

MEMORANDUM


STATE OF ALASKA

Department of Transportation & Public Facilities
Office of the Commissioner



TO: Agency Commissioners; Chief Contracts Officer, Chief Procurement Officer

DATE: March 31, 2026

FROM: Ryan Anderson, P.E., Commissioner 

SUBJECT: Clarification of Construction vs. Routine Operational Maintenance – Procurement Classification

Persistent challenges across State agencies in the classification of work as “construction” versus non-construction procurement are resulting in increased costs, extended timelines, and delays in executing work necessary to maintain and operate public facilities.

Under AS 36.30.005(b), all rights, powers, duties, and authority relating to the procurement of construction are vested in the Commissioner of the Department of Transportation & Public Facilities (DOT&PF). This includes the responsibility to ensure that procurement classifications are applied consistently with statute and in a manner that supports efficient and effective delivery of services.

Statutory Framework

AS 36.30.990(7) defines construction broadly to include building, altering, repairing, maintaining, improving, demolishing, or other public improvement to real property. However, the statute also expressly provides that construction does not include the *routine operation of a public improvement to real property*.

For purposes of this guidance, public facilities, highways, and other state-owned infrastructure constitute public improvements to real property. This includes buildings, highways, airports, and marine transportation systems, including ferries, ferry terminals, docks, and associated operational systems.

Additionally, AS 35.95.100 (6) defines maintenance as the preservation of a facility as nearly as possible in its original condition as constructed, or as improved.

Need for Clarification

Historically, departmental guidance has emphasized the inclusive elements of the construction definition (e.g., maintenance, repair, replacement), without fully addressing or operationalizing the statutory exclusion for routine operation.

This has led to the classification of many facility-related maintenance and replacement activities as construction, even where such activities are performed to preserve existing function and do not materially alter the facility.

The result has been inconsistent application of procurement pathways and delays in executing time-sensitive and operationally critical work.

Policy Direction

To ensure consistent application of statute across State agencies, the following interpretation shall apply:

Maintenance, repair, and replacement activities that are performed as part of the routine, recurring, and operational preservation of a public improvement to real property—and that do not materially change the facility or system’s function, capacity, or configuration—are considered part of the *routine operation of a public improvement* and are therefore not classified as construction, and should be procured under the Department of Administration (DOA) Procurement Delegation of Authority issued to your department by DOA.

Conversely, activities that expand, enhance, or materially alter a facility or system’s function, capacity, or configuration shall be classified as construction and must be procured under the DOT&PF delegation of authority issued to your department by DOT&PF.

The determination of whether an activity constitutes construction shall be based on the nature of the underlying work. The use of engineering, architectural, or other professional services does not, by itself, determine classification. Such services may support both routine operational maintenance and construction activities, and are considered construction-related only when required to plan or design material changes to a facility or system.

Implementation

The Chief Contracts Officer is directed to issue updated guidance in the form of a Contracts Officer Bulletin that:

- Establishes a clear and consistent framework for distinguishing construction from routine operational maintenance
- Provides criteria and examples to support procurement classification decisions

- Aligns departmental guidance with the statutory exclusion for routine operation under AS 36.30.990(7)
- Supersedes prior guidance to the extent it is inconsistent with this interpretation

This guidance shall be developed in coordination with the Department of Law and the Department of Administration, as appropriate.

Objective

The objective of this clarification is to:

- Ensure consistent and defensible application of statute
- Reduce unnecessary procurement delays
- Enable timely execution of maintenance and operational work
- Maintain compliance with all applicable procurement laws and regulations

Federal Requirements

Nothing in this policy alters, supersedes, or waives any applicable federal procurement requirements, funding conditions, or regulatory obligations.

All procurements utilizing federal funds, or otherwise subject to federal requirements, shall continue to comply with all applicable federal laws, regulations, and guidance, including but not limited to requirements related to competition, procurement methods, labor standards, and reporting.

This policy addresses classification of work for purposes of state procurement authority and does not change the applicability of federal requirements, including those associated with specific funding sources or programs.

This direction is effective immediately. This memorandum and associated guidance will be published on the State of Alaska procurement website. Additional guidance will follow through the updated Contracts Officer Bulletin.

cc: Procurement Officers; Contracts Officers