SB77

208952-3

By Senators Orr and Albritton

RFD: Finance and Taxation Education

First Read: 02-FEB-21

PFD: 01/26/2021
ENROLLED, An Act,
Relating to the purchase of supplies and services by state government; to repeal Article 2 (commencing with Section 41-16-20) of Chapter 16 of Title 41, Code of Alabama 1975, relating to competitive bidding on public contracts generally; to repeal Article 3A (commencing with Section 41-16-70) of Chapter 16 of Title 41, Code of Alabama 1975, relating to competitive bidding on contracts for goods and services; to repeal Division 1 (commencing with Section 41-4-110) of Article 5 of Chapter 4 of Title 41, Code of Alabama 1975, relating to the Division of Purchasing in the Department of Finance; to replace the repealed Division 1 and the previously repealed Division 2 (commencing with Section 41-4-130, and repealed by Act 2009-763, 2009 Regular Session) of Article 5 of Chapter 4 of Title 41, Code of Alabama 1975, with a new Article 5 (commencing with Section 41-4-110), to create the Office of the Chief Procurement Officer in the Department of Finance and the position of Chief Procurement Officer; to authorize the Chief Procurement Officer to make or supervise the purchase of supplies or services by the state; to provide for the appointment, qualifications, duties, and authority of the Chief Procurement Officer; and to amend Sections 41-4-66
Section 1. Article 2 (commencing with Section 41-16-20) and Article 3A (commencing with Section 41-16-70) of Chapter 16 of Title 41, Code of Alabama 1975, are repealed.

Section 2. Article 5 (commencing with Section 41-4-110) of Chapter 4 of Title 41, Code of Alabama 1975, is repealed and replaced with a new Article 5, to read as follows:

Article 5. OFFICE OF THE CHIEF PROCUREMENT OFFICER.


§41-4-110.

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

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

(1) Simplify, clarify, and modernize the law governing procurement by the state.
(2) Permit the continued development of procurement policies and practices.

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

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

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

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

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

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

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

§41-4-111.

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

§41-4-112.

This article requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith. Good faith means honesty in fact in the conduct or transaction concerned.

(1) This article applies to contracts solicited and entered into after October 1, 2022.

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

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

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

b. All expenditures of funds of whatever nature made by or on behalf of the county commissions and the governing boards of instrumentalities of counties, including waterworks boards, sewer boards, gas boards, and other like utility boards, and commissions for which procurement activities are currently governed by Article 3, commencing with Section 41-16-50, of Chapter 16.
§41-4-113. Written determinations required by this article shall be retained in the appropriate official contract file of the Chief Procurement Officer or the purchasing agency.

§41-4-114. (a) For purposes of this article, the following words shall have the following meanings:

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

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

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

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

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

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

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

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

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

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

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

(12) DESIGNEE. A duly authorized representative of a person.
(13) ELECTRONIC. Electrical, digital, magnetic, optical, electromagnetic, or other similar technology.

(14) GOVERNMENTAL BODY. Except as otherwise provided in this article, an agency, department, board, bureau, commission, committee, institution, corporation, authority, or office of this state. The term does not include the legislative or judicial departments of the state or a legislative or judicial agency, the Alabama State Port Authority, municipalities, or the county commission and governing boards of instrumentalities of counties including waterworks boards, sewer boards, gas boards, and other like utility boards and commissions.

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

(16) JUDICIAL AGENCY. Any department, appellate court, trial court, board, body, bureau, commission, committee, institution, corporation, authority, or office created, established, and operating as an agency of the judicial department of this state. The term includes, but is not limited to, the Administrative Office of Courts, the State Law Library, the Court of the Judiciary, and the Sentencing Commission.
(17) LEGISLATIVE AGENCY. The Alabama State Legislature and any department, board, body, bureau, commission, committee, institution, corporation, authority, or office created, established, and operating as an agency of the legislative department of this state. The term includes, but is not limited to, the Legislative Services Agency and the Department of Examiners of Public Accounts.

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

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

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

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

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

(23) PUBLIC NOTICE. The distribution or dissemination of information to interested parties using methods that are reasonably available, including, but not limited to, publication in newspapers of general circulation, electronic or paper mailing lists, and websites designated by the state and maintained for that purpose.

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

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

(26) SIGNATURE. A manual signature or an electronic signature, as defined in Section 8-1A-2.
(27) SOLICITATION. Any request to submit quotes, bids, or offers to the state for the procurement of supplies or services. The term includes invitations to bid and requests for proposals.

