



Procurement Procedures

Alabama State Port Authority Procurement Procedures

Table of Contents

SECTION 1: GENERAL INFORMATION3

- Principles of Law and Equity 3
- Delegation of Authority 3
- Retention of Written Determinations..... 3
- Public Record Status of Certain Procurement Information 3
- Use of electronic media 4
- Cooperative Purchasing Agreement for Certain Supplies or Services 4
- Compliance with Applicable Federal Law and Regulations 4
- Purchase of United States Flag or Alabama Flag 4

SECTION 2: SOLICITATIONS5

- Methods for awarding contracts 5
- Exemptions from competitive requirements..... 5
- Award to preferred supplier 5
- Competitive sealed bidding procedures 5
- Competitive sealed proposals..... 7
- Small purchase procedures..... 8
- Award of supply or service contracts without competition (Single/sole source)..... 9
- Emergency procurements..... 9
- Special procurement for small purchases..... 9
- Cancellation or rejection of bids, proposals, etc. 9
- Written determination of nonresponsibility of bidder or offeror 9
- Prequalification of prospective suppliers 10
- Request of price or cost information from bidders or offerors..... 10

SECTION 3: CONTRACTING11

- Suppliers, contractors, and affiliates to comply with state and local tax requirements; certification... 11
- Types of contracts..... 11
- Contract periods; renewal or extension provisions..... 12

Alabama State Port Authority Procurement Procedures

Inspection of sites and systems of contractors or subcontractors.....	12
Audit or examination of books and records; record keeping requirements	12
Finality of determinations.....	12
Collusion or other anti-competitive practices	13
Maintenance of contract records	13
Standards and use of specifications.....	13
Guidelines for adjusting contract provisions; remedies; justification for variations.....	13
SECTION 4: CONFLICTS AND RESOLUTION	15
Filing of protests; resolution; administrative review.....	15
Suspension or Debarment of Persons or Entities	16
Dispute Resolution Procedures.....	17
Appeals.....	17
Solicitation or Proposed Award, Award of Contract in Violation of Law.....	18
Civil Action to Enjoin Execution of Contract	18
SECTION 5: GLOSSARY AND DEFINITION OF TERMS.....	19

Alabama State Port Authority Procurement Procedures

SECTION 1: GENERAL INFORMATION

The procurement of any supplies or services by the Alabama State Port Authority (Authority) are governed by the following Policies and Procedures adopted by the Board of Directors of the Authority, as authorized under Section 41-4-124(e) of the Code of Alabama.

Principles of Law and Equity

Unless otherwise specified herein, the principles of law and equity, including the Uniform Commercial Code, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, and bankruptcy shall supplement these procedures.

Requirement to Act in Good Faith

The Authority requires all parties involved in the negotiation, performance, or administration of its contracts to act in good faith. Good faith means honesty in fact in the conduct or transaction concerned.

Delegation of Authority

The Chief Financial Officer may delegate their authority to designees.

Retention of Written Determinations

Written determinations required by procedure shall be retained in the appropriate official contract file of the Procurement Officer.

Public Record Status of Certain Procurement Information

Procurement information is a public record to the extent provided by Alabama State law (Act 2021-296, §2.) and shall be available to the public except that **any** of the following is not a public record:

- (1) Commercial or financial information obtained in response to a solicitation that is designated as privileged or confidential by the person or entity submitting such information in compliance with instructions in the solicitation for marking information exempt from public disclosure. Information not marked as required is a public record.
- (2) Evaluative documents, bids, or proposals prior to award.
- (3) When the public disclosure of procurement information would be detrimental to the safety or security of persons or property or to the public interest as determined, in writing, by the Chief Financial Officer.

Alabama State Port Authority Procurement Procedures

(4) Confidential information furnished by a bidder or offeror may not be disclosed outside of the Authority without the prior written consent of the bidder or offeror.

