

APA-2

Department of Finance

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Finance

RULE NO. & TITLE:

Current: 355-4-1 Division of Purchasing

New: 355-4-1 Office of the Chief Procurement Officer

INTENDED ACTION: To repeal current Rule 355-4-1 pertaining to the Division of Purchasing, which is abolished as of October 1, 2022, by Act 2021-296. To replace current Rule 355-4-1 with a new rule regarding the Office of the Chief Procurement Officer.

SUBSTANCE OF PROPOSED ACTION: The new rule implements the new Alabama procurement law, enacted Act 2021-296.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held only if requested by an interested party. A written request shall be submitted to the agency contact person listed below. Interested persons may present their view in writing to the contact person listed below.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: The Department of Finance, Legal Division will accept comments or requests for a hearing no later than May 5, 2022 at 5 p.m.

CONTACT PERSON AT AGENCY: Jacob Harper, Department of Finance, Legal Division, 600 Dexter Avenue, Suite E-309, Montgomery, AL 36130, Phone 334-242-4520 or Jacob.Harper@finance.alabama.gov.



Jacob Harper

STATE OF ALABAMA
DEPARTMENT OF FINANCE
ADMINISTRATIVE CODE

CHAPTER 355-4-1
DIVISION OF PURCHASING

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355-4-1-.01 Repeal Of Previous Rules. All previously existing rules for the Division of Purchasing are repealed and replaced in their entirety by this chapter.
Author: Alabama Department of Finance
Authority: Code of Ala. 1975, §41-4-35.
History: New Rule: Filed November 15, 2001; effective December 20, 2001.

355-4-1-.02 Definitions. As used in this chapter, except where the document clearly indicates otherwise, or where the term is defined elsewhere in this chapter, the following definitions shall apply:

- (a) Awarding Authority refers to the Department of Finance, Division of Purchasing.
- (b) Division of Purchasing refers to the Department of Finance, Division of Purchasing.
- (c) Term Contract means an open-end contract for a specified term, against which the Division of Purchasing may issue purchase orders for the goods or services specified by the contract.

- (d) Purchase means the acquiring of any goods or services by the state.
- (e) Contract means a document or documents stating the terms and conditions for acquiring goods or services. In the event of a purchase-by-purchase order, the contract shall be deemed to include the purchase order, the Invitation to Bid, and the bid of the successful bidder.
- (f) Invitation to Bid (ITB) means a solicitation in writing for goods and/or services requiring all bids to be sealed when received and to be opened in public.
- (g) Bid means any response submitted by a bidder in response to an ITB.
- (h) Notice of Award means a document accepting a bid made by a bidder.
- (i) Substitution is defined as an item that materially conforms to the specifications but is technically different from the item specified.
- (j) "As written" or "In writing" or other references to writings, notices, correspondence or documents may include e-mail or other electronic communication if such form of communication is approved by the Director of Purchasing.
- (k) Notice of Intent to Award is an electronic posting on the Purchasing Division website evidencing the intent of the awarding authority to accept a bid and to award a contract at the expiration of five calendar days.
- (l) Evaluation Period is the time after bid opening and before the issuance of a "Notice of Intent to Award" during which time a bid is examined and reviewed for compliance with mandatory specifications and terms and conditions for the good or service being procured.
- (m) Bid Subscription Organization is any organization, corporation, partnership or other business entity that maintains a government procurement and bid database and that provides information and leads about government bids to subscribers for a fee.

Author: Alabama Department of Finance

Authority: Code of Ala. 1975, §41-4-35.

History: Filed September 30, 1982. **Amended:** Filed December 6, 1989; effective January 15, 1990. **Repealed and New**

Rule: Filed November 15, 2001; effective December 20, 2001.

Amended: Filed January 18, 2008; effective February 22, 2008.

Amended: Filed April 6, 2010; effective May 11, 2010.

Ed. Note: This rule was previously Rule No. 355-4-1-.01 (same title) as per certification filed November 15, 2001; effective December 20, 2001.

355-4-1-.03 General Requirements Of Vendors.