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

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

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

   (b) The terms state, state department, state agency, agency, state entity, instrumentality of the state, and governmental body do not include municipalities, political subdivisions, county commissions, or the governing boards of instrumentalities of counties including waterworks boards, sewer boards, gas boards, and other like utility boards and commissions.

   §41-4-115.

   (a) Except as provided in subsection (b), procurement information is a public record to the extent provided by state law and shall be available to the public.
(b) Procurement information that is any of the following is not a public record:

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

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

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

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

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

§41-4-116.

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with the state's applicable statutory, regulatory, or other guidance.
for use of the media, so long as the guidance provides for both of the following:

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

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

Division 2. Procurement Organization.

§41-4-120.

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

§41-4-121.

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

§41-4-122.

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

(b) Consistent with this article, the Chief Procurement Officer shall adopt operational procedures governing the internal functions of the Office of the Chief Procurement Officer.
(c) Except as otherwise specifically provided in this article, the Chief Procurement Officer, in accordance with rules adopted under this article, shall do all of the following:

(1) Except for alcoholic beverages, which shall be purchased by the Alcoholic Beverage Control Board, procure or supervise the procurement of all supplies and services needed by the state.

(2) Ensure compliance with this article and the rules implementing this article by reviewing and monitoring procurements conducted by any designee, department, agency, or official delegated authority under Section 41-4-123.

(3) Require the periodic reporting of all procurement by or for counties, the purchase, contract, or lease price of which is one hundred dollars ($100) or more, and require information in connection therewith, to prescribe forms and fix the time for submitting such reports and, when requested by any county, municipal corporation, and other local public body, including any board of education, to make such purchase contract, or lease for it. It shall be the duty of every county to make the report on forms furnished by the Office of the Chief Procurement Officer, whenever requested to do so, but not more than once every 30 days.
(4) Perform other functions and duties of the Department of Finance as may from time to time be assigned by the Director of Finance.

(d) The Chief Procurement Officer may establish and maintain a system for the purchase of supplies and services by governmental bodies that conduct their procurement activities through the Office of the Chief Procurement Officer, through the utilization of approved credit cards. County and municipal governments and instrumentalities or public corporations thereof may participate in the state fleet fuel card program subject to the terms and conditions of the program related to the utilization of the fleet fuel card; provided, however, that county and municipal governments and instrumentalities or public corporations thereof shall not otherwise be subject to this subsection. The Chief Procurement Officer shall establish by rule a process for the competitive solicitation of credit card providers. The state Comptroller and the Chief Procurement Officer shall adopt fiscal procedures governing the payment of charges incurred by credit card users and the utilization of credit cards. The use of approved credit cards shall be established by the state Comptroller and the Chief Procurement Officer, with the approval of the Director of Finance, and be published through the Alabama fiscal procedures, in which each purchase made using approved credit cards is required to have prior approval by the department.
head or his or her designee and a record of each purchase and
approval is to be maintained. The Chief Procurement Officer
may select the provider or providers offering the highest fees
to the division for the use of its credit card or credit
cards. Fees received by the division for the use of credit
cards shall be placed in a special fund entitled the State
Procurement Fund in the State Treasury for the use of the
division and the funds shall be appropriated, budgeted, and
allotted in accordance with Sections 41-4-80 to 41-4-96,
inclusive, and 41-19-1 to 41-19-12, inclusive, and only in
amounts stipulated in general appropriations bills and other
appropriation bills. Approved credit cards may be issued to
requisitioning agencies upon the recommendation of the Chief
Procurement Officer and the approval of the Director of
Finance. Approved credit cards shall be assigned to the
department and limited in number. Approved credit cards may be
utilized to purchase items of supplies and services, and may
not exceed the limitations set forth by rule. The director of
the governmental entity body utilizing credit cards is
responsible for the proper use of credit cards assigned to his
or her agency, in accordance with rules established by Alabama
fiscal procedures. The Chief Procurement Officer may collect
any credit card from any agency governmental body at any time
due to improper use. The Chief Procurement Officer shall
submit an annual report and accounting regarding the use of
credit cards by each governmental body to the Director of
Finance and the Governor.

(e) The Office of the Chief Procurement Officer may
charge a biannual registration fee to vendors desiring to
register with the office to receive invitations to bid for any
supplies or services solicited by the division and to
governmental bodies for their proportionate share of operating
costs of the office. Any fee shall be set by administrative
rule upon the approval of the Director of Finance. Any fees
collected under this subsection shall be deposited in the
State Treasury to the credit of the State Procurement Fund and
shall be appropriated, budgeted, and allotted in accordance
with Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to
41-19-12, inclusive, and only in amounts stipulated in general
appropriations bills and other appropriation bills.

