

1 HB423
2 210438-3
3 By Representative Treadaway
4 RFD: State Government
5 First Read: 23-FEB-21

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ENROLLED, An Act,

Relating to public contracts; to amend Section 41-16-27, Code of Alabama 1975, to further provide for the award of push-to-talk contracts by public entities.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. ~~Sections 41-16-27 and 41-16-51, Code of Alabama 1975, are amended to read as follows:~~ Section 41-16-27, Code of Alabama 1975, is amended to read as follows:

"§41-16-27.

"(a) When purchases are required to be made through competitive bidding, award shall, except as provided in subsection (f), be made to the lowest responsible bidder taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purposes for which required, the terms of delivery, transportation charges, and the dates of delivery, provided, that the awarding authority may at any time within 30 days after the bids are opened negotiate and award the contract to anyone, provided he or she secures a price at least five percent under the low acceptable bid. The award of such a negotiated contract shall be subject to approval by the Director of Finance and the Governor, except in cases where the awarding authority is a two-year or four-year college or university governed by a board. The awarding authority or

1 requisitioning agency shall have the right to reject any bid
2 if the price is deemed excessive or quality of product
3 inferior. Awards are final only after approval of the
4 purchasing agent.

5 " (b) ~~(1)~~ The awarding authority may award multiple
6 purchase contracts resulting from a single invitation-to-bid
7 where the specifications of the items of personal property or
8 services intended to be purchased by a requisitioning agency
9 or agencies are determined, in whole or in part, by technical
10 compatibility and operational requirements. In order to make
11 multiple awards under this provision, the awarding authority
12 must include in the invitation-to-bid a notice that multiple
13 awards may be made and the specific technical compatibility or
14 operational requirements necessitating multiple awards.
15 Multiple awards of purchase contracts with unique technical
16 compatibility or operational specifications shall be made to
17 the lowest responsible bidder complying with the unique
18 technical compatibility or operational specifications. The
19 requisitioning agency shall provide the awarding authority
20 with the information necessary for it to determine the
21 necessity for the award of multiple purchase contracts under
22 this provision.

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

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

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

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

1 renegotiated during the period for which the contract is
2 extended.

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

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

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

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

19 Responsiveness to the bid shall be scored for each designated
20 criteria. If, for reasons cited above, the bid selected is not
21 from the lowest bidding contractor, the Alabama Medicaid
22 Agency shall present its reasons for not recommending award to
23 the low bidder to the Medicaid Interim Committee. The
24 committee shall evaluate the findings of the Alabama Medicaid
25 Agency and must, by resolution, approve the action of the

1 awarding authority before final awarding of any such contract.
2 The committee shall also hear any valid appeals against the
3 recommendation of the Alabama Medicaid Agency from the low bid
4 contractor(s) whose bid was not selected.

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

1 10 days after the date of the contract. For the purposes of
2 this section, the term Alabama business entity shall mean any
3 sole proprietorship, partnership, or corporation organized in
4 the State of Alabama.

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

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

1 Permanent Joint Legislative Committee on Energy Policy may
2 adopt rules providing industry recognized and accepted sources
3 pursuant to the Alabama Administrative Procedure Act.

4 "(i) When a single invitation-to-bid specifies a set
5 of deliverables that would be capable of division into
6 separate, independent contracts, the awarding authority, at
7 its discretion, may award a secondary contract for any subset
8 of such deliverables, not to exceed 20 percent of the original
9 contract value, to any Alabama business certified under the
10 Federal HUBZone program whose properly submitted responsible
11 bid does not exceed five percent of the lowest responsible
12 bid. In order to make a secondary award under this provision,
13 the awarding authority shall include in the invitation-to-bid
14 a notice that a secondary award may be made."

15 "§41-16-51.