Use of electronic media

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with the state's applicable statutory, regulatory, or other guidance for use of the media, so long as the guidance provides for both of the following:

- (1) Appropriate security to prevent unauthorized access to the bidding, approval, and award processes.
- (2) Accurate retrieval or conversion of electronic forms of such information into a medium that permits inspection and copying.

Cooperative Purchasing Agreement for Certain Supplies or Services

The Authority may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services to the same extent and methods as the State of Alabama Department of Finance.

Compliance with Applicable Federal Law and Regulations

When a procurement involves the expenditure of federal assistance or contract funds, the Chief Financial Officer shall comply with any applicable federal law and regulations.

Purchase of United States Flag or Alabama Flag

Per Alabama law, purchase of United States flags, or Alabama flags manufactured outside of the United States of America is prohibited.

Alabama State Port Authority Procurement Procedures

SECTION 2: SOLICITATIONS

Methods for awarding contracts

The Authority shall award contracts using any legal method, including the following:

- (1) Competitive sealed bids
- (2) Competitive sealed proposals
- (3) Small purchase procedures
- (4) A sole source procurement
- (5) An emergency procurement
- (6) Special procurement for small purchases

Exemptions from competitive requirements

The following supplies and services are exempt from the competitive requirements:

- (1) Works of art for museum and public display.
- (2) Published books in any format such as digital, audio, or hardcopy; maps; periodicals; and technical pamphlets.
- (3) Utility services where no competition exists or where rates are fixed by law.
- (4) Purchases of products made or manufactured by the blind or visually handicapped under the direction or supervision of the Alabama Institute for Deaf and Blind in accordance with Code of Alabama Sections 21-2-1 to 21-2-4, inclusive.
- (5) Photographs purchased from a federal agency.
- (6) The purchase of insurance and supplies or services related to the purchase of insurance

Award to preferred supplier

In the event a bid or offer is received for the supplies or services from a person deemed to be a responsible bidder or offeror and a preferred supplier and the bid is no more than five percent greater than the bid of the lowest responsible bidder or offeror who is not deemed to be a preferred supplier, the Procurement Officer, as defined, may award the contract to the preferred supplier.

Competitive sealed bidding procedures

Except as otherwise provided in these procedures, contracts shall be awarded by competitive sealed bidding once the expected annual aggregated purchase amount reaches the small purchase threshold.

- (a) An invitation to bid shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement.

Alabama State Port Authority Procurement Procedures

(b) Adequate public notice of the invitation to bid shall be given a reasonable time prior to the date set forth in the invitation for the opening of bids, such times to be dictated by the scope and complexity of the procurement.

(c) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation to bid. The amount of each bid, the name of each bidder, and any other information required for proper and lawful decisions shall be recorded. The record and each bid shall be open to public inspection to the extent required by law.

(d) Bids shall be unconditionally accepted without alteration or correction, except as authorized herein. Bids shall be evaluated based on the requirements set forth in the invitation to bid, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Any criteria that will affect the bid price and will be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation to bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation to bid. **It is important to prominently identify within the bid documents when the Authority is using specifications as part of an equipment standardization program,** as this impacts the calculation of life cycle costs.

(e)(1) When a bid is submitted that contains an error, the Chief Financial Officer may authorize the correction or withdrawal of the bid or may cancel the award of the contract. The authorization of the correction or withdrawal shall be done in accordance with guidelines adopted by the Authority.

(2) After a bid has been opened, with the exception of price negotiations with the lowest responsible bidder, no changes in bid prices or other provisions of bids prejudicial to the interest of the Authority or fair competition shall be permitted.

(f)(1) Unless there is a compelling reason to reject bids, as prescribed by rules, notice of intent to award to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation to bid shall be given by posting the notice at a location specified in the invitation to bid. Before posting the notice of intent to award, the Procurement Officer, as defined, may negotiate with the lowest responsive and responsible bidder to lower the bid price within the scope of the invitation to bid. The invitation to bid and notice of intent to award shall contain a statement of any bidder's right to protest.