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

§41-4-123.

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

§41-4-124.

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

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

(1) All educational and eleemosynary institutions
governed by a board of trustees or other similar governing
body.
(2) The Retirement Systems of Alabama.
(3) The Department of Mental Health.
(c) The Alabama Department of Transportation is
subject to this article except as it relates to the purchase
of professional services and shall adopt rules governing the
purchase of professional services by the department which are
consistent with the principles contained in this article and
promote fairness, competition, transparency, integrity, and
value in the procurement process.
(d) The procurement of any supplies or services by a
legislative agency or judicial agency shall be solely governed
by procedures adopted by the Legislative Council for all
legislative agencies and by rules adopted by the Supreme Court
of Alabama for all judicial agencies. The procedures adopted shall be consistent with any applicable requirements of the Constitution of Alabama of 1901, and shall be established in accordance with the underlying purposes and policies of promoting responsible and efficient use of public funds dedicated and appropriated to the agencies for their use, providing consistency of application of rules and requirements across all agencies within the applicable branch of state government, and promoting fairness, competition, transparency, integrity, and value in the procurement process. In no case may the legislative and judicial departments of the state adopt procedures that conflict with the laws of this state regarding the public disclosure of the use of public funds and the transparency of public expenditures, or that otherwise conflict with state law regarding public records and public access to those records. Except for the requirement to act in good faith, no other provision of this article shall apply to legislative or judicial agencies; provided, that the legislative and judicial departments may adopt all or any part of this article and its accompanying rules.

(e) The procurement of any supplies or services by the Alabama State Port Authority shall be solely governed by procedures adopted by the Board of Directors of the Alabama State Port Authority. The procedures adopted shall be consistent with any applicable requirements of the
Constitution of Alabama of 1901, and shall be established in accordance with the underlying purposes and policies of promoting responsible and efficient use of the funds of the Alabama State Port Authority, providing consistency of application of rules and requirements across all agencies within the applicable branch of state government, and promoting fairness, competition, transparency, integrity, and value in the procurement process. Except for the protection of information otherwise legally considered commercially confidential, sensitive, or of a nature that upon release would harm the competitive advantage of itself or its customers, concessionaires, lessees, or suppliers, the Alabama State Port Authority may not adopt procedures that conflict with the laws of this state regarding the public disclosure of the use of its funds and the transparency of its expenditures, or that otherwise conflict with state law regarding public records and public access to those records. Except as provided in this subsection and the requirement to act in good faith, no other provision of this chapter shall apply to the Alabama State Port Authority; provided, however, that the Alabama State Port Authority may adopt all or any part of this chapter and its accompanying rules.

§41-4-125.

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

(a)(1) Except as otherwise provided in this
section, attorneys retained to represent the state in
litigation shall be appointed by the Attorney General in
consultation with the Governor from a list of attorneys
maintained by the Attorney General. All attorneys interested
in representing the state may apply and shall be included on
the list. The selection of the attorney or law firm shall be
based upon the level of skill, experience, and expertise
required in the litigation and the fees charged by the
attorney or law firm shall be taken into consideration so that
the state receives the best representation for the funds paid.
Fees shall be negotiated and approved by the Governor in
consultation with the Attorney General. Maximum fees paid for
legal representation that does not involve a contingency fee
contract may be established by executive order of the
Governor.

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

\[\text{(b)}\text{ This section does not apply to either of the following:}\]

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

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

\[\text{(c)}\text{ Nothing in this section shall be construed as altering or amending the Governor's authority to retain attorneys under Section 36-13-2; provided, the Governor shall select the attorneys from three proposals received from attorneys included on the list maintained by the Attorney General.}\]

\[\text{(d)}\text{ (1) A governmental body may not enter into a contingency fee contract with any attorney or law firm unless the contracting agency makes a written determination prior to entering into a contingency fee contract that contingency fee representation is both cost effective and in the public}\]
interest. Any written determination shall include specific findings for each of the following factors:

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

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

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

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

(2) Subject to subdivision (3), the state may not enter into a contingency fee contract that provides for the contingency fee counsel to receive an aggregate contingency fee calculated from the gross recovery resulting from a judgment or settlement in each action, exclusive of expenses, in excess of the total of all of the following:

a. Twenty-two percent of any recovery of up to ten million dollars ($10,000,000)
b. Twenty percent of any portion of the recovery between ten million dollars ($10,000,000) and twenty-five million dollars ($25,000,000); plus

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

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

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

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

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

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

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

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

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

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

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

d. After giving reasonable notice to the contingency fee counsel, any defendant that is the subject of the litigation may contact the lead government attorney directly unless directed to do otherwise by that attorney. Contingency fee counsel shall have the right to participate in the discussion with the lead government attorney or attorneys unless, after consultation with contingency fee counsel, the
lead government attorney agrees to the discussion without contingency fee counsel being present.

e. A government attorney with supervisory authority for the case shall attend all settlement conferences.

f. Decisions regarding settlement of the case shall be reserved exclusively to the discretion of the government attorney and the state.

