Chapter 16 - Article 2 - Competitive Bidding on Public Contracts Generally

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41-16-20 - When required

(a) With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all contracts of whatever nature for labor, services, work, or for the purchase or lease of materials, equipment, supplies, other personal property or other nonprofessional services, involving fifteen thousand dollars ($15,000) or more, made by or on behalf of any state department, board, bureau, commission, committee, institution, corporation, authority, or office shall, except as otherwise provided in this article, be let by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.

(b) A "preferred vendor" shall be a person, firm, or corporation which is granted preference priority according to the following:

(1) PRIORITY #1. Produces or manufactures the product within the state.

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

(3) 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.

(c) In the event a bid is received for the product or service from a person, firm, or corporation deemed to be a responsible bidder and a preferred vendor where any state higher education institution, department, board, bureau, commission, committee, institution, corporation, authority, or office 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 preferred vendor.

41-16-21 - Exemptions from retirement. Void contracts

(a) Competitive bids shall not be required for utility services where no competition exists or where rates are fixed by law or ordinance, and the competitive bidding requirements of this article shall not apply to: The purchase of insurance by the state; contracts for the securing of services of attorneys, physicians, architects, teachers, artists, appraisers, engineers, or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part; contracts of employment in the regular civil service of the state; purchases of alcoholic beverages only by the Alcoholic Beverage Control Board; purchases and contracts for repair of equipment used in the construction and maintenance of highways by the State Department of Transportation; 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 through 21-2-4; purchases of maps or photographs purchased from any federal agency; contractual services and purchases of personal property, which by their very nature are impossible of award by competitive bidding; barter transactions by the Department of Corrections; and purchases, contracts, or repairs by the Alabama State Port Authority when it is deemed by the Director of the Alabama State Port...
Authority and the Secretary-Treasurer of the Alabama State Port Authority that the purchases, contracts, or 
repairs are impractical of award by competitive bidding due to the exigencies of time or interference with the 
flow of commerce. The Director of the Alabama State Port Authority and the Secretary-Treasurer of the 
Alabama State Port Authority shall place a sworn statement in writing in the permanent file or records setting 
out the emergency or exigency relied upon and the necessity for negotiation instead of proceeding by 
competitive bidding in that particular instance, and the sworn statement shall be open to public inspection. A 
copy of the sworn statement shall be furnished forthwith to the Governor and Attorney General.

(b) All educational and eleemosynary institutions governed by a board of trustees or other similar governing 
body and the Alabama State Port Authority shall be exempt from this article which relate to the powers, 
duties, authority, restrictions, and limitations conferred or imposed upon the Department of Finance, Division 
of Purchasing. The educational and eleemosynary institutions, the Alabama State Port Authority, and the other 
state agencies exempted from this article shall let by free and open competitive bidding on sealed bids to the 
lowest responsible bidder all contracts of whatever nature for labor, services or work or for the purchase or 
lease of materials, equipment, supplies, or other personal property involving seven thousand five hundred 
dollars ($7,500) or more. The institutions, departments, and agencies shall establish and maintain purchasing 
facilities as may be necessary to carry out the intent and purpose of this article by complying with the 
requirements for competitive bidding in the operation and management of each institution, department, or 
agency.

(c) Contracts entered into in violation of this article shall be void.

(d) Nothing in this section shall be construed as repealing Sections 9-2-106 and 9-2-107.

41-16-21.1 Joint purchasing agreements

(a) In the event that utility services are no longer exempt from competitive bidding under this article, non- 
adjacent counties may not purchase utility services by joint agreement under authority granted by this section.

(b) The Division of Purchasing, Department of Finance, is hereby authorized to enter into joint purchasing 
agreements to purchase, lease, or lease-purchase child support services, materials, equipment, supplies, or 
other personal property which have been let by competitive bid or competitive solicitation process by any 
group or consortium of governmental entities within or without the State of Alabama upon a finding by the 
Purchasing Agent that such joint purchasing agreements are in the best interests of the State of Alabama. 
Joint purchasing agreements entered into by the Division of Purchasing may be utilized by any governmental 
entity subject to the requirements of Title 41, Chapter 16, Articles 2 or 3A. This subsection shall not apply to 
the purchase, lease, or lease-purchase of materials, equipment, supplies, or other personal property which 
can only be utilized in conjunction with a service or service contract, whether subject to competitive bidding under 
this article or not, for the materials, equipment, supplies, or other personal property that must remain in effect 
to utilize the materials, equipment, supplies, or other personal property.

Nothing in this subsection prohibits or limits public four-year institutions from entering into joint purchasing 
agreements to purchase, lease, or lease-purchase materials, equipment, supplies, other personal property and 
services which have been let by competitive bid or competitive solicitation process by any group or consortium 
of governmental entities or through a group purchasing organization within or without the State of Alabama 
upon a finding by the institution that such purchasing agreements are in the best interests of the institution; 
provided, however, this sentence shall not permit agreements to purchase, lease, or lease-purchase wireless 
communications equipment or services through any group or consortium of governmental entities or through 
any group purchasing organization.

