Alabama Procurement Rules and Regulations

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I. Statutory Reference

A. Procurement/Purchasing Statutes

State and local public contracts are governed by Title 41 of the Code of Alabama, Chapter 16. Public works contracts are governed by Title 39 of the Code of Alabama, Chapters 1, 2, 3, 5, 6, 7 and 8.

B. Other Applicable Statutes

Alabama’s ethics rules, governing, *inter alia*, lobbying activities, are codified in Title 36 of the Code of Alabama, Chapter 25.

II. Regulations

The Alabama Department of Finance, Purchasing Division’s rules related to vendors and competitive bidding are contained in Alabama Administrative Code Regulations 355-4-1-.01, *et seq.* and 355-5-1-.01, *et seq.* This is the state agency generally responsible for any purchases made by or on behalf of the State or a State agency. The Purchasing Division posts relevant statutes, regulations, and Attorney General opinions on its website under the following URL:


The rules that apply to public construction and improvement projects assigned to the Alabama Building Commission by state law for its supervision and administration are contained in Alabama Administrative Code Regulation 170-X-5-.01, *et seq.*

III. Source Selection

The Alabama Competitive Bid Law generally governs the bid process for goods and services and requires that contracts awarded through competitive bidding be awarded to the lowest responsible bidder. See Ala. Code §§ 41-16-20 and 41-16-50. The source selection techniques used generally follow those of the federal system. The procurement can be accomplished either through an ITB (Invitation to Bid), an RFP (Request for Proposals), or, in limited circumstances, sole source. The threshold for competitive bid is $15,000 for state contracts and $15,000 for certain state and local agencies. Id.

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The Alabama Competitive bid law does make a concession for awarding contracts for goods or services to one other than the lowest bidder where the lowest bidder is a foreign entity and another bidder with certain characteristics (located in local preference zone, minority-owned enterprise, woman-owned enterprise, etc.) submits a bid that is no more than 10 percent greater than the bid of the foreign entity. See Ala. Code § 41-16-50.

There are exceptions to the competitive bidding requirement, which are listed in Ala. Code §§ 41-16-21, 41-16-22 and 41-16-23 as well as § 41-16-51. These include certain departments or agencies whose principal business is honorariums from competitive bid laws, federal government purchases, and exemption from public advertisement in cases of emergencies affecting public health and safety.

The Public Works Law governs the bid process for contracts covering construction, repair, renovation, or maintenance of public buildings, structures, sewers, roads, bridges, etc. and requires that projects in excess of $50,000 be awarded by sealed bid. There is a sole source exception. See Ala. Code § 39-2-2. Public works contracts must be awarded to the lowest responsible and responsive bidder. See Ala. Code § 39-2-6. However, if the awarding authority finds all bids to be unreasonable or that it is not to the interest of the awarding authority to accept any of the bids, the awarding authority may direct that the work be done by force account. *Id.*

IV. Bid Protests and Contract Disputes

A. Bid Protests

The Alabama Code does not provide for a formal process for bid protests and contract disputes. There is, however, a protest process outlined in the Alabama Administrative Code for the Division of Purchasing within the Department of Finance. See Ala. Admin. Code r. 355-4-1-.04. The process requires that any bidder adversely affected by an intent to award a contract let by competitive bid file with the Director of Purchasing a notice of protest within five (5) calendar days after the notice of intent to award the contract. A formal written protest must then be filed within seven (7) days, excluding Saturday, Sunday, and State holidays, after the notice of protest is filed. Within 30 calendar days of submission of the protest, the Director of Purchasing will issue a written decision. If an adverse decision is issued, the bidder may seek relief in accordance with Ala. Code § 41-16-31. This section provides for potential injunctive relief:

Any taxpayer of the area within the jurisdiction of the awarding authority and any bona fide unsuccessful bidder on a particular contract shall be empowered to bring a civil action in the appropriate court to enjoin execution of any contract entered into in violation of the provisions of this article.


However, according to the Alabama Supreme Court, Section 41-16-31 does not confer upon an unsuccessful bidder a right to sue for monetary damages or recover bid preparation costs (*see Vinson Guard Serv., Inc. v. Ret. Sys. of Ala.,* 836 So. 2d 807, 810 ( Ala. 2002)), rather the remedy is limited to enjoining the execution of the contract. See *Urban Sanitation Corp. v. Pell City,* 662 F.Supp. 1041, 1044 (D. Ala. 1986) (“There is no indication in [§ 41-16-31], however,
that an unsuccessful bidder has any right or expectancy to insist upon the award of a contract. To the contrary, the statute is carefully crafted to limit the remedy to ‘enjoin[ing] execution of any contract entered into in violation of the provisions of this article.’”). Regardless, injunctive relief is rarely granted. See Spring Hill Lighting & Supply Co. v. Square D Co., 662 So. 2d 1141, 1147 (Ala. 1995), (reviewing several state and federal applications of Alabama Bid Law and determining that “[j]unjunctive relief is seldom granted in actions alleging violations of the Competitive Bid Law”).