(7) The Attorney General shall develop a standard addendum to every contract for contingent fee attorney services that shall be used in all cases, describing in detail what is expected of both the contingency fee counsel and the state, including, without limitation, the requirements listed in subdivision (6).

(8) Copies of any executed contingency fee contract and the contracting agency's written determination to enter into the contingency fee contract with the contingency fee counsel and any payment of any contingency fees shall be posted online as provided in Section 41-4-65.

(9) Every contingency fee counsel, from the inception of the contingency fee contract until at least four years after the contract expires or is terminated, shall maintain detailed current records, including documentation of all time records, expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of the attorney
services. The contingency fee counsel shall make all the records available for inspection and copying upon request by the Governor, Attorney General, or contracting agency. In addition, the contingency fee counsel shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the contract in six minute increments and, upon request, shall provide promptly these records to the Governor, Attorney General, or contracting agency.

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

§41-4-126.

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

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

(2) Published books in any format such as digital, audio, or hardcopy; maps; periodicals; and technical pamphlets.
(3) Utility services where no competition exists or where rates are fixed by law.

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

(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) Photographs purchased from a federal agency.

(7) Barter transactions by the Department of Corrections.

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

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

(c) Nothing in this article is intended to repeal or limit any provision of Section 23-1-40 or Sections 23-2-140 through 23-2-175, relating to the procurement authority of the State Department of Transportation and the Alabama Toll Road, Bridge and Tunnel Authority. To the extent any provision contained in this article conflicts with Section 23-1-40 or Sections 23-2-140 through 23-2-175, the latter governs.
(d) Nothing in this article repeals or limits any provision of Section 41-4-400, relating to the procurement authority of the Division of Construction Management. To the extent any provision contained in this article conflicts with Section 41-4-400, the latter governs.

(e) Nothing in this chapter repeals or limits any provision of Section 14-7-8, relating to the procurement authority of Alabama Correctional Industries. To the extent any provision contained in this chapter conflicts with Section 14-7-8, the latter governs.

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

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

(h) Nothing in this article applies to the administration of health benefit plans by a governmental body and supplies or services related thereto.

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

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

(2) When an Alabama business entity organized under the laws of this state is available to supply the product or service purchased or negotiated under subdivision (1), the Alabama business entity shall have preference unless the product or service supplied by a foreign corporation is substantially different or superior to the product or service supplied by the Alabama business entity.

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

This article does not apply to purchases and contracts for the repair of equipment used in the construction
and maintenance of highways by the Department of Transportation.

†††(l) This article does not apply to public works projects governed by Title 39.

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

†††(n) This article does not apply to purchases of supplies and services for the maintenance and operation of highway infrastructure and right-of-way by the Department of Transportation.

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

†††(p) Governmental bodies may purchase supplies from any vendor that offers the item at a price at least ten
percent below the price established on a statewide contract by
the Office of the Chief Procurement Officer for the same item,
provided that each purchase, whether for a single item or
multiple items, does not exceed an amount established by rules
of the Chief Procurement Officer. The Office of the Chief
Procurement Officer shall confirm that the terms and
conditions of the purchases are substantially similar to those
of the statewide contract for the same item prior to the
approval of any purchase under this subsection. Any purchase
that would be directly connected to any information technology
network used by the state shall require prior approval by the
Secretary of Information Technology. If the purchaser is to
take possession of the purchased supplies at the vendor's
physical location, any acquisition of supplies under this
subsection may be purchased only from vendors physically
located within the state. The price of any supplies purchased
under this subsection shall be the market price readily
available to the public at large. The acquisition of supplies
under this subsection is subject to the supervision and
administration of the Office of the Chief Procurement Officer.

(3) Nothing in this article is intended to repeal
or limit any provision of Chapter 61E of Title 16, relating to
the powers and authority of the Department of Education to
enter into joint purchasing agreements on behalf of
educational institutions. To the extent any provision
contained in this article conflicts with Chapter 61E of Title 16, the latter governs.