41-16-21.2 Exemption of departments and agencies whose principal business is honorariums

All laws to the contrary notwithstanding, any state department or agency whose principal business is 
honorariums is hereby exempted from the provisions of the state competitive bid laws on purchases and 
contracts for services made by such department or agency.

41-16-22 Exemption of purchases from United States

The state may without advertisement or receiving competitive bids purchase materials, equipment, supplies 
or other personal property from the United States government or any agency, division or instrumentality thereof 
when such purchase is deemed by the state Purchasing Agent to be in the best interest of the State of 
Alabama.

41-16-23. Emergency exemptions

In case of emergency affecting public health, safety or convenience, as declared in writing by the head of the 
institution or state agency involved, setting forth the nature of the danger to public health, safety or 
convenience involved in delay, contracts may be let to the extent necessary to meet the emergency without 
public advertisement. Such action and the reasons therefor shall immediately be made public by the awarding 
agency.

41-16-24. Advertisement for bids Opening of bids Splitting of contracts

(a) The Purchasing Agent shall advertise for sealed bids on all purchases in excess of the competitive bid limit 
as established in Section 41-16-20 by posting notice thereof on a bulletin board maintained outside the office 
door or by publication of notice thereof, one time, in a newspaper published in Montgomery County, Alabama, 
or in any other manner, for such lengths of time as the Purchasing Agent may determine. The Purchasing 
Agent shall also solicit sealed bids or bids to be submitted by reverse auction procedure by notifying all 
Alabama persons, firms, or corporations who have filed a request in writing that they be listed for solicitation 
for bids on the particular items set forth in the request and the other persons, firms, or corporations the 
Purchasing Agent deems necessary to insure competition. If any person, firm, or corporation whose name is 
listed fails to respond to any solicitation for bids after the receipt of three solicitations, the listing may be 
cancelled by the Purchasing Agent.

(b) All bids, except as provided in subsection (d), shall be sealed when received, shall be opened in public at
the hour stated in the notice, and all original bids together with all documents pertaining to the award of the contract shall be retained in accordance with a retention period established by the State Records Commission and shall be open to public inspection.

(c) If the purchase or contract will involve an amount of the competitive bid limit as established in Section 41-16-20 or less, the Purchasing Agent may make the purchases or contracts either upon the basis of sealed bids, reverse auction procedure, or in the open market.

(d) For purposes of this article, a reverse auction procedure includes either of the following:

(1) A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple anonymous suppliers submit bids to provide the designated goods or services.

(2) A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple anonymous suppliers submit bids to provide the designated goods or services.

(e) No purchase or contract involving an amount in excess of the competitive bid limit as established in Section 41-16-20 shall be divided into parts involving amounts of the competitive bid limit as established in Section 41-16-20 or less for the purpose of avoiding the requirements of this article. All such partial contracts involving the competitive bid limit as established in Section 41-16-20 or less shall void.

41-16-25. Price fixing agreements or collusion

Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding or otherwise shall render the bids of such bidders void. Each bidder shall accompany his bid with a sworn statement that he has not been a party to such an agreement.

41-1626. Advance disclosure of terms of bid

Any disclosure in advance of the terms of a bid submitted in response to an advertisement for bids shall render the proceedings void and require advertisement and award anew.

41-16-27. Award of contract Record of bids Preference to Alabama commodities, firms, etc.

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

(b) The awarding authority may award multiple purchase contracts resulting from a single invitation-to-bid where the specifications of the items of personal property 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 provision, the awarding authority must 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 provision.

This subsection (b) shall not apply to contracts for the purchase of personal property for which a service or service contract, whether subject to competitive bidding under this article or not, is necessary to utilize the personal property throughout the period of utilization of the personal property.

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

(d) The Purchasing Agent in the purchase of or contract for personal property or contractual services shall give preference, provided there is no sacrifice or loss in price or quality, to commodities produced in Alabama or sold by Alabama persons, firms, or corporations.

(e)(1) Contracts for the purchase of personal property or contractual services other than personal services shall be let by competitive bid for periods not greater than five years and current contracts existing on February 28, 2006, may be extended or renewed for an additional two years with a 90-day notice of such extension or renewal given to the Legislative Council, however, any contract that generates funds or will reduce annual costs by awarding the contract for a longer term than a period of three years which is let by or on behalf of a state two-year or four-year college or university may be let for periods not greater than 10 years. Any contract awarded pursuant to this section for terms of less than 10 years may be extended for a period not to exceed 10 years from the initial awarding of the contract provided that the terms of the contract shall not be altered or renegotiated during the period for which the contract is extended.