(1) Vendor Registration Application. Every person or firm (also known hereinafter as Vendor) desiring to receive an ITB notice on goods or services purchased through Division of Purchasing must submit a vendor registration application. The information submitted on the application will determine the types of goods or services and the geographic area in which the applicant proposes to bid. Vendor registration will be conducted electronically from the Division of Purchasing website at www.purchasing.alabama.gov. Instructions for the registration process will be given at the website. The Division of Purchasing will not accept a vendor registration from any bid subscription organization. Any bid subscription organization registered and subsequently discovered will be promptly unregistered and removed from the Vendor database. Any registration fees paid by the bid subscription organization to the Division of Purchasing will be forfeited to the Division of Purchasing.

(2) Vendor Registration Fee. Every Vendor desiring to receive an ITB notice on goods and services purchased through the Division of Purchasing must, when submitting the vendor registration application, pay a bi-annual vendor registration fee in the amount of \$200.00. The registration fee must be paid at the time of registration by either an accepted credit or debit card or by electronic check. Vendor registration cannot be completed without payment of the required fee.

(3) Changes in Vendor Registration. It is the sole responsibility of the vendor to maintain its registration information. All changes and/or updates to Vendor information will be made electronically at the Division of Purchasing website at www.purchasing.alabama.gov. There is no additional fee for changes and/or updates submitted.

(4) Removal from Vendor List. The Director of Purchasing may remove from the Vendor list the name of any vendor for reasons of nonperformance on any contract or other factors deemed reasonable and valid by the Director of Purchasing.

(5) State Laws and Rules. Vendors are presumed to be knowledgeable of all laws, rules, and regulations that govern the purchasing process in Alabama. Vendors are responsible for reading all pages contained in an ITB.

(6) Improper Sale or Purchase. After a term contract has been established, it is improper for any state agency to purchase from any other source except in emergency situations. No vendor shall attempt to sell items to state agencies that are listed on term contracts with other vendors. Attempts to sell contract items of other vendors to individual state agencies by price reductions or any other manner may result in removal of the offending vendor from all vendor lists.

(7) Taxes And Fees. The State of Alabama is exempt from paying federal excise taxes and state and local sales taxes. Bidders must offer prices that do not include such taxes. Exemption certificates will be furnished upon request.

(8) Samples. Samples of items, when called for, must be furnished free of expense and, if not destroyed in the evaluation process, will, upon request, be returned at the bidder's expense. Request for the return of samples must accompany the sample and include UPS pickup slip, postage or other acceptable modes of return. Individual samples must be labeled with the bidder's name, bid number and item reference, manufacturer's brand name and number or they may be rejected. When return is not requested samples will be disposed of in manner acceptable to the Director of Purchasing.

(9) Invoices/Payments. Invoices shall be submitted in arrears to the requisitioning agency's address appearing on the purchase order unless otherwise directed. Inquiries concerning payment after correct invoices have been submitted should be directed to the requisitioning agency.

(10) Pre-Qualified Bidders. Prior to the purchase of a specific good or service, the Purchasing Division may screen potential vendors to determine those firms that are capable, financially and otherwise, of providing the desired good or service in accordance with the specifications, within the desired time frame and in the desired quantities. Only vendors on this Pre-Qualified Bidders List may respond to the ITB for the good or service.

Author: Alabama Department of Finance

Statutory Authority: Code of Ala. 1975, §41-4-35.

History: Filed September 30, 1982. **Amended:** Filed

December 6, 1989; effective January 15, 1990. **Repealed and New**

Rule: Filed November 15, 2001; effective December 20, 2001.

Amended: Filed April 6, 2010; effective May 11, 2010. **Amended:** Filed August 3, 2012; effective September 7, 2012.

Ed. Note: This rule was previously Rule No. 355-4-1-.02 (same title) as per certification filed November 15, 2001; effective December 20, 2001.

355-4-1-.04 Operational Policy.

(1) Visits, Salespersons, Etc., - To Division Of Purchasing. Visits to the Division of Purchasing are permitted and encouraged. It is preferred that visits be scheduled by appointment.

(2) Invitation To Bid (ITB). State law requires the Division of Purchasing to request sealed bids for purchases involving more than the minimum amount prescribed by law except in emergency situations or as otherwise provided by law. All bids shall be sealed when received and shall be opened in public. A bid not properly identified at or before bid opening will be disqualified. Bids properly identified in accordance with the terms and conditions of the ITB will be securely kept, unopened until stated opening date and hour. The Division of Purchasing accepts no responsibility for premature opening of a bid not properly identified or late arrival of a bid for whatever reason. At the hour stated in the notice all bids shall be opened in public for information of interested parties who may be present either in person or by representative. Such information is not to be construed as meaning any bid meets all specifications as set out in the ITB.