Nothing in this article shall be construed as repealing Section 9-2-106 or Section 9-2-107.

§41-4-127.

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

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

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

§41-4-128.

The Chief Procurement Officer shall collect and prepare statistical data concerning the procurement of all supplies and services and employ trained personnel as may be necessary to carry out this function. All using agencies shall furnish reports as required by the Chief Procurement Officer concerning usage, needs, and stocks on hand. The Chief Procurement Officer may prescribe forms to be used by the using agencies in the requisitioning, ordering, and reporting of supplies and services.
§41-4-129.

(a) The Chief Procurement Officer may establish a Procurement Advisory Council. If created, the council, upon adequate public notice, shall meet at least once a year for the discussion of problems and recommendations for improvement of the procurement process. When requested by the Chief Procurement Officer, the council shall conduct studies, research, analyses, and make reports and recommendations with respect to subjects or matters within the jurisdiction of the Chief Procurement Officer. The council shall consist of qualified representatives of state and local government and other persons selected by the Chief Procurement Officer.

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

Division 3. Source Selection and Contract Formation.

§41-4-130.

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

(1) COST-REIMBURSEMENT CONTRACT. A contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with the contract terms and the provisions of this chapter, and a fee, if any.
(2) ESTABLISHED CATALOGUE PRICE. The price included in a catalogue, price list, schedule, or other form that does all of the following:

a. Is regularly maintained by a manufacturer or contractor.

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

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

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

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

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

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

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

d. PRIORITY #4. Is physically located in the state
and that is more than 50 percent owned by a person who was
discharged or released under conditions other than
dishonorable and who has at least 24 months of active service
in the United States military, naval, or air service, or who
has less than 24 months of active service in any of the
foregoing and was separated with a service-connected
disability, or a national guardsman or reservist who completed
active federal service for purposes other than training or who
served at least 180 days of continuous service for purposes
other than training.

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

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

(7) RESPONSIBLE BIDDER or OFFEROR. A person who has
the capability in all respects to perform fully the contract
requirements and who has the integrity and reliability to
assure good faith performance.
(8) RESPONSIVE BIDDER or OFFEROR. A person who has submitted a bid or offer that conforms in all material respects to the invitation for bid or request for proposal.

§41-4-131.

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

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

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

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

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

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

(6) A special procurement pursuant to Section 41-4-137.

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

§41-4-132.

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

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

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

(d) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation to bid. The amount of each bid, the name of each bidder, and any other information required by rule shall be recorded. The record and each bid shall be open to public inspection to the extent required by Section 41-4-115.

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

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

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

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

(2) The Chief Procurement Officer may award multiple purchase contracts resulting from a single invitation to bid where the specifications of the items of supplies or services intended to be purchased by a requisitioning agency or agencies are determined, in whole or in part, by technical compatibility and operational requirements. In order to make multiple awards under this subdivision, the awarding authority shall include in the invitation to bid a notice that multiple awards may be made and the specific technical compatibility or operational requirements necessitating multiple awards. Multiple awards of purchase contracts with unique technical compatibility or operational specifications shall be made to the lowest responsible bidder complying with the unique technical compatibility or operational specifications. The requisitioning agency shall provide the awarding authority with the information necessary for it to determine the necessity for the award of multiple purchase contracts under this subdivision. This subdivision does not apply to contracts for the purchase or use of push-to-talk services, which shall be purchased through a separate competitive bid process.

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

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

(2) After receipt of the responses to the request
for qualifications from prospective bidders, all qualified
bidders, as determined by the Chief Procurement Officer, shall
have an opportunity to bid. The determination regarding which
bidders are qualified is not subject to review.

§41-4-133.

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

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

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

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

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

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

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

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

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

(i)(1) Before soliciting proposals, the Chief Procurement Officer may authorize issuance of a request for qualifications from prospective offerors. The request shall contain, at a minimum, a description of the scope of work to be solicited by the request for proposals, the deadline for
submission of information, and how prospective offerors may
apply for consideration. The request shall require information
concerning the prospective offeror's product specifications,
qualifications, experience, and ability to perform the
requirements of the contract. Adequate public notice of the
request for qualifications shall be given in the same manner
as provided in subsection (c) of Section 41-4-132.

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

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

§41-4-134.

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

§41-4-135.
A contract may be awarded for a supply or service without competition when the Chief Procurement Officer determines in writing that there is only one source for the required supply or service. In any event, sole source contracts may not exceed one year unless the Chief Procurement Officer determines in writing that there continues to be only one source for the required supply or service.

