

1 SB182
2 203776-3
3 By Senators Orr, Albritton, Shelnutt, Butler, Melson and Allen
4 RFD: Finance and Taxation General Fund
5 First Read: 13-FEB-20

1 SB182

2
3
4 ENGROSSED

5
6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to the purchase of supplies and services by
12 state government; to repeal Article 5 (commencing with Section
13 41-4-110) of Chapter 4 of Title 41 of the Code of Alabama
14 1975, creating the Division of Purchasing in the Department of
15 Finance; to repeal Article 2 (commencing with Section
16 41-16-20) and Article 3A (commencing with Section 41-26-70) of
17 Chapter 16 of Title 41, Code of Alabama 1975; and to add
18 Article 5A (commencing with Section 41-4-110A) to Chapter 4 of
19 Title 41 of the Code of Alabama 1975, creating the Office of
20 the Chief Procurement Officer and the position of Chief
21 Procurement Officer to make or supervise the purchase of
22 supplies or services by the state and to provide for the
23 appointment, qualifications, duties, and authority of the
24 Chief Procurement Officer; and to amend Sections 41-4-66 and
25 41-16-50 of the Code of Alabama 1975, to provide the Chief
26 Procurement Officer with the authority to maintain the state
27 database of each request for proposal for a public contract

1 and to delete state trade schools, junior colleges, colleges,
2 and universities under the supervision and control of the
3 Alabama Community College System from coverage under the
4 public bid law in Article 3 of Chapter 16, Title 40, Code of
5 Alabama 1975.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Article 5 (commencing with Section
8 41-4-110) of Chapter 4 of Title 41 of the Code of Alabama
9 1975, is repealed.

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12 Title 41, Code of Alabama 1975, are repealed.

13 Section 2. Article 5A (commencing with Section
14 41-4-110A) is added to Chapter 4 of Title 41 of the Code of
15 Alabama 1975, to read as follows:

16 Article 5A. OFFICE OF THE CHIEF PROCUREMENT OFFICER.

17 Division 1. General Provisions.

18 §41-4-110A.

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

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

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

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

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

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

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

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

10 (7) Foster effective broad-based competition within
11 the free enterprise system.

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

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

18 §41-4-111A.

19 Unless displaced by the particular provisions of
20 this article, the principles of law and equity, including the
21 Uniform Commercial Code, the law merchant, and law relative to
22 capacity to contract, agency, fraud, misrepresentation,
23 duress, coercion, mistake, and bankruptcy shall supplement the
24 provisions of this article.

25 §41-4-112A.

26 This article requires all parties involved in the
27 negotiation, performance, or administration of state contracts

1 to act in good faith. Good faith means honesty in fact in the
2 conduct or transaction concerned.

3 (1) This article applies to contracts solicited and
4 entered into after October 1, 2021.

5 (2) Except as otherwise provided in this article,
6 this article applies to every expenditure of public funds by a
7 governmental body of this state under a contract for supplies
8 or services.

9 (3) This article does not apply to either of the
10 following:

11 a. Gifts, grants, or contracts between state
12 agencies, between state agencies and political subdivisions,
13 or between the state and other governments.

14 b. All expenditures of funds of whatever nature made
15 by or on behalf of the county commissions and the governing
16 boards of instrumentalities of counties, including waterworks
17 boards, sewer boards, gas boards, and other like utility
18 boards, and commissions for which procurement activities are
19 currently governed by Article 3 of Chapter 16.

20 §41-4-113A.

21 Written determinations required by this article
22 shall be retained in the appropriate official contract file of
23 the Chief Procurement Officer or the purchasing agency.

24 §41-4-114A.

25 For purposes of this article, the following words
26 shall have the following meanings:

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

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

8 (3) CHANGE ORDER. A written order signed by the
9 procurement officer directing the contractor to make changes
10 which the changes clause of the contract authorizes the
11 procurement officer to order without the consent of the
12 contractor.

13 (4) CHIEF PROCUREMENT OFFICER. The person holding
14 the position created in Section 41-4-120A, as the head of the
15 Office of the Chief Procurement Officer.

16 (5) CONTINGENCY FEE CONTRACT. An agreement, express
17 or implied, for litigation legal services of an attorney or
18 attorneys, including any associated counsel, under which
19 compensation is contingent in whole or in part upon the
20 successful accomplishment or disposition of the subject matter
21 of the agreement. The payment may be in an amount which either
22 is fixed or is to be determined under a formula.

23 (6) CONTINGENCY FEE COUNSEL. An attorney or
24 attorneys performing services under a contingency fee
25 contract.

1 (7) CONTRACT. All types of state agreements,
2 regardless of what they may be called, for the procurement of
3 supplies or services.

4 (8) CONTRACT MODIFICATION. Any written alteration in
5 specifications, delivery point, rate of delivery, period of
6 performance, price, quantity, or other provisions of any
7 contract accomplished by mutual action of the parties to the
8 contract.

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

13 (10) CONTRACTOR. Any person having a contract with a
14 governmental body.

15 (11) DATA. Recorded information, regardless of form
16 or characteristic.

17 (12) DESIGNEE. A duly authorized representative of a
18 person.

19 (13) ELECTRONIC. Electrical, digital, magnetic,
20 optical, electromagnetic, or other similar technology.

21 (14) GOVERNMENTAL BODY. Except as otherwise provided
22 in this article, an agency, department, board, bureau,
23 commission, committee, institution, corporation, authority, or
24 office of this state. The term does not include the
25 legislative or judicial departments of the state or a
26 legislative or judicial agency, the Alabama State Port
27 Authority, or the county commission and governing boards of

1 instrumentalities of counties including waterworks boards,
2 sewer boards, gas boards, and other like utility boards and
3 commissions.

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

9 (16) JUDICIAL AGENCY. Any department, appellate
10 court, trial court, board, body, bureau, commission,
11 committee, institution, corporation, authority, or office
12 created, established, and operating as an agency of the
13 judicial department of this state. The term includes, but is
14 not limited to, the Administrative Office of Courts, the State
15 Law Library, the Court of the Judiciary, and the Sentencing
16 Commission.

