

1 SB220  
2 182114-1  
3 By Senator Dial  
4 RFD: Fiscal Responsibility and Economic Development  
5 First Read: 21-FEB-17

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

SYNOPSIS: Under existing law, preferred vendors are given preference in the awarding of public contracts required to be competitively bid.

This bill would give preferred vendor status under the competitive bid laws to those businesses located in the state that are owned by veterans who were deployed to Afghanistan or Iraq as a part of Operation Enduring Freedom or Operation Iraqi Freedom.

Also under existing law, the Division of Purchasing is authorized to enter into joint purchasing agreements for the purchase or lease of goods and child support services and is authorized to award multiple purchase contracts for the purchase of certain goods.

This bill would extend those authorizations to the purchase of services.

Also under existing law, the Division of Purchasing is authorized to maintain a system that

1 allows state agencies to purchase items using  
2 approved credit cards.

3 This bill would allow cities and counties to  
4 utilize the state fleet fuel card program.

5  
6 A BILL  
7 TO BE ENTITLED  
8 AN ACT

9  
10 To amend Sections 41-16-20, 41-16-21.1, 41-16-27,  
11 and 41-4-110 of the Code of Alabama 1975 relating to  
12 purchasing; to grant preferred vendor status to any business  
13 located in the state that is owned by a veteran deployed to  
14 Afghanistan or Iraq as a part of Operation Enduring Freedom or  
15 Operation Iraqi Freedom; to allow the Division of Purchasing  
16 to enter into joint purchase agreements for the purchase of  
17 services and to award multiple purchase contracts for the  
18 purchase of services; and to allow cities and counties to  
19 utilize the fleet fuel card program administered by the  
20 Division of Purchasing.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 41-16-20, 41-16-21.1, 41-16-27,  
23 and 41-4-110 of the Code of Alabama 1975 are amended to read  
24 as follows:

25 "§41-16-20.

26 "(a) With the exception of contracts for public  
27 works whose competitive bidding requirements are governed

1 exclusively by Title 39, all contracts of whatever nature for  
2 labor, services, work, or for the purchase or lease of  
3 materials, equipment, supplies, other personal property or  
4 other nonprofessional services, involving fifteen thousand  
5 dollars (\$15,000) or more, made by or on behalf of any state  
6 department, board, bureau, commission, committee, institution,  
7 corporation, authority, or office shall, except as otherwise  
8 provided in this article, be let by free and open competitive  
9 bidding, on sealed bids, to the lowest responsible bidder.

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

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

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

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

23 "(4) PRIORITY #4. A business that is physically  
24 located in this state and is owned by a veteran who was  
25 deployed at least once to Afghanistan or Iraq as part of  
26 Operation Enduring Freedom or Operation Iraqi Freedom. For the  
27 purposes of this section, a veteran is a person who served in

1 the army, air force, navy, marine corps, or coast guard and  
2 who was discharged or released from his or her service with an  
3 honorable or general discharge.

4 "(c) In the event a bid is received for the product  
5 or service from a person, firm, or corporation deemed to be a  
6 responsible bidder and a preferred vendor where any state  
7 higher education institution, department, board, bureau,  
8 commission, committee, institution, corporation, authority, or  
9 office is the awarding authority and the bid is no more than  
10 five percent greater than the bid of the lowest responsible  
11 bidder, the awarding authority may award the contract to the  
12 preferred vendor."

13 "§41-16-21.1.

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

18 "(b) The Division of Purchasing, Department of  
19 Finance, is hereby authorized to enter into joint purchasing  
20 agreements to purchase, lease, or lease-purchase ~~child support~~  
21 ~~services~~, materials, equipment, supplies, ~~or~~ other personal  
22 property or services, including child support services, which  
23 have been let by competitive bid or competitive solicitation  
24 process by any group or consortium of governmental entities  
25 within or without the State of Alabama upon a finding by the  
26 Purchasing Agent that such joint purchasing agreements are in  
27 the best interests of the State of Alabama. Joint purchasing

1 agreements entered into by the Division of Purchasing may be  
2 utilized by any governmental entity subject to the  
3 requirements of Title 41, Chapter 16, Articles 2 or 3A. This  
4 subsection shall not apply to the purchase, lease, or  
5 lease-purchase of materials, equipment, supplies, or other  
6 personal property which can only be utilized in conjunction  
7 with a service or service contract, whether subject to  
8 competitive bidding under this article or not, for the  
9 materials, equipment, supplies, or other personal property  
10 that must remain in effect to utilize the materials,  
11 equipment, supplies, or other personal property.

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

26 "§41-16-27.

