations that are not set forth in the invitation to bid.

6 (f) (1) When a bid is submitted that contains an  
7 error, the Chief Procurement Officer or head of a purchasing  
8 agency may authorize the correction or withdrawal of the bid  
9 or may cancel the award of the contract. The authorization of  
10 the correction or withdrawal shall be done in accordance with  
11 rules adopted by the Chief Procurement Officer.

12 (2) After a bid has been opened, with the exception  
13 of price negotiations with the lowest responsible bidder, no  
14 changes in bid prices or other provisions of bids prejudicial  
15 to the interest of the state or fair competition shall be  
16 permitted.

17 (g) (1) Unless there is a compelling reason to reject  
18 bids, as prescribed by rules, notice of intent to award to the  
19 lowest responsive and responsible bidder whose bid meets the  
20 requirements set forth in the invitation to bid shall be given  
21 by posting the notice at a location specified in the  
22 invitation to bid. Before posting the notice of intent to  
23 award, the Chief Procurement Officer or head of the purchasing  
24 agency, may negotiate with the lowest responsive and  
25 responsible bidder to lower the bid price within the scope of

1 the invitation to bid. The invitation to bid and notice of  
2 intent to award shall contain a statement of the bidder's  
3 right to protest.

4 (2) The Chief Procurement Officer may award multiple  
5 purchase contracts resulting from a single invitation to bid  
6 where the specifications of the items of supplies or services  
7 intended to be purchased by a requisitioning agency or  
8 agencies are determined, in whole or in part, by technical  
9 compatibility and operational requirements. In order to make  
10 multiple awards under this subdivision, the awarding authority  
11 shall include in the invitation to bid a notice that multiple  
12 awards may be made and the specific technical compatibility or  
13 operational requirements necessitating multiple awards.  
14 Multiple awards of purchase contracts with unique technical  
15 compatibility or operational specifications shall be made to  
16 the lowest responsible bidder complying with the unique  
17 technical compatibility or operational specifications. The  
18 requisitioning agency shall provide the awarding authority  
19 with the information necessary for it to determine the  
20 necessity for the award of multiple purchase contracts under  
21 this subdivision. This subdivision does not apply to contracts  
22 for the purchase or use of push-to-talk services, which shall  
23 be purchased through a separate competitive bid process.

24 (h) When it is considered impractical by the Chief  
25 Procurement Officer to initially prepare a purchase

1 description to support an award based on price, an invitation  
2 to bid may be issued requesting the submission of unpriced  
3 offers to be followed by an invitation to bid limited to those  
4 bidders whose offers have been qualified under the criteria  
5 set forth in the first solicitation.

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

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

23 §41-4-133.

24 (a) (1) A contract may be entered into by competitive  
25 sealed proposals when the Chief Procurement Officer or the

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

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

11 (b) Proposals shall be solicited through a request  
12 for proposals.

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

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

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

23 (f) Discussions may be conducted with responsible  
24 offerors who submit proposals determined by the Chief  
25 Procurement Officer or purchasing agency to be reasonably

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

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

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

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

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

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

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

19 §41-4-134.

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

25 §41-4-135.

1           A contract may be awarded for a supply or service  
2 without competition when the Chief Procurement Officer  
3 determines in writing that there is only one source for the  
4 required supply or service. In any event, sole source  
5 contracts may not exceed one year unless the Chief Procurement  
6 Officer determines in writing that there continues to be only  
7 one source for the required supply or service.

8           §41-4-136.

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

20           §41-4-137.

21           Notwithstanding any other provision of this article,  
22 the Chief Procurement Officer or the head of a purchasing  
23 agency, with prior public notice, may initiate a procurement  
24 above the small purchase amount specified in Section 41-4-134  
25 when the officer or agency head determines that an unusual or

1 unique situation exists that makes the application of all  
2 requirements of competitive sealed bidding or competitive  
3 sealed proposals contrary to the public interest. Any special  
4 procurement under this section shall be made with as much  
5 competition as is practicable under the circumstances. A  
6 written determination of the basis for the procurement and for  
7 the selection of the particular contractor shall be included  
8 by the Chief Procurement Officer or the head of the purchasing  
9 agency in the contract file. The Chief Procurement Officer  
10 shall publish an annual report, subject to Section 41-4-115,  
11 that describes all determinations made under this section  
12 during the prior calendar year.