17 (17) LEGISLATIVE AGENCY. The Alabama State
18 Legislature and any department, board, body, bureau,
19 commission, committee, institution, corporation, authority, or
20 office created, established, and operating as an agency of the
21 legislative department of this state. The term includes, but
22 is not limited to, the Legislative Services Agency and the
23 Department of Examiners of Public Accounts.

24 (18) PERSON. An individual, corporation,
25 association, partnership, limited liability corporation,
26 union, committee, club, other organization, or group.

1 (19) PROCUREMENT. Buying, purchasing, renting,
2 leasing, or otherwise acquiring any supplies or services. The
3 term includes all functions that pertain to the obtaining of
4 any supply or service, including description of requirements,
5 selection and solicitation of sources, preparation and award
6 of contracts, and all phases of contract administration. The
7 term does not include the leasing of real property.

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

13 (21) PROFESSIONAL SERVICES. The services of
14 physicians, architects, engineers, landscape architects, land
15 surveyors, geoscientists, attorneys, teachers, artists,
16 appraisers, and other individuals, or business entities
17 offering the services of those individuals, who possess a high
18 degree of scientific or specialized skill and knowledge where
19 the experience and professional qualifications of the service
20 provider are particularly relevant to the provision of the
21 required service.

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

24 (23) PUBLIC NOTICE. The distribution or
25 dissemination of information to interested parties using
26 methods that are reasonably available, including, but not
27 limited to, publication in newspapers of general circulation,

1 electronic or paper mailing lists, and web sites designated by
2 the state and maintained for that purpose.

3 (24) PURCHASING AGENCY. A governmental body, other
4 than the Office of the Chief Procurement Officer, that is
5 authorized by this article, its implementing rules, or by
6 delegation from the Chief Procurement Officer to enter into
7 contracts.

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

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

14 (27) SOLICITATION. Any request to submit quotes,
15 bids, or offers to the state for the procurement of supplies
16 or services. The term includes invitations to bid and requests
17 for proposals.

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

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

23 (30) WRITTEN or IN WRITING. The product of any
24 method of forming characters on paper, other materials, or
25 viewable screens, which can be read, retrieved, and
26 reproduced, including information that is electronically
27 transmitted and stored.

1 §41-4-115A.

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

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

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

14 (2) Evaluative documents, bids, or proposals prior
15 to award.

16 (3) When the public disclosure of procurement
17 information would be detrimental to the safety or security of
18 persons or property or to the public interest as determined,
19 in writing, by the Chief Procurement Officer.

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

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

25 §41-4-116A.

26 The use of electronic media, including acceptance of
27 electronic signatures, is authorized consistent with the

1 state's applicable statutory, regulatory, or other guidance
2 for use of the media, so long as the guidance provides for
3 both of the following:

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

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

9 Division 2. Procurement Organization.

10 §41-4-120A.

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

14 §41-4-121A.

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

20 §41-4-122A.

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

23 (b) Consistent with this article, the Chief
24 Procurement Officer shall adopt operational procedures
25 governing the internal functions of the Office of the Chief
26 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 41-4-123A.

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 so
23 to do, but not more than once every 30 days.

24 (4) Perform other functions and duties of the
25 Department of Finance as may from time to time be assigned by
26 the Director of Finance.

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

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

22 (e) The Office of the Chief Procurement Officer may
23 charge a biannual registration fee to vendors desiring to
24 register with the office to receive Invitations to Bid for any
25 supplies or services solicited by the division and to
26 governmental bodies for their proportionate share of operating
27 costs of the office. Any fee shall be set by administrative

1 rule upon the approval of the Director of Finance. Any fees
2 collected under this subsection shall be deposited in the
3 State Treasury to the credit of the State Procurement Fund and
4 shall be appropriated, budgeted, and allotted in accordance
5 with Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to
6 41-19-12, inclusive, and only in amounts stipulated in general
7 appropriations bills and other appropriation bills.

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

11 §41-4-123A.

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

15 §41-4-124A.

16 (a) Except as otherwise provided in this article,
17 all rights, powers, duties, and authority relating to the
18 procurement of supplies and services now vested in, or
19 exercised by, any state governmental body under existing law
20 are transferred to the Chief Procurement Officer.

21 (b) The following governmental bodies are subject to
22 this article except as it relates to the purchase of
23 professional services and the oversight and authority of the
24 Chief Procurement Officer, but shall establish and maintain
25 procurement offices and personnel and shall adopt rules as may
26 be necessary to comply with this article:

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

4 (2) The Retirement Systems of Alabama.

5 (3) The Department of Mental Health.

6 (c) The Alabama Department of Transportation is
7 subject to this article except as it relates to the purchase
8 of professional services and shall adopt rules governing the
9 purchase of professional services by the department which are
10 consistent with the principles contained in this article and
11 promote fairness, competition, transparency, integrity, and
12 value in the procurement process.

13 (d) The procurement of any supplies or services by a
14 legislative agency or judicial agency shall be solely governed
15 by procedures adopted by the Legislative Council for all
16 legislative agencies and by rules adopted by the Supreme Court
17 of Alabama for all judicial agencies. The procedures adopted
18 shall be consistent with any applicable requirements of the
19 Constitution of Alabama of 1901 and shall be established in
20 accordance with the underlying purposes and policies of
21 promoting responsible and efficient use of public funds
22 dedicated and appropriated to the agencies for their use,
23 providing consistency of application of rules and requirements
24 across all agencies within the applicable branch of state
25 government, and promoting fairness, competition, transparency,
26 integrity, and value in the procurement process. In no case
27 may the legislative and judicial departments of the state

1 adopt procedures that conflict with the laws of this state
2 regarding the public disclosure of the use of public funds and
3 the transparency of public expenditures, or that otherwise
4 conflict with state law regarding public records and public
5 access to those records. Except for the requirement to act in
6 good faith, no other provision of this article shall apply to
7 legislative or judicial agencies; provided, that the
8 legislative and judicial departments may adopt all or any part
9 of this article and its accompanying rules.