B. Bid Protest Appeals

An unsuccessful bidder who seeks to enforce an injunction based upon Alabama Competitive Bid Law, but fails at the trial court level, may appeal to the Court of Appeals only if he has also requested a stay of the judgment. Otherwise, if the contract was awarded and performance is begun under the contract, the appeal will be deemed moot. See Masonry Arts, Inc. v. Mobile County Comm’n, 628 So. 2d 334 (Ala. 1993).

C. Contract Disputes

Because the Alabama Code does not provide a formal process for bid protests or contract disputes, the procedures described above are the only procedures available to dispute a contract award. See Ala. Code § 41-16-31 (providing for limited injunctive relief).

D. Suspension and Debarment

Neither the Alabama Code nor Alabama Administrative Code contains procedures or processes for debarment or suspension. However, there are various provisions within the Alabama Administrative Code that prohibit awarding contracts or entering agreements with debarred and/or suspended contractors. These provisions generally rely on the federal list of debarred contractors or individual actions of state and local governmental bodies. See, e.g., Ala. Admin. Code rr. 305-0-2-.01 and 335-15-7-.30.

V. Administrative and Judicial Review

A. Administrative Review

See also id. at 1147-1148. Compare Crest Constr. Corp. v. Shelby County Bd. of Educ., 612 So. 2d 425 (Ala. 1992); Steeley v. Nolen, 578 So. 2d 1278 (Ala. 1991); Horne Wrecker Service, Inc. v. City of Florence, 567 So. 2d 1285 (Ala. 1990); Advance Tank & Constr. Co. v. Arab Water Works, 910 F.2d 761 (11th Cir. 1990) (applying Alabama law); Hosp. Systems, Inc. v. Hill Rom, Inc., 545 So. 2d 1324 (Ala. 1989); McCord Contract Floors, Inc. v. City of Dothan, 492 So. 2d 996 (Ala. 1986); I F. Pate Contractors v. Mobile Airport Auth., 484 So. 2d 418 (Ala. 1986); Mobile Dodge, Inc. v. Mobile County, 442 So. 2d 56 (Ala. 1983); Int’l Telecomm. Sys. v. State, 359 So. 2d 364 (Ala. 1978); White v. McDonald Ford Tractor Co., 287 Ala. 77, 248 So. 2d 121 (1971); Townsend v. McCall, 262 Ala. 554, 80 So. 2d 262 (1955); Mitchell v. Walden Motor Co., 235 Ala. 34, 177 So. 151 (1937); and Carson Cadillac Corp. v. City of Birmingham, 232 Ala. 312, 167 So. 794 (1936), all denying injunctive relief, with Kennedy v. City of Prichard, 484 So. 2d 432 (Ala. 1986), and Arrington v. Assoc. Gen. Contractors of America, 403 So. 2d 893 (Ala. 1981), cert. denied, 455 U.S. 913 (1982), both granting injunctive relief. While it is appropriate to create a restrictive standard for interfering with the normal progress of government works, the statements in the cases discussed above indicating that the injunctive remedy is the only remedy for violation of the Competitive Bid Law were not intended to create a license for persons to commit fraud and other intentional torts.
Generally, aggrieved parties must seek administrative review from the contracting agency and exhaust all available administrative remedies before seeking judicial review.\(^3\)

**B. Judicial Review**

In Alabama, courts have generally granted deferential review of the agency’s decision making process. For example, the Alabama Supreme Court stated:

We think that **State authorities should have discretion in determining who the lowest responsible bidder is.** This discretion should not be interfered with by any court unless it is exercised arbitrarily or capriciously, or unless it is based upon a misconception of the law or upon ignorance through lack of inquiry or in violation of law or is the result of improper influence. . . .

It is fair to say that the legislative intent in passing the Competitive Bid Law was to get the best quality equipment at the lowest possible price, and the executive authorities should carry out this intent of the legislature. **These officials must have discretion, not an unbridled discretion, but one exercised within the bounds we have tried to delineate in this opinion.** The single most important requirement of the Competitive Bid Law is the good faith of the officials charged in executing the requirements of the law. A bad motive, fraud or a gross abuse of discretion will vitiate an award whether made with specifications which are quite general or very precise.