§41-4-136.

Notwithstanding any other provision of this article, the Chief Procurement Officer or the head of a purchasing agency may make emergency procurements when there is a threat to public health, welfare, or safety under emergency conditions, as defined by rule. Emergency procurements made under this section shall be made with as much competition as is practicable under the circumstances. The authority to make emergency procurements may not be delegated. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

§41-4-137.

Notwithstanding any other provision of this article, the Chief Procurement Officer or the head of a purchasing agency, with prior public notice, may initiate a procurement above the small purchase amount specified in Section 41-4-134 when the officer or agency head determines that an unusual or
unique situation exists that makes the application of all
requirements of competitive sealed bidding or competitive
sealed proposals contrary to the public interest. Any special
procurement under this section shall be made with as much
competition as is practicable under the circumstances. A
written determination of the basis for the procurement and for
the selection of the particular contractor shall be included
by the Chief Procurement Officer or the head of the purchasing
agency in the contract file. The Chief Procurement Officer
shall publish an annual report, subject to Section 41-4-115,
that describes all determinations made under this section
during the prior calendar year.

§41-4-138.
When it is determined to be in the best interest of
the state, as specified by rule, an invitation to bid, a
request for proposals, or other solicitation under this
article may be cancelled, and any or all bids or proposals
received may be rejected.

§41-4-139.
(a) A written determination of nonresponsibility of
a bidder or offeror shall be made in accordance with rules
adopted by the Chief Procurement Officer. The unreasonable
failure of a bidder or offeror to promptly supply information
in connection with an inquiry with respect to responsibility
may be grounds for a determination of nonresponsibility with respect to the bidder or offeror.

(b) Confidential information furnished by a bidder or offeror under this section may not be disclosed outside of the Office of the Chief Procurement Officer or the purchasing agency without the prior written consent of the bidder or offeror. 

§41-4-140.

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

§41-4-141.

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

(1) The price is not any of the following:
   a. Based on adequate price competition.
   b. Based on established catalogue or market prices.
   c. Set by law or rule.

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

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

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

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

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

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

(d) Every bid submitted and contract executed by the state shall contain a certification by the bidder or contractor that the bidder or contractor is not barred from bidding for or entering into a contract under this section and that the bidder or contractor acknowledges that the contracting state agency may declare the contract void if the certification completed is false.

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

§41-4-143.

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

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

(2) A cost-reimbursement contract may be used only when a determination is made in writing that either of the following apply:
a. The cost-reimbursement contract is likely to be less costly to the state than any other type of contract.

b. It is impracticable to obtain the supplies or services required except under a cost-reimbursement contract. §41-4-144.

(a) Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time that is in the best interests of the state, so long as the terms of the contract and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal year at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

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

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

§41-4-145.

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

§41-4-146.

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

§41-4-147.
The determinations required by subsection (f) of Section 41-4-132, subsection (a) or (g) of Section 41-4-133, Section 41-4-135, Section 41-4-136, Section 41-4-137, subsection (a) of Section 41-4-139, Section 41-4-141, Section 41-4-143, and subsection (b) of Section 41-4-144 are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

§41-4-148.

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

§41-4-149.

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

(1) Each contractor's name.

(2) The amount and type of each contract.

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

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

Division 4. Specifications.

§41-4-150.

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

§41-4-151.

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

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

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

(d) All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the state's needs and shall not be unduly restrictive.
(e) Specifications may be prepared by persons other than state employees when necessary. The Chief Procurement Officer shall exercise diligence to assure that any third party who prepares specifications or requirements does not have a conflict of interest or an unfair competitive advantage in any subsequent procurement. Vendors that participate in the drafting of specifications for the state shall disclose the same on its vendor disclosure statement required by Section 41-16-82.

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

§41-4-155.

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

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

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

b. The temporary stopping of work or delaying performance.

(2) Variations occurring between estimated quantities of work in a contract and actual quantities.
(b)(1) Adjustments in price pursuant to clauses adopted under subsection (a) shall be computed in one or more of the following ways:

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

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

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

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

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

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

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

(1) Specified excuses for delay or nonperformance.
(2) Termination of the contract for default.

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

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

Division 6. Legal and Contractual Remedies.

Part A. Resolution of Controversies.

§41-4-160

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

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

(1) Resolve protested solicitations and awards.

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

(3) Resolve contract disputes.
§41-4-161.

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

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

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

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

(b) The Chief Procurement Officer, or his or her designee, may settle and resolve the protest of a bona fide actual or prospective bidder or offeror concerning the
solicitation or award of a contract in accordance with rules adopted under this article.