10 (e) The procurement of any supplies or services by
11 the Alabama State Port Authority shall be solely governed by
12 procedures adopted by the Board of Directors of the Alabama
13 State Port Authority. The procedures adopted shall be
14 consistent with any applicable requirements of the
15 Constitution of Alabama of 1901 and shall be established in
16 accordance with the underlying purposes and policies of
17 promoting responsible and efficient use of the funds of the
18 Alabama State Port Authority, providing consistency of
19 application of rules and requirements across all agencies
20 within the applicable branch of state government, and
21 promoting fairness, competition, transparency, integrity, and
22 value in the procurement process. Except for the protection of
23 information otherwise legally considered commercially
24 confidential, sensitive, or of a nature that upon release
25 would harm the competitive advantage of itself or its
26 customers, concessionaires, lessees, or suppliers, the Alabama
27 State Port Authority may not adopt procedures that conflict

1 with the laws of this state regarding the public disclosure of
2 the use of its funds and the transparency of its expenditures,
3 or that otherwise conflict with state law regarding public
4 records and public access to those records. Except as provided
5 in this subsection and the requirement to act in good faith,
6 no other provision of this chapter shall apply to the Alabama
7 State Port Authority; provided, however, that the Alabama
8 State Port Authority may adopt all or any part of this chapter
9 and its accompanying rules.

10 §41-4-125A.

11 (a) No contract for the services of legal counsel
12 for purposes of litigation may be awarded without the approval
13 of the Attorney General and the Governor. No contract for the
14 services of legal counsel for nonlitigation purposes may be
15 awarded without the approval of the Governor.

16 (b) (1) Except as otherwise provided in this section,
17 attorneys retained to represent the state in litigation shall
18 be appointed by the Attorney General in consultation with the
19 Governor from a list of attorneys maintained by the Attorney
20 General. All attorneys interested in representing the state
21 may apply and shall be included on the list. The selection of
22 the attorney or law firm shall be based upon the level of
23 skill, experience, and expertise required in the litigation
24 and the fees charged by the attorney or law firm shall be
25 taken into consideration so that the state receives the best
26 representation for the funds paid. Fees shall be negotiated
27 and approved by the Governor in consultation with the Attorney

1 General. Maximum fees paid for legal representation that does
2 not involve a contingency fee contract may be established by
3 executive order of the Governor.

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

18 (c) This section does not apply to either of the
19 following:

20 (1) The appointment of attorneys or experts by a
21 court.

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

24 (d) Nothing in this section shall be construed as
25 altering or amending the Governor's authority to retain
26 attorneys under Section 36-13-2; provided, the Governor shall
27 select the attorneys from three proposals received from

1 attorneys included on the list maintained by the Attorney
2 General.

3 (e) (1) A governmental body may not enter into a
4 contingency fee contract with any attorney or law firm unless
5 the contracting agency makes a written determination prior to
6 entering into a contingency fee contract that contingency fee
7 representation is both cost effective and in the public
8 interest. Any written determination shall include specific
9 findings for each of the following factors:

10 a. Whether there are sufficient and appropriate
11 legal and financial resources within the state to handle the
12 matter without a contingency contract.

13 b. The expected time and labor required, the
14 novelty, complexity, and difficulty of the questions involved,
15 and the skill requisite to perform the attorney services
16 properly.

17 c. The geographic area where the attorney services
18 are to be provided.

19 d. The amount of experience desired for the
20 particular kind of attorney services to be provided and the
21 nature of the private attorney's experience with similar
22 issues or cases.

23 (2) Subject to subdivision (3), the state may not
24 enter into a contingency fee contract that provides for the
25 contingency fee counsel to receive an aggregate contingency
26 fee calculated from the gross recovery resulting from a

1 judgment or settlement in each action, exclusive of expenses,
2 in excess of the total of all of the following:

3 a. Twenty-two percent of any recovery of up to ten
4 million dollars (\$10,000,000).

5 b. Twenty percent of any portion of the recovery
6 between ten million dollars (\$10,000,000) and twenty-five
7 million dollars (\$25,000,000).

8 c. Sixteen percent of any portion of the recovery
9 between twenty-five million dollars (\$25,000,000) and fifty
10 million dollars (\$50,000,000).

11 d. Twelve percent of any portion of the recovery
12 between fifty million dollars (\$50,000,000) and seventy-five
13 million dollars (\$75,000,000).

14 e. Eight percent of any portion of the recovery
15 between seventy-five million dollars (\$75,000,000) and one
16 hundred million dollars (\$100,000,000).

17 f. Seven and one-tenth (7.1) percent of any portion
18 of the recovery exceeding one hundred million dollars
19 (\$100,000,000).

20 (3) The aggregate fee paid under a contingency fee
21 contract may not exceed seventy-five million dollars
22 (\$75,000,000).

23 (4) All litigation expenses incurred by the
24 contingency fee counsel shall be paid or reimbursed upon
25 approval on a monthly basis upon presentation of documentation
26 of the expenses to the contracting agency.

1 (5) The Attorney General may certify in writing to
2 the Governor that, in the opinion of the Attorney General, an
3 issue affecting the public health, safety, convenience, or
4 economic welfare of the state exists that justifies that the
5 contingency fee limitations set forth in subdivision (2) or
6 (3) be suspended in the case of a particular contingency fee
7 contract. Upon receipt of the written certification, the
8 Governor, by the issuance of an executive order, may waive the
9 limitations with respect to the specified contingency fee
10 contract.

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

15 a. A government attorney has complete control over
16 the course and conduct of the case.

17 b. A government attorney with supervisory authority
18 is personally involved in overseeing the litigation.

