

	<b>STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES</b>		POLICY AND PROCEDURE NUMBER <b>10.01.011</b>	PAGE 1 of 18
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SUBJECT <b>Small Procurements</b>		SUPERSEDES		DATED
TITLE <b>Procurement and Property</b>	CHAPTER <b>General Procurement</b>	APPROVED BY Signature on File		

## PURPOSE AND SCOPE

To establish uniform methods and procedures for department personnel to follow when making small procurements of construction, commodities, services, and professional services.

Department procurement actions shall be accomplished in compliance with the State Procurement Code (AS 36.30); the Alaska Administrative Code (2 AAC 12); the State Administrative Manual; the department's Delegation of Authority from the Department of Administration; and the department's policies and procedures relating to procurement and contracting. Reference Department Policy (DPOL) 10.01.010.

## DISTRIBUTION

All holders of the Department of Transportation & Public Facilities Procedures Manual.

## PROCEDURE

### A. Assignment Of Responsibilities

The department procurement system, as a whole, is responsible for the procurement of construction (as defined in AS 36.30.990[15]), equipment, commodities, services, professional services, and leases either under authority granted the department by statute or by delegation from the Department of Administration:

1. Construction related procurements per AS 36.30.005(b) and as defined in AS 36.30.990(6). These include services and professional services related to the construction and maintenance of State facilities (highways, airports, buildings). Construction related procurements, while mainly the responsibility of the division of Design and Engineering Services (DES), are also performed by other divisions

and sections throughout the department (Maintenance & Operations, Planning, etc.) See Section H. Construction Related Small Procurements.

2. State Equipment Fleet (SEF) related procurements per AS 36.30.005(b). Procurement of equipment, parts, and services for the SEF is the responsibility of the SEF Statewide Procurement section and the regional and district SEF Parts sections.
  - a. "Equipment" is defined as rolling-stock, including attachments, managed by the SEF, which includes State-owned and State-leased passenger vehicles, construction vehicles, maintenance vehicles, heavy equipment, and crash/fire/rescue vehicles.
  - b. "Parts" are defined as items which attach to or are integral components of equipment and attachments managed by SEF. Included in this definition are consumable component replacement parts such as tires, wheels, lights, filters, belts, transmissions, and engines.
  - c. The SEF is also responsible for purchasing consumable automotive shop supplies such as shop tools and equipment (for SEF use only), lubricants, fluids, fuels, oil, grease, fasteners, manuals, and metal stock used in the repair and maintenance of equipment.
3. Alaska Marine Highway System (AMHS) related procurements per AS 36.30.015(g) and as defined in AS 36.30.990(6). Procurement of supplies, services, professional services, and construction for the repair, maintenance, and reconstruction of vessels, docking facilities, and passenger and vehicle transfer facilities of the Alaska Marine Highway System is the responsibility of Southeast Region Procurement.
4. Commodities, Services, and Professional Services not related to Construction (under delegation from the Department of Administration). Procurements of these items are the responsibility of the department Statewide and Regional Procurement Offices.
  - a. The Statewide Procurement Office is responsible for purchasing and establishing contracts for these items for those procurements exceeding the limit for Small Procurements. This responsibility can be delegated to the Regional Procurement Offices if and when required in the best interest of the department.
  - b. Regional Procurement Offices are responsible for small procurements of these items in support of their respective regions.
  - c. Statewide and Regional Procurement Offices may also accomplish Construction related small procurements when required and requested by an official with the authority to perform those procurements.

- d. Professional Service Contracts not related to Construction may also be procured by other department personnel if they have a procurement delegation for that type of procurement.
- e. The Department Supply Chief and the Procurement Officers for Central, Northern, and Southeast Regions, and the State Equipment Fleet have the authority to authorize an employee of the department who does not have a procurement delegation (non-construction) to make a specific purchase.
- f. Forms:
  - 1) Procurements of non-contract commodities and services, not related to construction, as differentiated from contract award purchases, estimated to cost more than \$5,000.00 must be made using a Delivery Order Form (02-601) or Purchase Order Form (no number).
  - 2) Procurements of non-contract professional services not related to construction, as differentiated from contract award purchases, estimated to cost more than \$5,000.00 must be made using the Standard Agreement Form (02-093).
    - a) Computer generated forms that closely approximate the design of these forms may also be used, after review and approval by the Statewide Procurement Section.
    - b) An audit copy of the Delivery Order or Purchase Order Form or Standard Agreement Form and either
      - ◆ a copy of the summary of quotations,
      - ◆ copies of written quotes received, or
      - ◆ copies of the informal proposals received,

will be forwarded to Statewide Procurement for all procurements over \$5,000 and all procurements made as a result of an approved Request for Alternate Procurement (RAP).