16 ~~"(a) Competitive bids for entities subject to this~~
17 ~~article shall not be required for utility services, the rates~~
18 ~~for which are fixed by law, regulation, or ordinance, and the~~
19 ~~competitive bidding requirements of this article shall not~~
20 ~~apply to:~~

21 ~~"(1) The purchase of insurance.~~

22 ~~"(2) The purchase of ballots and supplies for~~
23 ~~conducting any primary, general, special, or municipal~~
24 ~~election.~~

1 ~~"(3) Contracts for securing services of attorneys,~~
2 ~~physicians, architects, teachers, superintendents of~~
3 ~~construction, artists, appraisers, engineers, consultants,~~
4 ~~certified public accountants, public accountants, or other~~
5 ~~individuals possessing a high degree of professional skill~~
6 ~~where the personality of the individual plays a decisive part.~~

7 ~~"(4) Contracts of employment in the regular civil~~
8 ~~service.~~

9 ~~"(5) Contracts for fiscal or financial advice or~~
10 ~~services.~~

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

15 ~~"(7) Purchases of maps or photographs from any~~
16 ~~federal agency.~~

17 ~~"(8) Purchases of manuscripts, books, maps,~~
18 ~~pamphlets, periodicals, and library/research electronic data~~
19 ~~bases of manuscripts, books, maps, pamphlets, or periodicals.~~

20 ~~"(9) The selection of paying agents and trustees for~~
21 ~~any security issued by a public body.~~

22 ~~"(10) Existing contracts up for renewal for~~
23 ~~sanitation or solid waste collection, recycling, and disposal~~
24 ~~between municipalities or counties, or both, and those~~
25 ~~providing the service.~~

1 ~~"(11) Purchases of computer and word processing~~
2 ~~hardware when the hardware is the only type that is compatible~~
3 ~~with hardware already owned by the entity taking bids and~~
4 ~~custom software.~~

5 ~~"(12) Professional services contracts for~~
6 ~~codification and publication of the laws and ordinances of~~
7 ~~municipalities and counties.~~

8 ~~"(13) Contractual services and purchases of~~
9 ~~commodities for which there is only one vendor or supplier and~~
10 ~~contractual services and purchases of personal property which~~
11 ~~by their very nature are impossible to award by competitive~~
12 ~~bidding.~~

13 ~~"(14) Purchases of dirt, sand, or gravel by a county~~
14 ~~governing body from in-county property owners in order to~~
15 ~~supply a county road or bridge project in which the materials~~
16 ~~will be used. The material shall be delivered to the project~~
17 ~~site by county employees and equipment used only on projects~~
18 ~~conducted exclusively by county employees.~~

19 ~~"(15) Contractual services and purchases of products~~
20 ~~related to, or having an impact upon, security plans,~~
21 ~~procedures, assessments, measures, or systems, or the security~~
22 ~~or safety of persons, structures, facilities, or~~
23 ~~infrastructures.~~

24 ~~"(16) Subject to the limitations in this~~
25 ~~subdivision, purchases of goods or services, other than voice~~

1 ~~or data wireless communication services, made as a part of~~
 2 ~~the purchasing cooperative sponsored by the National~~
 3 ~~Association of Counties, its successor organization, or any~~
 4 ~~other national or regional governmental cooperative purchasing~~
 5 ~~program. Such purchases may only be made if all of the~~
 6 ~~following occur:~~

7 ~~"a. The goods or services being purchased are~~
 8 ~~available as a result of a competitive bid process conducted~~
 9 ~~by a governmental entity and approved by the Alabama~~
 10 ~~Department of Examiners of Public Accounts for each bid.~~

11 ~~"b. The goods or services are either not at the time~~
 12 ~~available to counties on the state purchasing program or are~~
 13 ~~available at a price equal to or less than that on the state~~
 14 ~~purchasing program.~~

15 ~~"c. The purchase is made through a participating~~
 16 ~~Alabama vendor holding an Alabama business license if such a~~
 17 ~~vendor exists.~~

18 ~~"d. The entity purchasing goods or services under~~
 19 ~~this subdivision has been notified by the Department of~~
 20 ~~Examiners of Public Accounts that the competitive bid process~~
 21 ~~utilized by the cooperative program offering the goods~~
 22 ~~complies with this subdivision.~~

23 ~~"(17) Purchase of goods or services, other than~~
 24 ~~wireless communication services, whether voice or data, from~~
 25 ~~vendors that have been awarded a current and valid Government~~

1 ~~Services Administration contract. Any purchase made pursuant~~
2 ~~to this subdivision shall be under the same terms and~~
3 ~~conditions as provided in the Government Services~~
4 ~~Administration contract. Prices paid for such goods and~~
5 ~~services, other than wireless communication services, whether~~
6 ~~voice or data, may not exceed the amount provided in the~~
7 ~~Government Services Administration contract.~~

8 ~~"(b) This article shall not apply to:~~

9 ~~"(1) Any purchases of products where the price of~~
10 ~~the products is already regulated and established by state~~
11 ~~law.~~

