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1, 2022 until such contracts expire or are terminated at which time the rules in effect on October 1, 2022 shall be repealed and replaced by these rules.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)

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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) Reserved. 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

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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.