For procurements for the State Equipment Fleet (SEF), these forms will be forwarded to SEF Headquarters.

## **B. State Contracts**

1. The Department of Administration establishes contracts for goods and services for use by all State agencies. DOT/PF Procurement offices and Contracting offices establish contracts for goods and services used specifically by the department. The establishment of these contracts is based on executive branch and department needs, as determined by historical requirements or discussions with departmental procurement and contracting officers.

2. The establishment of these contracts has two primary goals. The first is to facilitate the purchasing process. A procurement officer, contracting officer, or other authorized official may purchase according to the terms of the contract without issuing bids, requesting quotations or proposals, or seeking determinations for single source or limited competition.
3. The second goal is to secure good pricing through the leverage of the State's purchasing power. Even though it is occasionally possible to secure pricing on spot purchases which is better than the contract pricing, use of the contracts is mandatory unless specifically stated otherwise. Goods and services for which mandatory term contracts have been issued must be purchased only from the contract vendor. The contractors have provided prices over the entire period of the contract in exchange for the State's offer to place all of our orders with them. The department shall abide by the terms of the contract.
4. There is no monetary limit on purchasing from contract awards unless specifically noted in the contract or in the Department of Administration Contract Award Manual. All purchases made must be within budgetary limitations, however.
5. If commodities or services are being purchased on the open market on a continuing basis, it should be brought to the attention of the appropriate Procurement section or the appropriate Contracts section for consideration of the establishment of a contract award.

### **C. Small Procurements**

1. \$0.00 - \$2,500.00 (2AAC 12.400(a)). Procurements of up to \$2,500.00 may be made with the State of Alaska Procurement Card (PCARD) after receiving only one quotation or informal proposal from a qualified firm or person.
2. \$0.00 - \$25,000.00 (2 AAC 12.400[b]). Department personnel shall use reasonable and adequate procedures and make records that facilitate auditing for procurements of:
  - a. Supplies, services, professional services, or construction estimated to cost no more than \$5,000;
  - b. concession contracts estimated to have gross receipts of no more than \$5,000;
  - c. passenger transportation estimated to cost no more than \$15,000;
  - d. legal or hearing officer services estimated to cost no more than \$25,000
3. \$5,001.00 - \$25,000.00 (2 AAC 12.400[c]). For procurement of non-contract supplies, services, or professional services estimated to cost more than \$5,000, but no more than \$25,000, concession contracts estimated to have gross

receipts of more than \$5,000, but no more than \$25,000, or passenger transportation estimated to cost more than \$15,000, but no more than \$25,000:

- a. At least three firms or persons shall be contacted, either verbally or in writing, for a quotation or informal proposal. The procurement officer shall designate in the solicitation whether the response may be verbal or written. The solicitation shall include the specifications, the award criteria, and the date and time responses are due.
  - b. Award shall be made to the firm or person submitting the lowest quotation or the most advantageous informal proposal in accordance with the specifications and award criteria in the solicitation.
  - c. The procurement officer shall record the following information in the procurement file: the name of the person who made the solicitation; the date of the solicitation; the specifications or items solicited; the award criteria; the names of firms or persons contacted; a summary of any verbal responses; copies of all quotations or informal proposals received; and justification for the award.
4. \$25,001 - \$50,000 (2 AAC 12.400[d]). For procurement of non-contract supplies, services, or professional services estimated to cost more than \$25,000, but no more than \$50,000; for concession contracts estimated to have gross receipts of more than \$25,000, but no more than \$50,000; or for passenger transportation estimated to cost more than \$25,000, but no more than \$50,000:
- a. At least three firms or persons shall be contacted, in writing, for a quotation or informal proposal; and the procurement officer shall require that the response be made in writing. The solicitation shall include the specifications, the award criteria, and the date and time responses are due.
  - b. Award shall be made to the firm or person submitting the lowest quotation or the most advantageous informal proposal in accordance with the specifications and award criteria in the solicitation.
  - c. Written notice of the award shall be provided to each firm or person who provided a quotation or informal proposal. The notice shall include the name of the successful offeror, and describe protest rights under 2 AAC 12.695 and the time limitations within which a protest must be received.
  - d. The procurement officer shall record the following information in the procurement file: a copy of the solicitation; the names of firms or persons contacted; copies of all written quotations or informal proposals received; and a copy of the Notice of Award.
5. Non-Office Leased Space (2 AAC 12.400(e)). For procurement of non-office leased space that does not exceed 3,000 square feet or \$50,000 for the life of