(2) The Procurement Officer, as defined, may award multiple purchase contracts resulting from a single invitation to bid where the specifications of the items of supplies or services intended to be purchased are determined, in whole or in part, by technical compatibility and operational requirements. In order to make multiple awards under this tenet, the invitation to bid shall include a notice that multiple awards may be made and the specific technical compatibility or

Alabama State Port Authority Procurement Procedures

operational requirements necessitating multiple awards. Multiple awards of purchase contracts with unique technical compatibility or operational specifications shall be made to the lowest responsible bidder complying with the unique technical compatibility or operational specifications.

(g) When it is considered impractical by the Chief Financial Officer to initially prepare a purchase description to support an award based on price, an invitation to bid may be issued requesting the submission of unpriced offers to be followed by an invitation to bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(h)(1) Before soliciting bids, the Chief Financial Officer may authorize issuance of a request for qualifications from prospective bidders. The request shall contain, at a minimum, a description of the scope of work to be solicited by the invitation for bids, the deadline for submission of information, and how prospective bidders may apply for consideration. The request shall require information concerning the prospective bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the request for qualifications shall be given in the manner provided in subsection (c).

(2) After receipt of the responses to the request for qualifications from prospective bidders, all qualified bidders, as determined by the Procurement Officer, as defined, shall have an opportunity to bid. The determination regarding which bidders are qualified is not subject to review.

Competitive sealed proposals

A contract may be entered into by competitive sealed proposals when the Procurement Officer, as defined, determines that the use of competitive sealed bidding is either not practicable or not advantageous to the Authority. Unless determined otherwise by the Chief Financial Officer, professional services shall be procured by competitive sealed proposals.

(a) The Chief Financial Officer may determine when it is either not practicable or advantageous to the Authority to procure specified types of supplies or services by competitive sealed bidding.

(b) Proposals shall be solicited through a request for proposals.

(c) Adequate public notice of the request for proposals shall be given, such times to be dictated by the scope and complexity of the procurement.

(d) Proposals shall be opened in a manner that avoids disclosure of contents to competing offerors prior to contract award. A register of proposals shall be prepared and shall be open for public inspection after the contract is awarded.

(e) A request for proposals shall state the relative importance of price and other factors and subfactors, if any.

Alabama State Port Authority Procurement Procedures

(f) Discussions may be conducted with responsible offerors who submit proposals determined by the Procurement Officer to be reasonably competitive for award to assure full understanding of, and responsiveness to, the solicitation requirements. The determination of the Procurement Officer is not subject to review. **Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions of proposals may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there may not be disclosure of any information derived from proposals submitted by competing offerors.**

(g) Contracts shall be awarded to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the Authority, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. Public notice of the award of a contract shall be promptly given.

(h) The Procurement Officer may provide debriefings that furnish the basis for the source selection decision and contract award.

(i)(1) Before soliciting proposals, the Procurement Officer may authorize issuance of a request for qualifications from prospective offerors. The request shall contain, at a minimum, a description of the scope of work to be solicited by the request for proposals, the deadline for submission of information, and how prospective offerors may apply for consideration. The request shall require information concerning the prospective offeror's product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the request for qualifications shall be given such times to be dictated by the scope and complexity of the procurement.

(2) After receipt of the responses to the request for qualifications from prospective offerors, all qualified offerors, as determined by the Procurement Officer, shall have an opportunity to submit proposals. The determination regarding which offerors are qualified is not subject to review.

(3) If a professional service provider is prohibited by law or policy from submitting proposals in response to a request for proposals, the Procurement Officer may utilize the request for qualifications process to determine the awardee.

Small purchase procedures

Any procurement not exceeding the small purchase threshold may be made in accordance with small purchase procedures. A procurement may not be artificially divided so as to constitute a small purchase under this section.