Historically, the Alabama Supreme Court has given the awarding agencies great discretion in contract disputes. In *Vinson Guard Serv., Inc. v. Ret. Sys. of Ala.*, 836 So. 2d 807, 811-12 (2002), the Alabama Supreme Court held that a trial court did not err in refusing to compel a state agency to award a contract for security services to a firm that entered a bid at the state agency’s invitation when the agency’s invitation to bid contained errors and the state agency sought to rebid the contract. The court also held that the firm that submitted the bid was not entitled to an injunction prohibiting the state agency from rebidding the contract. *Id.*

**VI. Extent of State’s Adoption or Adaptation of ABA Model Procurement Code**

The Alabama State Legislature has not adapted and does not apply any portion of the American Bar Association’s Model Procurement Act.

\(^3\) Ala. Code § 41-22-20 (“A person who has exhausted all administrative remedies available within the agency, other than rehearing, and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.”).
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I. Statutory Reference

A. Procurement/Purchasing Statutes

The State of Alaska purchasing and procurement is generally managed by the Alaska Department of Administration, Division for Administrative Services (DAS). Information about the Department of Administration can be accessed through the website at http://www.doa.alaska.gov/das/. In addition, the DAS provides a Procurement Policies and Procedure Manual (AAM), which gives general guidance as to the State’s procurement system and procedures at: http://www.doa.alaska.gov/das/pu/pdf/pandp.pdf. Purchasing is governed by the Alaska State Procurement Code, Title 36, Chapter 30, AS § 36.30.005 et seq.

A table of contents for the State Procurement Code is below:

Chapter 30. State Procurement Code
Article 1. Organization of State Procurement
Sections 36.30.005-.086
Article 2. Competitive Sealed Bidding
Sections 36.30.100-.190
Article 3. Competitive Sealed Proposals
Sections 36.30.200-.290
Article 4. Other Procurement Methods
Sections 36.30.300-.320
Article 5. Preferences
Sections 36.30.321-.338
Article 6. Contract Formation and Modification
Sections 36.30.340-.480
Article 7. Procurement Records and Reports
Sections 36.30.500-.540
Article 8. Legal and Contractual Remedies
Sections 36.30.550-.699
Article 9. Intergovernmental Relations
Sections 36.30.700-.790
Article 10. General Provisions
Sections 36.30.850-.995

B. Other Applicable Statutes

1. Alaska Online Public Notice System. AS 44.62.175.
2. Executive Branch Ethics Act. AS 39.52.010 et seq.
3. Fiscal Procedures Act, Title 37, Chapter 5, Payment for State Purchases. AS 37.05.285.
4. Administrative Procedure Act. AS 44.62 et seq.
II. **Regulations**

The State of Alaska purchasing regulations are promulgated pursuant to the statutory authority of the Administrative Procedure Act (AS 44.62) and are found in the Alaska Administrative Code (AAC), Title 2, Chapter 12.

The regulations are available online at: http://www.legis.state.ak.us/basis/aac.asp

A table of contents for the procurement regulations follows below:

**Title 2 Administration, Chapter 12 Procurement**

1. Source Selection. (2 AAC 12.010 – 0.060)
2. Specifications. (2 AAC 12.070 – 0.110)
3. Competitive Sealed Bidding; Multistep Bidding. (2 AAC 12.120 – .210)
6. Small Purchases. (2 AAC 12.400)
7. Single Source Procurement. (2 AAC 12.410 – .420)
8. Limited Competition Procurements. (2 AAC 12.430)
11. Innovative Procurement. (2 AAC 12.575 – .577)
13. Legal and Contractual Remedies. (2 AAC 12.615 – .695)
14. Intergovernmental Relations. (2 AAC 12.700 – .710)
18. General Provisions. (2 AAC 12.990)

III. **Source Selection**

The general methods of procurement include:

A. **Small Procurements. AS 36.30.320:** A procurement for supplies, services, or professional services that does not exceed an aggregate dollar amount of $100,000, construction that does not exceed an aggregate dollar amount of $200,000, or lease of space that does not exceed 7,000 square feet may be made in accordance with the regulations for small procurements. Small procurements need not be made through competitive sealed bidding or competitive sealed proposals, but shall be made with competition that is practicable under the circumstances. Procurement requirements may not be artificially divided or fragmented so as to constitute a purchase under this section or to circumvent the source selection procedures required by AS 36.30.100 - .270. The procurement officer shall give adequate public notice of intent to make a procurement under this section in accordance with regulations. Note: Although this requirement is in the statute, there is no corresponding regulation requiring public notice of “intent” to make a small procurement.