

1 SB423
2 129582-2
3 By Senator Beasley
4 RFD: Fiscal Responsibility and Accountability
5 First Read: 19-APR-11

1 SB423

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend Section 41-16-72 of the Code of Alabama
12 1975, relating to procurement of professional services, to
13 exempt certain contracts with health professionals which
14 involve only service on agency task forces, boards, or
15 committees.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Section 41-16-72 of the Code of Alabama
18 1975, is amended to read as follows:

19 "§41-16-72.

20 "Any other provision of law notwithstanding, the
21 procurement of professional services by any agency,
22 department, board, bureau, commission, authority, public
23 corporation, or instrumentality of the State of Alabama shall
24 be conducted through the following selection process:

25 "(1)a. Except as otherwise provided herein,
26 attorneys retained to represent the state in litigation shall
27 be appointed by the Attorney General in consultation with the

1 Governor from a listing of attorneys maintained by the
2 Attorney General. All attorneys interested in representing the
3 State of Alabama may apply and shall be included on the
4 listing. The selection of the attorney or law firm shall be
5 based upon the level of skill, experience, and expertise
6 required in the litigation and the fees charged by the
7 attorney or law firm shall be taken into consideration so that
8 the State of Alabama receives the best representation for the
9 funds paid. Fees shall be negotiated and approved by the
10 Governor in consultation with the Attorney General. Maximum
11 fees paid for legal representation may be established by
12 executive order of the Governor.

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

26 "b. Attorneys retained by any state purchasing
27 entity to render nonlitigation legal services shall be

1 selected by such entity from a listing of attorneys maintained
2 by the Legal Advisor to the Governor. All attorneys interested
3 in representing any purchasing state entity may apply and
4 shall be included on the listing. The selection of the
5 attorney or law firm shall be based upon the level of skill,
6 experience, and expertise required for the services, but the
7 fees charged by the attorney or law firm shall be taken into
8 consideration so that such state entity shall receive the best
9 representation for the funds paid. Fees for such services
10 shall be negotiated by the state entity requiring the services
11 and shall be subject to the review and approval of the
12 Governor or the Director of Finance when so designated by the
13 Governor.

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

16 "d. This article shall not apply to the retention of
17 experts by the state for the purposes of litigation, or
18 avoidance of litigation.

19 "e. Nothing in this article shall be construed as
20 altering or amending the Governor's authority to retain
21 attorneys pursuant to Section 36-13-2, however, the Governor
22 shall select such attorneys from three proposals received from
23 attorneys included on the listing maintained by the Attorney
24 General.

25 "(2) Physicians retained to provide medical services
26 to the state shall be selected by the purchasing state entity
27 from a list of qualified physicians maintained by the Alabama

1 Medical Licensure Commission. All physicians interested in
2 providing medical services to the State of Alabama may apply
3 and shall be included on the listing.

4 "(3) Professional services of architects, landscape
5 architects, engineers, land surveyors, geoscience, and other
6 similar professionals shall be procured in accordance with
7 competitive, qualification-based selection policies and
8 procedures. Selection shall be based on factors to be
9 developed by the procuring state entity which may include,
10 among others, the following:

11 "a. Specialized expertise, capabilities, and
12 technical competence, as demonstrated by the proposed approach
13 and methodology to meet project requirements.

14 "b. Resources available to perform the work,
15 including any specialized services within the specified time
16 limits for the project.

17 "c. Record of past performance, quality of work,
18 ability to meet schedules, cost control, and contract
19 administration.

20 "d. Availability to and familiarity with the project
21 locale.

22 "e. Proposed project management techniques.

23 "f. Ability and proven history in handling special
24 project contracts.