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

19           "(b) The awarding authority may award multiple  
20 purchase contracts resulting from a single invitation-to-bid  
21 where the specifications of the items of personal property or  
22 services intended to be purchased by a requisitioning agency  
23 or agencies are determined, in whole or in part, by technical  
24 compatibility and operational requirements. In order to make  
25 multiple awards under this provision, the awarding authority  
26 must include in the invitation-to-bid a notice that multiple  
27 awards may be made and the specific technical compatibility or

1 operational requirements necessitating multiple awards.  
2 Multiple awards of purchase contracts with unique technical  
3 compatibility or operational specifications shall be made to  
4 the lowest responsible bidder complying with the unique  
5 technical compatibility or operational specifications. The  
6 requisitioning agency shall provide the awarding authority  
7 with the information necessary for it to determine the  
8 necessity for the award of multiple purchase contracts under  
9 this provision.

10 "This subsection (b) shall not apply to contracts  
11 for the purchase or use of push to talk services, which shall  
12 be purchased through a separate competitive bid process.

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

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

23 "(e) (1) Contracts for the purchase of personal  
24 property or contractual services other than personal services  
25 shall be let by competitive bid for periods not greater than  
26 five years and current contracts existing on February 28,  
27 2006, may be extended or renewed for an additional two years



1 with a 90-day notice of such extension or renewal given to the  
2 Legislative Council, however, any contract that generates  
3 funds or will reduce annual costs by awarding the contract for  
4 a longer term than a period of three years which is let by or  
5 on behalf of a state two-year or four-year college or  
6 university may be let for periods not greater than 10 years.  
7 Any contract awarded pursuant to this section for terms of  
8 less than 10 years may be extended for a period not to exceed  
9 10 years from the initial awarding of the contract provided  
10 that the terms of the contract shall not be altered or  
11 renegotiated during the period for which the contract is  
12 extended.

13 "(2) For purchases of personal property made on or  
14 after January 1, 2010, in instances in which the awarding  
15 authority determines that the total cost of ownership over the  
16 expected life of the item or items, including acquisition  
17 costs plus sustaining costs, and including specifically life  
18 cycle costs, can be reasonably ascertained from industry  
19 recognized and accepted sources, the lowest responsible bid  
20 may be determined to be the bid offering the lowest life cycle  
21 costs and otherwise meeting all of the conditions and  
22 specifications contained in the invitation to bid. To utilize  
23 this provision to determine the lowest responsible bidder, the  
24 awarding authority must include a notice in the invitation to  
25 bid that the lowest responsible bid may be determined by using  
26 life cycle costs and identify the industry recognized and

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

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

12 "(f) Contracts for the purchase of services for  
13 receiving, processing, and paying claims for services rendered  
14 recipients of the Alabama Medicaid program authorized under  
15 Section 22-6-7 which are required to be competitively bid may  
16 be awarded to the bidder whose proposal is most advantageous  
17 to the state, taking into consideration cost factors, program  
18 suitability factors (technical factors) including  
19 understanding of program requirements, management plan,  
20 excellence of program design, key personnel, corporate or  
21 company resources and designated location, and other factors  
22 including financial condition and capability of the bidder,  
23 corporate experience and past performance and priority of the  
24 business to insure the contract awarded is the best for the  
25 purposes required. Each of these criteria shall be given  
26 relative weight value as designated in the invitation to bid,  
27 with price retaining the most significant weight.

1 Responsiveness to the bid shall be scored for each designated  
2 criteria. If, for reasons cited above, the bid selected is not  
3 from the lowest bidding contractor, the Alabama Medicaid  
4 Agency shall present its reasons for not recommending award to  
5 the low bidder to the Medicaid Interim Committee. The  
6 committee shall evaluate the findings of the Alabama Medicaid  
7 Agency and must, by resolution, approve the action of the  
8 awarding authority before final awarding of any such contract.  
9 The committee shall also hear any valid appeals against the  
10 recommendation of the Alabama Medicaid Agency from the low bid  
11 contractor(s) whose bid was not selected.