13 §41-4-138.

14 When it is determined to be in the best interest of  
15 the state, as specified by rule, an invitation to bid, a  
16 request for proposals, or other solicitation under this  
17 article may be cancelled, and any or all bids or proposals  
18 received may be rejected.

19 §41-4-139.

20 (a) A written determination of nonresponsibility of  
21 a bidder or offeror shall be made in accordance with rules  
22 adopted by the Chief Procurement Officer. The unreasonable  
23 failure of a bidder or offeror to promptly supply information  
24 in connection with an inquiry with respect to responsibility

1 may be grounds for a determination of nonresponsibility with  
2 respect to the bidder or offeror.

3 (b) Confidential information furnished by a bidder  
4 or offeror under this section may not be disclosed outside of  
5 the Office of the Chief Procurement Officer or the purchasing  
6 agency without the prior written consent of the bidder or  
7 offeror.

8 §41-4-140.

9 Prospective suppliers may be prequalified for  
10 particular types of supplies or services. The method of  
11 submitting prequalification information and the information  
12 required in order to be prequalified shall be determined by  
13 the Chief Procurement Officer.

14 §41-4-141.

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

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

- 20 a. Based on adequate price competition.  
21 b. Based on established catalogue or market prices.  
22 c. Set by law or rule.

23 (2) The price or cost exceeds an amount established  
24 by rule.

25 §41-4-142.

1           (a) For the purpose of this section, the following  
2 terms shall have the respective meanings ascribed by this  
3 section:

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

7           (2) STATE DEPARTMENT or AGENCY. Every state office,  
8 department, division, bureau, board, or commission of the  
9 State of Alabama.

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

20           (c) Each vendor, contractor, or affiliate of a  
21 vendor or contractor that is offered a contract to do business  
22 with a state department or state agency shall be required to  
23 certify that the vendor or affiliate is appropriately  
24 registered to collect and remit sales and use tax, or  
25 simplified sellers use tax and lease tax as required by this

1 section and submit to that state department or agency  
2 certification required by the Alabama Department of Revenue.

3 (d) Every bid submitted and contract executed by the  
4 state shall contain a certification by the bidder or  
5 contractor that the bidder or contractor is not barred from  
6 bidding for or entering into a contract under this section and  
7 that the bidder or contractor acknowledges that the  
8 contracting state agency may declare the contract void if the  
9 certification completed is false.

10 (e) Each vendor or contractor that sells or leases  
11 supplies to a state department or agency, and each affiliate  
12 of that vendor or contractor that makes sales for delivery  
13 into Alabama, shall be required to collect and remit the  
14 Alabama sales and use tax, or simplified sellers use tax, and  
15 lease tax on all its sales and leases into the state.

16 §41-4-143.

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

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

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

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

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

5           §41-4-144.

6           (a) Unless otherwise provided by law, a contract for  
7 supplies or services may be entered into for any period of  
8 time that is in the best interests of the state, so long as  
9 the terms of the contract and the conditions of renewal or  
10 extension, if any, are included in the solicitation and funds  
11 are available for the first fiscal year at the time of  
12 contracting. Payment and performance obligations for  
13 succeeding fiscal periods shall be subject to the availability  
14 and appropriation of funds.

15           (b) A multi-year contract may be used when the  
16 estimated requirements cover the period of the contract and  
17 are reasonably firm and continuing, and the contract will  
18 serve the best interests of the state by encouraging effective  
19 competition or otherwise promoting economies in state  
20 procurement.

21           (c) When funds are not appropriated or otherwise  
22 made available to support continuation of performance in a  
23 subsequent fiscal period, the contract shall be cancelled and  
24 the contractor shall be reimbursed for the reasonable value of  
25 any non-recurring costs incurred but not amortized in the

1 price of the supplies or services delivered under the  
2 contract. The cost of cancellation may be paid from any  
3 appropriations available for that purpose.

4 §41-4-145.