Alabama State Port Authority Procurement Procedures

Award of supply or service contracts without competition (Single/sole source)

A contract may be awarded for a supply or service without competition when the Chief Financial Officer determines in writing that there is only one source for the required supply or service. In any event, sole source contracts may not exceed one year unless the Chief Financial Officer determines in writing that there continues to be only one source for the required supply or service.

Emergency procurements

The Authority may make emergency procurements when there is a threat to public health, welfare, or safety under emergency conditions. Emergency procurements made hereunder shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

Special procurement for small purchases

The Procurement Officer, as defined, with prior public notice, may initiate a procurement above the small purchase threshold when the officer determines that an unusual or unique situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest. Any special procurement under this section shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the Procurement Officer in the contract file.

Cancellation or rejection of bids, proposals, etc.

When it is determined to be in the best interest of the Authority or the State of Alabama, an invitation to bid, a request for proposals, or other solicitation may be cancelled, and any or all bids or proposals received may be rejected.

Written determination of nonresponsibility of bidder or offeror

A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with guidelines adopted by the Authority. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to the bidder or offeror.

Alabama State Port Authority Procurement Procedures

Prequalification of prospective suppliers

Prospective suppliers may be prequalified for particular types of supplies or services. The method of submitting prequalification information and the information required in order to be prequalified shall be determined by the Chief Financial Officer.

Request of price or cost information from bidders or offerors

The Procurement Officer may request factual information reasonably available to the bidder or offeror to substantiate that the price or cost offered, or some portion of it, is reasonable when either of the following occurs:

- (1) The price is not any of the following:
 - a. Based on adequate price competition.
 - b. Based on established catalogue or market prices.
 - c. Set by law or rule.
- (2) The price or cost exceeds an amount established by rule.

Alabama State Port Authority Procurement Procedures

SECTION 3: CONTRACTING

Suppliers, contractors, and affiliates to comply with state and local tax requirements; certification

The Authority may not contract for the purchase or lease of supplies from a supplier, contractor, or an affiliate of a supplier or contractor, unless that supplier, contractor, and all of its affiliates that make sales for delivery into Alabama or leases for use in Alabama are properly registered, collecting, and remitting Alabama state and local sales and use tax, or simplified sellers use tax, and lease tax, as provided for by Article 4 of Chapter 12 of Title 40 and Articles 1, 2, and 4 of Chapter 23 of Title 40, or by any local act or ordinance.

Each supplier, contractor, or affiliate of a supplier or contractor that is offered a contract to do business with the Authority shall be required to certify that the supplier or affiliate is appropriately registered to collect and remit sales and use tax, or simplified sellers use tax and lease tax as required by this section and submit to the Authority certification required by the Alabama Department of Revenue.

Each supplier or contractor that sells or leases supplies to the Authority, and each affiliate of that supplier or contractor that makes sales for delivery into Alabama, shall be required to collect and remit the Alabama sales and use tax, or simplified sellers use tax, and lease tax on all its sales and leases into the state.

Every bid submitted and contract executed by the Authority shall contain a certification by the bidder or contractor that the bidder or contractor is not barred from bidding for or entering into a contract under this section and that the bidder or contractor acknowledges that the Authority may declare the contract void if the certification completed is false.

Types of contracts

The Authority is authorized to utilize any type of contract that will promote the best interests of the state except:

- (a) The use of a cost-plus-a-percentage-of-cost contract is prohibited.
- (b) A cost-reimbursement contract may be used only when a determination is made in writing that either of the following apply:
 - i. The cost-reimbursement contract is likely to be less costly to the state than any other type of contract.
 - ii. It is impracticable to obtain the supplies or services required except under a cost-reimbursement contract.

Alabama State Port Authority Procurement Procedures

Contract periods; renewal or extension provisions

Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time that is in the best interests of the Authority, so long as the terms of the contract and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal year at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

A multi-year contract may be used when the estimated requirements cover the period of the contract and are reasonably firm and continuing, and the contract will serve the best interests of the Authority by encouraging effective competition or otherwise promoting economies in state procurement.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled, and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for that purpose.