the fixed term of the lease plus any renewal options, the procedures described in (a) - (c) above shall be followed for the appropriate estimated cost limitations, except that a written notice of award shall be made in all cases.

6. General Requirements & Tips Applicable To All Small Procurements.

- a. Postings in electronic media satisfy the competitive solicitation and notice of award requirements for Small Procurements. Quotes and informal proposals may also be submitted in electronic media if permitted by the procurement officer (2 AAC 12.400[g]).
- b. All Small Procurements shall be solicited from Alaskan vendors, whenever practicable. The minimum number of quotations must be sought from Alaskan vendors prior to soliciting any non-Alaskan vendors, unless the procurement officer determines in writing that soliciting quotes or proposals from Alaskan vendors is not practicable.
- c. All Small Procurements are subject to applicable Alaskan bidder and Alaskan products preferences as set out in AS 36.30 and 2 AAC 12.260(d). Proper application of the above listed preferences (in most cases) is to deduct the percentage allowed from the bid of the qualifying Alaskan bidder.
  - 1) Correct Procedure for applying the Alaska Bidders Preference: Non-Alaskan bidder bids \$9078.00 and the Alaskan bidder bid \$9553.00. The correct procedure is to deduct five percent (5%) from the Alaskan bidder, which would result in a total of \$9075.35. The Alaskan company is the low bidder.
  - 2) Incorrect Procedure for applying the Alaska Bidders Preference: Using the amounts shown above, the procurement officer "adds" five percent (5%) to the non-Alaskan bid resulting in a total of \$9,531.90 or \$21.10 less than the Alaskan bid. This incorrect method would have awarded the bid to the non-Alaskan.
  - 3) 2 AAC 12.890 requires that in a solicitation to which both the Alaska bidder's preference and the Alaska products preferences apply, the bidder's preference shall apply first and the products preference second. Additional preferences which may apply are applied in the order that they appear in AS 36.30.170.
- d. No Substitute / Brand Specific (2 AAC 12.100). Except for procurements made under 2 AAC 12.400 (a) and (b) (less than \$5,000.00), a request or specification that limits the procurement of an item or items to a specific manufacturer's name or catalog number may be used only if the procurement officer makes a written determination that only the identified brand name item or items will satisfy the State's needs (2 AAC 12.100).

- 1) Each "No Substitute / Brand Name" request must be accompanied by a written justification, endorsed by the requesting section head or division director. This justification will be used to assist the Procurement Officer in making the required determination. This determination is subject to the requirements of AS 36.30.315.
  - 2) Procurement Officers have the authority to determine "no substitute" for procurements which they are authorized to make. "No substitute" requests which exceed the Procurement Officer's authority will be submitted to Statewide Procurement along with the required justification.
- e. In the process of obtaining quotations or proposals, procurement officers should rotate the list of vendors whenever possible to allow all firms in the area to compete. You should not always contact the same three vendors if other sources are available. However, vendors known to offer good prices in the past do not have to be omitted when rotating the list. The minimum number of quotations or proposals required is just that - a minimum.
- f. When a situation occurs in which only one quotation or proposal is received, the procurement may be awarded to the sole offeror, but the reasons the other offerors failed to submit a quotation or proposal should be documented in the file. You do not have to continue to seek quotations or proposals from companies that historically do not respond to the solicitation. When a quotation or proposal is determined to be non-responsive, you should document the file as to why it was non-responsive.
- g. When an offeror is considered non-responsive because they offered an item that did not meet the specifications, you should document the reason. It is the responsibility of the Procurement Officer to determine compliance to specifications.
- 1) If the item quoted was a brand specific item, insure that brand specific justification was obtained prior to requesting quotations, and that the companies contacted were capable of bidding on that particular brand of item.
  - 2) When a "brand name or equal" specification is used, it is a good practice to list all brands that are known to be "equal" in order to avoid conflicts with the bidders.
- h. Ties: if a tie exists between two or more low quotations or proposals, award shall be made through a random drawing (2 AAC 12.900). Award may not be made by dividing the procurement among identical bidders.
7. Amendments to orders or contracts issued as a result of the Small Procurement Process:

- a. Anticipated Amendments. These are amendments which were foreseen at the time of the procurement. To qualify as an anticipated amendment, (1) the solicitation must have advised offerors of the potential amendment(s); (2) the contract must reference the potential amendment(s); and (3) the amendment(s) must be within the scope of the original contract. However, a contract established under Small Procurement procedures cannot be amended to more than the limit for small procurements.
- b. Unanticipated Amendments. There may be circumstances when an unanticipated amendment to an existing order or contract is in the State's best interest. Per 2 AAC 12.485, non-construction related contracts established under small procurement procedures may be amended up to the small procurement limit. If an unanticipated amendment would result in the total contract amount exceeding the small procurement limit, it must either be treated as a new procurement or submitted as an Emergency or Single Source Request for Alternate Procurement (RAP).

The amendment

- 1) must be within the scope of the original contract;
- 2) must be required due to unforeseen circumstances or predicaments which were not foreseen at the time the contract was established, and not constitute an effort to evade the procurement statutes; and
- 3) a written explanation by the Regional Procurement Officer citing the reason(s) for the amendment must be made part of the procurement file.

#### 8. Fragmentation.

Per the State Administrative Manual (Section 81.150), procurement requirements may not be artificially divided or fragmented to constitute a purchase under Small Procurement rules or to circumvent the source selection procedures required by AS 36.30.100 - 36.30.270. When it becomes apparent that a requester is issuing multiple requests to stay within the limits for small procurements:

- a. if the requests have not been completed they will be consolidated and processed according to the procedures enumerated above. Copies of the requests will then be sent to the requester's division director and the Department Supply Chief for review and possible action; or
- b. if the multiple requests are not discovered until after the procurement(s) has (have) been made, copies of all the procurement documents will be routed as described above.



The department may not always consolidate separate requests for like or similar items; however, this is not fragmentation if it is due to valid operational requirements or constraints. If you have a question about whether or not failure to consolidate requests could be construed as fragmentation, contact the Department Supply Chief for guidance prior to proceeding with procurement action.

## 9. Violations

### a. Per AS 36.30.930. CIVIL AND CRIMINAL PENALTIES:

- 1) a person who contracts for or purchases supplies, equipment for the State fleet, services, professional services, or construction in a manner the person knows to be contrary to the requirements of this chapter or the regulations adopted under this chapter is liable for all costs and damages to the State arising out of the violation; and
- 2) a person who intentionally or knowingly contracts for or purchases supplies, equipment for the State fleet, services, professional services, or construction under a scheme or artifice to avoid the requirements of this chapter is guilty of a class C felony.

### b. Violations of procurement statutes, regulations, the State Administrative Manual, or the terms set forth herein may be cause for revocation of purchasing authority, disciplinary action up to and including dismissal, and/or prosecution under AS 36.30.930.

## D. **Protest Procedures For Small Procurements (2 AAC 12.695)**

1. When an offeror or potential offeror has a dispute over the solicitation or the award of a small procurement, they must first attempt to resolve it with the Procurement Officer. If the attempt is unsuccessful, they may protest. The protest must be filed with the Commissioner or Commissioner's Designee. The protester must also file a copy of the protest with the Procurement Officer.
  - a. If they are protesting a small procurement solicitation, the protest must be filed before the date and time that quotations or informal proposals are due.
  - b. If they are protesting the award of a small procurement not exceeding \$25,000, the protest must be filed within 10 days from the date of the solicitation or the date of the award, whichever is later.
  - c. If protesting the award of a small procurement contract exceeding \$25,000, the protest shall be filed within 10 days from the date that Notice of Award is made.
2. To be accepted, the protest must contain the following information:

- a. the name, address, and telephone number of the protester;
  - b. the signature of the protester or the protester's representative;
  - c. identification of the contracting agency and the solicitation or contract at issue;
  - d. a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
  - e. the form of relief requested.
3. Upon receipt of a protest:
- a. The procurement officer must immediately give notice of the protest to the contractor; or, if no award has been made, to all firms or persons that were solicited for the small procurement.
  - b. If the protest is filed with the procurement officer instead of with the Commissioner or Commissioner's Designee, the procurement officer shall immediately notify the Commissioner or Commissioner's Designee.
  - c. The procurement officer shall also notify the Statewide Procurement Office.
4. The Commissioner or Commissioner's Designee has the following options to resolve the protest:
- a. with the concurrence of the protester, he/she may assign the protest to the procurement officer or other responsible State official for a final administrative resolution under alternate dispute resolution;
  - b. he/she may issue a decision denying the protest and stating the reasons for denial;
  - c. he/she may issue a decision that sustains the protest, in whole or in part, and instruct the procurement officer to implement an appropriate remedy; or
  - d. he/she may conduct a hearing on the protest consistent with the procedures contained in AS 36.30.670(b).
5. There are no provisions for appeal under the small procurement protest process. If the protester is not satisfied with actions or decision of the Commissioner or Commissioner's Designee, their only option is to take the matter to court.

6. Copies of all protests of small procurements and a report of the actions taken shall be forwarded the Statewide Procurement Office or the Chief Contracts Officer, as applicable, within fifteen days of resolution.
7. Tips on avoiding protests.
  - a. Be fair to all offerors or potential offerors. Keep them all informed of any changes to the terms, conditions, and specifications of your solicitations.
  - b. Carefully consider questions or criticisms raised by offerors or potential offerors in response to your solicitations. Be willing to modify your terms and conditions if warranted and practicable.
  - c. Be willing to admit and correct mistakes. If you can't correct a mistake for a current solicitation, promise to correct it in future ones (and keep your promises!).
  - d. Treat all offerors or potential offerors in the way you would want to be treated if you were they.

#### **E. Definitions**

1. "Alternate dispute resolution" means an informal technique that is voluntarily used to resolve issues in controversy. "Alternate dispute resolution" includes negotiation, mediation, facilitation, and arbitration.
2. "Authorized" means authorized by written delegation under 2 AAC 12.740 by the head of an agency that has a procurement delegation based upon a written determination of capability under AS 36.30.015.
3. "Concession contract" means a contract in which the primary method of compensation is based on commissions paid to the contractor. These commissions are generated from the collection of receipts or fees for services charged to customers other than the State. Generally, the commissions are based on a percentage of gross sales or an established fee schedule and do not involve the expenditure of State funds.
4. "In the State's best interest" is defined in 2 AAC 12.415 as: "A determination by a State procurement official that a specific course of action is or is not in the State's best interest under AS 36.30.300 means a determination that is reasonable under the circumstances and is neither arbitrary, capricious, or prompted by corruption. A request to employ the single source procurement method under AS 36.30.300 that is based on a determination that it is in the State's best interest shall cite the specific and significant interests to support the use of the single source procurement method."
5. "practicable" means what may reasonably be accomplished or applied.
6. "practical" has the same meaning as "practicable."

7. "procurement officer" means a person authorized to enter into and administer contracts for an agency and make written determinations with respect to them; it also includes an authorized representative of a procurement officer acting within the limits of authority.
8. "reasonable and adequate procedures" is defined in 2 AAC 12.990(a)(17) as procedures that ensure fairness to potential offerors and competition commensurate with the circumstances of the procurement, considering price, mission requirements, and available competition; "reasonable and adequate procedures" includes contacting only one potential offeror in appropriate circumstances.
9. "solicitation" means an invitation to bid, a request for proposals, a request for quotations, or any other method of soliciting bids, proposals, or quotes to perform a State contract.

