

SB100 INTRODUCED



1 U95RXG-1
2 By Senator Orr
3 RFD: Finance and Taxation Education
4 First Read: 21-Mar-23
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SYNOPSIS:

Under existing law, with exceptions, the Chief Procurement Officer administers and oversees the procurement of supplies and services of any state governmental body.

This bill would change the name of the Office of the Chief Procurement Officer to the Division of Procurement.

This bill would specify that the appointment of attorneys and experts by a court, and the retention of experts for purposes of litigation or avoidance of litigation, is not subject to the procurement code.

This bill would provide an exemption to the procurement code for the procurement of certain health professionals who provide services on Alabama Medicaid Agency task forces, committees, and boards.

This bill would further provide for the authority to make emergency procurements and the authority of the Contract Review Legislative Oversight Committee to review those procurements.

This bill would authorize the redaction of certain professional service contracts entered into by the Attorney General until the conclusion of litigation.

This bill would provide for the procurement of



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29 physicians retained by a governmental agency to provide
30 medical services to the State of Alabama.

31 This bill would further define professional
32 services to include the management or administration of
33 occupational licensing boards, and would subject
34 contracts for these services to review by the Contract
35 Review Legislative Oversight Committee.

36 This bill would also subject the procurement of
37 supplies, services, and professional services by a
38 district attorney or sheriff to the competitive bid law
39 governing counties and municipalities and exempt them
40 from the state procurement code.

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A BILL

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TO BE ENTITLED

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AN ACT

47

48 Relating to state government; to amend Sections
49 41-4-114, 41-4-120, 41-4-122 as last amended by Act 2022-357
50 of the 2022 Regular Session, 41-4-124, 41-4-125, Section
51 41-4-126 as last amended by Act 2022-357 of the 2022 Regular
52 Session, 41-4-136, 41-4-139, 41-4-172, 29-2-41.1, and
53 29-2-41.2, Code of Alabama 1975, to further provide exemptions
54 to the state procurement code; to further provide for the
55 authority to make emergency procurements and the review of
56 those procurements by the Contract Review Legislative



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57 Oversight Committee; to provide for the procurement of certain
58 health professionals who provide services to the Medicaid
59 Agency under certain conditions; to provide for the redaction
60 of certain professional services contracts by the Attorney
61 General; to further provide for the definition of professional
62 services to include the management and administration of
63 occupational licensing boards; to provide for the procurement
64 of supplies, services, and professional services by district
65 attorneys or sheriffs; to provide for the change of the name
66 of the Office of the Chief Procurement Officer to the Division
67 of Procurement; and to add Section 41-4-125.01 to the Code of
68 Alabama 1975, to provide for the procurement of physicians
69 retained to provide medical services to the State of Alabama.

70 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

71 Section 1. Sections 41-4-114, 41-4-120, 41-4-122 as
72 last amended by Act 2022-357 of the 2022 Regular Session,
73 41-4-124, 41-4-125, Section 41-4-126 as last amended by Act
74 2022-357 of the 2022 Regular Session, 41-4-139, 41-4-172,
75 29-2-41.1, and 29-2-41.2, Code of Alabama 1975, are amended to
76 read as follows:

77 "§41-4-114

78 (a) For purposes of this article, the following words
79 ~~shall~~ have the following meanings:

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

83 (2) CAPITAL EQUIPMENT. Tangible personal property that
84 can be appraised for value, is not disposable or consumable,



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85 is stand alone, and has a useful life of one year or more.

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

91 (4) CHIEF PROCUREMENT OFFICER. The ~~person~~ individual
92 holding the position created in Section 41-4-120, as the head
93 of the ~~Office of the Chief Procurement Officer~~ Division of
94 Procurement.

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

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

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

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

112 (9) CONTRACTING AGENCY. The Governor, Attorney General,



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113 or director of a state agency, department, bureau, commission,
114 authority, public corporation, or instrumentality of the State
115 of Alabama that seeks to enter a contract.

