ACT #2016-298

1 HB170
2 175349-2
3 By Representatives Patterson, Whorton (R), Pettus, Ledbetter,
4 Sanderford and Hall
5 RFD: State Government
6 First Read: 09-FEB-16
ENROLLED, An Act,

To amend Sections 16-13B-2, 16-13B-7, 41-16-51, and 41-16-57, Code of Alabama 1975, relating to the Competitive Bid Law; to provide for the length of time certain contracts may be let; to specify requirements for purchases from a sole source; to permit purchases from a vendor under a general services administration contract; and to permit purchases of services under a competitive bid nationwide cooperative purchasing program.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 16-13B-2, 16-13B-7, 41-16-51, and 41-16-57 of the Code of Alabama 1975, are amended to read as follows:

"§16-13B-2.
(a) Competitive bids shall not be required for utility services for county or city boards of education, the rates for which are fixed by law, regulation, or ordinance, and the competitive bidding requirements of this chapter shall not apply to:

(1) The purchase of insurance.

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

"(3) Contracts of employment in the regular civil service.

"(4) Contracts for fiscal or financial advice or services.

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

"(6) Purchases of maps or photographs from any federal agency.

"(7) Purchases of manuscripts, books, maps, pamphlets, or periodicals.

"(8) The selection of paying agents and trustees for any security issued by a public body.

"(9) Existing contracts up for renewal for sanitation or solid waste collection, recycling, or disposal and those providing the service.

"(10) Purchases of computer and word processing hardware when the hardware is the only type that is compatible with hardware already owned by the entity taking bids and custom software.

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

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

"(13) Purchases of goods or services, other than
voice or data wireless communication services, made as a part
of any purchasing cooperative sponsored by the National
Association of Counties, its successor organization, or any
other competitive bid nationwide cooperative purchasing
program, or other national or regional governmental
cooperative purchasing program. This subdivision shall not
apply to goods for which a service or service contract,
whether subject to competitive bidding under this chapter or
not, is necessary to utilize the goods. Such purchases may
only be made if all of the following occur:

"a. The goods or services being purchased are
available as a result of a competitive bid process approved by
the Department of Examiners of Public Accounts for each bid.

"b. The goods or services are either not at the time
available to local boards of education on the state purchasing
program or are available at a price equal to or less than that
on the state purchasing program.
  "c. The purchase is made through a participating
Alabama vendor holding an Alabama business license if such a
vendor exists.
  "(14) Purchases of unprocessed agricultural products
as defined in subsection (b) of Section 16-1-46 adding this
subdivision and the food is purchased with a cost of one
hundred thousand dollars ($100,000) or less.
  "(15) Purchase of goods or services, other than
voice or data wireless communication services, from vendors
that have been awarded a current and valid general services
administration contract. Prices paid for the goods or services
may not exceed the lowest competitively bid price for these
goods or services, other than voice or data wireless
communication services, and may not exceed the price on an
existing state purchasing program.
  "(b) This chapter shall not apply to:
  "(1) Any purchases of products where the price of
the products is already regulated and established by state
law.
  "(2) Purchases made by individual schools of the
county or municipal public school systems from moneys other
than those raised by taxation or received through
appropriations from state or county sources.
"(c) The city and county boards of education shall establish and maintain such purchasing facilities and procedures as may be necessary to carry out the intent and purpose of this chapter by complying with the requirements for competitive bidding in the operation and management of each city and county board of education.

"(d) Contracts entered into in violation of this chapter shall be void, and anyone who violates this chapter shall be guilty of a Class C felony.

"§16-13B-7.

"(a) When purchases are required to be made through competitive bidding, awards shall be made to the lowest responsible bidder taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purposes for which required, the terms of delivery, transportation charges, and the dates of delivery. If at any time after the award has been made the lowest responsible bidder notifies the awarding authority in writing that the bidder will no longer comply with the terms of the award to provide the goods or services to the awarding authority under the terms and conditions of the original award, or the awarding authority documents that the lowest responsible bidder defaults under the terms of the original award, the awarding authority may terminate the award to the defaulting bidder and make an award to the second lowest
responsible bidder for the remainder of the award period
without rebidding, provided the award to the second lowest
responsible bidder is in all respects made under the terms and
conditions contained in the original bid specifications and is
for the same or a lower price than the bid originally
submitted to the awarding authority by the second lowest
responsible bidder.

"(b) The awarding authority in the purchase of or
contract for personal property or contractual services shall
give preference, provided there is no sacrifice or loss in
price or quality, to commodities produced in Alabama or sold
by Alabama persons, firms, or corporations. Notwithstanding
the foregoing, no county or city board of education charged
with the letting of contracts or purchase of materials for the
construction, modification, alteration, or repair of any
publicly-owned facility may specify the use of materials or
systems by purchase of goods or services from a sole source,
unless:

"(1) The board of education can document to the
satisfaction of the State Building Commission that the sole
source product or service is of an indispensable nature, no
other product or service can meet its needs, all other viable
alternatives have been explored, and it has been determined
that only this product or service will fulfill the function
for which the product is needed. Frivolous features will not be considered.