## **F. Preferences**

1. AS 36.30.
  - a. ALASKA BIDDERS PREFERENCE: Award will be made to the lowest responsive and responsible bidder after an Alaskan bidder's preference of five percent (5%) has been applied. The preference will be given to a person who: (1) holds a current Alaska business license; (2) submits a bid for goods and services under the name on the Alaska business license; (3) has maintained a place of business within the State staffed by the bidder, or an employee of the bidder, for a period of six months immediately preceding the date of the bid; (4) is incorporated or qualified to do business under the laws of the State, is a sole proprietor, and the proprietor is a resident of the State or is a partnership, and all partners are residents of the State; (5) if a joint venture, is composed entirely of ventures that qualify under (1) - (4) of this subsection. AS 36.30.170(b)
  - b. USE OF LOCAL FOREST PRODUCTS: In a project financed by State money in which the use of timber, lumber and manufactured lumber is required, only timber, lumber and manufactured lumber products originating in this State shall be used unless the use of those products has been determined to be impractical, in accordance with AS 36.15.010.
  - c. LOCAL AGRICULTURAL AND FISHERIES PRODUCTS PREFERENCE: When agricultural, dairy, timber, lumber, or fisheries products are purchased using State money, only those products harvested in Alaska, or in the case of fisheries products harvested or processed within the jurisdiction of Alaska, will be purchased, provided they are available, of comparable quality, and priced no more than 7% higher than products harvested outside the State, or in the case of fisheries products harvested or processed outside the jurisdiction of the State, in accordance with AS 36.15.050.

- d. ALASKA PRODUCT PREFERENCE: A bidder that designates the use of an Alaska Product which meets the requirements of the ITB specifications and is designated as a Class I, Class II, or Class III Alaska Product by the Department of Commerce & Economic Development shall receive a preference in the bid evaluation in accordance with AS 36.30.332 and 3 AAC 92.010.
- e. EMPLOYMENT PROGRAM PREFERENCE: If a bidder qualifies for the Alaskan bidder preference, under AS 36.30.170(b), and is offering goods or service through an employment program, as defined under AS 36.30.990(10), and is the lowest responsive and responsible bidder with a bid that is no more than 15 percent higher than the lowest bid, the procurement officer will make award to that bidder, in accordance with AS 36.30.170(c) and 2 AAC 12.050.
- f. ALASKANS WITH DISABILITIES PREFERENCE: If a bidder qualifies for the Alaskan bidder's preference, under AS 36.30.170(b), and is a sole proprietorship owned by a person with a disability, as defined in AS 36.30.170(j), and is the lowest responsive and responsible bidder with a bid that is no more than 10 percent higher than the lowest bid, the procurement officer will make the award to that bidder, in accordance with AS 36.30.170(e).
- g. EMPLOYERS OF PEOPLE WITH DISABILITIES PREFERENCE: If a bidder qualifies for the Alaskan bidder's preference, under AS 36.30.170(b), and, at the time the bid is submitted, employs a staff that is made up of 50 percent or more people with disabilities, as defined in AS 36.30.170(j), and submits a responsive and responsible bid that is no more than 10 percent higher than the lowest responsive and responsible bid, the procurement officer will make the award to that bidder, in accordance with AS 36.30.170(f).
- h. PREFERENCE QUALIFICATION LETTER: Regarding preference e., f., and g., above, the Division of Vocational Rehabilitation in the Department of Education maintains the list of Alaskan; (1) employment programs that qualify for preference, (2) individuals who qualify for preference as Alaskan's with disabilities, and (3) employer's who qualify for preference as employer's of people with disabilities.

As evidence of an individual's or a business' right to certain preference, the Division of Vocational Rehabilitation will issue a certification letter. To take advantage of the preferences e., f., or g., above, an individual or business must be on the appropriate Division of Vocational Rehabilitation list, at the time the bid is opened, and must provide the procurement officer a copy of their certification letter. Bidders must attach a copy of their certification letter to their bid. The bidder's failure to provide the certification letter mentioned above, with their bid, will cause the State to disallow the preference.

- i. In order to qualify for a preference under e., f., or g., above, a bidder must add value by actually performing, controlling, managing, and supervising the

services provided, or a bidder must have sold supplies of the general nature solicited to other State agencies, governments, or the general public.

2. 2 AAC 12.260 EVALUATION OF PROPOSALS. . . . (d) For the purposes of evaluating cost factors, the proposed costs of an offeror who qualifies as an Alaska bidder under AS 36.30.170 (b) shall be reduced by five percent. The proposal with the lowest cost factor must receive the highest available rating allocated to cost. A proposal that has a higher cost factor than the lowest must have a lower rating for cost.