Inspection of sites and systems of contractors or subcontractors

The Procurement Officer, as defined, or their designee, at reasonable times, may inspect a part of the plant, the place of business, or the logical and physical electronic systems of a contractor or any subcontractor that is related to the performance of any contract awarded or to be awarded by the Authority.

Audit or examination of books and records; record keeping requirements

The Authority, at reasonable times and places, may audit or examine the books and records of any person who has submitted data in substantiation of offered prices to the extent that the books and records relate to that data. Any person who receives a contract, change order, or contract modification for which data is required shall maintain the books and records that relate to the cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

Finality of determinations

The determinations of the Authority required in awarding contracts are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

Alabama State Port Authority Procurement Procedures

Collusion or other anti-competitive practices

When for any reason collusion or other anti-competitive practices are suspected during the procurement process, a notice of the relevant facts shall be transmitted to the Attorney General and, if applicable, to the Ethics Commission.

Maintenance of contract records

The Authority shall maintain a record of all contracts made for a minimum of one year. The record shall contain all the following:

- (1) Each contractor's name.
- (2) The amount and type of each contract.
- (3) A listing of the supplies or services procured under each contract.

A copy of the record 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 Authority.

Standards and use of specifications

The Chief Financial Officer may set standards for the preparation, maintenance, and content of specifications for supplies or services required by the Authority and monitor their use.

The Procurement Officer, as defined, shall obtain expert advice and assistance from personnel in the development of specifications and may delegate in writing the authority to prepare specifications.

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Authority's needs and shall not be unduly restrictive.

Specifications may, when necessary, be prepared by people other than state employees. The Procurement Officer, as defined, shall exercise diligence to assure that any third party who prepares specifications or requirements does not have a conflict of interest or an unfair competitive advantage in any subsequent procurement. Suppliers that participate in the drafting of specifications for the Authority shall disclose the same on its required supplier disclosure statement.

Guidelines for adjusting contract provisions; remedies; justification for variations

The Chief Financial Officer may adopt guidelines permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions as appropriate covering both of the following subjects:

- (a) The unilateral right of the Authority to order in writing both of the following:

Alabama State Port Authority Procurement Procedures

- i. Changes in the work within the scope of the contract.
 - ii. The temporary stopping of work or delaying performance.
- (b) Variations occurring between estimated quantities of work in a contract and actual quantities.

Adjustments in price pursuant to clauses adopted under subsection (a) shall be computed in one or more of the following ways:

- a. By agreement on a fixed-price adjustment before commencement of the performance or as soon as practicable.
- b. By unit prices specified in the contract or subsequently agreed upon.
- c. By the costs attributable to the events or situations under the clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon.
- d. In any other manner as the contracting parties may mutually agree.
- e. In the absence of agreement by the parties, by a unilateral determination by the Authority of the costs attributable to the events or situations under the clauses with adjustment of profit or fee.

A contractor shall be required to submit cost or pricing data if any adjustment in the contract price is the result of a request of price or cost information from bidders or offerors as allowed by Code of Alabama Section 41-4-141.

The Authority may adopt guidelines permitting or requiring the inclusion in its contracts of clauses providing for appropriate remedies covering all the following subjects:

- (1) Specified excuses for delay or nonperformance.
- (2) Termination of the contract for default.
- (3) Termination of the contract in whole or in part for the convenience of the Authority.
- (d) The Procurement Officer, as defined, may vary the clauses adopted under these guidelines for inclusion in any particular contract, so long as any variation is supported by a written determination that states the circumstances justifying the variation. Notice of any material variation shall be stated in the invitation to bid or request for proposals.

Alabama State Port Authority Procurement Procedures

SECTION 4: CONFLICTS AND RESOLUTION

Filing of protests; resolution; administrative review

A bona fide prospective bidder or offeror who is aggrieved in connection with the solicitation of a contract may protest to the Chief Financial Officer within 14 days of the date of issuance of the solicitation or any amendment to it if the amendment is at issue.

