

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



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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

1 individuals possessing a high degree of professional skill
2 where the personality of the individual plays a decisive part.

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

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

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

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

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

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

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

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

24 "(11) Contractual services and purchases of
25 commodities for which there is only one vendor or supplier and

1 contractual services and purchases of personal property which
 2 by their very nature are impossible to award by competitive
 3 bidding.

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

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

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

23 "b. The goods or services are either not at the time
 24 available to local boards of education on the state purchasing

1 program or are available at a price equal to or less than that
2 on the state purchasing program.

3 "c. The purchase is made through a participating
4 Alabama vendor holding an Alabama business license if such a
5 vendor exists.

6 "(14) Purchases of unprocessed agricultural products
7 as defined in subsection (b) of Section 16-1-46 adding this
8 subdivision and the food is purchased with a cost of one
9 hundred thousand dollars (\$100,000) or less.

10 "(15) Purchase of goods or services, other than
11 voice or data wireless communication services, from vendors
12 that have been awarded a current and valid general services
13 administration contract. Prices paid for the goods or services
14 may not exceed the lowest competitively bid price for these
15 goods or services, other than voice or data wireless
16 communication services, and may not exceed the price on an
17 existing state purchasing program.

18 "(b) This chapter shall not apply to:

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

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

1 "(c) The city and county boards of education shall
2 establish and maintain such purchasing facilities and
3 procedures as may be necessary to carry out the intent and
4 purpose of this chapter by complying with the requirements for
5 competitive bidding in the operation and management of each
6 city and county board of education.

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

10 "§16-13B-7.

11 "(a) When purchases are required to be made through
12 competitive bidding, awards shall be made to the lowest
13 responsible bidder taking into consideration the qualities of
14 the commodities proposed to be supplied, their conformity with
15 specifications, the purposes for which required, the terms of
16 delivery, transportation charges, and the dates of delivery.
17 If at any time after the award has been made the lowest
18 responsible bidder notifies the awarding authority in writing
19 that the bidder will no longer comply with the terms of the
20 award to provide the goods or services to the awarding
21 authority under the terms and conditions of the original
22 award, or the awarding authority documents that the lowest
23 responsible bidder defaults under the terms of the original
24 award, the awarding authority may terminate the award to the
25 defaulting bidder and make an award to the second lowest

1 responsible bidder for the remainder of the award period
2 without rebidding, provided the award to the second lowest
3 responsible bidder is in all respects made under the terms and
4 conditions contained in the original bid specifications and is
5 for the same or a lower price than the bid originally
6 submitted to the awarding authority by the second lowest
7 responsible bidder.

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

19 " (1) The board of education can document ~~to the~~
20 ~~satisfaction of the State Building Commission~~ that the sole
21 source product or service is of an indispensable nature, no
22 other product or service can meet its needs, all other viable
23 alternatives have been explored, and it has been determined
24 that only this product or service will fulfill the function

1 for which the product is needed. Frivolous features will not
2 be considered.

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

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

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

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

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

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

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

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

21 "§41-16-51.

22 "(a) Competitive bids for entities subject to this
 23 article shall not be required for utility services, the rates
 24 for which are fixed by law, regulation, or ordinance, and the

1 competitive bidding requirements of this article shall not
2 apply to:

3 "(1) The purchase of insurance.

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

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

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

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

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

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

23 "(8) Purchases of manuscripts, books, maps,
24 pamphlets, or periodicals.

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

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

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

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

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

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

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

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

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

22 "b. The goods or services are either not at the time
 23 available to counties on the state purchasing program or are
 24 available at a price equal to or less than that on the state
 25 purchasing program.

1 "c. The purchase is made through a participating
2 Alabama vendor holding an Alabama business license if such a
3 vendor exists.

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

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

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

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

23 "(2) Purchases made by individual schools of the
24 county or municipal public school systems from moneys other

1 than those raised by taxation or received through
 2 appropriations from state or county sources.

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

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

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

15 "(6) Contracts for the purchase, lease, sale,
 16 construction, installation, acquisition, improvement,
 17 enlargement, or extension of any plant, building, structure,
 18 or other facility or any machinery, equipment, furniture, or
 19 furnishings therefor designed or intended for lease or sale
 20 for industrial development, other than public utilities, under
 21 Sections 11-54-80 to 11-54-99, inclusive, or Sections 11-54-20
 22 to 11-54-28, inclusive, or any other statute or amendment to
 23 the Constitution of Alabama authorizing the construction of
 24 plants or other facilities for industrial development or for
 25 the construction and equipment of buildings for public

1 building authorities under Sections 11-56-1 to 11-56-22,
2 inclusive.