12 ~~"(2) Purchases made by individual schools of the~~
13 ~~county or municipal public school systems from moneys other~~
14 ~~than those raised by taxation or received through~~
15 ~~appropriations from state or county sources.~~

16 ~~"(3) The purchase, lease, sale, construction,~~
17 ~~installation, acquisition, improvement, enlargement, or~~
18 ~~expansion of any building or structure or other facility~~
19 ~~designed or intended for lease or sale by a medical clinic~~
20 ~~board organized under Sections 11-58-1 to 11-58-14, inclusive.~~

21 ~~"(4) The purchase, lease, or other acquisition of~~
22 ~~machinery, equipment, supplies, and other personal property or~~
23 ~~services by a medical clinic board organized under Sections~~
24 ~~11-58-1 to 11-58-14, inclusive.~~

1 ~~"(5) Purchases for public hospitals and nursing~~
2 ~~homes operated by the governing boards of instrumentalities of~~
3 ~~the state, counties, and municipalities.~~

4 ~~"(6) Contracts for the purchase, lease, sale,~~
5 ~~construction, installation, acquisition, improvement,~~
6 ~~enlargement, or extension of any plant, building, structure,~~
7 ~~or other facility or any machinery, equipment, furniture, or~~
8 ~~furnishings therefor designed or intended for lease or sale~~
9 ~~for industrial development, other than public utilities, under~~
10 ~~Sections 11-54-80 to 11-54-99, inclusive, or Sections 11-54-20~~
11 ~~to 11-54-28, inclusive, or any other statute or amendment to~~
12 ~~the Constitution of Alabama authorizing the construction of~~
13 ~~plants or other facilities for industrial development or for~~
14 ~~the construction and equipment of buildings for public~~
15 ~~building authorities under Sections 11-56-1 to 11-56-22,~~
16 ~~inclusive.~~

17 ~~"(7) The purchase of equipment, supplies, or~~
18 ~~materials needed, used, and consumed in the normal and routine~~
19 ~~operation of any waterworks system, sanitary sewer system, gas~~
20 ~~system, or electric system, or any two or more thereof, that~~
21 ~~are owned by municipalities, counties, or public corporations,~~
22 ~~boards, or authorities that are agencies, departments, or~~
23 ~~instrumentalities of municipalities or counties and no part of~~
24 ~~the operating expenses of which system or systems have, during~~
25 ~~the then current fiscal year, been paid from revenues derived~~

1 ~~from taxes or from appropriations of the state, a county, or a~~
2 ~~municipality.~~

3 ~~"(8) Purchases made by local housing authorities,~~
4 ~~organized and existing under Chapter 1 of Title 24, from~~
5 ~~moneys other than those raised by state, county, or city~~
6 ~~taxation or received through appropriations from state,~~
7 ~~county, or city sources.~~

8 ~~"(c) The state trade schools, state junior colleges,~~
9 ~~state colleges, and universities under the supervision and~~
10 ~~control of the State Board of Education, the district boards~~
11 ~~of education of independent school districts, the county~~
12 ~~commissions, and the governing bodies of the municipalities of~~
13 ~~the state shall establish and maintain such purchasing~~
14 ~~facilities and procedures as may be necessary to carry out the~~
15 ~~intent and purpose of this article by complying with the~~
16 ~~requirements for competitive bidding in the operation and~~
17 ~~management of each state trade school, state junior college,~~
18 ~~state college, or university under the supervision and control~~
19 ~~of the State Board of Education, the district boards of~~
20 ~~education of independent school districts, the county~~
21 ~~commissions, and the governing bodies of the municipalities of~~
22 ~~the state and the governing boards of instrumentalities of~~
23 ~~counties and municipalities, including waterworks boards,~~
24 ~~sewer boards, gas boards, and other like utility boards and~~
25 ~~commissions.~~

1 ~~"(d) Contracts entered into in violation of this~~
2 ~~article shall be void and anyone who violates the provisions~~
3 ~~of this article shall be guilty of a Class C felony."~~

4 Section 2. This act shall become effective ~~on the~~
5 ~~first day of the third month~~ October 1, 2021, following its
6 passage and approval by the Governor, or its otherwise
7 becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 07-APR-21, as amended.

Jeff Woodard
Clerk

Senate

20-APR-21

Passed