A bona fide actual bidder or offeror who is aggrieved in connection with the intended award or award of a contract may protest to the Chief Financial Officer within 14 days of the date the award or notification of intent to award, whichever is earlier, is posted. However, a matter that could have been raised as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

A protest filed shall be in writing, be filed with the Chief Financial Officer, and set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.

The Chief Financial Officer, or their designee, may settle and resolve the protest of a bona fide actual or prospective bidder or offeror concerning the solicitation or award of a contract in accordance with guideline adopted by the Authority.

If the protest is not resolved by mutual agreement within 10 days after the protest is filed, the Chief Financial Officer shall commence an administrative review of the protest and issue a decision in writing within 14 days of the review.

A copy of the decision shall be mailed or otherwise furnished immediately to the protestor and any other party intervening. Such decision shall be final and conclusive, unless fraudulent, or a party adversely affected by the decision appeals administratively to the Director of the Authority in accordance with the procedures outlined in the Appeals section.

In the event of a timely protest or an appeal, the Authority may not proceed further with the solicitation or with the award of the contract until five days after notice of the final decision is provided to the protestor, except that solicitation or award of a protested contract is not stayed if the Chief Financial Officer, after consultation with the Director of the Authority, or their designee, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the best interests of the State.

Alabama State Port Authority Procurement Procedures

Suspension or Debarment of Persons or Entities

After reasonable notice to the person or entity involved and reasonable opportunity for that person or entity to be heard, the Chief Financial Officer, after consultation with the Authority, may do either of the following:

- (1) Terminate existing contracts and debar a person or entity for cause from consideration for award of contracts. The debarment may not be for a period of more than three years.
- (2) Suspend a person or entity from consideration for award of contracts if there is probable cause for debarment. The suspension may not be for a period exceeding three months.

The Chief Financial Officer may suspend or debar a person from consideration for award of contracts for any of the following:

- (1) Conviction of a criminal offense that is in connection with obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract.
- (2) Conviction under state or federal law of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty as a state contractor.
- (3) Conviction under state or federal antitrust law arising out of the submission of bids or proposals.
- (4) Violation of a contract provision of a character that is regarded by the Chief Financial Officer to be so serious as to justify debarment action, including either of the following:
 - a. Deliberate failure, without good cause, to perform in accordance with the specifications or within the time limit provided in the contract.
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts that was not caused by acts beyond the control of the contractor.
- (5) Violation of the ethical standards set forth in the Code of Alabama Chapter 25 of Title 36.
- (6) Violation of an order of the Chief Financial Officer.
- (7) Any other cause the Chief Financial Officer determines to be serious and egregious misconduct.

Any decision by the Chief Financial Officer to debar or suspend a person shall be in writing. The writing shall state the reasons for the action taken.

Alabama State Port Authority Procurement Procedures

A copy of the decision made to debar or suspend a person shall be mailed or otherwise furnished immediately to all the following:

- a. The debarred or suspended person.
- b. Any other party intervening.
- c. All Authority procurement officials and employees with contracting authority who shall decide whether the suspension or debarment warrants termination of existing contracts with the suspended or debarred person or entity.
- d. The Authority Grants Administrator.

Contracts may not be awarded to the suspended or debarred person during the suspension or debarment period established by the Chief Financial Officer.

A decision to debar or suspend a person shall be final and conclusive, unless fraudulent, or the debarred or suspended person appeals administratively to the Director of the Authority in accordance with the procedures outlined in the Appeals section.

The Chief Financial Officer shall maintain a list of suspended or debarred persons or entities and make it reasonably available for inspection.

Dispute Resolution Procedures

The Authority shall establish procedures to resolve disputes between the Authority and a contractor that arise under, or by virtue of, a contract between them, including disputes based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

Appeals

A party that receives an adverse decision from the Chief Financial Officer may appeal the decision to the Director of the Authority.