(3) Cancellation of ITB. The Director of Purchasing may cancel an ITB any time prior to the bid opening or award.

(4) Submission of Multiple ITB's. Responses to multiple ITB's may be submitted in the same delivery package, provided, each bid in the package is separately sealed and properly identified, as described in the ITB instructions.

(5) Postage Due or Collect. When postage due or collect mail is delivered, the Division of Purchasing cannot assume the responsibility for paying the amount due and will refuse the mail.

(6) Late Bids. Bids must be received in the Division of Purchasing on or before the date and hour designated in the ITB. Late bids will not be accepted.

(7) Bid and/or Performance Bond.

(a) A Bid or Performance Bond may be required by the ITB. When required, the amount will be stated. Bid or Performance Bond shall consist of a cashiers check, other type bank certified check (personal or company checks are not acceptable), bank or postal money order or surety bond issued by a company authorized to do business within the State of Alabama. Irrevocable letter of credit and certain U.S. notes and bonds may be accepted when approved by the Division of Purchasing no later than 24 hours prior to bid opening. The Director of Purchasing shall be the custodian of the Performance Bond. The Bond must reference the bid number and be payable to the State of Alabama.

(b) Bid Bond: Guarantees good faith and firm bid for period stated in bid and must accompany the bid. Bid Bonds will be returned to all bidders upon final award of the bid.

(c) Performance Bond: Guarantees vendor will provide on time delivery of the goods and/or services specified. When required, bond must be filed with the Division of Purchasing within time specified in the ITB, not including State holidays, after receipt of notice of award. Performance Bond will be returned, in reasonable time, after the Division of Purchasing has received verification that the contract has been satisfactorily completed.

(8) Award.

(a) Awards shall be made on contracts entered into with the lowest responsible bidder meeting all specifications and terms and conditions established by the Division of Purchasing. The Division of Purchasing reserves the right to determine the lowest responsible bidder on the basis of an individual item or group of items. Delivery dates may be a factor in awards. Multiple awards may be issued if notice is contained within the bid and when technical compatibility and/or operational specifications are defined.

(b) The Director of Purchasing may award the contract to a preferred bidder as provided in Alabama law. Tie bids will be awarded to the bidder that, in the opinion of the Director of Purchasing, will best serve the interests of the state.

(c) Upon award of a bid, the Division of Purchasing will issue a purchase order or Notice of Award which will be given for immediate acceptance by the awarded bidder. Unless the Director of Purchasing is promptly notified to the contrary, the bidder accepts the order or award and will make delivery as

specified in the award. No award is valid unless the signature of the Director of Purchasing is affixed to it.

(9) Discounts for timely payments. Discounts offered by bidders for timely payment shall be deemed part of the bid price for cash payment in the regular course of business without regard to date of remittance. Bid prices will be net unless specifically noted otherwise. All discounts offered will be considered in determining the low bid.

(10) Prices. All prices shall be shown in U.S. currency and rounded to not more than five (5) decimal places.

(11) Specifications.

(a) Reference to brand names and numbers is descriptive, but not restrictive, unless otherwise specified. Bids on equivalent items meeting the standards of quality thereby indicated will be considered, providing the bid clearly describes the article offered and indicates how it differs from the referenced brands. Descriptive literature or manufacturer's specifications plus any supplemental information necessary for comparison purposes should be submitted with the bid or the bid on that item may be rejected. Reference to literature submitted with a previous bid or on file with the Division of Purchasing will not satisfy this requirement. The burden is on the bidder to demonstrate that the item bid is equivalent to the item specified in the ITB.

(b) Reference by the Division of Purchasing on the ITB to available existing specifications shall be sufficient to make the terms of such specifications binding on the bidder. Unless the bidder specifies otherwise in its bid, it is understood the bidder is offering a referenced brand item as specified in the ITB or is bidding as specified when no brand is referenced. Failure to examine drawings, specifications and instructions will be at the bidder's risk.

(c) Substitute Offer: The bidder has the burden of demonstrating that a substitute offer is equivalent to and meets the standard of quality indicated by the brand name and number referenced.

(d) Nonconforming Merchandise: When merchandise received from the lowest responsible bidder is not in accordance with the bid specifications, it will be returned to the bidder, at bidder's expense.

(e) Warranties: All manufacturer's standard warranties will apply to all goods and services unless otherwise stated.