5 The Chief Procurement Officer or his or her  
6 designee, at reasonable times, may inspect a part of the  
7 plant, the place of business, or the logical and physical  
8 electronic systems of a contractor or any subcontractor that  
9 is related to the performance of any contract awarded or to be  
10 awarded by the state.

11 §41-4-146.

12 In addition to the authority of the Department of  
13 Examiners of Public Accounts, as set forth under Chapter 5A of  
14 Title 41, the Department of Finance, at reasonable times and  
15 places, may audit or examine the books and records of any  
16 person who has submitted data in substantiation of offered  
17 prices under Section 41-4-141 to the extent that the books and  
18 records relate to that data. Any person who receives a  
19 contract, change order, or contract modification for which  
20 data is required under Section 41-4-141, shall maintain the  
21 books and records that relate to the cost or pricing data for  
22 three years from the date of final payment under the contract,  
23 unless a shorter period is otherwise authorized in writing.

24 §41-4-147.

1           The determinations required by subsection (f) of  
2 Section 41-4-132, subsection (a) or (g) of Section 41-4-133,  
3 Section 41-4-135, Section 41-4-136, Section 41-4-137,  
4 subsection (a) of Section 41-4-139, Section 41-4-141, Section  
5 41-4-143, and subsection (b) of Section 41-4-144 are final and  
6 conclusive unless they are clearly erroneous, arbitrary,  
7 capricious, or contrary to law.

8           §41-4-148.

9           When for any reason collusion or other  
10 anti-competitive practices are suspected during the  
11 procurement process, a notice of the relevant facts shall be  
12 transmitted to the Attorney General and, if applicable, to the  
13 Ethics Commission.

14          §41-4-149.

15          (a) The Chief Procurement Officer shall maintain a  
16 record listing all contracts made under Section 41-4-135,  
17 41-4-136, or 41-4-137 for a minimum of one year. The record  
18 shall contain all of the following:

19               (1) Each contractor's name.

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

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

23          (b) A copy of the record shall be available for  
24 public inspection, except where disclosure would be  
25 detrimental to the safety or security of persons or property

1 or to the public interest as determined by the Chief  
2 Procurement Officer.

3 Division 4. Specifications.

4 §41-4-150.

5 As used in this division, the term specification  
6 means any description of the physical or functional  
7 characteristics, or of the nature of a supply or service, and  
8 may include a description of any requirement for inspecting,  
9 testing, or preparing a supply or service for delivery.

10 §41-4-151.

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

14 (b) The Chief Procurement Officer shall monitor the  
15 use of specifications for supplies or services required by a  
16 purchasing agency.

17 (c) The Chief Procurement Officer shall obtain  
18 expert advice and assistance from personnel of using agencies  
19 in the development of specifications and may delegate in  
20 writing to a using agency the authority to prepare and utilize  
21 its own specifications.

22 (d) All specifications shall seek to promote overall  
23 economy for the purposes intended and encourage competition in  
24 satisfying the state's needs and shall not be unduly  
25 restrictive.

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

10           Division 5. Modification and Termination of  
11 Contracts for Supplies and Services.

12           §41-4-155.

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

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

20           a. Changes in the work within the scope of the  
21 contract.

22           b. The temporary stopping of work or delaying  
23 performance.

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

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

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

6           b. By unit prices specified in the contract or  
7 subsequently agreed upon.

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

11           d. In any other manner as the contracting parties  
12 may mutually agree.

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

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

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

25           (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.

1 §41-4-161.

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

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

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

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

22 (b) The Chief Procurement Officer, or his or her  
23 designee, may settle and resolve the protest of a bona fide  
24 actual or prospective bidder or offeror concerning the

1 solicitation or award of a contract in accordance with rules  
2 adopted under this article.

3 (c) If the protest is not resolved by mutual  
4 agreement within 10 days after the protest is filed, the Chief  
5 Procurement Officer shall commence an administrative review of  
6 the protest and issue a decision in writing within 14 days of  
7 the review.

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

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

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

1 §41-4-162.

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

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

10 (2) Suspend a person or entity from consideration  
11 for award of contracts if there is probable cause for  
12 debarment. The suspension may not be for a period exceeding  
13 three months.