An appeal to the Director of the Authority shall be made in writing within five days of receipt of the adverse decision from the Chief Financial Officer.

The Director of the Authority shall hold unlawful and set aside any decision issued by the Chief Financial Officer that the Director finds to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

The Director of the Authority shall issue a written decision within 14 days of receipt of the appeal.

A copy of the decision shall be mailed or otherwise furnished immediately to the parties.

Alabama State Port Authority Procurement Procedures

The decision of the Director of the Authority shall be final and conclusive unless fraudulent.

Solicitation or Proposed Award, Award of Contract in Violation of Law

If, prior to an award, a solicitation or proposed award of a contract is determined to be in violation of law, the solicitation or proposed award shall be cancelled or revised to comply with the law.

If, after an award, a solicitation or award of a contract is determined to be in violation of law, then:

(1) If the person awarded the contract has not acted fraudulently or in bad faith, the contract may be ratified and affirmed by the Procurement Officer, so long as doing so is in the best interests of the Authority, or the contract may be terminated by the Procurement Officer and the person awarded the contract shall be compensated for the supplies provided or services rendered under the contract prior to termination.

(2) If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared void by the Procurement Officer or the contract may be ratified and affirmed by the Procurement Officer, so long as the action is in the best interests of the Authority. A contract ratified and affirmed under these circumstances does not prejudice the Authority's right to any available damages.

Civil Action to Enjoin Execution of Contract

A bona fide unsuccessful bidder or offeror on a particular contract, who has exhausted the administrative remedies contained in these procedures, and any taxpayer of the area within the jurisdiction of the Authority, may bring a civil action in the Circuit Court of Mobile County to enjoin execution of any contract entered into in violation of law.

Alabama State Port Authority Procurement Procedures

SECTION 5: GLOSSARY AND DEFINITION OF TERMS (AS USED IN THE AUTHORITY'S PROCUREMENT PROCEDURES)

AFFILIATE. A related party as defined in subsection (c) of Section 40-23-190 of the Code of Alabama as that provision existed on January 1, 2004.

AUTHORITY. The Alabama State Port Authority, an agency of the State of Alabama.

BUSINESS. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.

CAPITAL EQUIPMENT. Tangible personal property that can be appraised for value, is not disposable or consumable, is stand alone, and has a useful life of one year or more.

CHANGE ORDER. A written order signed by the procurement officer directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.

CHIEF FINANCIAL OFFICER. The person serving from time to time as the Chief Financial Officer of the Authority.

CODE OF ALABAMA. The Code of Alabama, 1975, or any successor official codification of the laws of the State.

CONTRACT. All types of state agreements, regardless of what they may be called, for the procurement of supplies or services.

CONTRACT MODIFICATION. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

CONTRACTOR. Any person having a contract with the Authority.

COOPERATIVE PURCHASING. Procurement conducted by, or on behalf of, one or more public procurement units.

COST-REIMBURSEMENT CONTRACT. A contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with the contract terms and the provisions, and a fee, if any.

DATA. Recorded information, regardless of form or characteristic.

Alabama State Port Authority Procurement Procedures

DESIGNEE. A duly authorized representative of a person.

ELECTRONIC. Electrical, digital, magnetic, optical, electromagnetic, or other similar technology.

ELECTRONIC SIGNATURE. An electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

ESTABLISHED CATALOGUE PRICE. The price included in a catalogue, price list, schedule, or other form that does **all** the following:

- a. Is regularly maintained by a manufacturer or contractor.
- b. Is either published or otherwise available for inspection by customers.
- c. States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

EXTERNAL PROCUREMENT ACTIVITY. A buying organization not located in the State of Alabama which, if located in this state, would qualify as a public procurement unit. The term includes agencies of the United States and of any other state.

GOVERNMENTAL BODY. An agency, department, board, bureau, commission, committee, institution, corporation, authority, or office of this state. The term as used herein does not include the legislative or judicial departments of the state or a legislative or judicial agency, the Authority, municipalities, or the county commission and governing boards of instrumentalities of counties including waterworks boards, sewer boards, gas boards, and other like utility boards and commissions.