(12) Title: Transfer of title to merchandise will take place at the point and time the requisitioning agency receives and accepts the items purchased.

(13) Records - Public. After posting the notice of intent to award, records of the Purchasing Division pertaining to the bid process shall be open to public inspection at reasonable times and on terms that do not interfere with the regular operation of the division. Should any individual need copies of records, he/she must supply his/her own means of making the needed copies.

(14) Protest. The Division of Purchasing shall provide a notice of intent to award of all contracts let by competitive bid by electronic posting to the Division of Purchasing website. Any bidder adversely affected by an intent to award a contract let by competitive bid shall file with the Director of Purchasing a notice of protest within five (5) calendar days after the notice of intent to award is electronically posted. The notice of protest may be filed by mail, by hand delivery, by email or by facsimile. The notice of protest must be filed with the Director of Purchasing by 5:00 PM, Central Time, on the fifth calendar day after the notice of intent to award is electronically posted. A formal written protest shall be filed within seven (7) days, excluding Saturday, Sunday, and State holidays, after the notice of protest is filed. The formal written protest may be filed by email in PDF format or by mail or hand delivery. The formal written protest must be filed with the Director of Purchasing by 5:00 PM, Central Time, on the seventh day after filing the notice of protest. The bidder or its legal representative must sign the formal written protest or it will not be accepted. Failure to file either the notice of protest or the formal written protest within the time limits prescribed herein shall constitute a waiver of any protest of the award of contract.

The formal written protest shall state with particularity the facts and law upon which the protest is based. Within 30 calendar days of receipt of the timely filed, formal written protest, the Director of Purchasing shall issue a written decision with respect to the protest. Should the decision by the Director of Purchasing be adverse to the bidder, the bidder may seek relief in accordance with section 41-16-31 of the Code of Alabama.

(15) Communication During Bid Evaluation. There shall be no communication, during the evaluation period, between any

Vendor and the state agency requisitioning the good or service to be procured. Any communications, either written, oral, or electronic between the Vendor and the requisitioning state agency must come through the Division of Purchasing buyer administering the ITB.

(16) No Valid or Complaint Bids. If, after evaluation of all bids accepted by the Division of Purchasing at bid opening, the accepted bids are determined to be non-complaint with the specifications of the ITB or the terms and conditions of the ITB or the accepted bids exceed the requisitioning agency's budget for the good or service, either in total amount of the bid or in one or more pricing lines contained in the bid, the Director of Purchasing, at his discretion, may accept all bids rejected for procedural reasons. Procedural reasons include, but are not limited to, bid(s) not signed as required, bid(s) not notarized as required, bid(s) not identified as required at bid opening and others. Should a procedurally rejected bid meet all specifications, terms and conditions, and the requisitioning agency's budget requirements, the Director of Purchasing may award the contract to the Vendor submitting the bid. If, after accepting and evaluating procedurally rejected bids, no complaint bid can be found, the Director of Purchasing, at his discretion, may take action necessary to acquire the good or service sought by the requisitioning state agency by obtaining open market quotes.

Author: Alabama Department of Finance

Statutory Authority: Code of Ala. 1975, §41-4-35.

History: Filed September 30, 1982. **Amended:** Filed December 6, 1989; effective January 15, 1990. **Ed. Note:** Rule Title changed from "Bidding Policy" to "Operational Policy."

Repealed and New Rule: Filed November 15, 2001; effective December 20, 2001. **Amended:** Filed January 18, 2008; effective February 22, 2008. **Amended:** Filed April 6, 2010; effective May 11, 2010. **Amended:** Filed August 3, 2012; effective September 7, 2012.

Ed. Note: This rule was previously Rule No. 355-4-1-.03 (same title) as per certification filed November 15, 2001; effective December 20, 2001.

355-4-1-.05 Performance.

(1) Shipping Authority. The lowest responsible bidder will receive a purchase order or notice of award from the Division of Purchasing. Any vendor that delivers without a duly authorized purchase order does so at its own risk.

(2) New/Used/Altered Commodities. All supplies and equipment furnished must be new and in first class condition unless the purchase order specifically permits used items. Demonstration, previously rented, or reconditioned items are not considered new. No new or used equipment is acceptable if serial number or any other manufacturer's identifying label or make has been removed, obliterated, altered, or changed in any way.