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

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

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

(f) In the event of a timely protest under subsection (a) or an appeal under Section 41-4-164, the state may not proceed further with the solicitation or with the award of the contract until five days after notice of the final decision is provided to the protestor, except that solicitation or award of a protested contract is not stayed if the Chief Procurement Officer, after consultation with the head of the using agency or the head of a purchasing agency, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the best interests of the state.
§41-4-162.

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

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

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

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

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

(2) Conviction under state or federal law of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty as a state contractor.
(3) Conviction under state or federal antitrust law arising out of the submission of bids or proposals.

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

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

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

(5) Violation of the ethical standards set forth in Chapter 25 of Title 36.

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

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

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

(d)(1) A copy of the decision made under subsection (c) shall be mailed or otherwise furnished immediately to all of the following:
a. The debarred or suspended person.

b. Any other party intervening.

c. All state procurement officials governed by this article with contracting authority who shall decide whether the suspension or debarment warrants termination of existing contracts with the suspended or debarred person or entity.

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

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

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

§41-4-163.

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

§41-4-164.
(a) A party that receives an adverse decision from the Chief Procurement Officer under subsection (c) of Section 41-4-161 or subsection (c) of Section 41-4-162 may appeal the decision to the Director of Finance.

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

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

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

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

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

Part B. Solicitations or Awards in Violation of Law.

§41-4-165.

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

§41-4-166.

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

§41-4-167.

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

(1) If the person awarded the contract has not acted fraudulently or in bad faith, the contract may be ratified and affirmed by the Chief Procurement Officer, so long as doing so is in the best interests of the state, or the contract may be terminated by the Chief Procurement Officer and the person awarded the contract shall be compensated for the supplies provided or services rendered under the contract prior to termination.

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

§41-4-168.

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

Division 7. Intergovernmental Relations.
§41-4-170.
As used in this division, the following terms shall
have the following meanings:

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

(2) EXTERNAL PROCUREMENT ACTIVITY. A buying
organization not located in this state which, if located in
this state, would qualify as a public procurement unit. The
term includes agencies of the United States and of any other
state.

(3) LOCAL PUBLIC PROCUREMENT UNIT. Any of the
following:

a. A county, municipality, or other political
subdivision of the state. A unit that is governed by this
article and is also a municipality or other political
subdivision of the state.

b. An agency of any political subdivision, public
authority, or educational, health, or other institution.

c. Any nonprofit corporation operating a charitable
hospital.
d. To the extent provided by law, any entity that expends public funds for the procurement of supplies or services and is governed by this article.

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

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

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

§41-4-171.

(a) A public procurement unit that is governed by this article may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services, other than voice or data wireless communications services, with one or more public procurement units in accordance with an agreement entered into between the participants. The cooperative purchasing agreement may include joint or multi-party contracts between public procurement units and open-ended public procurement unit
contracts that are made available to other public procurement units.

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

§41-4-172.

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

§41-4-173.

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

§41-4-174.

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

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

§41-4-175.
To the extent possible, the chief procurement officer of any public procurement unit may collect information concerning the type, cost, quality, and quantity of commonly used supplies or services being procured or used by public procurement units and make the collected information available to any other public procurement unit upon request.

§41-4-176.

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

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

§41-4-177.

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

(b) The Chief Procurement Officer shall identify programs designed to assist small and disadvantaged businesses in procurement activities governed by this article, which may
include staff assistance, special publications, source lists, solicitation mailing lists, and training programs.

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

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

§41-4-178.

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

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

"§41-4-66.

"(a) The Division of Control and Accounts with the State Department of Finance Chief Procurement Officer shall establish and maintain and post on the state's website a statewide database of each request for a proposal for a public contract by the State of Alabama, any agency, board, commission, or department of the state which receives state or
federally appropriated funds, the State Board of Education, a
public college or trade school, or a public university.

"(b) The Division of Control and Accounts Chief
Procurement Officer shall establish procedures and adopt rules
to implement this section.

"(c) Each agency, board, commission, department,
State Board of Education, public college or trade school, and
public university shall cooperate with and provide information
to the Division of Control and Accounts Chief Procurement
Officer as necessary to implement and administer the section.

"(d) Beginning on October 1, 2013 October 1, 2021,
the Division of Control and Accounts Chief Procurement Officer
may charge any agency, board, commission, or department of the
state which receives state or federally appropriated funds for
this and any other services provided to them by this division.