(2) For purchases of personal property made on or after January 1, 2010, in instances in which the awarding authority determines that the total cost of ownership over the expected life of the item or items, including acquisition costs plus sustaining costs, and including specifically life cycle costs, can be reasonably ascertained from industry recognized and accepted sources, the lowest responsible bid may be determined to be the bid offering the lowest life cycle costs and otherwise meeting all of the conditions and specifications contained in the invitation to bid. To utilize this provision to determine the lowest responsible bidder, the awarding authority must include a notice in the invitation to bid that the lowest responsible bid may be determined by...
using life cycle costs and identify the industry recognized and accepted sources that will be applicable to such an evaluation.

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

(f) Contracts for the purchase of services for receiving, processing, and paying claims for services rendered recipients of the Alabama Medicaid program authorized under Section 22-6-7 which are required to be competitively bid may be awarded to the bidder whose proposal is most advantageous to the state, taking into consideration cost factors, program suitability factors (technical factors) including understanding of program requirements, program management plan, excellence of personnel, corporate or company resources and designated location, and other factors including financial condition and capability of the bidder, corporate experience and past performance and priority of the business to insure the contract awarded is the best for the purposes required. Each of these criteria shall be given relative weight value as designated in the invitation to bid, with price retaining the most significant weight. Responsiveness to the bid shall be scored for each designated criterion for reasons cited above, the bid selected is not from the lowest bidding contractor, the Alabama Medicaid Agency shall present its reasons for not recommending award to the low bidder to the Medicaid Interim Committee. The committee shall evaluate the findings of the Alabama Medicaid Agency and must, by resolution, approve the action of the awarding authority before final awarding of any such contract. The committee shall also hear any valid appeals against the recommendation of the Alabama Medicaid Agency from the low bid contractor(s) whose bid was not selected.

(g) Notwithstanding the requirements under Sections 41-16-20, 41-16-21, and this section, contractual services and purchases of personal property regarding the athletic department, food services, and transit 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 deemed by the respective board that financial benefits will accrue to the institution, except that in the cases where an Alabama business entity as defined by this section is available to supply the product or service they will have preference unless the foreign corporation is substantially different or superior to the product or service supplied by the Alabama business entity. However, the terms and conditions of any of the services or purchases which are contracted through negotiation without being competitively bid and the name and address of the recipient of such a contract shall be advertised in a newspaper of general circulation in the municipality in which the college or university is located once a week for two consecutive weeks commencing no later than 10 days after the date of the contract. For the purposes of this section, the term Alabama business entity shall mean any sole proprietorship, partnership, corporation organized in the State of Alabama.

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

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

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

41-16-28. Bond for faithful performance

Bond in a responsible sum for faithful performance of the contract, with adequate surety, shall be required in an amount specified in the advertisement for bids.

41-16-29. Assignment of contracts

No contract awarded to the lowest responsible bidder shall be assignable by the successful bidder without written consent of the awarding authority and requisitioning agency, and in no event shall a contract be assigned to an unsuccessful bidder whose bid was rejected because he was not a responsible bidder.

41-16-30. Criminal offenses

Neither the Purchasing Agent nor any assistant or employee of his shall be financially interested or have any personal beneficial interest, either directly or indirectly, in the purchase of or contract for any personal property or contractual service, nor in any firm, partnership, association or corporation furnishing any such personal property or contractual services to the state government or to any of its departments, agencies or institutions. Neither the Purchasing Agent nor any assistant or employee of his shall accept or receive, directly or indirectly, from any person, firm, association or corporation indirectly, any contract may be awarded, by rebate, gifts or otherwise, any money or thing of value whatsoever or any promise, obligation or contract for future reward or compensation, nor shall any person willfully make any purchase or award any contract in violation of the provisions of this article.
Any violation of this section shall be deemed a misdemeanor, and any person who violates this section shall, upon conviction, be imprisoned for not more than 12 months or fined not more than $500.00 or both. Upon conviction thereof, any such Purchasing Agent, assistant or employee of his or any person who willfully makes any purchase or awards any contract in violation of the provisions of this article shall be removed from office.

41-16-31. Injunctions

Any taxpayer of the area within the jurisdiction of the awarding authority and any bona fide unsuccessful bidder on a particular contract shall be empowered to bring a civil action in the appropriate court to enjoin execution of any contract entered into in violation of the provisions of this article.

41-16-32. Cumulative nature of provisions Conflict of laws

This article shall be cumulative in its nature.

All conflicting provisions of law are hereby expressly repealed; however, this article shall in no manner repeal any of the provisions of Chapter 36 of Title 16 of this code or Chapters 2 and 5 of Title 39 of this code or Article 5 of Chapter 4 of this title.