(3) Packaging. All goods must be packaged in new packing containers. Packing that meets the requirements of common carriers is acceptable, unless otherwise required. A packing slip or invoice must accompany all shipments and must reference the purchase order and/or requisition number.

(4) Back Orders. If it is necessary to back order any items, the vendor must notify the requisitioning agency and advise as to the expected shipping or delivery date. If this date is not acceptable, the Division of Purchasing may seek remedies for default.

(5) Substitutions. Substitutions on a purchase order shall require the approval of the Director of Purchasing. The Division of Purchasing reserves the right to reject at destination and hold at the vendor's risk and expense any goods supplied by the vendor which do not conform to the specification or description embodied in the order or are inferior in any respect to the good specified. Any good bought by sample which is inferior in quality to the sample submitted by vendor will be rejected. Any goods delivered that do not meet specifications may be returned to the vendor at its expense. When a good is returned, the vendor must make immediate replacement with acceptable merchandise or the Division of Purchasing may seek remedies for default.

(6) Loss or Damage in Transit. Delivery by a vendor to a common carrier does not constitute delivery to the requisitioning agency. Any claim for loss or damage incurred during delivery shall be between the vendor and the carrier. The requisitioning agency accepts title only after satisfactory receipt at the delivery point. The requisitioning agency shall note all visible damages on the freight bill and may refuse the damaged goods. The vendor shall make immediate replacement of the damaged merchandise or be subject to damages for breach of contract. If damage is to a small portion of a total shipment and the agency will not be inconvenienced because of the shortage, the vendor may be permitted by the Director of Purchasing to deduct the amount of damage or loss from its invoice, in lieu of replacement. Risk of loss during delivery is

borne by the vendor until the goods have been accepted by the requisitioning agency, unless otherwise specified in the ITB.

(7) Freight. Delivery points shall be established for each individual purchase in the manner determined by the requisitioning agency.

(8) Delivery Time. The number of calendar days required for delivery after receipt of a purchase order shall be stated in the ITB, and/or the purchase order. When no time is stated in either document, the time shall be 14 calendar days after receipt of order. If a shipment is not made within the time period specified, the purchase order may be canceled.

(9) Receipt by Requisitioning Agency. If not otherwise stated in the order, a requisitioning agency will be said to have received goods when they have been delivered, unloaded and placed on the agency's dock or if there is no dock, inside an accessible building. Shipments will be checked against the receiving copy of the purchase order. If the purchase order requires grading certificates, USDA Stamps, or any proof of quality, such proof must accompany the shipment.

(10) Inspection. All materials, workmanship, equipment, and supplies are subject to inspection and test at any place or time. Final inspection, acceptance or rejection will be made at delivery destination. Goods that do not meet specifications will be rejected unless substitutions have been approved by the Director of Purchasing. Failure to inspect or to reject upon receipt, however, does not relieve the vendor of liability. When subsequent tests, after receipt, are conducted and when such tests reveal a failure to meet specifications, the requisitioning agency will reject the goods and the vendor shall immediately supply goods meeting specifications or the Division of Purchasing may seek damages including but not limited to the testing expense, regardless of whether a part of or all of the goods have been consumed through the testing process. Rejected goods shall be removed by the vendor promptly after rejection, at its expense. If not removed in fourteen (14) calendar days, they may be disposed of at the discretion of the requisitioning agency.

(11) Monitoring of Services. Performance of services will be monitored by the requisitioning agency and/or the Division of Purchasing and evaluation reports may be filed with the Division of Purchasing. Performance not meeting specifications will result in cancellation of contract or purchase order and may result in vendor being removed from the Vendor list.

(12) Complaints About Vendors. Any deficiencies in products or vendor performance shall be reported by the requisitioning agency to the vendor and the Division of Purchasing. Failure of a vendor to respond promptly may result in cancellation of the contract or purchase order and may subject the vendor to removal from the Vendor List.

(13) Default by Vendor. In case of a default on a contract and/or purchase order by a vendor, the requisitioning agency may procure the goods or services from other sources and hold the vendor responsible for any excess cost in price and/or handling.