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

21 d. After giving reasonable notice to the contingency
22 fee counsel, any defendant that is the subject of the
23 litigation may contact the lead government attorney directly
24 unless directed to do otherwise by that attorney. Contingency
25 fee counsel shall have the right to participate in the
26 discussion with the lead government attorney or attorneys
27 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
26 services. The contingency fee counsel shall make all the
27 records available for inspection and copying upon request by

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

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

13 §41-4-126A.

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

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

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

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

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

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

5 (6) Photographs purchased from a federal agency.

6 (7) Barter transactions by the Department of
7 Corrections.

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

10 (b) Any state department or agency whose principal
11 business is honorariums is exempted from this chapter on
12 purchases and contracts for services made by that department
13 or agency.

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

21 (d) Nothing in this article repeals or limits any
22 provision of Section 41-4-400, relating to the procurement
23 authority of the Division of Construction Management. To the
24 extent any provision contained in this article conflicts with
25 Section 41-4-400, the latter governs.

26 (e) Nothing in this chapter repeals or limits any
27 provision of Section 14-7-8, relating to the procurement

1 authority of Alabama Correctional Industries. To the extent
2 any provision contained in this chapter conflicts with Section
3 14-7-8, the latter governs.

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

8 (g) This article does not apply to direct health
9 care services provided by the Alabama Department of Public
10 Health.

11 (h) Except for capital equipment, this article does
12 not apply to the purchase by a public hospital of medical
13 products, medical supplies, medical devices, services,
14 implants, pharmaceuticals, fluids, gases, and any other
15 medical products which are used in the course of treating
16 patients, or to support the treatment of patients.

17 (i) (1) Except as provided in subdivision (2), the
18 purchase of supplies or services negotiated on behalf of
19 two-year and four-year colleges and universities may be
20 awarded without competitive bidding, provided that no state
21 revenues, appropriations, or other state funds are expended or
22 committed and when it is determined by the respective board
23 that financial benefits will accrue to the institution.

24 (2) When an Alabama business entity organized under
25 the laws of this state is available to supply the product or
26 service purchased or negotiated under subdivision (1), the
27 Alabama business entity shall have preference unless the

1 product or service supplied by a foreign corporation is
2 substantially different or superior to the product or service
3 supplied by the Alabama business entity.

4 (3) Public notice shall be provided by the
5 purchasing agency within 10 days of the execution of a
6 contract under this subsection. The public notice shall
7 include, at a minimum, the terms and conditions of any of the
8 supplies or services that are contracted through negotiation
9 without being competitively bid and the name and address of
10 the recipient of the contract.

11 (j) This article does not apply to purchases and
12 contracts for the repair of equipment used in the construction
13 and maintenance of highways by the Department of
14 Transportation.

15 (k) This article does not apply to public works
16 projects governed by Title 39.

17 (l) This article does not apply to the purchase by
18 the Department of Transportation of road building materials
19 for transportation infrastructure in the state. Road building
20 materials may be purchased from private land owners or
21 commercial providers from the nearest or most cost-effective
22 source available for the particular application. Road building
23 materials include dirt, gravel, stone, slag, or borrow
24 materials, in natural state or processed by crushing, grading
25 or screening processes.

26 (m) This article does not apply to purchases of
27 supplies and services for the maintenance and operation of

1 highway infrastructure and right-of-way by the Department of
2 Transportation.

3 (n) Nothing in this article is intended to repeal or
4 limit any provision of Article 2, Chapter 1, Title 23,
5 relating to the powers and authority of the Department of
6 Transportation. To the extent any provision contained in this
7 article conflicts with Article 2, Chapter 1, Title 23, the
8 latter governs.

9 (o) Governmental bodies may purchase supplies from
10 any vendor that offers the item at a price at least ten
11 percent below the price established on a statewide contract by
12 the Office of the Chief Procurement Officer for the same item,
13 provided that each purchase, whether for a single item or
14 multiple items, does not exceed an amount established by rules
15 of the Chief Procurement Officer. The Office of the Chief
16 Procurement Officer shall confirm that the terms and
17 conditions of the purchases are substantially similar to those
18 of the statewide contract for the same item prior to the
19 approval of any purchase under this subsection. Any purchase
20 that would be directly connected to any information technology
21 network used by the state shall require prior approval by the
22 Secretary of Information Technology. If the purchaser is to
23 take possession of the purchased supplies at the vendor's
24 physical location, any acquisition of supplies under this
25 subsection may be purchased only from vendors physically
26 located within the state. The price of any supplies purchased
27 under this subsection shall be the market price readily

1 available to the public at large. The acquisition of supplies
2 under this subsection is subject to the supervision and
3 administration of the Office of the Chief Procurement Officer.

4 §41-4-127A.

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

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

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

15 §41-4-128A.

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

25 §41-4-129A.

26 (a) The Chief Procurement Officer may establish a
27 Procurement Advisory Council. If created, the council, upon

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

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

14 Division 3. Source Selection and Contract Formation.
15 §41-4-130A.

16 As used in this division, the following terms shall
17 have the following meanings:

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

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

25 a. Is regularly maintained by a manufacturer or
26 contractor.

1 b. Is either published or otherwise available for
2 inspection by customers.

3 c. States prices at which sales are currently or
4 were last made to a significant number of any category of
5 buyers or buyers constituting the general buying public for
6 the supplies or services involved.

7 (3) INVITATION TO BID. All documents, whether
8 attached or incorporated by reference, utilized for soliciting
9 bids.

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

12 a. PRIORITY #1. Produces or manufactures the product
13 within the state.

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

16 c. PRIORITY #3. Is organized for business under the
17 applicable laws of the state as a corporation, partnership, or
18 professional association and has maintained at least one
19 retail outlet or service center for the product or service
20 within the state for not less than one year prior to the
21 deadline date for the competitive bid.