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

17 (1) Conviction of a criminal offense that is in  
18 connection with obtaining or attempting to obtain a public or  
19 private contract or subcontract, or in the performance of the  
20 contract or subcontract.

21 (2) Conviction under state or federal law of  
22 embezzlement, theft, forgery, bribery, falsification or  
23 destruction of records, receiving stolen property, or any  
24 other offense indicating a lack of business integrity or  
25 business honesty as a state contractor.

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

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

7           a. Deliberate failure, without good cause, to  
8 perform in accordance with the specifications or within the  
9 time limit provided in the contract.

10           b. A recent record of failure to perform or of  
11 unsatisfactory performance in accordance with the terms of one  
12 or more contracts that was not caused by acts beyond the  
13 control of the contractor.

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

16           (6) Violation of an order of the Chief Procurement  
17 Officer.

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

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

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

1 a. The debarred or suspended person.

2 b. Any other party intervening.

3 c. All state procurement officials governed by this  
4 article with contracting authority who shall decide whether  
5 the suspension or debarment warrants termination of existing  
6 contracts with the suspended or debarred person or entity.

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

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

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

17 §41-4-163.

18 The Chief Procurement Officer, by rule, shall  
19 establish procedures to resolve disputes between the state and  
20 a contractor that arise under, or by virtue of, a contract  
21 between them, including disputes based upon breach of  
22 contract, mistake, misrepresentation, or other cause for  
23 contract modification or rescission.

24 §41-4-164.

1           (a) A party that receives an adverse decision from  
2 the Chief Procurement Officer under subsection (c) of Section  
3 41-4-161 or subsection (c) of Section 41-4-162 may appeal the  
4 decision to the Director of Finance.

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

8           (c) The Director of Finance shall hold unlawful and  
9 set aside any decision issued by the Chief Procurement Officer  
10 that the director finds to be arbitrary, capricious, an abuse  
11 of discretion, or otherwise not in accordance with law.

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

14           (e) A copy of the decision under subsection (d)  
15 shall be mailed or otherwise furnished immediately to the  
16 parties.

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

19           Part B. Solicitations or Awards in Violation of Law.  
20           §41-4-165.

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

23           §41-4-166.

24           If, prior to an award, a solicitation or proposed  
25 award of a contract is determined to be in violation of law,

1 the solicitation or proposed award shall be cancelled or  
2 revised to comply with the law.

3 §41-4-167.

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

6 (1) If the person awarded the contract has not acted  
7 fraudulently or in bad faith, the contract may be ratified and  
8 affirmed by the Chief Procurement Officer, so long as doing so  
9 is in the best interests of the state, or the contract may be  
10 terminated by the Chief Procurement Officer and the person  
11 awarded the contract shall be compensated for the supplies  
12 provided or services rendered under the contract prior to  
13 termination.

14 (2) If the person awarded the contract has acted  
15 fraudulently or in bad faith, the contract may be declared  
16 void by the Chief Procurement Officer or the contract may be  
17 ratified and affirmed by the Chief Procurement Officer, so  
18 long as the action is in the best interests of the state. A  
19 contract ratified and affirmed under this subdivision does not  
20 prejudice the state's right to any available damages.

21 §41-4-168.

22 A bona fide unsuccessful bidder or offeror on a  
23 particular contract who has exhausted the administrative  
24 remedies contained in this division and any taxpayer of the  
25 area within the jurisdiction of the awarding authority may

1 bring a civil action in the Circuit Court of Montgomery County  
2 to enjoin execution of any contract entered into in violation  
3 of this article.

4 Division 7. Intergovernmental Relations.

5 §41-4-170.

6 As used in this division, the following terms shall  
7 have the following meanings:

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

10 (2) EXTERNAL PROCUREMENT ACTIVITY. A buying  
11 organization not located in this state which, if located in  
12 this state, would qualify as a public procurement unit. The  
13 term includes agencies of the United States and of any other  
14 state.

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

17 ~~a. A county, municipality, or other political~~  
18 ~~subdivision of the state~~ a. A unit that is governed by this  
19 article and is also a municipality or other political  
20 subdivision of the state.

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

23 c. Any nonprofit corporation operating a charitable  
24 hospital.

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

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

6           a. A local public procurement unit.