(14) Cancellation of Purchase Order/Contract. A purchase order can be canceled in whole or in part when vendor fails to deliver or perform as specified. Cancellation of a purchase order can only be made by a written purchase order change (POC) from the Division of Purchasing. A term contract can be canceled by the Division of Purchasing, for justifiable cause, by giving the vendor thirty (30) days written notice. A vendor may request cancellation and the Division of Purchasing may grant the request if performance is prevented by an act of God, act of War, order of legal authority, or other unavoidable circumstances not attributable to the fault or negligence of the vendor. The burden of proof for such relief rests with the vendor. All correspondence pertaining to cancellation of a purchase order or term contract must be addressed to the Director of Purchasing with a copy to the requisitioning agency. Contracts for services may be cancelled, for justifiable cause, by the Division of Purchasing, by giving the vendor 72 hours' written notice.

(15) Payment Withheld. Payment may be withheld until all items have been delivered and all requirements of the contract or purchase order have been fulfilled.

Author: Alabama Department of Finance

Statutory Authority: Code of Ala. 1975, §41-4-35.

History: Filed September 30, 1982. **Amended:** Filed

December 6, 1989; effective January 15, 1990. **Repealed and New**

Rule: Filed November 15, 2001; effective December 20, 2001.

Amended: Filed January 18, 2008; effective February 22, 2008.

Ed. Note: This rule was previously Rule No. 355-4-1-.04 (same title) as per certification filed November 15, 2001; effective December 20, 2001.

355-4-1-.06 No Bid Response To ITB. (REPEALED)

Author: Alabama Department of Finance
Statutory Authority: Code of Ala. 1975, §41-4-35.
History: Filed December 6, 1989; effective January 15, 1990.
Repealed and New Rule: Filed November 15, 2001; effective December 20, 2001. **Amended:** Filed January 18, 2008; effective February 22, 2008. **Repealed:** Filed August 3, 2012; effective September 7, 2012.

Ed. Note: This rule was previously Rule No. 355-4-1-.07 (same title) as per certification filed November 15, 2001; effective December 20, 2001.

355-4-1-.07 State Of Alabama Purchasing/Credit Card Program.

(1) The Division of Purchasing will establish a Purchasing/Credit Card program through a competitive solicitation process. The resulting contract or contracts will be for a period not to exceed the maximum term set out in Section 41-16-27(e) of the Code of Ala. 1975.

Author: Alabama Department of Finance
Statutory Authority: Code of Ala. 1975, §§41-4-35, 41-4-110(c).
History: **New Rule:** Filed April 6, 2010; effective May 11, 2010.
Amended: Filed August 3, 2012; effective September 7, 2012.

Ed. Note: Rules 355-4-1-.05, Request for Quotation - General Terms and Conditions; 355-4-1-.06, Invitation to Bid (ITB) - General Terms and Conditions; 355-4-1-.08, Awards; 355-4-1-.09, Transition Period, were repealed as per certification filed November 15, 2002; effective December 20, 2001. The remaining rules were renumbered accordingly. Repealed rules are listed below including history:

355-4-1-.05 Request For Quotation - General Terms And Conditions. (Repealed)

History: Filed September 30, 1982. **Repealed and new rule** (same title) **adopted in lieu thereof:** Filed December 6, 1989; effective January 15, 1990. **Repealed:** Filed November 15, 2001; effective December 20, 2001.

355-4-1-.06 Invitation To Bid (ITB) - General Terms And Conditions. (Repealed)

History: Filed September 30, 1982. **Repealed and new rule** (title changed from "Invitation to Bid" to "Invitation to Bid - General

Terms and Conditions" adopted in lieu thereof: Filed December 6, 1989; effective January 15, 1990. Repealed: Filed November 15, 2001; effective December 20, 2001.

355-4-1-.08 Awards. (Repealed)

History: Filed September 30, 1982. Amended: Filed December 6, 1989; effective January 15, 1990. Ed. Note: This rule was previously Rule No. 355-4-1-.07 entitled "Purchase Order." Repealed: Filed November 15, 2001; effective December 20, 2001.

355-4-1-.09 Transition Period. (Repealed)

History: Filed September 30, 1982. Amended: Filed December 6, 1989; effective January 15, 1990. Ed. Note: This rule was previously Rule No. 355-4-1-.08 (same title). Repealed: Filed November 15, 2001; effective December 20, 2001.

**State of Alabama
Department of Finance
Administrative Code**

**Chapter 355-4-1
Office of the Chief Procurement Officer**

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355-4-1-.01 Repeal of Previous Rules.