22 d. PRIORITY #4. Is physically located in the state
23 and that is more than 50 percent owned by a person who was
24 discharged or released under conditions other than
25 dishonorable and who has at least 24 months' active service in
26 the United States' military, naval, or air service, or who has
27 less than 24 months of active service in any of the foregoing

1 and was separated with a service-connected disability, or a
2 national guardsman or reservist who completed active federal
3 service for purposes other than training or who served at
4 least 180 days of continuous service for purposes other than
5 training.

6 (5) PURCHASE DESCRIPTION. The words used in a
7 solicitation to describe the supplies or services to be
8 purchased. The term includes any specifications attached to,
9 or made a part of, the solicitation.

10 (6) REQUEST FOR PROPOSALS. All documents, whether
11 attached or incorporated by reference, that are used for
12 soliciting proposals.

13 (7) RESPONSIBLE BIDDER or OFFEROR. A person who has
14 the capability in all respects to perform fully the contract
15 requirements and who has the integrity and reliability to
16 assure good faith performance.

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

20 §41-4-131A.

21 (a) Unless otherwise authorized by law, all state
22 contracts shall be awarded by the use of one of the following
23 methods:

24 (1) Competitive sealed bids, pursuant to Section
25 41-4-132A.

26 (2) Competitive sealed proposals, pursuant to
27 Section 41-4-133A.

1 (3) Small purchase procedures pursuant to Section
2 41-4-134A.

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

5 (5) An emergency procurement pursuant to Section
6 41-4-136A.

7 (6) A special procurement pursuant to Section
8 41.4.137A.

9 (b) In the event a bid or offer is received for the
10 supplies or service from a person deemed to be a responsible
11 bidder or offeror and a preferred vendor and the bid is no
12 more than five percent greater than the bid of the lowest
13 responsible bidder or offeror who is not deemed to be a
14 preferred vendor, the Chief Procurement Officer or purchasing
15 agency may award the contract to the preferred vendor.

16 §41-4-132A.

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

19 (b) An invitation to bid shall be issued and shall
20 include a purchase description and all contractual terms and
21 conditions applicable to the procurement.

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

26 (d) Bids shall be opened publicly in the presence of
27 one or more witnesses at the time and place designated in the

1 invitation to bid. The amount of each bid, the name of each
2 bidder, and any other information required by rule shall be
3 recorded. The record and each bid shall be open to public
4 inspection to the extent required by Section 41-4-115A.

5 (e) Bids shall be unconditionally accepted without
6 alteration or correction, except as authorized in this
7 article. Bids shall be evaluated based on the requirements set
8 forth in the invitation to bid, which may include criteria to
9 determine acceptability, such as inspection, testing, quality,
10 workmanship, delivery, and suitability for a particular
11 purpose. Any criteria that will affect the bid price and will
12 be considered in evaluation for award shall be objectively
13 measurable, such as discounts, transportation costs, and total
14 or life cycle costs. The invitation to bid shall set forth the
15 evaluation criteria to be used. No criteria may be used in bid
16 evaluations that are not set forth in the invitation to bid.

17 (f) (1) When a bid is submitted that contains an
18 error, the Chief Procurement Officer or head of a purchasing
19 agency may authorize the correction or withdrawal of the bid
20 or may cancel the award of the contract. The authorization of
21 the correction or withdrawal shall be done in accordance with
22 rules adopted by the Chief Procurement Officer.

23 (2) After a bid has been opened, with the exception
24 of price negotiations with the lowest responsible bidder, no
25 changes in bid prices or other provisions of bids prejudicial
26 to the interest of the state or fair competition shall be
27 permitted.

1 (g) (1) Unless there is a compelling reason to reject
2 bids, as prescribed by rules, notice of intent to award to the
3 lowest responsive and responsible bidder whose bid meets the
4 requirements set forth in the invitation to bid shall be given
5 by posting the notice at a location specified in the
6 invitation to bid. Before posting the notice of intent to
7 award, the Chief Procurement Officer or head of the purchasing
8 agency, may negotiate with the lowest responsive and
9 responsible bidder to lower the bid price within the scope of
10 the invitation to bid. The invitation to bid and notice of
11 intent to award shall contain a statement of the bidder's
12 right to protest.

13 (2) The Chief Procurement Officer may award multiple
14 purchase contracts resulting from a single invitation to bid
15 where the specifications of the items of supplies or services
16 intended to be purchased by a requisitioning agency or
17 agencies are determined, in whole or in part, by technical
18 compatibility and operational requirements. In order to make
19 multiple awards under this subdivision, the awarding authority
20 shall include in the invitation to bid a notice that multiple
21 awards may be made and the specific technical compatibility or
22 operational requirements necessitating multiple awards.
23 Multiple awards of purchase contracts with unique technical
24 compatibility or operational specifications shall be made to
25 the lowest responsible bidder complying with the unique
26 technical compatibility or operational specifications. The
27 requisitioning agency shall provide the awarding authority

1 with the information necessary for it to determine the
2 necessity for the award of multiple purchase contracts under
3 this subdivision. This subdivision does not apply to contracts
4 for the purchase or use of push-to-talk services, which shall
5 be purchased through a separate competitive bid process.

6 (h) When it is considered impractical by the Chief
7 Procurement Officer to initially prepare a purchase
8 description to support an award based on price, an invitation
9 to bid may be issued requesting the submission of unpriced
10 offers to be followed by an invitation to bid limited to those
11 bidders whose offers have been qualified under the criteria
12 set forth in the first solicitation.

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

25 (2) After receipt of the responses to the request
26 for qualifications from prospective bidders, all qualified
27 bidders, as determined by the Chief Procurement Officer, shall

1 have an opportunity to bid. The determination regarding which
2 bidders are qualified is not subject to review.

3 §41-4-133A.

4 (a) (1) A contract may be entered into by competitive
5 sealed proposals when the Chief Procurement Officer or the
6 head of a purchasing agency, in accordance with rules,
7 determines that the use of competitive sealed bidding is
8 either not practicable or not advantageous to the state.
9 Unless determined otherwise by the Chief Procurement Officer,
10 professional services shall be procured by competitive sealed
11 proposals.