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

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

19 "(c) The state trade schools, state junior colleges,
20 state colleges, and universities under the supervision and
21 control of the State Board of Education, the district boards
22 of education of independent school districts, the county
23 commissions, and the governing bodies of the municipalities of
24 the state shall establish and maintain such purchasing
25 facilities and procedures as may be necessary to carry out the

1 intent and purpose of this article by complying with the
2 requirements for competitive bidding in the operation and
3 management of each state trade school, state junior college,
4 state college, or university under the supervision and control
5 of the State Board of Education, the district boards of
6 education of independent school districts, the county
7 commissions, and the governing bodies of the municipalities of
8 the state and the governing boards of instrumentalities of
9 counties and municipalities, including waterworks boards,
10 sewer boards, gas boards, and other like utility boards and
11 commissions.

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

15 "§41-16-57.

16 "(a) When purchases are required to be made through
17 competitive bidding, awards shall be made to the lowest
18 responsible bidder taking into consideration the qualities of
19 the commodities proposed to be supplied, their conformity with
20 specifications, the purposes for which required, the terms of
21 delivery, transportation charges, and the dates of delivery.
22 If at any time after the award has been made the lowest
23 responsible bidder notifies the awarding authority in writing
24 that the bidder will no longer comply with the terms of the
25 award to provide the goods or services to the awarding

1 authority under the terms and conditions of the original
2 award, or the awarding authority documents that the lowest
3 responsible bidder defaults under the terms of the original
4 award, the awarding authority may terminate the award to the
5 defaulting bidder and make an award to the second lowest
6 responsible bidder for the remainder of the award period
7 without rebidding, provided the award to the second lowest
8 responsible bidder is in all respects made under the terms and
9 conditions contained in the original bid specifications and is
10 for the same or a lower price than the bid originally
11 submitted to the awarding authority by the second lowest
12 responsible bidder.

13 "(b) The awarding authority in the purchase of or
14 contract for ~~personal property or contractual~~ goods or
15 services shall give preference, provided there is no sacrifice
16 or loss in price or quality, to commodities produced in
17 Alabama or sold by Alabama persons, firms, or corporations.
18 Notwithstanding the foregoing, no county official, county
19 commission, ~~school board,~~ city council or city councilmen, or
20 other public official, ~~state board, or state agency~~ charged
21 with the letting of contracts or purchase of ~~materials for the~~
22 ~~construction, modification, alteration, or repair of any~~
23 ~~publicly owned facility~~ goods or services may specify the use
24 of materials or systems by a sole source, unless:

1 "(1) The governmental body can document ~~to the~~
2 ~~satisfaction of the State of Alabama Building Commission~~ that
3 the sole source ~~product or service is~~ goods or services are of
4 an indispensable nature, all other viable alternatives have
5 been explored, and it has been determined that only ~~this~~
6 ~~product or service~~ these goods or services will fulfill the
7 function for which the product is needed. Frivolous features
8 will not be considered.

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

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

19 "(c) (1) Beginning January 1, 2009, for purchases of
20 personal property, including on or after June 9, 2011, goods
21 which are, or are to become, fixtures, in instances where the
22 awarding authority determines that the total cost of ownership
23 over the expected life of the item or items, including
24 acquisition costs plus sustaining costs or life cycle costs,
25 can be reasonably ascertained from industry recognized and

1 accepted sources, the lowest responsible bid may be determined
2 to be the bid offering the lowest life cycle costs and
3 otherwise meeting all of the conditions and specifications
4 contained in the invitation to bid. To utilize this
5 subdivision to determine the lowest responsible bidder, the
6 awarding authority shall include a notice in the invitation to
7 bid that the lowest responsible bid may be determined by using
8 life cycle costs and identify the industry recognized and
9 accepted sources that will be applicable to such an
10 evaluation.

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

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

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

23 "(f) Contracts for the purchase of personal property
24 or contractual services shall be let for periods not greater
25 than three years. Contracts for the leasing of motor vehicles

1 by local governing bodies shall be let for periods not greater
2 than five years. Lease-purchase contracts for capital
3 improvements and repairs to real property shall be let for
4 periods not greater than 10 years and all other lease-purchase
5 contracts shall be let for periods not greater than 10 years."

6 Section 2. This act shall become effective
7 immediately following its passage and approval by the
8 Governor, or its otherwise becoming law.

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[Handwritten Signature]

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	<u>28-APR-16</u>	Amended and Passed
House	<u>28-APR-16</u>	Concurred in Senate Amendment

APPROVED 5-10-2016

TIME 3:30 PM

[Handwritten Signature: Robert Bentley]

GOVERNOR

Alabama Secretary Of State

Act Num....: 2016-298
Bill Num....: H-170

Lawson

CO-SPONSORS

Horton (R)
Butts
Leadbetter
Sanders (D)
Hall

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. 1790

YEAS 17 NAYS 14
JEFF WOODARD, Clerk

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

DATE: 4-5

2016

RD 1 RFD GA

This Bill was referred to the Standing Committee of the Senate on GA

and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amend(s) 0 w/sub 0 by a vote of 9 yeas 0 nays 0 abstain 0

this 27th day of April 2016
Strawger, Subling, Chairperson

DATE: 4-12

2016

RF FAJ

RD 2 CAL

DATE: _____

20____

RE-REFERRED RE-COMMITTED
Committee _____

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)