173927-2 : n : 02/16/2016 : SCOFIELD / vr

SENATE GOVERNMENTAL AFFAIRS COMMITTEE AMENDMENT #1 TO SB162

On page 8, line 18, delete "three" and insert in lieu thereof the following:

~~three~~ five

174036-2 : n : 02/16/2016 : COLEMAN / vr

SENATE GOVERNMENTAL AFFAIRS COMMITTEE AMENDMENT #2 TO SB162

On page 1, delete line 21 and insert in lieu thereof the following:

To amend Sections 16-13B-2, 16-13B-7, and 41-16-51, Code

On page 2, delete line 4 and insert in lieu thereof the following:

Section 1. Sections 16-13B-2, 16-13B-7, and 41-16-51 of the

On page 8, after line 21, insert the following:

"§41-16-51.

"(a) Competitive bids shall not be required for utility services, the rates for which are fixed by law, regulation, or ordinance, and the competitive bidding requirements of this article shall not apply to:

"(1) The purchase of insurance.

"(2) The purchase of ballots and supplies for conducting any primary, general, special, or municipal election.

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

"(4) Contracts of employment in the regular civil service.

"(5) Contracts for fiscal or financial advice or services.

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

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

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

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

"(10) Existing contracts up for renewal for sanitation or solid waste collection, recycling, and disposal

between municipalities or counties, or both, and those providing the service.

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

"(12) Professional services contracts for codification and publication of the laws and ordinances of municipalities and counties.

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

"(14) Purchases of dirt, sand, or gravel by a county governing body from in-county property owners in order to supply a county road or bridge project in which the materials will be used. The material shall be delivered to the project site by county employees and equipment used only on projects conducted exclusively by county employees.

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

"(16) Subject to the limitations in this subdivision, purchases of goods made as a part of the purchasing cooperative sponsored by the National Association of Counties, its successor organization, or any other competitive bid nationwide cooperative purchasing program, or other national or regional governmental cooperative purchasing program. This subdivision shall not apply to ~~goods for which a service or service contract, whether subject to competitive bidding under this article or not, is necessary to utilize the goods~~ voice or wireless communication services. Such purchases may only be made if all of the following occur:

"a. The goods or services being purchased are available as a result of a competitive bid process conducted by a governmental entity and approved by the Alabama Department of Examiners of Public Accounts for each bid.

"b. The goods or services are either not at the time available to counties on the state purchasing program or are available at a price equal to or less than that on the state purchasing program.

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

"d. The entity purchasing goods under this subdivision has been notified by the Department of Examiners of Public Accounts that the competitive bid process utilized

by the cooperative program offering the goods complies with this subdivision.

"(17) Purchase of goods or services, other than wireless communication services, whether voice or data, from vendors that have been awarded a current and valid Government Services Administration contract. Any purchase made pursuant to this subdivision shall be under the same terms and conditions as provided in the Government Services Administration contract. Prices paid for such goods and services, other than wireless communication services, whether voice or data, may not exceed the amount provided in the Government Services Administration contract.

"(b) This article shall not apply to:

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

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

"(3) The purchase, lease, sale, construction, installation, acquisition, improvement, enlargement, or expansion of any building or structure or other facility designed or intended for lease or sale by a medical clinic board organized under Sections 11-58-1 to 11-58-14, inclusive.

"(4) The purchase, lease, or other acquisition of machinery, equipment, supplies, and other personal property or services by a medical clinic board organized under Sections 11-58-1 to 11-58-14, inclusive.

"(5) Purchases for public hospitals and nursing homes operated by the governing boards of instrumentalities of the state, counties, and municipalities.

"(6) Contracts for the purchase, lease, sale, construction, installation, acquisition, improvement, enlargement, or extension of any plant, building, structure, or other facility or any machinery, equipment, furniture, or furnishings therefor designed or intended for lease or sale for industrial development, other than public utilities, under Sections 11-54-80 to 11-54-99, inclusive, or Sections 11-54-20 to 11-54-28, inclusive, or any other statute or amendment to the Constitution of Alabama authorizing the construction of plants or other facilities for industrial development or for the construction and equipment of buildings for public building authorities under Sections 11-56-1 to 11-56-22, inclusive.

"(7) The purchase of equipment, supplies, or materials needed, used, and consumed in the normal and routine operation of any waterworks system, sanitary sewer system, gas system, or electric system, or any two or more thereof, that are owned by municipalities, counties, or public corporations, boards, or authorities that are agencies, departments, or

instrumentalities of municipalities or counties and no part of the operating expenses of which system or systems have, during the then current fiscal year, been paid from revenues derived from taxes or from appropriations of the state, a county, or a municipality.

