

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 355 Department or Agency: Department of Finance

Rule No. 355-4-4

Rule Title: Specifications

New 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? N/A

Is there another, less restrictive method of regulation available that could adequately protect the public? N/A

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? N/A

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? No

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 *Janet Harper*

Date 3/21/22

REC'D & FILED

MAR 21 2022

LEGISLATIVE SVC AGENCY

APA-2

Department of Finance

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Finance

RULE NO. & TITLE: 355-4-4 Specifications

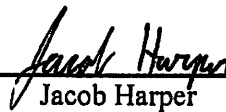
INTENDED ACTION: To propose a new rule.

SUBSTANCE OF PROPOSED ACTION: The new rule implements the new Alabama procurement law, enacted Act 2021-296. The rule governs how specifications for procurements can be developed.

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 355-4-4
Specifications**

Table of Contents

355-4-4-.01 Definitions of Terms Used in Chapter 4.

355-4-4-.02 Specifications.

355-4-4-.01 **Definitions of Terms Used in Chapter 4.**

(1) Definitions.

(a) Brand Name Specification means a specification limited to one or more items by manufacturers' names or catalogue numbers.

(b) Brand Name or Equal Specification means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet State requirements, and which provides for the submission of equivalent products.

(c) Qualified Products List means an approved list of supplies or services described by model or catalogue numbers, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.

(d) As used in Chapter 4 and related rules, specification means any description of the physical, functional, or performance characteristics, or of the nature of a supply or service. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply or service for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout the State Procurement Rules.

(e) Specification for a Common or General Use Item means a specification which has been developed and approved for repeated use in procurements.

Author: Department of Finance Legal Division

Statutory Authority: Code of Ala. 1975, § 41-4-150

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

355-4-4-.02 Specifications.

(1) General Purpose and Policies.

(a) Use of Functional or Performance Descriptions. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the State. To facilitate the use of such criteria, using agencies shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met.

(b) Preference for Commercially Available Products. It is the general policy of this State to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

(2) Authority to Prepare Specifications.

(a) Statutory Authority of the Purchasing Agency to Prepare Specifications. The Purchasing Agency is authorized to prepare specifications for any type of supplies or services, the use of which shall be monitored by the Chief Procurement Officer.

(b) Authority to Contract for Preparation of Specifications

When a written determination is made by the head of a Purchasing Agency authorized to prepare such specifications that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the State, a contract to prepare specifications for State use in procurement of supplies or services may be entered into

provided such officer and the Chief Procurement Officer retain the authority to finally approve the specifications.

(c) Small Purchase and Emergency Authority. If a specification for general or common use or a qualified products list exists for an item to be procured under 355-4-3-.04 (Small Purchases), it shall be used except as otherwise provided by the head of a Purchasing Agency. If no such specification exists, Purchasing and Using Agencies shall prepare specifications for use in such purchases. In an emergency under Rule 355-4-3-.06 (Emergency Procurements), any necessary specifications may be utilized by the Purchasing or Using Agency without regard to the provisions of this Chapter.

Author: Department of Finance Legal Division

Statutory Authority: Code of Ala. 1975, § 41-4-151

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