The rules set forth in this Chapter govern all contracts solicited and entered into after October 1, 2022. Contracts entered into on or before October 1, 2022 will continue to be governed by the administrative rules in effect on October 1, 2022 until such contracts expire or are terminated at which time the rules in effect on October 1, 2022 shall be repealed and replaced by these rules.

Author: Department of Finance Legal Division

Statutory Authority: Code of Ala. 1975, § 41-4-35

History: New Rule: Filed March 21, 2022; effective October 1, 2022.

355-4-1-.02 Written Determinations.

(1) Preparation and Execution. Where the State Procurement Code or these Rules require a written determination, the written determination shall set out sufficient facts, circumstances, and reasoning to substantiate the specific determination which is made. The Chief Procurement Officer

is authorized to prescribe methods and operational procedures to be used in preparing written determinations. Each written determination shall be filed in the solicitation or contract file to which it applies, shall be retained as part of such file for so long as the file is required to be maintained, and except as otherwise provided by law or regulation, shall be open to public inspection.

Author: Department of Finance Legal Division

Statutory Authority: Code of Ala. 1975, § 41-4-113; 41-4-133; 41-4-137; 41-4-139; 41-4-143(a)(2)

History: New Rule: Filed March 21, 2022; effective October 1, 2022.

355-4-1-.03 **Definitions Generally.**

As used throughout these Rules, words and terms defined in the State Procurement Code shall have the same meaning as in the Code, and each word or term listed in this Rule shall have the meaning set forth below or in the Rule cited, unless:

- (a) its use clearly requires a different meaning; or
- (b) a different definition is prescribed for a particular Chapter or portion thereof.

(1) Brand Name or Equal Specification is defined in Rule 355-4-4-.01.

(2) Brand Name Specification is defined in Rule 355-4-4-.01.

(3) Capability is defined in Rule 355-4-3-.01.

(4) Confidential Information is defined as:

- (a) Information which is exempt from disclosure under Code of Ala. 1975, § 41-4-115 of the Code of Alabama 1975;
- (b) Information which is protected as a matter of state or federal security or privacy statute, regulation, or policy, including without limitation;

1. Sensitive Personally Identifying Information as defined in the Alabama Data Breach Notification Act at Code of Ala. 1975, § 8-28-2(6);
2. Protected Health Information as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule;
3. Federal Tax Information as defined and regulated by the US Internal Revenue Service Publication 1075 or equivalent publication;
4. Criminal Justice Information as defined and regulated by the Federal Bureau of Investigation Criminal Justice Information Services (CJIS) Security Policy; and
5. In addition to any statutory or regulatory definitions, any biometric data or geolocation data of any individual.

- (c) Software source code and configurations, whether developed by the State or otherwise;
- (d) Login or authentication credentials for any electronic system, whether such credentials are administrative or individual;
- (e) Records pertaining to information technology systems, including cyber security plans, vulnerability testing, reports, and assessments materials, detailed network system designs, diagrams, and schematics, detailed hardware and software inventories, or other materials the release of which would make public security details that would aid an attempted security breach or circumvention of law as to the items assessed;
- (f) Any audit, assessment, compliance report, work papers or any combination of these that if disclosed could allow unauthorized access to the State's information technology assets;
- (g) Proprietary or trade secret information;
- (h) Unopened bids or proposals; and
- (i) Unpriced technical offers;

(5) Days mean calendar days. In computing any period of time prescribed by these Rules, Code of Ala. 1975, § 1-1-4 shall govern.

- (6) Discussions is defined in Rule 355-4-3-.01.
- (7) Interested Party is defined in Rule 355-4-6-.01.
- (8) May denotes the permissive. However, the words "no person may" mean that no person is required, authorized, or permitted to do the act prescribed.
- (9) Offer means proposal and Offeror means a person submitting a proposal when a procurement is made by a source selection method other than competitive sealed bidding.
- (10) Practicable denotes what may be accomplished or put into practical application. For purposes of these Rules, the terms "practical" and "practicable" shall be considered to have the same meaning.
- (11) Prequalification for Inclusion on Bidders Lists is defined in Rule 355-4-3-.01.
- (12) Protest means a written statement concerning any unresolved disagreement or controversy arising out of the solicitation or award of a State contract filed in accordance with Rule 355-4-6-.01.
- (13) Protestor is defined in Rule 355-4-6-.01.
- (14) Purchase Request or Purchase Requisition means that document whereby a Using Agency requests that a contract be entered into for a specific need, and may include, but is not limited to, the description of the requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by the State Procurement Code or these Rules.
- (15) Qualified Products List is defined in Rule 355-4-4-.01.
- (16) Solicitation is defined in Rule 355-4-3-.01.
- (17) Specification is defined in Rule 355-4-4-.01.
- (18) Specification for a Common or General Use Item is defined in Rule 355-4-4-.01.
- (19) State is defined as the State of Alabama.

