

1 HB507
2 199621-1
3 By Representatives Treadaway, Ball, Lawrence, Scott and Oliver
4 RFD: State Government
5 First Read: 25-APR-19

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, state and local agencies
9 may public award contracts.

10 This bill would authorize state and local
11 agencies to award public contracts for the use of
12 certain wireless telecommunications services,
13 including contracts for push to talk services.
14

15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 Relating to public contracts; to amend Sections
20 41-16-27 and 41-16-51, Code of Alabama 1975, to authorize
21 certain state and local agencies to purchase or use certain
22 wireless telecommunications services.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

26 "§41-16-27.

1 "(a) When purchases are required to be made through
2 competitive bidding, award shall, except as provided in
3 subsection (f), be made to the lowest responsible bidder
4 taking into consideration the qualities of the commodities
5 proposed to be supplied, their conformity with specifications,
6 the purposes for which required, the terms of delivery,
7 transportation charges, and the dates of delivery, provided,
8 that the awarding authority may at any time within 30 days
9 after the bids are opened negotiate and award the contract to
10 anyone, provided he or she secures a price at least five
11 percent under the low acceptable bid. The award of such a
12 negotiated contract shall be subject to approval by the
13 Director of Finance and the Governor, except in cases where
14 the awarding authority is a two-year or four-year college or
15 university governed by a board. The awarding authority or
16 requisitioning agency shall have the right to reject any bid
17 if the price is deemed excessive or quality of product
18 inferior. Awards are final only after approval of the
19 purchasing agent.

20 "(b) (1) The awarding authority may award multiple
21 purchase contracts resulting from a single invitation-to-bid
22 where the specifications of the items of personal property or
23 services intended to be purchased by a requisitioning agency
24 or agencies are determined, in whole or in part, by technical
25 compatibility and operational requirements. In order to make
26 multiple awards under this provision, the awarding authority
27 must include in the invitation-to-bid a notice that multiple

1 awards may be made and the specific technical compatibility or
2 operational requirements necessitating multiple awards.
3 Multiple awards of purchase contracts with unique technical
4 compatibility or operational specifications shall be made to
5 the lowest responsible bidder complying with the unique
6 technical compatibility or operational specifications. The
7 requisitioning agency shall provide the awarding authority
8 with the information necessary for it to determine the
9 necessity for the award of multiple purchase contracts under
10 this provision.

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

14 "(c) Each bid, with the name of the bidder, shall be
15 entered on a record. Each record, with the successful bid
16 indicated thereon and with the reasons for the award if not
17 awarded to the lowest bidder shall, after award of the order
18 or contract, be open to public inspection.

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

24 "(e) (1) Contracts for the purchase of personal
25 property or contractual services other than personal services
26 shall be let by competitive bid for periods not greater than
27 five years and current contracts existing on February 28,

1 2006, may be extended or renewed for an additional two years
2 with a 90-day notice of such extension or renewal given to the
3 Legislative Council, however, any contract that generates
4 funds or will reduce annual costs by awarding the contract for
5 a longer term than a period of three years which is let by or
6 on behalf of a state two-year or four-year college or
7 university may be let for periods not greater than 10 years.
8 Any contract awarded pursuant to this section for terms of
9 less than 10 years may be extended for a period not to exceed
10 10 years from the initial awarding of the contract provided
11 that the terms of the contract shall not be altered or
12 renegotiated during the period for which the contract is
13 extended.

14 "(2) For purchases of personal property made on or
15 after January 1, 2010, in instances in which the awarding
16 authority determines that the total cost of ownership over the
17 expected life of the item or items, including acquisition
18 costs plus sustaining costs, and including specifically life
19 cycle costs, can be reasonably ascertained from industry
20 recognized and accepted sources, the lowest responsible bid
21 may be determined to be the bid offering the lowest life cycle
22 costs and otherwise meeting all of the conditions and
23 specifications contained in the invitation to bid. To utilize
24 this provision to determine the lowest responsible bidder, the
25 awarding authority must include a notice in the invitation to
26 bid that the lowest responsible bid may be determined by using
27 life cycle costs and identify the industry recognized and

1 accepted sources that will be applicable to such an
2 evaluation.