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

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

120 (12) DESIGNEE. A duly authorized representative of a
121 person.

122 (13) ELECTRONIC. Electrical, digital, magnetic,
123 optical, electromagnetic, or other similar technology.

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

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

139 (16) JUDICIAL AGENCY. Any department, appellate court,
140 trial court, board, body, bureau, commission, committee,



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141 institution, corporation, authority, or office created,
142 established, and operating as an agency of the judicial
143 department of this state. The term includes, but is not
144 limited to, the Administrative Office of Courts, the State Law
145 Library, the Court of the Judiciary, and the Sentencing
146 Commission.

147 (17) LEGISLATIVE AGENCY. The Alabama State Legislature
148 and any department, board, body, bureau, commission,
149 committee, institution, corporation, authority, or office
150 created, established, and operating as an agency of the
151 legislative department of this state. The term includes, but
152 is not limited to, the Legislative Services Agency and the
153 Department of Examiners of Public Accounts.

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

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

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



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169 (21) PROFESSIONAL SERVICES. The services of physicians,
170 architects, engineers, landscape architects, land surveyors,
171 geoscientists, attorneys, teachers, artists, appraisers, and
172 other individuals, or business entities offering the services
173 of those individuals, who possess a high degree of scientific
174 or specialized skill and knowledge where the experience and
175 professional qualifications of the service provider are
176 particularly relevant to the provision of the required
177 service. The term also includes the management or
178 administration of any occupational licensing board, as defined
179 under Section 41-9A-1, by a person other than a state
180 employee.

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

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

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

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



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197 incidental to the required performance.

198 (26) SIGNATURE. A manual signature or an electronic
199 signature, as defined in Section 8-1A-2.

200 (27) SOLICITATION. Any request to submit quotes, bids,
201 or offers to the state for the procurement of supplies or
202 services. The term includes invitations to bid and requests
203 for proposals.

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

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

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

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

221 "§41-4-120

222 There is created within the Department of Finance the
223 ~~Office of the Chief Procurement Officer~~ Division of
224 Procurement, headed by the Chief Procurement Officer."



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225 "§41-4-122

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

228
229 (b) Consistent with this article, the Chief Procurement
230 Officer shall adopt operational procedures governing the
231 internal functions of the ~~Office of the Chief Procurement~~
232 ~~Officer~~ Division of Procurement.

233 (c) Except as otherwise specifically provided in this
234 article, the Chief Procurement Officer, in accordance with
235 rules adopted under this article, shall do all of the
236 following:

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

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

245 (3) Require, upon request of the Chief Procurement
246 Officer, the periodic reporting of all procurement by or for
247 counties, the purchase, contract, or lease price of which is
248 one hundred dollars (\$100) or more, and require information in
249 connection therewith; to prescribe forms and fix the time for
250 submitting such reports; and, when requested by any county,
251 municipal corporation, other local public body, including any
252 board of education, to make such purchase contract, or lease



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253 for it. It shall be the duty of every county to make the
254 report on forms furnished by the ~~Office of the Chief~~
255 ~~Procurement Officer~~ Division of Procurement, whenever
256 requested to do so, but not more than once every 30 days.

257 (4) Perform other functions and duties of the
258 Department of Finance as may be assigned by the Director of
259 Finance.

260 (d) The Chief Procurement Officer may establish and
261 maintain a system for the purchase of supplies and services by
262 governmental bodies that conduct their procurement activities
263 through the ~~Office of the Chief Procurement Officer~~ Division
264 of Procurement, through the utilization of approved credit
265 cards. County and municipal governments and instrumentalities
266 or public corporations thereof may participate in the state
267 fleet fuel card program subject to the terms and conditions of
268 the program related to the utilization of the fleet fuel card;
269 provided, however, that county and municipal governments and
270 instrumentalities or public corporations thereof shall not
271 otherwise be subject to this subsection. The Chief Procurement
272 Officer shall establish by rule a process for the competitive
273 solicitation of credit card providers. The state Comptroller
274 and the Chief Procurement Officer shall adopt fiscal
275 procedures governing the payment of charges incurred by credit
276 card users and the utilization of credit cards. The use of
277 approved credit cards shall be established by the state
278 Comptroller and the Chief Procurement Officer, with the
279 approval of the Director of Finance, and be published through
280 the Alabama fiscal procedures, in which each purchase made



