

1 SB556  
2 107342-4  
3 By Senator Mitchell  
4 RFD: Governmental Affairs  
5 First Read: 02-APR-09

1 SB556

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3  
4 ENROLLED, An Act,

5 To amend Section 41-4-110, Code of Alabama, 1975, to  
6 further authorize the Purchasing Agent to establish and  
7 maintain a system for the purchase of personal property by  
8 state departments, agencies, boards and institutions that  
9 conduct their purchasing activities through the Division of  
10 Purchasing, through the utilization of approved credit cards;  
11 to create the State Procurement fund in the State Treasury; to  
12 authorize the Division of Purchasing to charge a bi annual  
13 registration fee to vendors desiring to register with the  
14 Division to receive invitations to bid for any goods or  
15 services solicited by the Division; to authorize the Division  
16 to charge for their operating costs.

17 To also amend Section 41-4-113, Code of Alabama,  
18 1975, to allow the Purchasing Agent to accept an electronic  
19 signature or other electronic indicia of the required  
20 signature of the head of any state department, any public  
21 employee or public official, or his or her designee for any  
22 application, requisition or other document submitted to the  
23 Division of Purchasing.

1           To also amend Section 41-16-20, Code of Alabama  
2 1975, to further provide that the competitive bid applies to  
3 contracts for the purchase of other nonprofessional services.

4           To also amend Section 41-16-21.1, Code of Alabama,  
5 1975, to authorize the Division of Purchasing, Department of  
6 Finance, to enter into joint purchasing agreements to  
7 purchase, lease, or lease purchase materials, equipment,  
8 supplies or other personal property which have met the  
9 criteria set for such agreements.

10           To also amend Section 41-16-24, Code of Alabama,  
11 1975, to refer back to the competitive bid limit established  
12 in Title 41, Chapter 16, Article 2, Section 20.

13           To also amend Section 41-16-27, Code of Alabama,  
14 1975, to allow for multiple awards on certain contracts when  
15 technical compatibility and operation continuity is required.

16           To repeal Sections 41-4-130 through 41-4-161, Code  
17 of Alabama, 1975, relating to public printing and binding.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19           Section 1. Sections 41-4-110, 41-4-113, 41-16-20,  
20 41-16-21.1, 41-16-24, and 41-16-27, Code of Alabama 1975, are  
21 amended to read as follows:

22           "§41-4-110.

23           "(a) There shall be in the Department of Finance the  
24 division of purchasing. The functions and duties of the  
25 division of purchasing shall be as follows:

1           "(1) To purchase all personal property and  
2 nonprofessional services, except alcoholic beverages, which  
3 shall be purchased by the Alcoholic Beverage Control Board and  
4 except as otherwise provided by law, for the state and each  
5 department, board, bureau, commission, agency, office and  
6 institution thereof.

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

11           "(3) To fix standards of quality and quantity and to  
12 develop standard specifications for all personal property and  
13 nonprofessional services acquired by the state or any  
14 department, board, bureau, commission, agency, office or  
15 institution thereof.

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

24           "(5) To manage, supervise, and control all printing  
25 and binding for the state and for each department, board,

1 bureau, commission, agency, office, and institution thereof  
2 and the distribution of all printed matter and to make and  
3 supervise the execution of all contracts with respect thereto,  
4 unless otherwise provided by law.

5 "(6) To require the periodic reporting of all  
6 purchases of furniture, fixtures, supplies, material,  
7 equipment, and other personal property, except printing, and  
8 all contracts and leases for the use or acquisition thereof by  
9 or for counties, the purchase, contract or lease price of  
10 which is \$100.00 or more, and to require information in  
11 connection therewith, to prescribe forms and fix the time for  
12 submitting such reports, and, when requested by any county,  
13 municipal corporation, and other local public body (including  
14 any board of education) to make such purchases, contracts, or  
15 leases for it. It shall be the duty of every county to make  
16 such report on forms furnished by the Department of Finance,  
17 whenever requested so to do, but not more than once every 30  
18 days.