"(2) The sole source specification has been recommended by the architect or engineer of record who also documents that there is no other product available and that the use of the requirement is of an indispensable nature and why. No other vendor offers substantially equivalent goods or services that can accomplish the purpose for which the goods or services are required.

"(3) All information substantiating the use of a sole source specification is documented in writing and is filed into the project file.

"(c)(1) For purchases of personal property in instances where the awarding authority determines that the total cost of ownership over the expected life of the item or items, including acquisition costs plus sustaining costs or life cycle costs, can be reasonably ascertained from industry recognized and accepted sources, the lowest responsible bid may be determined to be the bid offering the lowest life cycle costs and otherwise meeting all of the conditions and specifications contained in the invitation to bid. To utilize this subdivision to determine the lowest responsible bidder, the awarding authority shall include a notice in the invitation to bid that the lowest responsible bid may be determined by using life cycle costs and identify the industry
recognized and accepted sources that will be applicable to
such an evaluation.

"(2) The Department of Examiners of Public Accounts
shall establish procedures for the use of life cycle costs,
which shall be distributed to all contracting agencies and
shall be used in conducting any audits of the purchasing
agency.

"(d) The awarding authority or requisitioning agency
may reject any bid if the price is deemed excessive or quality
of product inferior.

"(e) Each record, with the successful bid indicated
thereon, and with the reasons for the award if not awarded to
the lowest bidder, shall, after award of the order or
contract, be open to public inspection.

"(f) Contracts for the purchase of personal property
or contractual services shall be let for periods not greater
than three five years. Lease-purchase contracts for capital
improvements and repairs to real property shall be let for
periods not greater than 10 years and all other lease-purchase
contracts shall be let for periods not greater than 10 years.

"§41-16-51.

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

"(1) The purchase of insurance.

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

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

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

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

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

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

"(8) Purchases of manuscripts, books, maps,
pamphlets, or periodicals.
"(9) The selection of paying agents and trustees for any security issued by a public body.

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

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

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

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

"(14) Purchases of dirt, sand, or gravel by a county governing body from in-county property owners in order to supply a county road or bridge project in which the materials will be used. The material shall be delivered to the project site by county employees and equipment used only on projects conducted exclusively by county employees.
"(15) Contractual services and purchases of products related to, or having an impact upon, security plans, procedures, assessments, measures, or systems, or the security or safety of persons, structures, facilities, or infrastructures.

"(16) Subject to the limitations in this subdivision, purchases of goods or services, other than voice or data wireless communication services, made as a part of the purchasing cooperative sponsored by the National Association of Counties, its successor organization, or any other competitive bid nationwide cooperative purchasing program, or other national or regional governmental cooperative purchasing program. This subdivision shall not apply to goods for which a service or service contract, whether subject to competitive bidding under this article or not, is necessary to utilize the goods. Such purchases may only be made if all of the following occur:

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

"b. The goods or services are either not at the time available to counties on the state purchasing program or are available at a price equal to or less than that on the state purchasing program.
"c. The purchase is made through a participating Alabama vendor holding an Alabama business license if such a vendor exists.

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

"(17) Purchase of goods or services, other than wireless communication services, whether voice or data, from vendors that have been awarded a current and valid Government Services Administration contract. Any purchase made pursuant to this subdivision shall be under the same terms and conditions as provided in the Government Services Administration contract. Prices paid for such goods and services, other than wireless communication services, whether voice or data, may not exceed the amount provided in the Government Services Administration contract.

"(b) This article shall not apply to:

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

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

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

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

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

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

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

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

"(c) The state trade schools, state junior colleges, state colleges, and universities under the supervision and control of the State Board of Education, the district boards of education of independent school districts, the county commissions, and the governing bodies of the municipalities of the state shall establish and maintain such purchasing facilities and procedures as may be necessary to carry out the
intent and purpose of this article by complying with the
requirements for competitive bidding in the operation and
management of each state trade school, state junior college,
state college, or university under the supervision and control
of the State Board of Education, the district boards of
education of independent school districts, the county
commissions, and the governing bodies of the municipalities of
the state and the governing boards of instrumentalities of
counties and municipalities, including waterworks boards,
sewer boards, gas boards, and other like utility boards and
commissions.

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

"§41-16-57.