## **G. Professional Services**

Procurements of professional services must be made in accordance with either Chapter 82 of the State Administrative Manual (non-construction related) or the DOT/PF "Professional Services Agreements (PSA) Manual" (construction related). Procurements should be separated to accommodate Alaskan vendors if Alaskan vendors would not otherwise be able to respond. All small procurement solicitations for professional services must contain the substance of the following paragraph:

Offerors shall carefully review this solicitation for defects and questionable or objectionable material. Comments concerning defects and objectionable material must be made in writing and received by the purchasing authority before proposal due date. This will allow issuance of any necessary amendments. It will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which award could not be made. Protests based upon any omission, error, or the content of the solicitation will be disallowed if not made in writing before the proposal due date.

### **1. Definition Of Professional Services (State Admin Manual)**

- a. AS 36.30.990(17) defines "Professional Services" to mean: "professional, technical, or consultant's services that are predominantly intellectual in character, result in the production of a report or the completion of a task, and include analysis, evaluation, prediction, planning, or recommendation..."
- b. It is important to understand the meaning of the term "professional services." The provider of a service by a professional does not define that as a "professional service." Professional services are any professional, technical, or consultant services predominately intellectual in character. They include analysis, evaluation, predicting, planning, or recommendation and result in the production of a report or the completion of a task. A professional services contract requires specialized knowledge and training (often through long and intensive academic preparation) or in-depth experience in a particular field or discipline. A contract which is procured as a professional service but which in fact is not a professional service is subject to being voided.

If your requirement does not meet the above definition and description, it should not be procured as a "professional service." This does not mean that a

- proposal process may not be appropriate, it means the procurement may not be made under the statutory professional services exclusion. If you have doubts as to whether or not what you are seeking is actually a professional service, contact the Department Supply Chief or Chief Contracts Officer.
- c. The following are examples of ways to decide if you require professional services.
- 1) If you need a particular computer program, you may purchase the program under a professional services contract only if the program has to be designed specifically for your unique needs. If the program is "off-the-shelf" and usable "as is," it cannot be purchased under a professional services contract.
  - 2) A graphic designer may perform a professional service when providing a design for a document or a presentation. In this case, the work required to implement the design would require the unique talent of the designer, and therefore qualifies as a professional service. However, after the graphic designer has completed the camera-ready materials for the document or the materials for the presentation, any printing services required should not be included in the contract, as they are not professional services. Any procurement of supplies included with professional services, when the value of the supplies is estimated to exceed 25 percent of the contract price should not be purchased under this section.
  - 3) Carpenters can perform a professional service, but only if their expertise is used in a consultant mode. For example, they can review a construction or remodeling project, or specification, to verify the feasibility or quality of the project; however, they cannot actually perform any manual carpentry work under a professional services contract.
- d. Some procurements involve a combination of professional services and nonprofessional services and/or supplies. There is no exact separation which determines whether the procurement should be made as a professional service or not. The first determination to be made should be if it is reasonable to separate the professional services from the nonprofessional services and/or supplies. If that is done, each portion of the procurement should be made as appropriate.
- e. If it is impracticable to separate the procurement, then you must decide whether to make the purchase as a professional service or not. A general rule of thumb which should be applied is: if 75 percent or more of the cost of the procurement consists of professional services as defined in Chapter 82., then the procurement may be made as a professional service. If less is a professional service, the procurement should be made otherwise. This does not mean that all procurements which consist of less than 75 percent professional services must be procured by other means. Procurements, including combinations of less than 75 percent professional services, or other circumstances which make competitive sealed bidding or Requests For

Quotations impracticable, should be made under AS 36.30.200 (b) and 2 AAC 12.215 (b) using a Proposal process.

## 2. OTHER PROFESSIONAL SERVICES CONSIDERATIONS (State Admin Manual).

The State cannot normally enter into a contract with a State employee; therefore, it is necessary to ensure an employer/employee relationship does not exist.