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

16 (b) Proposals shall be solicited through a request
17 for proposals.

18 (c) Adequate public notice of the request for
19 proposals shall be given in the same manner as provided in
20 subsection (c) of Section 41-4-132A.

21 (d) Proposals shall be opened so as to avoid
22 disclosure of contents to competing offerors prior to contract
23 award. A register of proposals shall be prepared in accordance
24 with rules and shall be open for public inspection after award
25 of the contract.

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

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

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

21 (h) The Chief Procurement Officer may provide
22 debriefings that furnish the basis for the source selection
23 decision and contract award.

24 (i) (1) Before soliciting proposals, the Chief
25 Procurement Officer may authorize issuance of a request for
26 qualifications from prospective offerors. The request shall
27 contain, at a minimum, a description of the scope of work to

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

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

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

20 §41-4-134A.

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

26 §41-4-135A.

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 §41-4-136A.

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 §41-4-137A.

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 41-4-134A
25 when the officer or agency head determines that an unusual or
26 unique situation exists that makes the application of all
27 requirements of competitive sealed bidding or competitive

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

11 §41-4-138A.

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

17 §41-4-139A.

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

25 (b) Confidential information furnished by a bidder
26 or offeror under this section may not be disclosed outside of
27 the Office of the Chief Procurement Officer or the purchasing

1 agency without the prior written consent of the bidder or
2 offeror.

3 §41-4-140A.

4 Prospective suppliers may be prequalified for
5 particular types of supplies or services. The method of
6 submitting prequalification information and the information
7 required in order to be prequalified shall be determined by
8 the Chief Procurement Officer.

9 §41-4-141A.

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

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

15 a. Based on adequate price competition.

16 b. Based on established catalogue or market prices.

17 c. Set by law or rule.

18 (2) The price or cost exceeds an amount established
19 by rule.

20 §41-4-142A. (a) For the purpose of this section, the
21 following terms shall have the respective meanings ascribed by
22 this section:

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

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

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

14 (c) Each vendor, contractor, or affiliate of a
15 vendor or contractor that is offered a contract to do business
16 with a state department or state agency shall be required to
17 certify that the vendor or affiliate is appropriately
18 registered to collect and remit sales and use tax, or
19 simplified sellers use tax and lease tax as required by this
20 section and submit to that state department or agency
21 certification required by the Alabama Department of Revenue.

22 (d) Every bid submitted and contract executed by the
23 state shall contain a certification by the bidder or
24 contractor that the bidder or contractor is not barred from
25 bidding for or entering into a contract under this section and
26 that the bidder or contractor acknowledges that the

1 contracting state agency may declare the contract void if the
2 certification completed is false.

3 (e) Each vendor or contractor that sells or leases
4 supplies to a state department or agency, and each affiliate
5 of that vendor or contractor that makes sales for delivery
6 into Alabama, shall be required to collect and remit the
7 Alabama sales and use tax, or simplified sellers use tax, or
8 lease tax on all its sales and leases into the state.

9 §41-4-143A.

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

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

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

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

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

22 §41-4-144A.

23 (a) Unless otherwise provided by law, a contract for
24 supplies or services may be entered into for any period of
25 time that is in the best interests of the state, so long as
26 the terms of the contract and the conditions of renewal or
27 extension, if any, are included in the solicitation and funds

1 are available for the first fiscal year at the time of
2 contracting. Payment and performance obligations for
3 succeeding fiscal periods shall be subject to the availability
4 and appropriation of funds.

5 (b) A multi-year contract may be used when the
6 estimated requirements cover the period of the contract and
7 are reasonably firm and continuing; and the contract will
8 serve the best interests of the state by encouraging effective
9 competition or otherwise promoting economies in state
10 procurement.

11 (c) When funds are not appropriated or otherwise
12 made available to support continuation of performance in a
13 subsequent fiscal period, the contract shall be cancelled and
14 the contractor shall be reimbursed for the reasonable value of
15 any non-recurring costs incurred but not amortized in the
16 price of the supplies or services delivered under the
17 contract. The cost of cancellation may be paid from any
18 appropriations available for that purpose.

19 §41-4-145A.

20 The Chief Procurement Officer or his or her
21 designee, at reasonable times, may inspect a part of the
22 plant, the place of business, or the logical and physical
23 electronic systems of a contractor or any subcontractor that
24 is related to the performance of any contract awarded or to be
25 awarded by the state.

26 §41-4-146A.

1 In addition to the authority of the Department of
2 Examiners of Public Accounts, as set forth under Chapter 5A of
3 Title 41, the Department of Finance, at reasonable times and
4 places, may audit or examine the books and records of any
5 person who has submitted data in substantiation of offered
6 prices under Section 41-4-141A to the extent that the books
7 and records relate to that data. Any person who receives a
8 contract, change order, or contract modification for which
9 data is required under Section 41-4-141A, shall maintain the
10 books and records that relate to the cost or pricing data for
11 three years from the date of final payment under the contract,
12 unless a shorter period is otherwise authorized in writing.

13 §41-4-147A.

14 The determinations required by subsection (f) of
15 Section 41-4-132A, subsection (a) or (g) of Section 41-4-133A,
16 Section 41-4-135A, Section 41-4-136A, Section 41-4-137A,
17 subsection (a) of Section 41-4-139A, Section 41-4-141A,
18 Section 41-4-143A, and subsection (b) of Section 41-4-144A are
19 final and conclusive unless they are clearly erroneous,
20 arbitrary, capricious, or contrary to law.

21 §41-4-148A.

22 When for any reason collusion or other
23 anti-competitive practices are suspected during the
24 procurement process, a notice of the relevant facts shall be
25 transmitted to the Attorney General and, if applicable, to the
26 Ethics Commission.

27 §41-4-149A.