"(8) Purchases made by local housing authorities, organized and existing under Chapter 1 of Title 24, from moneys other than those raised by state, county, or city taxation or received through appropriations from state, county, or city sources.

"(c) The state trade schools, state junior colleges, state colleges, and universities under the supervision and control of the State Board of Education, the district boards of education of independent school districts, the county commissions, and the governing bodies of the municipalities of the state shall establish and maintain such purchasing facilities and procedures as may be necessary to carry out the intent and purpose of this article by complying with the requirements for competitive bidding in the operation and management of each state trade school, state junior college, state college, or university under the supervision and control of the State Board of Education, the district boards of education of independent school districts, the county commissions, and the governing bodies of the municipalities of the state and the governing boards of instrumentalities of counties and municipalities, including waterworks boards,

sewer boards, gas boards, and other like utility boards and commissions.

"(d) Contracts entered into in violation of this article shall be void and anyone who violates the provisions of this article shall be guilty of a Class C felony."

SB162

173361-1

By Senator Dial

RFD: Governmental Affairs

First Read: 09-FEB-16

173361-1:n:02/03/2016:KMS/cj LRS2016-363

SYNOPSIS: This bill would provide for the length of time certain contracts may be let under the state Competitive Bid Law, would specify requirements for purchases from a sole source, permit purchases from a vendor under a general services administration contract, and permit purchases of services under a competitive bid nationwide cooperative purchasing program.

A BILL

TO BE ENTITLED

AN ACT

To amend Section 16-13B-2 and Section 16-13B-7, Code of Alabama 1975, relating to the Competitive Bid Law; to provide for the length of time certain contracts may be let; to specify requirements for purchases from a sole source; to permit purchases from a vendor under a general services administration contract; and to permit purchases of services

under a competitive bid nationwide cooperative purchasing program.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§16-13B-2.

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

"(1) The purchase of insurance.

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

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

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

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

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

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

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

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

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

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

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

"(13) Purchases of goods <u>or services</u> made as a part of any purchasing cooperative sponsored by the National Association of Counties, its successor organization, or any other competitive bid nationwide cooperative purchasing

program, or other national or regional governmental cooperative purchasing program. This subdivision shall not apply to ~~goods for which a service or service contract, whether subject to competitive bidding under this chapter or not, is necessary to utilize the goods~~ voice or wireless communications services. Such purchases may only be made if all of the following occur:

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

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

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

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

"(15) Purchase of goods or services from vendors that have been awarded a current and valid general services administration contract. Prices paid for the goods or services may not exceed the lowest competitively bid price for these goods or services and may not exceed the price on an existing state purchasing program.

"(b) This chapter shall not apply to:

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

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

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

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

"§16-13B-7.

"(a) When purchases are required to be made through competitive bidding, awards shall be made to the lowest responsible bidder taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purposes for which required, the terms of delivery, transportation charges, and the dates of delivery. If at any time after the award has been made the lowest responsible bidder notifies the awarding authority in writing that the bidder will no longer comply with the terms of the

award to provide the goods or services to the awarding authority under the terms and conditions of the original award, or the awarding authority documents that the lowest responsible bidder defaults under the terms of the original award, the awarding authority may terminate the award to the defaulting bidder and make an award to the second lowest responsible bidder for the remainder of the award period without rebidding, provided the award to the second lowest responsible bidder is in all respects made under the terms and conditions contained in the original bid specifications and is for the same or a lower price than the bid originally submitted to the awarding authority by the second lowest responsible bidder.

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

"(1) The board of education can document ~~to the satisfaction of the State Building Commission~~ that the sole source product or service is of an indispensable nature, no

other product or service can meet its needs, all other viable alternatives have been explored, and it has been determined that only this product or service will fulfill the function for which the product is needed. Frivolous features will not be considered.

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

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

"(c)(1) For purchases of personal property in instances where the awarding authority determines that the total cost of ownership over the expected life of the item or items, including acquisition costs plus sustaining costs or life cycle costs, can be reasonably ascertained from industry recognized and accepted sources, the lowest responsible bid may be determined to be the bid offering the lowest life cycle costs and otherwise meeting all of the conditions and specifications contained in the invitation to bid. To utilize this subdivision to determine the lowest responsible bidder, the awarding authority shall include a notice in the invitation to bid that the lowest responsible bid may be

determined by using life cycle costs and identify the industry recognized and accepted sources that will be applicable to such an evaluation.

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

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

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

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

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