3 "(3) Industry recognized and accepted sources may be
4 provided by rules adopted pursuant to the Alabama
5 Administrative Procedure Act by the Green Fleets Review
6 Committee if the review committee is established and enacted
7 at the 2009 Regular Session. If the Green Fleets Review
8 Committee is not enacted at the 2009 Regular Session, the
9 Permanent Joint Legislative Committee on Energy Policy may
10 adopt rules providing industry recognized and accepted
11 sources, pursuant to the Alabama Administrative Procedure Act.

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

1 Responsiveness to the bid shall be scored for each designated
2 criteria. If, for reasons cited above, the bid selected is not
3 from the lowest bidding contractor, the Alabama Medicaid
4 Agency shall present its reasons for not recommending award to
5 the low bidder to the Medicaid Interim Committee. The
6 committee shall evaluate the findings of the Alabama Medicaid
7 Agency and must, by resolution, approve the action of the
8 awarding authority before final awarding of any such contract.
9 The committee shall also hear any valid appeals against the
10 recommendation of the Alabama Medicaid Agency from the low bid
11 contractor(s) whose bid was not selected.

12 "(g) Notwithstanding the requirements under Sections
13 41-16-20, 41-16-21, and this section, contractual services and
14 purchases of personal property regarding the athletic
15 department, food services, and transit services negotiated on
16 behalf of two-year and four-year colleges and universities may
17 be awarded without competitive bidding provided that no state
18 revenues, appropriations, or other state funds are expended or
19 committed and when it is deemed by the respective board that
20 financial benefits will accrue to the institution, except that
21 in the cases where an Alabama business entity, as defined by
22 this section, is available to supply the product or service,
23 they will have preference unless the product or service
24 supplied by a foreign corporation is substantially different
25 or superior to the product or service supplied by the Alabama
26 business entity. However, the terms and conditions of any of
27 the services or purchases which are contracted through

1 negotiation without being competitively bid and the name and
2 address of the recipient of such a contract shall be
3 advertised in a newspaper of general circulation in the
4 municipality in which the college or university is located
5 once a week for two consecutive weeks commencing no later than
6 10 days after the date of the contract. For the purposes of
7 this section, the term Alabama business entity shall mean any
8 sole proprietorship, partnership, or corporation organized in
9 the State of Alabama.

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

25 "(2) Industry recognized and accepted sources may be
26 provided by rules adopted pursuant to the Alabama
27 Administrative Procedure Act by the Green Fleets Review

1 Committee if the review committee is established and enacted
2 at the 2009 Regular Session. If the Green Fleets Review
3 Committee is not enacted at the 2009 Regular Session, the
4 Permanent Joint Legislative Committee on Energy Policy may
5 adopt rules providing industry recognized and accepted sources
6 pursuant to the Alabama Administrative Procedure Act.

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

18 "§41-16-51.

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

24 "(1) The purchase of insurance.

25 "(2) The purchase of ballots and supplies for
26 conducting any primary, general, special, or municipal
27 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.

26 "(11) Purchases of computer and word processing
27 hardware when the hardware is the only type that is compatible

1 with hardware already owned by the entity taking bids and
2 custom software.

3 "(12) Professional services contracts for
4 codification and publication of the laws and ordinances of
5 municipalities and counties.

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

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

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

22 "(16) Subject to the limitations in this
23 subdivision, purchases of goods or services, ~~other than voice~~
24 ~~or data wireless communication services,~~ made as a part of the
25 purchasing cooperative sponsored by the National Association
26 of Counties, its successor organization, or any other national

1 or regional governmental cooperative purchasing program. Such
2 purchases may only be made if all of the following occur:

3 "a. The goods or services being purchased are
4 available as a result of a competitive bid process conducted
5 by a governmental entity and approved by the Alabama
6 Department of Examiners of Public Accounts for each bid.