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

22 "(b) As long as the constitution so requires, all  
23 stationery, printing, paper and fuel used in the legislative  
24 and other departments of the government shall be furnished,  
25 and the printing, binding, and distribution of the laws,

1 journals, departmental reports, and all other printing,  
2 binding and repairing and furnishing the halls and rooms used  
3 for the meetings of the Legislature and its committees shall  
4 be performed under contract, to be given to the lowest  
5 responsible bidder below a maximum price, under such  
6 regulations as have been or may be prescribed by law and as  
7 may be promulgated by the Director of Finance. No member or  
8 officer of any department of the government shall be in any  
9 way interested in such contracts, and all such contracts shall  
10 be subject to the approval of the Governor, the Auditor and  
11 the Treasurer. All contracts not required to be approved by a  
12 named officer or officers by the Constitution shall be subject  
13 to the approval of the Director of Finance, who may, however,  
14 provide for the automatic approval thereof by compliance with  
15 the general rules or regulations promulgated by him or her.

16 "(c) The Purchasing Agent is further authorized to  
17 establish and maintain a system for the purchase of personal  
18 property and nonprofessional services by state departments,  
19 agencies, boards and institutions that conduct their  
20 purchasing activities through the Division of Purchasing,  
21 through the utilization of approved credit cards. The  
22 Purchasing Agent shall establish by administrative rule a  
23 process for the competitive solicitation of credit card  
24 providers. The State Comptroller and the Purchasing Agent  
25 shall promulgate fiscal procedures governing the payment of

1 charges incurred by credit card users and the utilization of  
2 credit cards. The use of approved credit cards shall be  
3 established by the State Comptroller and the State Purchasing  
4 Agent, with the approval of the State Finance Director, and be  
5 published through the Alabama Fiscal Procedures, in which each  
6 purchase made using approved credit cards is required to have  
7 prior approval by the department head or his or her designee  
8 and a record of such purchases and approvals is to be  
9 maintained. The Purchasing Agent may select the provider or  
10 providers offering the highest fees to the Division for the  
11 use of its credit card or credit cards. Fees received by the  
12 Division for the use of credit cards shall be placed in a  
13 special fund entitled the State Procurement Fund in the State  
14 Treasury for the use of the Division and such funds shall be  
15 appropriated, budgeted and allotted in accordance with  
16 Sections 41-4-80 to 41-4-96, inclusive and 41-19-1 to  
17 41-19-12, inclusive and only in amounts stipulated in general  
18 appropriations bills and other appropriation bills. Approved  
19 credit cards may be issued to requisitioning agencies upon the  
20 recommendation of the Purchasing Agent and the approval of the  
21 Director of Finance. Approved credit cards will be assigned to  
22 the department and will be in limited number. Such credit  
23 cards may be utilized to purchase items of personal property  
24 and nonprofessional services, and shall not exceed the  
25 limitations set forth in Section 41-16-24(a) of the Code of

1 Alabama. The director of the governmental entity utilizing  
2 credit cards is responsible for the proper use of credit cards  
3 assigned to his or her agency, in accordance with rules  
4 established by Alabama Fiscal Procedures. The Purchasing Agent  
5 may collect any credit card from any agency at any time due to  
6 improper use. The Purchasing Agent shall submit an annual  
7 report and accounting regarding the use of credit cards by  
8 each governmental entity to the Director of Finance and the  
9 Governor.

10 "(d) The Division of Purchasing is authorized to  
11 charge a bi-annual registration fee to vendors desiring to  
12 register with the Division to receive invitations-to-bid for  
13 any goods or services solicited by the Division and to charge  
14 departments, boards, bureaus, commissions, agencies, offices,  
15 and institutions for their proportionate share of operating  
16 costs of the Division. Any fee must be set by administrative  
17 rule upon the approval of the Director of Finance. Any fees  
18 collected under this provision shall be deposited in the State  
19 Treasury to the credit of the State Procurement Fund and shall  
20 be appropriated, budgeted and allotted in accordance with  
21 Sections 41-4-80 to 41-4-96, inclusive and 41-19-1 to  
22 41-19-12, inclusive and only in amounts stipulated in general  
23 appropriations bills and other appropriation bills.

24 "§41-4-113.

1           "(a) Unless otherwise provided by law, when the head  
2 of any state department desires any items of personal property  
3 or non professional services, or other articles of use or  
4 necessity, application shall be made therefor to the division  
5 of purchasing, stating by items the articles desired and  
6 needed, the fund that will pay for their purchase, that the  
7 articles are necessary, that the amount of the requisition is  
8 not excessive, and that no part of the requisition will be  
9 used except in conducting the public business. The application  
10 shall be kept on file in the office of the division of  
11 purchasing.