1 (a) The Chief Procurement Officer shall maintain a
2 record listing all contracts made under Section 41-4-135A,
3 41-4-136A, or 41-4-137A for a minimum of one year. The record
4 shall contain all of the following:

5 (1) Each contractor's name.

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

7 (3) A listing of the supplies or services procured
8 under each contract.

9 (b) A copy of the record shall be available for
10 public inspection, except where disclosure would be
11 detrimental to the safety or security of persons or property
12 or to the public interest as determined by the Chief
13 Procurement Officer.

14 Division 4. Specifications.

15 §41-4-150A.

16 As used in this division, the term specification
17 means any description of the physical or functional
18 characteristics, or of the nature of a supply or service, and
19 may include a description of any requirement for inspecting,
20 testing, or preparing a supply or service for delivery.

21 §41-4-151A.

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

25 (b) The Chief Procurement Officer shall monitor the
26 use of specifications for supplies or services required by a
27 purchasing agency.

1 (c) The Chief Procurement Officer shall obtain
2 expert advice and assistance from personnel of using agencies
3 in the development of specifications and may delegate in
4 writing to a using agency the authority to prepare and utilize
5 its own specifications.

6 (d) All specifications shall seek to promote overall
7 economy for the purposes intended and encourage competition in
8 satisfying the state's needs and shall not be unduly
9 restrictive.

10 (e) Specifications may be prepared by persons other
11 than state employees when necessary. The Chief Procurement
12 Officer shall exercise diligence to assure that any third
13 party who prepares specifications or requirements does not
14 have a conflict of interest or an unfair competitive advantage
15 in any subsequent procurement. Vendors that participate in the
16 drafting of specifications for the state shall disclose the
17 same on its vendor disclosure statement required by Section
18 41-16-82.

19 Division 5. Modification and Termination of
20 Contracts for Supplies and Services.

21 §41-4-155A.

22 (a) The Chief Procurement Officer may adopt rules
23 permitting or requiring the inclusion of clauses providing for
24 adjustments in prices, time of performance, or other contract
25 provisions as appropriate covering both of the following
26 subjects:

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

3 a. Changes in the work within the scope of the
4 contract.

5 b. The temporary stopping of work or delaying
6 performance.

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

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

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

14 b. By unit prices specified in the contract or
15 subsequently agreed upon.

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

19 d. In any other manner as the contracting parties
20 may mutually agree.

21 e. In the absence of agreement by the parties, by a
22 unilateral determination by the state of the costs
23 attributable to the events or situations under the clauses
24 with adjustment of profit or fee.

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

1 (c) The Chief Procurement Officer may adopt rules to
2 implement this division, including rules permitting or
3 requiring the inclusion in state contracts of clauses
4 providing for appropriate remedies covering all of the
5 following subjects:

6 (1) Specified excuses for delay or nonperformance.

7 (2) Termination of the contract for default.

8 (3) Termination of the contract in whole or in part
9 for the convenience of the state.

10 (d) The Chief Procurement Officer may vary the
11 clauses adopted by rule under subsection (a) and (c) for
12 inclusion in any particular state contract, so long as any
13 variation is supported by a written determination that states
14 the circumstances justifying the variation. Notice of any
15 material variation shall be stated in the invitation to bid or
16 request for proposals.

17 Division 6. Legal and Contractual Remedies.

18 Part A. Resolution of Controversies.

19 §41-4-160A

20 (a) Contracts of a governmental body listed under
21 subsection (b) of Section 41-4-124A are not subject to this
22 part as it relates to the authority of the Chief Procurement
23 Officer and Director of Finance.

24 (b) The governmental bodies listed under subsection
25 (b) of Section 41-4-124A shall establish written procedures
26 keeping with the spirit and intent of this part to do all of
27 the following:

1 (1) Resolve protested solicitations and awards.

2 (2) Establish criteria and review procedures for
3 suspension and debarment of persons or entities

4 (3) Resolve contract disputes.

5 §41-4-161A.

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

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

17 b. A matter that could have been raised under
18 subdivision (1) as a protest of the solicitation may not be
19 raised as a protest of the award or intended award of a
20 contract.

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

26 (b) The Chief Procurement Officer, or his or her
27 designee, may settle and resolve the protest of a bona fide

1 actual or prospective bidder or offeror concerning the
2 solicitation or award of a contract in accordance with rules
3 adopted under this article.

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

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

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

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

27 §41-4-162A.

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

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

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

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

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

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

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

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

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

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

12 (5) Violation of the ethical standards set forth in
13 Chapter 25 (commencing with Section 36-25-1) of Title 36.

14 (6) Violation of an order of the Chief Procurement
15 Officer.

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

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

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

24 a. The debarred or suspended person.

25 b. Any other party intervening.

26 c. All state procurement officials governed by this
27 article with contracting authority who shall decide whether

1 the suspension or debarment warrants termination of existing
2 contracts with the suspended or debarred person or entity.

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

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

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

13 §41-4-163A.

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

20 §41-4-164A.

21 (a) A party that receives an adverse decision from
22 the Chief Procurement Officer under subsection (c) of Section
23 41-4-161A or subsection (c) of Section 41-4-162A may appeal
24 the decision to the Director of Finance.

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

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

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

7 (e) A copy of the decision under subsection (d)
8 shall be mailed or otherwise furnished immediately to the
9 parties.

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

12 Part B. Solicitations or Awards in Violation of Law.
13 §41-4-165A.

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

16 §41-4-166A.

17 If, prior to an award, a solicitation or proposed
18 award of a contract is determined to be in violation of law,
19 the solicitation or proposed award shall be cancelled or
20 revised to comply with the law.

21 §41-4-167A.

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

24 (1) If the person awarded the contract has not acted
25 fraudulently or in bad faith, the contract may be ratified and
26 affirmed by the Chief Procurement Officer, so long as doing so
27 is in the best interests of the state, or the contract may be

1 terminated by the Chief Procurement Officer and the person
2 awarded the contract shall be compensated for the supplies
3 provided or services rendered under the contract prior to
4 termination.