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281 using approved credit cards is required to have prior approval
282 by the department head or his or her designee and a record of
283 each purchase and approval is to be maintained. The Chief
284 Procurement Officer may select the provider or providers
285 offering the highest fees to the division for the use of its
286 credit card or credit cards. Fees received by the division for
287 the use of credit cards shall be placed in a special fund
288 entitled the State Procurement Fund in the State Treasury for
289 the use of the division and the funds shall be appropriated,
290 budgeted, and allotted in accordance with Sections 41-4-80 to
291 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and
292 only in amounts stipulated in general appropriations bills and
293 other appropriation bills. Approved credit cards may be issued
294 to requisitioning agencies upon the recommendation of the
295 Chief Procurement Officer and the approval of the Director of
296 Finance. Approved credit cards shall be assigned to the
297 department and limited in number. Approved credit cards may be
298 utilized to purchase items of supplies and services, and may
299 not exceed the limitations set forth by rule. The director of
300 the governmental body utilizing credit cards is responsible
301 for the proper use of credit cards assigned to his or her
302 agency, in accordance with rules established by Alabama fiscal
303 procedures. The Chief Procurement Officer may collect any
304 credit card from any governmental body at any time due to
305 improper use. The Chief Procurement Officer shall submit an
306 annual report and accounting regarding the use of credit cards
307 by each governmental body to the Director of Finance and the
308 Governor.



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

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

326 "§41-4-124

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

332 (b) The following governmental bodies are subject to
333 this article except as it relates to the purchase of
334 professional services and the oversight and authority of the
335 Chief Procurement Officer, but shall establish and maintain
336 procurement offices and personnel and shall adopt rules as may



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337 be necessary to comply with this article:

338 (1) All educational and eleemosynary institutions
339 governed by a board of trustees or other similar governing
340 body.

341 (2) The Retirement Systems of Alabama.

342 (3) The Department of Mental Health.

343 (c) The Alabama Department of Transportation is subject
344 to this article except as it relates to the purchase of
345 professional services and shall adopt rules governing the
346 purchase of professional services by the department which are
347 consistent with the principles contained in this article and
348 promote fairness, competition, transparency, integrity, and
349 value in the procurement process.

350 (d) The procurement of any supplies, services, or
351 professional services by a district attorney or sheriff shall
352 be solely governed by Article 3, commencing with Section
353 41-16-50 of Chapter 16.

354 ~~(d)~~ (e) The procurement of any supplies or services by a
355 legislative agency or judicial agency shall be solely governed
356 by procedures adopted by the Legislative Council for all
357 legislative agencies and by rules adopted by the Supreme Court
358 of Alabama for all judicial agencies. The procedures adopted
359 shall be consistent with any applicable requirements of the
360 Constitution of Alabama of ~~1901~~ 2022, and shall be established
361 in accordance with the underlying purposes and policies of
362 promoting responsible and efficient use of public funds
363 dedicated and appropriated to the agencies for their use,
364 providing consistency of application of rules and requirements



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365 across all agencies within the applicable branch of state
366 government, and promoting fairness, competition, transparency,
367 integrity, and value in the procurement process. In no case
368 may the legislative and judicial departments of the state
369 adopt procedures that conflict with the laws of this state
370 regarding the public disclosure of the use of public funds and
371 the transparency of public expenditures, or that otherwise
372 conflict with state law regarding public records and public
373 access to those records. Except for the requirement to act in
374 good faith, no other provision of this article shall apply to
375 legislative or judicial agencies; provided, that the
376 legislative and judicial departments may adopt all or any part
377 of this article and its accompanying rules.