"(e) The database shall be a public record and may
be viewed by any citizen, either in person or via the state's
website.

"(f) Each request for a proposal shall remain
available on the website until the last posting date required
by law has expired.

"(g) There shall not be a charge for access to the
database."

Section 4. Section 41-16-50, Code of Alabama 1975,
is amended to read as follows:
"$41-16-50.

(a) With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all expenditure of funds of whatever nature for labor, services, work, or for the purchase of materials, equipment, supplies, or other personal property involving fifteen thousand dollars ($15,000) or more, and the lease of materials, equipment, supplies, or other personal property where the lessee is, or becomes legally and contractually, bound under the terms of the lease, to pay a total amount of fifteen thousand dollars ($15,000) or more, made by or on behalf of any state trade school, state junior college, state college, or university under the supervision and control of the Alabama Community College System; the Alabama Fire College, the district boards of education of independent school districts, the county commissions, 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, except as hereinafter provided, shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder. Prior to advertising for bids for an item of personal property or services, where a county, a municipality, or an
instrumentality thereof is the awarding authority, the
awarding authority may establish a local preference zone
consisting of either the legal boundaries or jurisdiction of
the awarding authority, or the boundaries of the county in
which the awarding authority is located, or the boundaries of
the Core Based Statistical Area in which the awarding
authority is located. If no such action is taken by the
awarding authority, the boundaries of the local preference
zone shall be deemed to be the same as the legal boundaries or
jurisdiction of the awarding authority. In the event a bid is
received for an item of personal property or services to be
purchased or contracted for from a person, firm, or
corporation deemed to be a responsible bidder, having a place
of business within the local preference zone where the county,
a municipality, or an instrumentality thereof is the awarding
authority, and the bid is no more than five percent greater
than the bid of the lowest responsible bidder, the awarding
authority may award the contract to the resident responsible
bidder. In the event only one bidder responds to the
invitation to bid, the awarding authority may reject the bid
and negotiate the purchase or contract, providing the
negotiated price is lower than the bid price.

"(b) The governing bodies of two or more contracting
agencies, as enumerated in subsection (a), or the governing
bodies of two or more counties, or the governing bodies of two
or more city or county boards of education, may provide, by
joint agreement, for the purchase of labor, services, or work,
or for the purchase or lease of materials, equipment,
supplies; or other personal property for use by their
respective agencies. The agreement shall be entered into by
similar ordinances, in the case of municipalities, or
resolutions, in the case of other contracting agencies,
adopted by each of the participating governing bodies, which
shall set forth the categories of labor, services, or work, or
for the purchase or lease of materials, equipment, supplies,
or other personal property to be purchased, the manner of
advertising for bids and the awarding of contracts, the method
of payment by each participating contracting agency, and other
matters deemed necessary to carry out the purposes of the
agreement. Each contracting agency's share of expenditures for
purchases under any agreement shall be appropriated and paid
in the manner set forth in the agreement and in the same
manner as for other expenses of the contracting agency. The
contracting agencies entering into a joint agreement, as
herein permitted, may designate a joint purchasing or bidding
agent, and the agent shall comply with this article.
Purchases, contracts, or agreements made pursuant to a joint
purchasing or bidding agreement shall be subject to all terms
and conditions of this article.
"In the event that utility services are no longer exempt from competitive bidding under this article, non-adjoining counties may not purchase utility services by joint agreement under authority granted by this subsection.

"(c) The awarding authority may require bidders to furnish a bid bond for a particular bid solicitation if the bonding requirement applies to all bidders, is included in the written bid specifications, and if bonding is available for the services, equipment, or materials.

"(d) Notwithstanding subsection (a), in the event the lowest bid for an item of personal property or services to be purchased or contracted for is received from a foreign entity, where the county, a municipality, or an instrumentality thereof is the awarding authority, the awarding authority may award the contract to a responsible bidder whose bid is no more than 10 percent greater than the foreign entity if the bidder has a place of business within the local preference zone or is a responsible bidder from a business within the state that is a woman-owned enterprise, an enterprise of small business, as defined in Section 25-10-3, a minority-owned business enterprise, a veteran-owned business enterprise, or a disadvantaged-owned business enterprise. For the purposes of this subsection, foreign entity means a business entity that does not have a place of business within the state."
Section 5. This act shall become effective October 1, 2022, following its passage and approval by the Governor, or its otherwise becoming law.
President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB77
Senate 09-FEB-21
I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 15-APR-21

By: Senator Orr

APPROVED 4-27-2021
TIME 9:50 AM

Alabama Secretary of State
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