"(a) When purchases are required to be made through
competitive bidding, awards shall be made to the lowest
responsible bidder taking into consideration the qualities of
the commodities proposed to be supplied, their conformity with
specifications, the purposes for which required, the terms of
delivery, transportation charges, and the dates of delivery.
If at any time after the award has been made the lowest
responsible bidder notifies the awarding authority in writing
that the bidder will no longer comply with the terms of the
award to provide the goods or services to the awarding
authority under the terms and conditions of the original
award, or the awarding authority documents that the lowest
responsible bidder defaults under the terms of the original
award, the awarding authority may terminate the award to the
defaulting bidder and make an award to the second lowest
responsible bidder for the remainder of the award period
without rebidding, provided the award to the second lowest
responsible bidder is in all respects made under the terms and
conditions contained in the original bid specifications and is
for the same or a lower price than the bid originally
submitted to the awarding authority by the second lowest
responsible bidder.

"(b) The awarding authority in the purchase of or
contract for personal property or contractual goods or
services shall give preference, provided there is no sacrifice
or loss in price or quality, to commodities produced in
Alabama or sold by Alabama persons, firms, or corporations.
Notwithstanding the foregoing, no county official, county
commission, school board, city council or city councilmen, or
other public official, state board, or state agency charged
with the letting of contracts or purchase of materials for the
construction, modification, alteration, or repair of any
publicly owned facility goods or services may specify the use
of materials or systems by a sole source, unless:
"(1) The governmental body can document to the satisfaction of the State of Alabama Building Commission that the sole source product or service is goods or services are of an indispensable nature, all other viable alternatives have been explored, and it has been determined that only this product or service these goods or services will fulfill the function for which the product is needed. Frivolous features will not be considered.

"(2) The sole source specification has been recommended by the architect or engineer of record and who also documents that there is no other product available and that the use of the requirement is of an indispensable nature and why. No other vendor offers substantially equivalent goods or services that can accomplish the purpose for which the goods or services are required.

"(3) All information substantiating the use of a sole source specification is documented in writing and is filed into the project file.

"(c)(1) Beginning January 1, 2009, for purchases of personal property, including on or after June 9, 2011, goods which are, or are to become, fixtures, in instances where the awarding authority determines that the total cost of ownership over the expected life of the item or items, including acquisition costs plus sustaining costs or life cycle costs, can be reasonably ascertained from industry recognized and
accepted sources, the lowest responsible bid may be determined
to be the bid offering the lowest life cycle costs and
otherwise meeting all of the conditions and specifications
contained in the invitation to bid. To utilize this
subdivision to determine the lowest responsible bidder, the
awarding authority shall include a notice in the invitation to
bid that the lowest responsible bid may be determined by using
life cycle costs and identify the industry recognized and
accepted sources that will be applicable to such an
evaluation.

"(2) No later than November 30, 2008, the Department
of Examiners of Public Accounts shall establish procedures for
the use of life cycle costs, which shall be distributed to all
contracting agencies and shall be used in conducting any
audits of the purchasing agency.

"(d) The awarding authority or requisitioning agency
may reject any bid if the price is deemed excessive or quality
of product inferior.

"(e) Each record, with the successful bid indicated
thereon, and with the reasons for the award if not awarded to
the lowest bidder, shall, after award of the order or
contract, be open to public inspection.

"(f) Contracts for the purchase of personal property
or contractual services shall be let for periods not greater
than three years. Contracts for the leasing of motor vehicles
by local governing bodies shall be let for periods not greater
than five years. Lease-purchase contracts for capital
improvements and repairs to real property shall be let for
periods not greater than 10 years and all other lease-purchase
contracts shall be let for periods not greater than 10 years."

Section 2. This act shall become effective
immediately following its passage and approval by the
Governor, or its otherwise becoming law.
Speaker of the House of Representatives

Kay Ivey
President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 23-MAR-16, as amended.

Jeff Woodard
Clerk

Senate  28-APR-16  Amended and Passed
House  28-APR-16  Concurred in Senate Amendment

APPROVED 5-10-2016

TIME 3:38 pm

GOVERNOR

Alabama Secretary Of State
Act Num.: 2016-298
Bill Num.: H-170

Recvd 05/10/16  04:45pm SLF
I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 170
YEAS 77 NAYS 14
JEFF WOODARD, Clerk

This Bill was referred to the Standing Committee of the Senate on
and was acted upon by such Committee in session and is by order of the Committee returned thefrom with a favorable report w/amend(s) _ w/sub _ by a vote of
YEAS 9 NAYS 0 ABSTAIN 0
this 25th day of April 2016
Shayanna Ashby, Chairperson

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. __________
AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919
JEFF WOODARD, Clerk

CONFERENCE COMMITTEE
House Conferees ________________________________ ________________________________
______________________________ ________________________________ ________________________________ ________________________________ ________________________________
I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB __________
YEAS _______ NAYS _______
PATRICK HARRIS, Secretary

FURTHER SENATE ACTION (OVER)