

1 HB260  
2 165554-1  
3 By Representatives Patterson, Williams (P), Ball, Hanes,  
4 Sanderford, Whorton (R), Greer and McCutcheon  
5 RFD: Education Policy  
6 First Read: 12-MAR-15

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8 SYNOPSIS: Existing law governs competitive bidding by  
9 city and county boards of education for the  
10 purchase of certain goods and services.

11 This bill would allow purchases of services  
12 under a competitive bid nationwide cooperative  
13 purchasing program.

14 This bill would allow purchases from a  
15 vendor under a GSA contract.

16 This bill would specify requirements for  
17 purchases of sole source products or services.

18 This bill would also change from three to  
19 five years the maximum length of time certain  
20 contracts may be let.

21  
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25  
26 Relating to competitive bidding by schools; to amend  
27 Sections 16-13B-2 and 16-13B-7, Code of Alabama 1975; to allow

1 purchases of services under a competitive bid nationwide  
2 cooperative purchasing program; to allow purchases from a  
3 vendor under a GSA contract; to specify requirements for  
4 purchases of sole source products or services; and to change  
5 from three to five years the maximum length of time certain  
6 contracts may be let.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Sections 16-13B-2 and 16-13B-7, Code of  
9 Alabama 1975, are amended to read as follows:

10 "§16-13B-2.

11 "(a) Competitive bids shall not be required for  
12 utility services for county or city boards of education, the  
13 rates for which are fixed by law, regulation, or ordinance,  
14 and the competitive bidding requirements of this chapter shall  
15 not apply to:

16 "(1) The purchase of insurance.

17 "(2) Contracts for securing services of attorneys,  
18 physicians, architects, teachers, superintendents of  
19 construction, artists, appraisers, engineers, consultants,  
20 certified public accountants, public accountants, or other  
21 individuals possessing a high degree of professional skill  
22 where the personality of the individual plays a decisive part.

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

25 "(4) Contracts for fiscal or financial advice or  
26 services.

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

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

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

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

11           "(9) Existing contracts up for renewal for  
12 sanitation or solid waste collection, recycling, or disposal  
13 and those providing the service.

14           "(10) Purchases of computer and word processing  
15 hardware when the hardware is the only type that is compatible  
16 with hardware already owned by the entity taking bids and  
17 custom software.

18           "(11) Contractual services and purchases of  
19 commodities for which there is only one vendor or supplier and  
20 contractual services and purchases of personal property which  
21 by their very nature are impossible to award by competitive  
22 bidding.

23           "(12) Contractual services and purchases of products  
24 related to, or having an impact upon, security plans,  
25 procedures, assessments, measures, or systems, or the security  
26 or safety of persons, structures, facilities, or  
27 infrastructures.

1           "(13) Purchases of goods or services made as a part  
2 of any purchasing cooperative sponsored by the National  
3 Association of Counties, its successor organization, or any  
4 other competitive bid nationwide cooperative purchasing  
5 program, or other national or regional governmental  
6 cooperative purchasing program. ~~This subdivision shall not  
7 apply to goods for which a service or service contract,  
8 whether subject to competitive bidding under this chapter or  
9 not, is necessary to utilize the goods.~~ Such purchases may  
10 only be made if all of the following occur:

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

14           "b. The goods or services are either not at the time  
15 available to local boards of education on the state purchasing  
16 program or are available at a price equal to or less than that  
17 on the state purchasing program.

18           "c. The purchase is made through a participating  
19 Alabama vendor holding an Alabama business license if such a  
20 vendor exists.

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

25           "(15) Purchases of goods or services from vendors  
26 that have been awarded a current and valid GSA contract, as  
27 defined in Section 41-16-71. Prices paid for the goods or

1 services may not exceed the lowest competitively bid price for  
2 these goods or services and may not exceed the price on an  
3 existing state purchasing program.

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

5 "(1) Any purchases of products where the price of  
6 the products is already regulated and established by state  
7 law.

8 "(2) Purchases made by individual schools of the  
9 county or municipal public school systems from moneys other  
10 than those raised by taxation or received through  
11 appropriations from state or county sources.

12 "(c) The city and county boards of education shall  
13 establish and maintain such purchasing facilities and  
14 procedures as may be necessary to carry out the intent and  
15 purpose of this chapter by complying with the requirements for  
16 competitive bidding in the operation and management of each  
17 city and county board of education.

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

21 "§16-13B-7.

22 "(a) When purchases are required to be made through  
23 competitive bidding, awards shall be made to the lowest  
24 responsible bidder taking into consideration the qualities of  
25 the commodities proposed to be supplied, their conformity with  
26 specifications, the purposes for which required, the terms of  
27 delivery, transportation charges, and the dates of delivery.

1 If at any time after the award has been made the lowest  
2 responsible bidder notifies the awarding authority in writing  
3 that the bidder will no longer comply with the terms of the  
4 award to provide the goods or services to the awarding  
5 authority under the terms and conditions of the original  
6 award, or the awarding authority documents that the lowest  
7 responsible bidder defaults under the terms of the original  
8 award, the awarding authority may terminate the award to the  
9 defaulting bidder and make an award to the second lowest  
10 responsible bidder for the remainder of the award period  
11 without rebidding, provided the award to the second lowest  
12 responsible bidder is in all respects made under the terms and  
13 conditions contained in the original bid specifications and is  
14 for the same or a lower price than the bid originally  
15 submitted to the awarding authority by the second lowest  
16 responsible bidder.

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

1           "(1) The board of education can document ~~to the~~  
2 ~~satisfaction of the State Building Commission~~ that the sole  
3 source product or service is of an indispensable nature, no  
4 other product or service can meet its needs, all other viable  
5 alternatives have been explored, and it has been determined  
6 that only this product or service will fulfill the function  
7 for which the product is needed. Frivolous features will not  
8 be considered.

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

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

19           "(c) (1) For purchases of personal property in  
20 instances where the awarding authority determines that the  
21 total cost of ownership over the expected life of the item or  
22 items, including acquisition costs plus sustaining costs or  
23 life cycle costs, can be reasonably ascertained from industry  
24 recognized and accepted sources, the lowest responsible bid  
25 may be determined to be the bid offering the lowest life cycle  
26 costs and otherwise meeting all of the conditions and  
27 specifications contained in the invitation to bid. To utilize



1 this subdivision to determine the lowest responsible bidder,  
2 the awarding authority shall include a notice in the  
3 invitation to bid that the lowest responsible bid may be  
4 determined by using life cycle costs and identify the industry  
5 recognized and accepted sources that will be applicable to  
6 such an evaluation.

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

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

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

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

25 Section 2. This act shall become effective  
26 immediately following its passage and approval by the  
27 Governor, or its otherwise becoming law.

