

Section 41-16-72

Procurement of professional services.

Any other provision of law notwithstanding, the procurement of professional services by any agency, department, board, bureau, commission, authority, public corporation, or instrumentality of the State of Alabama shall be conducted through the following selection process:

(1)a. Except as otherwise provided herein, attorneys retained to represent the state in litigation shall be appointed by the Attorney General in consultation with the Governor from a listing of attorneys maintained by the Attorney General. All attorneys interested in representing the State of Alabama may apply and shall be included on the listing. The selection of the attorney or law firm shall be based upon the level of skill, experience, and expertise required in the litigation and the fees charged by the attorney or law firm shall be taken into consideration so that the State of Alabama receives the best representation for the funds paid. Fees shall be negotiated and approved by the Governor in consultation with the Attorney General. Maximum fees paid for legal representation may be established by executive order of the Governor.

Nothing in this article and nothing in Chapter 15 of Title 36 modifies or repeals the exclusive authority of the governing boards of the public institutions of higher education to direct and control litigation involving their respective universities and to employ and retain legal counsel of their own choice, consistent with their broad powers of management and control set forth in Chapters 47-56 of Title 16 and in the constitution. Provided further, nothing in this article modifies or repeals the authority of the Attorney General to direct and control litigation involving the state or any agency, department, or instrumentality of the state, or the authority of the Governor to appear in civil cases in which the state is interested.

b. Attorneys retained by any state purchasing entity to render nonlitigation legal services shall be selected by such entity from a listing of attorneys maintained by the Legal Advisor to the Governor. All attorneys interested in representing any purchasing state entity may apply and shall be included on the listing. The selection of the attorney or law firm shall be based upon the level of skill, experience, and expertise required for the services, but the fees charged by the attorney or law firm shall be taken into consideration so that such state entity shall receive the best representation for the funds paid. Fees for such services shall be negotiated by the state entity requiring the services and shall be subject to the review and approval of the Governor or the Director of Finance when so designated by the Governor.

c. This article shall not apply to the appointment by a court of attorneys or experts.

d. This article shall not apply to the retention of experts by the state for the purposes of litigation, or avoidance of litigation.

e. Nothing in this article shall be construed as altering or amending the Governor's authority to retain attorneys pursuant to Section 36-13-2, however, the Governor shall select such attorneys from three proposals received from attorneys included on the listing maintained by the Attorney General.

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

(3) Professional services of architects, landscape architects, engineers, land surveyors, geoscience, and other similar professionals shall be procured in accordance with competitive, qualification-based selection policies and procedures. Selection shall be based on factors to be developed by the procuring state entity which may include, among others, the following:

- a. Specialized expertise, capabilities, and technical competence, as demonstrated by the proposed approach and methodology to meet project requirements.
- b. Resources available to perform the work, including any specialized services within the specified time limits for the project.
- c. Record of past performance, quality of work, ability to meet schedules, cost control, and contract administration.
- d. Availability to and familiarity with the project locale.
- e. Proposed project management techniques.
- f. Ability and proven history in handling special project contracts.

Notice of need for professional services shall be widely disseminated to the professional community in a full and open manner. Procuring state entities shall evaluate such professionals that respond to the notice of need based on such state entity's qualification-based selection process criteria. Any such procuring state entity shall then make a good faith effort to negotiate a contract for professional services from the selected professional after first discussing and refining the scope of services for the project with such professional. Where the Alabama Building Commission has set a fee schedule for the professional services sought, fees shall not exceed the schedule without approval of the Director of the Alabama Building Commission and the Governor.

(4) The Director of Finance, through the Division of Purchasing of the Department of Finance, shall establish and maintain lists of professional service providers, other than those specifically named in this section, which may be required from time to time by any state agency, department, board, bureau, commission, authority, public corporation, or instrumentality. When such professional services are needed, the purchasing state entity

shall solicit proposals from the professional service providers desiring to receive requests for proposals. The purchasing state entity shall select the professional service provider that best meets the needs of the purchasing entity as expressed in the request for proposals. Price shall be taken into consideration. In the event the fees paid to the selected professional service provider exceed by 10 percent the professional service fee offered by the lowest qualified proposal, the reasons for selecting a professional service provider must be stated in writing, signed by the director of the purchasing state entity, and made a part of the selection record.

(5) Contracts for professional services shall be limited only to that portion of a contract relating to the professional service provided. Goods purchased by the state in conjunction with the contract for professional services shall be purchased pursuant to Section 41-16-20.

(6) Should an emergency affecting the public health, safety, convenience, or the economic welfare of the State of Alabama so declared in writing under oath to the Governor and the Attorney General by the state entity requiring the professional services arise, the professional services required to alleviate the emergency situation may be procured from any qualified professional service provider without following the process or procedure required by this article.

(7) The process set forth herein for the selection of professional service providers shall not apply to the Legislature, the Alabama State Port Authority, or to colleges and universities governed by a board of trustees or by the Department of Postsecondary Education. The State Department of Education shall not be subject to the provisions of this article, requiring the process set forth herein for the selection of professional service providers, except for the future acquisition of professional services in support of computer technology on a statewide basis which exceeds the amount of expenditures set forth within this chapter. However, if a state agency or department is able to provide the necessary computer networking services, then the services shall be provided by the agency or department without being contracted to an outside provider. In the event the State Department of Education has intervened into the financial operations of a local board of education, the State Department of Education shall follow the provisions of law applicable to local boards of education for services related to the local board of education subject to intervention.

(8) Under any contract letting process in this section, all requests for proposals from any state entity purchasing professional services shall be sent to all professional service providers regardless of race that have notified the state of their interest in receiving state business.

(9) Under any contract letting process in this section, all lists containing professional service providers and contractors for contracts under the provisions of this article shall seek the racial and ethnic diversity of the state.

(Act 2001-956, p. 817, §4.)