

APA-1

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control: 355
Department or Agency: State of Alabama Department of Finance
Rule No.: 355-4-3-.06
Rule Title: Sole Source Procurement
Intended Action: Amend

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? No

To what degree?: N/A

Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? NA

Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

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.

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 Services Agency.

Signature of certifying officer

Jeffrey B Garber
Jeffrey B Garber

Date

Monday, November 18, 2024

REC'D & FILED
NOV 18, 2024

LEGISLATIVE SVC AGENCY

APA-2

STATE OF ALABAMA
DEPARTMENT OF FINANCE

NOTICE OF INTENDED ACTION

AGENCY NAME: State of Alabama Department of Finance
RULE NO. & TITLE: 355-4-3-.06 Sole Source Procurement
INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION:

Provide for Chief Procurement Officer review and certification annually of multi-year sole-source contracts.

TIME, PLACE AND 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 person listed below. Interested persons may present their views in writing to the contact person listed below.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Wednesday, January 1, 2025

CONTACT PERSON AT AGENCY:

Jeffrey B. Garber, Department of
Finance Legal Division, 600 Dexter
Ave., Ste. E-309, Ph. (334)
242-4516 or
jeff.garber@finance.alabama.gov.

Jeffrey B Garber

Jeffrey B Garber

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

355-4-3-.06

Sole Source Procurement.

(1) Conditions for Use of Sole Source Procurement. Sole source procurement is not permissible unless a required supply or service is available from only a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item. The following are examples of circumstances which could necessitate sole source procurement:

- (a) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- (b) where a sole supplier's item is needed for trial use or testing; and
- (c) where a sole supplier's item is to be procured for resale.

The determination as to whether a procurement shall be made as a sole source shall be made, in writing, by the Chief Procurement Officer. The Chief Procurement Officer may specify the application of such determination and the duration of its effectiveness. If such duration shall be for more than one year, the Chief Procurement Officer must specify the period and certify annually the continuation of any multi-year sole source contract. In cases of reasonable doubt, competition should be solicited. Any request by a Using Agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

(2) Negotiation in Sole Source Procurement. The Procurement Officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.

(3) Record of Sole Source Procurement. For the purpose of complying with Code of Ala. 1975, §41-4-149, a record of sole source procurements shall be maintained that lists:

- (a) each contractor's name;
- (b) the amount and type of each contract;
- (c) a listing of the supplies procured under each contract; and
- (d) the identification number of each contract file.

The record for each fiscal year shall be available for public inspection, except where disclosure would be detrimental to the safety or security of persons or property or to the public interest as determined by the Chief Procurement Officer.

Author: Department of Finance, Legal Division

Statutory Authority: Code of Ala. 1975, §41-4-135.

History: New Rule: Published June 30, 2022; effective August 14, 2022; operative October 1, 2022. **Amended:** January 13, 2023; Effective: May 15, 2023. Amended: Published _____ ; effective _____ .