12           "(b) For any application, requisition or other  
13 document submitted to the Division of Purchasing which  
14 requires the signature of the head of any state department,  
15 any public employee or public official, or his or her  
16 designee, the Purchasing Agent may accept an electronic  
17 signature or other electronic indicia of the required  
18 signature. The Purchasing Agent may prescribe by written  
19 policy the types of electronic signatures and the methods for  
20 providing and affixing electronic signatures. The submission  
21 of documents containing approved electronic signatures or  
22 other electronic indicia does not relieve the department head,  
23 public employee or public official of the responsibility for  
24 the accuracy of certifications otherwise required by law or

1 rule and he or she shall be accountable as if the document  
2 were personally signed and attested to before a notary public.

3 "§41-16-20.

4 "(a) With the exception of contracts for public  
5 works whose competitive bidding requirements are governed  
6 exclusively by Title 39, all contracts of whatever nature for  
7 labor, services, work, or for the purchase or lease of  
8 materials, equipment, supplies, other personal property or  
9 other nonprofessional services, involving seven thousand five  
10 hundred dollars (\$7,500) or more, made by or on behalf of any  
11 state department, board, bureau, commission, committee,  
12 institution, corporation, authority, or office shall, except  
13 as otherwise provided in this article, be let by free and open  
14 competitive bidding, on sealed bids, to the lowest responsible  
15 bidder.

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

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

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

23 "(3) PRIORITY #3. Is organized for business under  
24 the applicable laws of the state as a corporation,  
25 partnership, or professional association and has maintained at

1 least one retail outlet or service center for the product or  
2 service within the state for not less than one year prior to  
3 the deadline date for the competitive bid.

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 department, board, bureau, commission, committee, institution,  
8 corporation, authority, or office is the awarding authority  
9 and the bid is no more than five percent greater than the bid  
10 of the lowest responsible bidder, the awarding authority may  
11 award the contract to the preferred vendor.

12 "§41-16-21.1.

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

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

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

1           "§41-16-24.

2           "(a) The Purchasing Agent shall advertise for sealed  
3 bids on all purchases in excess of the competitive bid limit  
4 as established in Title 41, Chapter 16, Article 2, Section 20  
5 by posting notice thereof on a bulletin board maintained  
6 outside the office door or by publication of notice thereof,  
7 one time, in a newspaper published in Montgomery County,  
8 Alabama, or in any other manner, for such lengths of time as  
9 the Purchasing Agent may determine. The Purchasing Agent shall  
10 also solicit sealed bids or bids to be submitted by reverse  
11 auction procedure by notifying all Alabama persons, firms, or  
12 corporations who have filed a request in writing that they be  
13 listed for solicitation on bids for the particular items set  
14 forth in the request and the other persons, firms, or  
15 corporations the Purchasing Agent deems necessary to insure  
16 competition. If any person, firm, or corporation whose name is  
17 listed fails to respond to any solicitation for bids after the  
18 receipt of three solicitations, the listing may be cancelled  
19 by the Purchasing Agent.

20           "(b) All bids, except as provided in subsection (d),  
21 shall be sealed when received, shall be opened in public at  
22 the hour stated in the notice, and all original bids together  
23 with all documents pertaining to the award of the contract  
24 shall be retained in accordance with a retention period

1 established by the State Records Commission and shall be open  
2 to public inspection.

3 "(c) If the purchase or contract will involve an  
4 amount of the competitive bid limit as established in Title  
5 41, Chapter 16, Article 2, Section 20 or less, the Purchasing  
6 Agent may make the purchases or contracts either upon the  
7 basis of sealed bids, reverse auction procedure, or in the  
8 open market.

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

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

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

21 "(e) No purchase or contract involving an amount in  
22 excess of the competitive bid limit as established in Title  
23 41, Chapter 16, Article 2, Section 20 shall be divided into  
24 parts involving amounts of the competitive bid limit as  
25 established in Title 41, Chapter 16, Article 2, Section 20 or

1 less for the purpose of avoiding the requirements of this  
2 article. All such partial contracts involving the competitive  
3 bid limit as established in Title 41, Chapter 16, Article 2,  
4 Section 20 or less shall be void.

5 "§41-16-27.