- a. An employer/employee relationship may exist if the following conditions apply:
  - 1) The person is subject to the control of the State - not only as to what shall be done but when, where, and how it shall be done. It is not necessary that the State actually direct or control the manner in which services are performed; it is sufficient that the State has the right to do so.
  - 2) The State has the right to discharge the person.
  - 3) The State furnishes the tools, equipment, and a place to work for the individual performing the services.
- b. People are independent contractors if they are subject to control or direction of the State only as to the result to be accomplished and the work to be done, not as to the means and methods for accomplishing the result; or, they are in business providing a service to the public from which they may derive a profit or suffer a loss.

### **H. Construction Related Small Procurements**

1. "construction" is the process of building, altering, repairing, maintaining, improving, or demolishing a structure, building, public highway, or other public improvement to any kind of real property - other than privately owned real property leased for the use of agencies.
  - a. "Construction" includes services and professional services relating to planning and design required for the construction. To be considered as "construction," the item or items being procured must be physically attached to the real property, either structurally or through a hard connection to the mechanical or electrical systems of the real property; i.e., a built in dishwasher that is attached to the building structurally, hard wired to the electrical system, and plumbed to the mechanical system qualifies as "construction."
    - 1) "Construction" may include the bulk purchase of materials when the purchase is for a specific project and the application of such materials meets the intent of the above definition; i.e., lumber supplies purchased



for the construction of a specific project (i.e., to build a storage shed) qualifies as "construction."

- 2) "Construction" does not include the purchase of materials which will not be physically attached to the real property, nor does it include materials being placed into inventory for general or future use; i.e., a portable dishwasher that is easily movable, plugs into an existing outlet, and attaches in some temporary fashion to the mechanical system is not considered "construction," and lumber supplies purchased and placed into inventory, for use on an "as-needed" basis (generally for repairs) is not considered "construction."
  - b. "Construction" does not include the routine operation of a public improvement to real property nor does it include the construction of public housing.
2. Common areas of DOT/PF responsibility and authority for Construction include:
- a. Contracts for planning and design-related services and professional services for State-owned highways, harbors, airports, and buildings.
  - b. Contracts for architectural, engineering, and land surveying services related to the construction of State-owned public facilities.
  - c. Contracts for the construction of State-owned public facilities - highways, airports, and harbors.
  - d. Contracts related to the maintenance of all State-owned public facilities, including janitorial services within State-owned facilities.
    - 1) The regional Maintenance & Operations divisions are responsible for advertising and awarding maintenance contracts for highways, buildings, harbors, and rural airports.
    - 2) Anchorage and Fairbanks International Airports, are responsible for advertising and awarding maintenance contracts for those airports.
    - 3) "Maintenance Contracts" are defined as those that require a company to provide labor, and in most cases equipment and materials, to perform a service.
      - a) Examples of such contracts are: asphalt surface patching; brush cutting; guardrail repair; fence repair; crushing of aggregate in a State-owned pit; snow removal; painting or repairing buildings; and rental of equipment with operators.
      - b) The purchase of materials from a commercial source to be stored or stockpiled for later use by State maintenance crews or contractors, on the other hand, would not be considered "Maintenance Contracts."

3. The upper limit for Construction Related Small Procurements is \$100,000 rather than \$50,000.
4. For detailed procedures and forms for Small Procurements of Construction Related Professional Services, see the DOT/PF "Professional Services Agreements (PSA) Manual."
5. For detailed procedures and forms for Small Procurements of Construction, see the DOT/PF "Small Procurement Manual For Construction Contracts."
6. For detailed procedures and forms for changes (amendments) to Small Procurement Construction contracts, see the "Small Procurement Manual for Construction Contracts."
7. Construction Related Alternate Procurements. Procedures for construction related Alternate Procurements submitted to the Regional Procurement sections are the same as for "non-construction," with the following exceptions: the limit for construction related Single Source and Limited Competition procurements which may be approved at the regional level is \$100,000.00 and contracts for construction exceeding \$100,000.00 may not be made using limited competition procurement procedures.

#### **I. Competitive Sealed Bids And Competitive Sealed Proposals**

For procurement of non-contract supplies, services, or professional services not related to construction estimated to cost more than \$50,000, or for concession contracts estimated to have gross receipts of more than \$50,000, the request(s) shall be sent to Statewide Procurement for processing. Requests received must contain complete information and adequate specifications, or they will be returned without action.