7 "b. The goods or services are either not at the time
8 available to counties on the state purchasing program or are
9 available at a price equal to or less than that on the state
10 purchasing program.

11 "c. The purchase is made through a participating
12 Alabama vendor holding an Alabama business license if such a
13 vendor exists.

14 "d. The entity purchasing goods or services under
15 this subdivision has been notified by the Department of
16 Examiners of Public Accounts that the competitive bid process
17 utilized by the cooperative program offering the goods
18 complies with this subdivision.

19 "(17) Purchase of goods or services, ~~other than~~
20 ~~wireless communication services, whether voice or data,~~ from
21 vendors that have been awarded a current and valid Government
22 Services Administration contract. Any purchase made pursuant
23 to this subdivision shall be under the same terms and
24 conditions as provided in the Government Services
25 Administration contract. Prices paid for such goods and
26 ~~services, other than wireless communication services, whether~~

1 ~~voice or data,~~ may not exceed the amount provided in the
2 Government Services Administration contract.

3 "(b) This article shall not apply to:

4 "(1) Any purchases of products where the price of
5 the products is already regulated and established by state
6 law.

7 "(2) Purchases made by individual schools of the
8 county or municipal public school systems from moneys other
9 than those raised by taxation or received through
10 appropriations from state or county sources.

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

16 "(4) The purchase, lease, or other acquisition of
17 machinery, equipment, supplies, and other personal property or
18 services by a medical clinic board organized under Sections
19 11-58-1 to 11-58-14, inclusive.

20 "(5) Purchases for public hospitals and nursing
21 homes operated by the governing boards of instrumentalities of
22 the state, counties, and municipalities.

23 "(6) Contracts for the purchase, lease, sale,
24 construction, installation, acquisition, improvement,
25 enlargement, or extension of any plant, building, structure,
26 or other facility or any machinery, equipment, furniture, or
27 furnishings therefor designed or intended for lease or sale

1 for industrial development, other than public utilities, under
2 Sections 11-54-80 to 11-54-99, inclusive, or Sections 11-54-20
3 to 11-54-28, inclusive, or any other statute or amendment to
4 the Constitution of Alabama authorizing the construction of
5 plants or other facilities for industrial development or for
6 the construction and equipment of buildings for public
7 building authorities under Sections 11-56-1 to 11-56-22,
8 inclusive.

9 "(7) The purchase of equipment, supplies, or
10 materials needed, used, and consumed in the normal and routine
11 operation of any waterworks system, sanitary sewer system, gas
12 system, or electric system, or any two or more thereof, that
13 are owned by municipalities, counties, or public corporations,
14 boards, or authorities that are agencies, departments, or
15 instrumentalities of municipalities or counties and no part of
16 the operating expenses of which system or systems have, during
17 the then current fiscal year, been paid from revenues derived
18 from taxes or from appropriations of the state, a county, or a
19 municipality.

20 "(8) Purchases made by local housing authorities,
21 organized and existing under Chapter 1 of Title 24, from
22 moneys other than those raised by state, county, or city
23 taxation or received through appropriations from state,
24 county, or city sources.

25 "(c) The state trade schools, state junior colleges,
26 state colleges, and universities under the supervision and
27 control of the State Board of Education, the district boards

1 of education of independent school districts, the county
2 commissions, and the governing bodies of the municipalities of
3 the state shall establish and maintain such purchasing
4 facilities and procedures as may be necessary to carry out the
5 intent and purpose of this article by complying with the
6 requirements for competitive bidding in the operation and
7 management of each state trade school, state junior college,
8 state college, or university under the supervision and control
9 of the State Board of Education, the district boards of
10 education of independent school districts, the county
11 commissions, and the governing bodies of the municipalities of
12 the state and the governing boards of instrumentalities of
13 counties and municipalities, including waterworks boards,
14 sewer boards, gas boards, and other like utility boards and
15 commissions.

16 "(d) Contracts entered into in violation of this
17 article shall be void and anyone who violates the provisions
18 of this article shall be guilty of a Class C felony."

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