7           b. An external procurement activity.

8           c. A state public procurement unit.

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

11          (5) STATE PUBLIC PROCUREMENT UNIT. The Office of the  
12          Chief Procurement Officer or the equivalent officer of any  
13          other state and any purchasing agency of this state or any  
14          other state.

15          §41-4-171.

16          (a) A public procurement unit that is governed by  
17          this article may either participate in, sponsor, conduct, or  
18          administer a cooperative purchasing agreement for the  
19          procurement of any supplies or services, other than voice or  
20          data wireless communications services, with one or more public  
21          procurement units in accordance with an agreement entered into  
22          between the participants. The cooperative purchasing agreement  
23          may include joint or multi-party contracts between public  
24          procurement units and open-ended public procurement unit

1 contracts that are made available to other public procurement  
2 units.

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

7 §41-4-172.

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

11 §41-4-173.

12 A public procurement unit may enter into an  
13 agreement, without regard to the requirements of Division 3,  
14 with any other public procurement unit for the cooperative  
15 purchase or use of supplies or services under the terms agreed  
16 upon between the parties.

17 §41-4-174.

18 (a) When a public procurement unit administering a  
19 cooperative purchase complies with the requirements of this  
20 article, a public procurement unit participating in the  
21 purchase shall be deemed to have complied with this article.

22 (b) Public procurement units may not enter into a  
23 cooperative purchasing agreement for the purpose of  
24 circumventing this article.

25 §41-4-175.

1           To the extent possible, the chief procurement  
2 officer of any public procurement unit may collect information  
3 concerning the type, cost, quality, and quantity of commonly  
4 used supplies or services being procured or used by public  
5 procurement units and make the collected information available  
6 to any other public procurement unit upon request.

7           §41-4-176.

8           Under a cooperative purchasing agreement,  
9 controversies arising between an administering public  
10 procurement unit and its bidders, offerors, or contractors  
11 shall be resolved between the ordering public procurement unit  
12 and the supplying bidders, offerors, or contractors in  
13 accordance with Division 6.

14           Division 8. Assistance to Small and Disadvantaged  
15 Businesses; Federal Assistance or Contract Procurement  
16 Requirements.

17           §41-4-177.

18           (a) It is the policy of the state that the Chief  
19 Procurement Officer shall provide reasonable procurement  
20 assistance to small and disadvantaged businesses in this  
21 state.

22           (b) The Chief Procurement Officer shall identify  
23 programs designed to assist small and disadvantaged businesses  
24 in procurement activities governed by this article, which may

1 include staff assistance, special publications, source lists,  
2 solicitation mailing lists, and training programs.

3 (c) The Chief Procurement Officer may reduce the  
4 level or change the types of bonding normally required, or  
5 accept alternative forms of security to the extent necessary,  
6 to encourage procurement from small and disadvantaged  
7 businesses.

8 (d) The Chief Procurement Officer may make special  
9 provisions for progress payments as he or she determines to be  
10 reasonably necessary to encourage procurement from small and  
11 disadvantaged businesses.

12 §41-4-178.

13 When a procurement involves the expenditure of  
14 federal assistance or contract funds, the Chief Procurement  
15 Officer shall comply with any applicable federal law and  
16 regulations.

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

19 "§41-4-66.

20 "~~(a) The Division of Control and Accounts with the~~  
21 ~~State Department of Finance~~ Chief Procurement Officer shall  
22 establish and maintain and post on the state's website a  
23 statewide database of each request for a proposal for a public  
24 contract by the State of Alabama, any agency, board,  
25 commission, or department of the state which receives state or

1 federally appropriated funds, the State Board of Education, a  
2 public college or trade school, or a public university.

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

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

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

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

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

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

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

1           "§41-16-50.

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

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

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

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

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

1                   Section 5. This act shall become effective October  
2           1, 2022, following its passage and approval by the Governor,  
3           or its otherwise becoming law.

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

---

President and Presiding Officer of the Senate

---

Speaker of the House of Representatives

SB77

Senate 09-FEB-21

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

Patrick Harris,  
Secretary.

---

House of Representatives  
Passed: 15-APR-21

---

By: Senator Orr