(20) State Procurement Code is defined as Act 2021-296 as amended.

(21) Technical Proposal means solicited or unsolicited submission of information from a prospective contractor which states how that party intends to perform certain work; its technical and business qualifications; and its proposed delivery, warranty, and other terms and conditions as those might differ from or supplement the State's solicitation requirements. It shall include such pricing information as may be required.

Author: Department of Finance Legal Division

Statutory Authority: Code of Ala. 1975, § 41-4-114

History: New Rule: Filed March 21, 2022; effective October 1, 2022.

355-4-1-.04 **Public Access to Procurement Information.**

(1) All bids or offers received become records of the Chief Procurement Officer or the Purchasing Agency and will be open to inspection by the public after award unless exempt from disclosure under Alabama law or regulation. Notwithstanding the forgoing, there shall be a presumption against public disclosure of Confidential Information, as determined by the Chief Procurement Officer or the Purchasing Agency.

(2) Unless specifically requested by the State, a bidder or offeror should not voluntarily provide to the Chief Procurement Officer or the Purchasing Agency any information that the bidder or offeror claims is Confidential Information. All material submitted will become the property of the State and may be returned only at the State's option. Confidential Information should not be voluntarily included in a bid or offer because the Chief Procurement Officer or the Purchasing Agency may use any materials or ideas submitted in any bid or offer without compensation to the bidder or offeror.

(3) If the State requests from the bidder or offeror, or if the bidder or offeror chooses to include, Confidential Information, the bidder or offeror may so designate information as such and request that the information be

exempt from disclosure. The bidder or offeror must clearly designate the part of the response that contains Confidential Information in order to claim exemption from disclosure by submitting both an unredacted copy and a redacted copy of its bid or offer. Copies shall be clearly identified as either "ORIGINAL COPY" or "REDACTED COPY". Failure to properly redact and clearly identify all Confidential Information may result in the Chief Procurement Officer or the Purchasing Agency determining that the bidder or offeror waived any right to assert such confidentiality.

(4) The Chief Procurement Officer or the Purchasing Agency may review the claimed Confidential Information to determine whether the material is of such nature that confidentiality is warranted. Notwithstanding the above and regardless of any markings or requests by the bidder or offeror, the Chief Procurement Officer or the Purchasing Agency may evaluate bids or offers to determine whether information should be considered Confidential Information.

(5) The decision as to whether such confidentiality is appropriate rests solely with Chief Procurement Officer or the Purchasing Agency. If the Chief Procurement Officer or the Purchasing Agency determines that the information marked as Confidential Information does not meet a statutory or regulatory exception to disclosure, the Chief Procurement Officer or the Purchasing Agency will inform the bidder or offeror, in writing, of the information the Chief Procurement Officer or the Purchasing Agency does not consider confidential.

(6) Upon receipt of the determination by the Chief Procurement Officer or the Purchasing Agency that all or some portion of the bidder or offeror's designated information will not be treated as exempt from disclosure, the bidder or offeror may exercise the following options:

- (a) Withdraw the entire bid or offer;
- (b) Request that the Chief Procurement Officer or the Purchasing Agency evaluate the response without the claimed Confidential Information; or
- (c) Withdraw the designation of Confidential Information for such information.

(7) In submitting a bid or offer, each bidder or offeror agrees that the Chief Procurement Officer or the Purchasing Agency may reveal Confidential Information contained in the bid or offer to the staff of the Chief Procurement Officer

or the Purchasing Agency and to the staff of other Governmental Bodies, any outside consultant or other third parties who serve on an evaluation committee or who are assisting the Chief Procurement Officer or the Purchasing Agency in development of specifications or the evaluation of responses. The State shall require said individuals to protect the confidentiality of any specifically identified Confidential Information obtained as a result of their participation in the evaluation.

Author: Department of Finance Legal Division

Statutory Authority: Code of Ala. 1975, § 41-4-115

History: New Rule: Filed March 21, 2022; effective October 1, 2022.