12 "(g) Notwithstanding the requirements under Sections  
13 41-16-20, 41-16-21, and this section, contractual services and  
14 purchases of personal property regarding the athletic  
15 department, food services, and transit services negotiated on  
16 behalf of two-year and four-year colleges and universities may  
17 be awarded without competitive bidding provided that no state  
18 revenues, appropriations, or other state funds are expended or  
19 committed and when it is deemed by the respective board that  
20 financial benefits will accrue to the institution, except that  
21 in the cases where an Alabama business entity as defined by  
22 this section is available to supply the product or service  
23 they will have preference unless the product or service  
24 supplied by a foreign corporation is substantially different  
25 or superior to the product or service supplied by the Alabama  
26 business entity. However, the terms and conditions of any of  
27 the services or purchases which are contracted through

1 negotiation without being competitively bid and the name and  
2 address of the recipient of such a contract shall be  
3 advertised in a newspaper of general circulation in the  
4 municipality in which the college or university is located  
5 once a week for two consecutive weeks commencing no later than  
6 10 days after the date of the contract. For the purposes of  
7 this section, the term Alabama business entity shall mean any  
8 sole proprietorship, partnership, or corporation organized in  
9 the State of Alabama.

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

25 "(2) Industry recognized and accepted sources may be  
26 provided by rules adopted pursuant to the Alabama  
27 Administrative Procedure Act by the Green Fleets Review

1 Committee if the review committee is established and enacted  
2 at the 2009 Regular Session. If the Green Fleets Review  
3 Committee is not enacted at the 2009 Regular Session, the  
4 Permanent Joint Legislative Committee on Energy Policy may  
5 adopt rules providing industry recognized and accepted sources  
6 pursuant to the Alabama Administrative Procedure Act.

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

18 "§41-4-110.

19 "(a) There shall be in the Department of Finance the  
20 Division of Purchasing. The functions and duties of the  
21 Division of Purchasing shall be as follows:

22 "(1) To purchase all personal property and  
23 nonprofessional services, except alcoholic beverages, which  
24 shall be purchased by the Alcoholic Beverage Control Board and  
25 except as otherwise provided by law, for the state and each  
26 department, board, bureau, commission, agency, office, and  
27 institution thereof, except as provided in subsection (e).

1           "(2) To make and supervise the execution of all  
2 contracts and leases for the use or acquisition of any  
3 personal property and nonprofessional services unless  
4 otherwise provided by law.

5           "(3) To fix standards of quality and quantity and to  
6 develop standard specifications for all personal property and  
7 nonprofessional services acquired by the state or any  
8 department, board, bureau, commission, agency, office, or  
9 institution thereof.

10           "(4) To maintain records as to prices and sources of  
11 supply of such personal property and nonprofessional services,  
12 such records to be open to the inspection of any state,  
13 county, municipal, or other public officer or employee charged  
14 with the duty of acquiring any such property and  
15 nonprofessional services or article for his or her department,  
16 board, bureau, commission, agency, office, institution,  
17 county, municipal corporation, or local public body.

18           "(5) To manage, supervise, and control all printing  
19 and binding for the state and for each department, board,  
20 bureau, commission, agency, office, and institution thereof  
21 and the distribution of all printed matter and to make and  
22 supervise the execution of all contracts with respect thereto,  
23 unless otherwise provided by law.

24           "(6) To require the periodic reporting of all  
25 purchases of furniture, fixtures, supplies, material,  
26 equipment, and other personal property, except printing, and  
27 all contracts and leases for the use or acquisition thereof by

1 or for counties, the purchase, contract or lease price of  
2 which is \$100.00 or more, and to require information in  
3 connection therewith, to prescribe forms and fix the time for  
4 submitting such reports, and, when requested by any county,  
5 municipal corporation, and other local public body (including  
6 any board of education) to make such purchases, contracts, or  
7 leases for it. It shall be the duty of every county to make  
8 such report on forms furnished by the Department of Finance,  
9 whenever requested so to do, but not more than once every 30  
10 days.

11 "(7) To perform such other functions and duties of  
12 the Department of Finance as may from time to time be assigned  
13 by the Director of Finance.

14 "(b) As long as the constitution so requires, all  
15 stationery, printing, paper, and fuel used in the legislative  
16 and other departments of the government shall be furnished,  
17 and the printing, binding, and distribution of the laws,  
18 journals, departmental reports, and all other printing,  
19 binding, and repairing and furnishing the halls and rooms used  
20 for the meetings of the Legislature and its committees shall  
21 be performed under contract, to be given to the lowest  
22 responsible bidder below a maximum price, under such  
23 regulations as have been or may be prescribed by law and as  
24 may be promulgated by the Director of Finance. No member or  
25 officer of any department of the government shall be in any  
26 way interested in such contracts, and all such contracts shall  
27 be subject to the approval of the Governor, the Auditor and

1 the Treasurer. All contracts not required to be approved by a  
2 named officer or officers by the Constitution shall be subject  
3 to the approval of the Director of Finance, who may, however,  
4 provide for the automatic approval thereof by compliance with  
5 the general rules or regulations promulgated by him or her.

