

1 SB98
2 126436-1
3 By Senators Holtzclaw, Orr, Irons, Dial, Bedford, Holley,
4 Williams and Whatley
5 RFD: Fiscal Responsibility and Accountability
6 First Read: 01-MAR-11

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8 SYNOPSIS: Under existing law, the Contract Review
9 Permanent Legislative Oversight Committee reviews
10 contracts of state departments for personal or
11 professional services with private entities or
12 individuals to be paid out of appropriated funds.
13 Contracts let in specified emergency situations may
14 be let for 60 days without committee review, but a
15 succeeding contract is subject to review by the
16 committee. Personal and professional service
17 contracts let by competitive bid are excluded from
18 review.

19 This bill would clarify that all emergency
20 contracts excepted from legislative committee
21 review, irrespective of the emergency
22 circumstances, would have a term of no more than 60
23 days and a second identical or substantially
24 similar emergency contract for those particular
25 services could not be let within one year of the
26 commencement date of the initial emergency
27 contract.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT
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6 Relating to personal and professional services
7 contracts; amending Sections 29-2-41.1 and 41-16-72, Code of
8 Alabama 1975, to provide further for emergency contracts.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 29-2-41.1, and 41-6-72, Code of
11 Alabama 1975, are amended to read as follows:

12 "§29-2-41.1.

13 "In case of an emergency adversely affecting public
14 health, safety, security, or the economic welfare of the
15 state, so declared in writing to the Governor by the head of
16 the institution or agency involved, setting forth the nature
17 of the danger to public health, safety, security or the
18 economic welfare of the state, contracts may be let to the
19 extent necessary to meet the emergency without review by the
20 committee. Any contract let pursuant to this section involving
21 an emergency ~~adversely affecting the economic welfare of the~~
22 ~~state~~ shall be let for a period of not more than 60 days
23 during which time the committee shall review a contract for a
24 longer period of time if such services are required beyond the
25 60-day limit hereby imposed. The institution or agency may not
26 enter a second identical or substantially similar emergency

1 contract for those particular services within one calendar
2 year of the commencement of the initial emergency contract.

3 "Immediately upon the letting of an emergency
4 contract that will be followed by a subsequent contract of
5 longer duration, the head of the institution or agency
6 involved shall notify the committee of the emergency contract
7 and the subsequent contract, and the terms, purpose, duration,
8 and other information as requested by the committee regarding
9 the contracts. In instances when this notification is
10 received, the committee's 60-day review of the subsequent
11 contract will run concurrently with the term of the emergency
12 contract.

13 "§41-16-72.

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

19 "(1)a. Except as otherwise provided herein,
20 attorneys retained to represent the state in litigation shall
21 be appointed by the Attorney General in consultation with the
22 Governor from a listing of attorneys maintained by the
23 Attorney General. All attorneys interested in representing the
24 State of Alabama may apply and shall be included on the
25 listing. The selection of the attorney or law firm shall be
26 based upon the level of skill, experience, and expertise
27 required in the litigation and the fees charged by the

1 attorney or law firm shall be taken into consideration so that
2 the State of Alabama receives the best representation for the
3 funds paid. Fees shall be negotiated and approved by the
4 Governor in consultation with the Attorney General. Maximum
5 fees paid for legal representation may be established by
6 executive order of the Governor.

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

20 "b. Attorneys retained by any state purchasing
21 entity to render nonlitigation legal services shall be
22 selected by such entity from a listing of attorneys maintained
23 by the Legal Advisor to the Governor. All attorneys interested
24 in representing any purchasing state entity may apply and
25 shall be included on the listing. The selection of the
26 attorney or law firm shall be based upon the level of skill,
27 experience, and expertise required for the services, but the

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

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

10 "d. This article shall not apply to the retention of
11 experts by the state for the purposes of litigation, or
12 avoidance of litigation.

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

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

25 "(3) Professional services of architects, landscape
26 architects, engineers, land surveyors, geoscience, and other
27 similar professionals shall be procured in accordance with

1 competitive, qualification-based selection policies and
2 procedures. Selection shall be based on factors to be
3 developed by the procuring state entity which may include,
4 among others, the following:

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

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

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

14 "d. Availability to and familiarity with the project
15 locale.

16 "e. Proposed project management techniques.

17 f. Ability and proven history in handling special
18 project contracts.

19 "Notice of need for professional services shall be
20 widely disseminated to the professional community in a full
21 and open manner. Procuring state entities shall evaluate such
22 professionals that respond to the notice of need based on such
23 state entity's qualification-based selection process criteria.
24 Any such procuring state entity shall then make a good faith
25 effort to negotiate a contract for professional services from
26 the selected professional after first discussing and refining
27 the scope of services for the project with such professional.

1 Where the Alabama Building Commission has set a fee schedule
2 for the professional services sought, fees shall not exceed
3 the schedule without approval of the Director of the Alabama
4 Building Commission and the Governor.

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

24 "(5) Contracts for professional services shall be
25 limited only to that portion of a contract relating to the
26 professional service provided. Goods purchased by the state in

1 conjunction with the contract for professional services shall
2 be purchased pursuant to Section 41-16-20.

3 "(6) Should an emergency affecting the public
4 health, safety, ~~convenience~~, or the economic welfare of the
5 State of Alabama so declared in writing under oath to the
6 Governor and the Attorney General by the state entity
7 requiring the professional services arise, the professional
8 services required to alleviate the emergency situation may be
9 procured from any qualified professional service provider
10 without following the process or procedure required by this
11 article. Any contract let pursuant to this subdivision
12 involving an emergency as herein specified may not be let for
13 a period of more than 60 days. During this time, if the
14 contract would otherwise be subject to review by the Contract
15 Review Permanent Legislative Oversight Committee, the
16 committee shall review a subsequent contract for a longer
17 period of time if such services are required beyond the 60-day
18 limit. The institution or agency may not enter a second
19 identical or substantially similar emergency contract for
20 those particular services within one calendar year of the
21 commencement of the initial emergency contract.

22 "Immediately upon the letting of an emergency
23 contract that will be followed by a subsequent contract of
24 longer duration, the state entity shall notify the committee
25 of the emergency contract and the subsequent contract, and the
26 terms, purpose, duration, and other information as requested
27 by the committee regarding the contracts. In instances when

1 this notification is received, the committee's 60-day review
2 of the subsequent contract will run concurrently with the term
3 of the emergency contract.

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

24 "(8) Under any contract letting process in this
25 section, all requests for proposals from any state entity
26 purchasing professional services shall be sent to all
27 professional service providers regardless of race that have

1 notified the state of their interest in receiving state
2 business.

3 "(9) Under any contract letting process in this
4 section, all lists containing professional service providers
5 and contractors for contracts under the provisions of this
6 article shall seek the racial and ethnic diversity of the
7 state."

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