378 ~~(e)~~ (f) The procurement of any supplies or services by
379 the Alabama State Port Authority shall be solely governed by
380 procedures adopted by the Board of Directors of the Alabama
381 State Port Authority. The procedures adopted shall be
382 consistent with any applicable requirements of the
383 Constitution of Alabama of ~~1901~~ 2022, and shall be established
384 in accordance with the underlying purposes and policies of
385 promoting responsible and efficient use of the funds of the
386 Alabama State Port Authority, providing consistency of
387 application of rules and requirements across all agencies
388 within the applicable branch of state government, and
389 promoting fairness, competition, transparency, integrity, and
390 value in the procurement process. Except for the protection of
391 information otherwise legally considered commercially
392 confidential, sensitive, or of a nature that upon release



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393 would harm the competitive advantage of itself or its
394 customers, concessionaires, lessees, or suppliers, the Alabama
395 State Port Authority may not adopt procedures that conflict
396 with the laws of this state regarding the public disclosure of
397 the use of its funds and the transparency of its expenditures,
398 or that otherwise conflict with state law regarding public
399 records and public access to those records. Except as provided
400 in this subsection and the requirement to act in good faith,
401 no other provision of this article shall apply to the Alabama
402 State Port Authority; provided, however, that the Alabama
403 State Port Authority may adopt all or any part of this article
404 and its accompanying rules."

405 "§41-4-125

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



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

435 (b) This ~~section~~article does not apply to either of
436 the following:

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

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

440 (c) Nothing in this section shall be construed as
441 altering or amending the Governor's authority to retain
442 attorneys under Section 36-13-2; provided, the Governor shall
443 select the attorneys from ~~three proposals received from~~
444 ~~attorneys included on~~ the list maintained by the Attorney
445 General.

446 (d) (1) A governmental body may not enter into a
447 contingency fee contract with any attorney or law firm unless
448 the contracting agency makes a written determination prior to



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449 entering into a contingency fee contract that contingency fee
450 representation is both cost effective and in the public
451 interest. Any written determination shall include specific
452 findings for each of the following factors:

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

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

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

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

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

470 a. Twenty-two percent of any recovery ~~of up to~~ that
471 does not exceed ten million dollars (\$10,000,000); plus

472 b. Twenty percent of any portion of the recovery
473 ~~between~~ that exceeds ten million dollars (\$10,000,000) ~~and but~~
474 does not exceed twenty-five million dollars (\$25,000,000);
475 plus

476 c. Sixteen percent of any portion of the recovery



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477 ~~between~~ that exceeds twenty-five million dollars (\$25,000,000)
478 ~~and~~ but does not exceed fifty million dollars (\$50,000,000);
479 plus

480 d. Twelve percent of any portion of the recovery
481 ~~between~~ that exceeds fifty million dollars (\$50,000,000) ~~and~~
482 but does not exceed seventy-five million dollars
483 (\$75,000,000); plus

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

487 f. Seven and one-tenth (7.1) percent of any portion of
488 the recovery exceeding one hundred million dollars
489 (\$100,000,000).

490 (3) The aggregate fee paid under a contingency fee
491 contract may not exceed seventy-five million dollars
492 (\$75,000,000).

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

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



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505 limitations with respect to the specified contingency fee
506 contract.

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

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

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

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

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

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

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

531 (7) The Attorney General shall develop a standard
532 addendum to every contract for contingent fee attorney



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533 services that shall be used in all cases, describing in detail
534 what is expected of both the contingency fee counsel and the
535 state, including, without limitation, the requirements listed
536 in subdivision (6).

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

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

557 (10) Any contingency fee paid to a private attorney or
558 law firm shall be paid from the State Treasury from the funds
559 recovered as a result of the ~~contingent~~contingency fee
560 contract within 30 days of receipt of the recovery unless



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561 ordered to do otherwise by a court with jurisdiction over the
562 litigation subject to the contingency fee contract."