6 "(c) The Purchasing Agent is further authorized to  
7 establish and maintain a system for the purchase of personal  
8 property and nonprofessional services by state departments,  
9 agencies, boards, and institutions that conduct their  
10 purchasing activities through the Division of Purchasing,  
11 through the utilization of approved credit cards. City and  
12 county governments may participate in the state fleet fuel  
13 card program subject to the terms and conditions of the  
14 program related to the utilization of the fleet fuel card;  
15 provided, however, that city and county governments shall not  
16 otherwise be subject to the provisions of this subsection. The  
17 Purchasing Agent shall establish by administrative rule a  
18 process for the competitive solicitation of credit card  
19 providers. The state Comptroller and the Purchasing Agent  
20 shall promulgate fiscal procedures governing the payment of  
21 charges incurred by credit card users and the utilization of  
22 credit cards. The use of approved credit cards shall be  
23 established by the state Comptroller and the State Purchasing  
24 Agent, with the approval of the Director of Finance, and be  
25 published through the Alabama fiscal procedures, in which each  
26 purchase made using approved credit cards is required to have  
27 prior approval by the department head or his or her designee



1 and a record of such purchases and approvals is to be  
2 maintained. The Purchasing Agent may select the provider or  
3 providers offering the highest fees to the division for the  
4 use of its credit card or credit cards. Fees received by the  
5 division for the use of credit cards shall be placed in a  
6 special fund entitled the State Procurement Fund in the State  
7 Treasury for the use of the division and such funds shall be  
8 appropriated, budgeted, and allotted in accordance with  
9 Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to  
10 41-19-12, inclusive, and only in amounts stipulated in general  
11 appropriations bills and other appropriation bills. Approved  
12 credit cards may be issued to requisitioning agencies upon the  
13 recommendation of the Purchasing Agent and the approval of the  
14 Director of Finance. Approved credit cards will be assigned to  
15 the department and will be in limited number. Such credit  
16 cards may be utilized to purchase items of personal property  
17 and nonprofessional services, and shall not exceed the  
18 limitations set forth in subsection (a) of Section 41-16-24.  
19 The director of the governmental entity utilizing credit cards  
20 is responsible for the proper use of credit cards assigned to  
21 his or her agency, in accordance with rules established by  
22 Alabama fiscal procedures. The Purchasing Agent may collect  
23 any credit card from any agency at any time due to improper  
24 use. The Purchasing Agent shall submit an annual report and  
25 accounting regarding the use of credit cards by each  
26 governmental entity to the Director of Finance and the  
27 Governor.

1           "(d) The Division of Purchasing is authorized to  
2 charge a biannual registration fee to vendors desiring to  
3 register with the division to receive invitations-to-bid for  
4 any goods or services solicited by the division and to charge  
5 departments, boards, bureaus, commissions, agencies, offices,  
6 and institutions for their proportionate share of operating  
7 costs of the division. Any fee must be set by administrative  
8 rule upon the approval of the Director of Finance. Any fees  
9 collected under this provision shall be deposited in the State  
10 Treasury to the credit of the State Procurement Fund and shall  
11 be appropriated, budgeted, and allotted in accordance with  
12 Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to  
13 41-19-12, inclusive, and only in amounts stipulated in general  
14 appropriations bills and other appropriation bills.

15           "(e) Notwithstanding any law to the contrary, state  
16 departments, agencies, boards, and institutions may purchase  
17 personal property from any vendor that offers the item at a  
18 price at least ten percent below the price established on a  
19 statewide contract by the Division of Purchasing for the same  
20 item, provided that each acquisition of personal property  
21 pursuant to this subsection, whether for a single item or  
22 multiple items, does not exceed fifteen thousand dollars  
23 (\$15,000). The Division of Purchasing shall confirm that the  
24 terms and conditions of such purchase are substantially  
25 similar to those of the statewide contract for the same item  
26 prior to the approval of any purchase pursuant to this  
27 subsection. This subsection shall not apply to construction or

1 road-building materials, as identified by the Purchasing  
2 Agent. Any purchase that would be directly connected to any IT  
3 network used by the state shall require prior approval by the  
4 Secretary of Information Technology.

5 "Any acquisition of personal property pursuant to  
6 this subsection shall be purchased solely from vendors  
7 physically located within the state, if the purchaser is to  
8 take possession of the purchased goods at the vendor's  
9 physical location.

10 "The price of any goods or services purchased  
11 pursuant to this subsection shall be the market price readily  
12 available to the public at large.

13 "Any acquisition of personal property pursuant to  
14 this subsection is not exempt from the supervision and  
15 administration of the Division of Purchasing."