5 (2) If the person awarded the contract has acted
6 fraudulently or in bad faith, the contract may be declared
7 void by the Chief Procurement Officer or the contract may be
8 ratified and affirmed by the Chief Procurement Officer, so
9 long as the action is in the best interests of the state. A
10 contract ratified and affirmed under this subdivision does not
11 prejudice the state's right to any available damages.

12 §41-4-168A.

13 A bona fide unsuccessful bidder or offeror on a
14 particular contract who has exhausted the administrative
15 remedies contained in this division and any taxpayer of the
16 area within the jurisdiction of the awarding authority may
17 bring a civil action in the Circuit Court of Montgomery County
18 to enjoin execution of any contract entered into in violation
19 of this article.

20 Division 7. Intergovernmental Relations.

21 §41-4-170A.

22 As used in this division, the following terms shall
23 have the following meanings:

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

26 (2) EXTERNAL PROCUREMENT ACTIVITY. A buying
27 organization not located in this state which, if located in

1 this state, would qualify as a public procurement unit. The
2 term includes agencies of the United States and of any other
3 state.

4 (3) LOCAL PUBLIC PROCUREMENT UNIT. A county,
5 municipality or other political subdivision of the state or
6 agency of any the political subdivision; public authority;
7 educational, health, or other institution; to the extent
8 provided by law, any entity that expends public funds for the
9 procurement of supplies or services and is governed by this
10 article; and any nonprofit corporation operating a charitable
11 hospital.

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

- 14 a. A local public procurement unit.
- 15 b. An external procurement activity.
- 16 c. A state public procurement unit.
- 17 d. Any not-for-profit entity comprised of more than
18 one unit or activity listed in paragraph a., b., or c.

19 (e) STATE PUBLIC PROCUREMENT UNIT. The Office of the
20 Chief Procurement Officer or the equivalent officer of any
21 other state and any purchasing agency of this state or any
22 other state.

23 §41-4-171A.

24 (a) A public procurement unit that is governed by
25 this article may either participate in, sponsor, conduct, or
26 administer a cooperative purchasing agreement for the
27 procurement of any supplies or services with one or more

1 public procurement units in accordance with an agreement
2 entered into between the participants. The cooperative
3 purchasing may include joint or multi-party contracts between
4 public procurement units and open-ended public procurement
5 unit contracts that are made available to other public
6 procurement units.

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

11 §41-4-172A.

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

15 §41-4-173A.

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

21 §41-4-174A.

22 (a) When a public procurement unit administering a
23 cooperative purchase complies with the requirements of this
24 article, a public procurement unit participating in the
25 purchase shall be deemed to have complied with this article.

1 (b) Public procurement units may not enter into a
2 cooperative purchasing agreement for the purpose of
3 circumventing this article.

4 §41-4-175A.

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

11 §41-4-176A.

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

18 Division 8. Assistance to Small and Disadvantaged
19 Businesses; Federal Assistance or Contract Procurement
20 Requirements.

21 §41-4-177A.

22 (a) It is the policy of the state that the Chief
23 Procurement Officer shall provide reasonable procurement
24 assistance to small and disadvantaged businesses in this
25 state.

26 (b) The Chief Procurement Officer shall identify
27 programs designed to assist small and disadvantaged businesses

1 in procurement activities governed by this article, which may
2 include staff assistance, special publications, source lists,
3 solicitation mailing lists, and training programs.

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

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

13 §41-4-178A.

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

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

20 "§41-4-66.

21 "~~(a) The Division of Control and Accounts with the~~
22 ~~State Department of Finance~~ Chief Procurement Officer shall
23 establish and maintain and post on the state's website a
24 statewide database of each request for a proposal for a public
25 contract by the State of Alabama, any agency, board,
26 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 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:

26 "§41-16-50.

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

1 the awarding authority, or the boundaries of the county in
2 which the awarding authority is located, or the boundaries of
3 the Core Based Statistical Area in which the awarding
4 authority is located. If no such action is taken by the
5 awarding authority, the boundaries of the local preference
6 zone shall be deemed to be the same as the legal boundaries or
7 jurisdiction of the awarding authority. In the event a bid is
8 received for an item of personal property or services to be
9 purchased or contracted for from a person, firm, or
10 corporation deemed to be a responsible bidder, having a place
11 of business within the local preference zone where the county,
12 a municipality, or an instrumentality thereof is the awarding
13 authority, and the bid is no more than five percent greater
14 than the bid of the lowest responsible bidder, the awarding
15 authority may award the contract to the resident responsible
16 bidder. In the event only one bidder responds to the
17 invitation to bid, the awarding authority may reject the bid
18 and negotiate the purchase or contract, providing the
19 negotiated price is lower than the bid price.

20 "(b) The governing bodies of two or more contracting
21 agencies, as enumerated in subsection (a), or the governing
22 bodies of two or more counties, or the governing bodies of two
23 or more city or county boards of education, may provide, by
24 joint agreement, for the purchase of labor, services, or work,
25 or for the purchase or lease of materials, equipment,
26 supplies, or other personal property for use by their
27 respective agencies. The agreement shall be entered into by

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

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

24 "(c) The awarding authority may require bidders to
25 furnish a bid bond for a particular bid solicitation if the
26 bonding requirement applies to all bidders, is included in the

1 written bid specifications, and if bonding is available for
2 the services, equipment, or materials.

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

19 Section 5. This act shall become effective October
20 1, 2021, following its passage and approval by the Governor,
21 or its otherwise becoming law.

1
2
3 Senate

4 Read for the first time and referred to the Senate
5 committee on Finance and Taxation General Fund ... 13-FEB-20
6
7 Reported from Finance and Taxation General Fund as
8 Favorable..... 20-FEB-20
9
10 Read for the third time and passed as amended 05-MAR-20

11 Yeas 30
12 Nays 0

13
14
15 Patrick Harris,
16 Secretary.
17