INVITATION TO BID. All documents, whether attached or incorporated by reference, utilized for soliciting bids.

LOCAL PUBLIC PROCUREMENT UNIT. **Any** of the following:

- a. A municipality or other political subdivision of the state.
- b. An agency of any political subdivision, public authority, or educational, health, or other institution.
- c. Any nonprofit corporation operating a charitable hospital.
- d. To the extent provided by law, any entity that expends public funds for the procurement of supplies or services and is governed by Code of Alabama Article 41-4-124.

PERSON. An individual, corporation, association, partnership, limited liability corporation, union, committee, club, other organization, or group.

Alabama State Port Authority Procurement Procedures

PREFERRED SUPPLIER. A person that is granted preference priority according to the following:

1. Produces or manufactures the product within the state.
2. Has an assembly plant or distribution facility for the product within the state.
3. Is organized for business under the applicable laws of the state as a corporation, partnership, or professional association and has maintained at least one retail outlet or service center for the product or service within the state for not less than one year prior to the deadline date for the competitive bid.
 - a. Is physically located in the state and is more than 50 percent owned by a person who was discharged or released under conditions other than dishonorable and who has at least 24 months of active service in the United States military, naval, or air service, or who has less than 24 months of active service in any of the foregoing and was separated with a service-connected disability, or a national guardsman or reservist who completed active federal service for purposes other than training or who served at least 180 days of continuous service for purposes other than training.

PROCUREMENT. Buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. The term includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. The term does not include the leasing of real property.

PROCUREMENT OFFICER. Any person duly authorized by the Authority to enter into and administer contracts and make written determinations with respect to those contracts. The term includes an authorized representative acting within the limits of authority.

PROFESSIONAL SERVICES. The services of physicians, architects, engineers, landscape architects, land surveyors, geoscientists, attorneys, teachers, artists, appraisers, and other individuals, or business entities offering the services of those individuals, who possess a high degree of scientific or specialized skill and knowledge where the experience and professional qualifications of the service provider are particularly relevant to the provision of the required service.

PUBLIC FUNDS. Money, regardless of its source, which is owned or held by a governmental body.

PUBLIC NOTICE. The distribution or dissemination of information to interested parties using methods that are reasonably available, including, but not limited to,

Alabama State Port Authority Procurement Procedures

publication in newspapers of general circulation, electronic or paper mailing lists, and websites designated by the Authority and maintained for that purpose.

PUBLIC PROCUREMENT UNIT. Any one of the following:

- a. A local public procurement unit.
- b. An external procurement activity.
- c. A state public procurement unit.
- d. Any not-for-profit entity comprised of more than one unit or activity listed in paragraph a., b., or c.

PURCHASE DESCRIPTION. The words used in a solicitation to describe the supplies or services to be purchased. The term includes any specifications attached to, or made a part of, the solicitation.

REQUEST FOR PROPOSALS. All documents, whether attached or incorporated by reference, that are used for soliciting proposals.

RESPONSIBLE BIDDER OR OFFEROR. A person who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability to assure good faith performance.

RESPONSIVE BIDDER OR OFFEROR. A person who has submitted a bid or offer that conforms in all material respects to the invitation for bid or request for proposal.

SERVICES. The furnishing of labor, time, or effort by a contractor. The term does not include the delivery of a specific end-product, other than reports that are merely incidental to the required performance.

SMALL PURCHASE. An amount below which procurement procedures for small purchases may be used, defined on date of approval as \$25,000.

SOLICITATION. Any request to submit quotes, bids, or offers to the Authority for the procurement of supplies or services. The term includes invitations to bid and requests for proposals.

SPECIFICATION. Any description of the physical or functional characteristics, or of the nature of a supply or service, and may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

SUPPLIES. All property, including equipment, materials, and printing. The term does not include land or a permanent interest in land.