563 "§41-4-126

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

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

570 (2) Published books in any format such as digital,
571 audio, or hardcopy; maps; periodicals; and technical
572 pamphlets.

573 (3) Utility services where no competition exists or
574 where rates are fixed by law.

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

577 (5) Purchases of products made or manufactured by the
578 blind or visually handicapped under the direction or
579 supervision of the Alabama Institute for Deaf and Blind in
580 accordance with ~~Sections 21-2-1 to 21-2-4, inclusive~~ Chapter 2
581 of Title 21.

582 (6) Photographs purchased from a federal agency.

583 (7) Barter transactions by the Department of
584 Corrections.

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

587 (9) Supplies and services that by their very nature are
588 impossible to award by competitive process, as determined by



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589 [the Chief Procurement Officer.](#)

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

594 (c) Nothing in this article is intended to repeal or
595 limit any provision of Section 23-1-40 or ~~Sections 23-2-140~~
596 ~~through 23-2-175~~ [Article 5 or Article 6 of Chapter 2 of Title](#)
597 [23, commencing with Section 23-2-140](#), relating to the
598 procurement authority of the State Department of
599 Transportation and the Alabama Toll Road, Bridge and Tunnel
600 Authority. To the extent any provision contained in this
601 article conflicts with Section 23-1-40 or ~~Sections 23-2-140~~
602 ~~through 23-2-175~~ [Article 5 or Article 6 of Chapter 2 of Title](#)
603 [23](#), the latter governs.

604 (d) Nothing in this article repeals or limits any
605 provision of Section 41-4-400, relating to the procurement
606 authority of the Division of Construction Management. To the
607 extent any provision contained in this article conflicts with
608 Section 41-4-400, the latter governs.

609 (e) Nothing in this article repeals or limits any
610 provision of Section 14-7-8, relating to the procurement
611 authority of Alabama Correctional Industries. To the extent
612 any provision contained in this article conflicts with Section
613 14-7-8, the latter governs.

614 (f) This article does not apply to any state authority,
615 board, or other entity with respect to contracts relating to
616 the issuance of debt that is required to be repaid from



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617 sources other than state funds.

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

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

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

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

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

643 (3) Public notice shall be provided by the purchasing
644 agency within 10 days of the execution of a contract under



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645 this subsection. The public notice shall include, at a
646 minimum, the terms and conditions of any of the supplies or
647 services that are contracted through negotiation without being
648 competitively bid and the name and address of the recipient of
649 the contract.

650 (k) This article does not apply to purchases and
651 contracts for the repair of equipment used in the construction
652 and maintenance of highways by the Department of
653 Transportation.

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

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

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

669 (o) Nothing in this article is intended to repeal or
670 limit any provision of Article 2, Chapter 1, Title 23,
671 relating to the powers and authority of the Department of
672 Transportation. To the extent any provision contained in this



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673 article conflicts with Article 2, Chapter 1, Title 23, the
674 latter governs.

675 (p) Governmental bodies may purchase supplies from any
676 vendor that offers the item at a price at least ten percent
677 below the price established on a statewide contract by the
678 ~~Office of the Chief Procurement Officer~~ Division of
679 Procurement for the same item, provided that each purchase,
680 whether for a single item or multiple items, does not exceed
681 an amount established by rules of the Chief Procurement
682 Officer. The ~~Office of the Chief Procurement Officer~~ Division
683 of Procurement shall confirm that the terms and conditions of
684 the purchases are substantially similar to those of the
685 statewide contract for the same item prior to the approval of
686 any purchase under this subsection. Any purchase that would be
687 directly connected to any information technology network used
688 by the state shall require prior approval by the Secretary of
689 Information Technology. If the purchaser is to take possession
690 of the purchased supplies at the vendor's physical location,
691 any acquisition of supplies under this subsection may be
692 purchased only from vendors physically located within the
693 state. The price of any supplies purchased under this
694 subsection shall be the market price readily available to the
695 public at large. The acquisition of supplies under this
696 subsection is subject to the supervision and administration of
697 the ~~Office of the Chief Procurement Officer~~ Division of
698 Procurement.