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

24 "(b) The awarding authority may award multiple  
25 purchase contracts resulting from a single invitation-to-bid

1 where the specifications of the items of personal property  
2 intended to be purchased by a requisitioning agency or  
3 agencies are determined, in whole or in part, by technical  
4 compatibility and operational requirements. In order to make  
5 multiple awards under this provision, the awarding authority  
6 must include in the invitation-to-bid a notice that multiple  
7 awards may be made and the specific technical compatibility or  
8 operational requirements necessitating multiple awards.

9 Multiple awards of purchase contracts with unique technical  
10 compatibility or operational specifications shall be made to  
11 the lowest responsible bidder complying with the unique  
12 technical compatibility or operational specifications. The  
13 requisitioning agency shall provide the awarding authority  
14 with the information necessary for it to determine the  
15 necessity for the award of multiple purchase contracts under  
16 this provision.

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

23 "(c) Each bid, with the name of the bidder, shall be  
24 entered on a record. Each record, with the successful bid  
25 indicated thereon and with the reasons for the award if not

1 awarded to the lowest bidder shall, after award of the order  
2 or contract, be open to public inspection.

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

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

24 "(f) Contracts for the purchase of services for  
25 receiving, processing, and paying claims for services rendered

1 recipients of the Alabama Medicaid program authorized under  
2 Section 22-6-7 which are required to be competitively bid may  
3 be awarded to the bidder whose proposal is most advantageous  
4 to the state, taking into consideration cost factors, program  
5 suitability factors (technical factors) including  
6 understanding of program requirements, management plan,  
7 excellence of program design, key personnel, corporate or  
8 company resources and designated location, and other factors  
9 including financial condition and capability of the bidder,  
10 corporate experience and past performance and priority of the  
11 business to insure the contract awarded is the best for the  
12 purposes required. Each of these criteria shall be given  
13 relative weight value as designated in the invitation to bid,  
14 with price retaining the most significant weight.  
15 Responsiveness to the bid shall be scored for each designated  
16 criteria. If, for reasons cited above, the bid selected is not  
17 from the lowest bidding contractor, the Alabama Medicaid  
18 Agency shall present its reasons for not recommending award to  
19 the low bidder to the Medicaid Interim Committee. The  
20 committee shall evaluate the findings of the Alabama Medicaid  
21 Agency and must, by resolution, approve the action of the  
22 awarding authority before final awarding of any such contract.  
23 The committee shall also hear any valid appeals against the  
24 recommendation of the Alabama Medicaid Agency from the low bid  
25 contractor(s) whose bid was not selected.

1           "(g) Notwithstanding the requirements under Sections  
2     41-16-20, 41-16-21, and this section, contractual services and  
3     purchases of personal property regarding the athletic  
4     department, food services, and transit services negotiated on  
5     behalf of two-year and four-year colleges and universities may  
6     be awarded without competitive bidding provided that no state  
7     revenues, appropriations, or other state funds are expended or  
8     committed and when it is deemed by the respective board that  
9     financial benefits will accrue to the institution, except that  
10    in the cases where an Alabama business entity as defined by  
11    this section is available to supply the product or service  
12    they will have preference unless the product or service  
13    supplied by a foreign corporation is substantially different  
14    or superior to the product or service supplied by the Alabama  
15    business entity. However, the terms and conditions of any of  
16    the services or purchases which are contracted through  
17    negotiation without being competitively bid and the name and  
18    address of the recipient of such a contract shall be  
19    advertised in a newspaper of general circulation in the  
20    municipality in which the college or university is located  
21    once a week for two consecutive weeks commencing no later than  
22    10 days after the date of the contract. For the purposes of  
23    this section, the term Alabama business entity shall mean any  
24    sole proprietorship, partnership, or corporation organized in  
25    the State of Alabama."

1                   Section 2. This act shall not affect the review of  
2 any contract by the Contract Review Permanent Legislative  
3 Oversight Committee.

4                   Section 3. Sections 41-4-130 through 41-4-161, Code  
5 of Alabama, 1975, are hereby repealed.

6                   Section 4. This act shall become effective  
7 immediately upon its passage and approval by the Governor, or  
8 its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB556  
Senate 07-MAY-09  
I hereby certify that the within Act originated in and passed  
the Senate, as amended.

McDowell Lee  
Secretary

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House of Representatives  
Passed: 15-MAY-09

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By: Senator Mitchell