

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control No. 355 Department or Agency: Department of Finance – Division of Purchasing  
Rule No. 355-4-1-.04

Rule Title: Operational Policy

         New   X   Amend          Repeal          Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?         NO        

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?         YES        

Is there another, less restrictive method of regulation available that could adequately protect the public?         NO        

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?         NO        

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?         NO        

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?         YES        

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Does the proposed rule have an economic impact?         NO        

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

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Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer         M. Sturt        

Date         6/19/12        

(DATE FILED)  
(STAMP)

APA-2  
07/04

DEPARTMENT OF FINANCE  
Division of Purchasing

**NOTICE OF INTENDED ACTION**

AGENCY NAME: Department of Finance – Division of Purchasing

RULE NO. & TITLE: 355-4-1-.04 Operational Policy

INTENDED ACTION: Amend existing rule

SUBSTANCE OF PROPOSED ACTION:

Amend the existing rule to clarify and simplify the process by which a bidder can submit bids to multiple Invitations to Bid (“ITB’s”); amend the definition of nonconforming merchandise to require compliance with bid specifications rather than compliance with a purchase order; add requirement that bid number be noted on bid and/or performance bonds.

TIME, PLACE, MANNER OF PRESENTING VIEWS:


Views on this intended action may be presented by telephone to Mose Stuart at (334) 242-4516. Written views may be submitted to:

Mose Stuart  
Department of Finance – Legal Division  
Third Floor, State Capitol Building  
Montgomery, Alabama 36130

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

August 3, 2012

CONTACT PERSON AT AGENCY: Mose Stuart

  
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Mose Stuart  
Senior Associate Counsel

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) Combining ITBs Submission of Multiple ITB's. Separate ITBs cannot be combined by the bidder in a bid response and must be separately sealed and properly identified 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 or 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 ~~competitive~~ bid and when technical ~~compatibility~~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 ~~purchase order~~ 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. If the Director of Purchasing 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 Compliant Bids. If, after evaluation of all bids accepted by the Division of Purchasing at bid opening, the accepted bids are determined to be non-compliant 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 compliant 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:** January 18, 2008; Effective February 22, 2008. **Amended:** April 6, 2010; Effective May 12, 2010.

**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.