699 (q) Nothing in this article is intended to repeal or
700 limit any provision of Chapter 61E of Title 16, relating to



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701 the powers and authority of the Department of Education to
702 enter into joint purchasing agreements on behalf of
703 educational institutions. To the extent any provision
704 contained in this article conflicts with Chapter 61E of Title
705 16, the latter governs.

706 (r) Nothing in this article shall be construed as
707 repealing Section 9-2-106 or Section 9-2-107.

708 (s) This article does not apply to purchases by the
709 Alabama Department of Rehabilitation Services of supplies and
710 services for the Alabama Department of Rehabilitation Services
711 consumers.

712 (t) This article does not apply to the Alabama Medicaid
713 Agency for purposes of the selection of professional service
714 providers for contracts with physicians, pharmacists,
715 dentists, optometrists, opticians, nurses, and other health
716 professionals which involve only service on agency task
717 forces, boards, or committees."

718 "§41-4-139

719 (a) A written determination of nonresponsibility of a
720 bidder or offeror shall be made in accordance with rules
721 adopted by the Chief Procurement Officer. The unreasonable
722 failure of a bidder or offeror to promptly supply information
723 in connection with an inquiry with respect to responsibility
724 may be grounds for a determination of nonresponsibility with
725 respect to the bidder or offeror.

726 (b) Confidential information furnished by a bidder or
727 offeror under this section may not be disclosed outside of the
728 ~~Office of the Chief Procurement Officer~~ Division of



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729 Procurement or the purchasing agency without the prior written
730 consent of the bidder or offeror."

731 "§41-4-172

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

736 "§29-2-41.1

737 In case of an emergency adversely affecting public
738 health, public safety, ~~security~~, or ~~the economic public~~
739 welfare of the state, so declared in writing ~~to the Governor~~
740 by the Chief Procurement Officer or the head of ~~the~~
741 ~~institution or a purchasing~~ agency ~~involved~~, as defined under
742 Section 41-4-114, setting forth the nature of the danger to
743 public health, public safety, ~~security~~ or ~~the economic public~~
744 welfare of the state, contracts may be let to the extent
745 necessary to meet the emergency without review by the
746 committee. Any contract let pursuant to this section involving
747 an emergency adversely affecting the ~~economic public~~ welfare
748 of the state shall be let for a period of not more than 60
749 days during which time the committee shall review a contract
750 for a longer period of time if such services are required
751 beyond the 60-day limit hereby imposed."

752 "§29-2-41.2

753 (a) For the purposes of this article the term personal
754 and professional services specifically includes independent
755 contractor agreements as well as individual employment
756 agreements.



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757 (b) Notwithstanding any other provisions of this
758 article, all contracts for employment of an attorney to
759 provide legal services, including contracts involving an
760 attorney providing legal services under an agreement with the
761 Attorney General, shall be reviewed by the committee.
762 Contracts for professional services executed by the Attorney
763 General in preparation for or during litigation may be
764 redacted until the conclusion of the litigation. ~~Provided,~~
765 ~~however, contracts~~ Contracts for appointment of attorneys for
766 the Department of Transportation for right of way condemnation
767 cases are exempt from the provisions of this article."

768 Section 2. Section 41-4-125.01 is added to the Code of
769 Alabama 1975, to read as follows:

770 41-4-125.01

771 Physicians retained to provide medical services to the
772 State of Alabama shall be selected by the purchasing state
773 entity from a list of qualified physicians maintained by the
774 Alabama Medical Licensure Commission. All physicians
775 interested in providing medical services to the State of
776 Alabama may apply and shall be included on the listing.

777 Section 3. This act shall become effective immediately
778 following its passage and approval by the Governor, or its
779 otherwise becoming law.