25 "Notice of need for professional services shall be
26 widely disseminated to the professional community in a full
27 and open manner. Procuring state entities shall evaluate such

1 professionals that respond to the notice of need based on such
2 state entity's qualification-based selection process criteria.
3 Any such procuring state entity shall then make a good faith
4 effort to negotiate a contract for professional services from
5 the selected professional after first discussing and refining
6 the scope of services for the project with such professional.
7 Where the Alabama Building Commission has set a fee schedule
8 for the professional services sought, fees shall not exceed
9 the schedule without approval of the Director of the Alabama
10 Building Commission and the Governor.

11 "(4) The Director of Finance, through the Division
12 of Purchasing of the Department of Finance, shall establish
13 and maintain lists of professional service providers, other
14 than those specifically named in this section, which may be
15 required from time to time by any state agency, department,
16 board, bureau, commission, authority, public corporation, or
17 instrumentality. When such professional services are needed,
18 the purchasing state entity shall solicit proposals from the
19 professional service providers desiring to receive requests
20 for proposals. The purchasing state entity shall select the
21 professional service provider that best meets the needs of the
22 purchasing entity as expressed in the request for proposals.
23 Price shall be taken into consideration. In the event the fees
24 paid to the selected professional service provider exceed by
25 10 percent the professional service fee offered by the lowest
26 qualified proposal, the reasons for selecting a professional
27 service provider must be stated in writing, signed by the

1 director of the purchasing state entity, and made a part of
2 the selection record.

3 "(5) Contracts for professional services shall be
4 limited only to that portion of a contract relating to the
5 professional service provided. Goods purchased by the state in
6 conjunction with the contract for professional services shall
7 be purchased pursuant to Section 41-16-20.

8 "(6) Should an emergency affecting the public
9 health, safety, convenience, or the economic welfare of the
10 State of Alabama so declared in writing under oath to the
11 Governor and the Attorney General by the state entity
12 requiring the professional services arise, the professional
13 services required to alleviate the emergency situation may be
14 procured from any qualified professional service provider
15 without following the process or procedure required by this
16 article.

17 "(7) The process set forth herein for the selection
18 of professional service providers shall not apply to the
19 Legislature, the Alabama State Port Authority, or to colleges
20 and universities governed by a board of trustees or by the
21 Department of Postsecondary Education. The State Department of
22 Education shall not be subject to the provisions of this
23 article, requiring the process set forth herein for the
24 selection of professional service providers, except for the
25 future acquisition of professional services in support of
26 computer technology on a statewide basis which exceeds the
27 amount of expenditures set forth within this chapter. However,

1 if a state agency or department is able to provide the
2 necessary computer networking services, then the services
3 shall be provided by the agency or department without being
4 contracted to an outside provider. In the event the State
5 Department of Education has intervened into the financial
6 operations of a local board of education, the State Department
7 of Education shall follow the provisions of law applicable to
8 local boards of education for services related to the local
9 board of education subject to intervention. The Alabama
10 Medicaid Agency shall not be subject to the provisions of this
11 article requiring the process set forth herein for the
12 selection of professional service providers for contracts with
13 physicians, pharmacists, dentists, optometrists, opticians,
14 nurses, and other health professionals which involve only
15 service on agency task forces, boards, or committees.

16 "(8) Under any contract letting process in this
17 section, all requests for proposals from any state entity
18 purchasing professional services shall be sent to all
19 professional service providers regardless of race that have
20 notified the state of their interest in receiving state
21 business.

22 "(9) Under any contract letting process in this
23 section, all lists containing professional service providers
24 and contractors for contracts under the provisions of this
25 article shall seek the racial and ethnic diversity of the
26 state."

1 Section 2. All laws or parts of laws which conflict
2 with this act are repealed.

3 Section 3. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.

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3	Senate	
4	Read for the first time and referred to the Senate	
5	committee on Fiscal Responsibility and Account-	
6	ability.....	19-APR-11
7		
8	Read for the second time and placed on the calen-	
9	dar 1 amendment.....	04-MAY-11
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11	Read for the third time and passed as amended	25-MAY-11
12		
13	Yeas 25	
14	Nays 0	
15	Abstaining 1	
16		
17	Patrick Harris	
18	Secretary	
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