



ALASKA PUBLIC PROCUREMENT

ACADEMY LEVEL II

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PREPARED BY THE OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT

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LEVEL II – ABOVE \$25,000.01 TO \$100,000**CONDUCTING A SMALL PROCUREMENT ABOVE \$25,000.01**

2 AAC 12.400 describes three levels of competition for small procurements depending on the dollar amount, **including all renewals**. Note that each level of competition is inclusive of the upper limit shown. For instance, a \$25,000 procurement may be conducted using reasonable and adequate procedures while a procurement *exceeding* \$25,000.01 must be procured using the next higher level of competition.

Use the [Small Procurement Matrix](https://oppm.doa.alaska.gov/media/1746/small-procurement-matrix.pdf) <https://oppm.doa.alaska.gov/media/1746/small-procurement-matrix.pdf> to assist in determining what competitive process to use for each dollar amount, what forms to use, and what procurement records must be kept. The Small Procurement Matrix is included at the end of the Level I Procurement Academy manual and is also located on the OPPM website under policy User Guides & Matrixes page.

VERBAL OR WRITTEN QUOTES/INFORMAL PROPOSALS: \$25,000.01 - \$50,000

For procurements costing more than \$25,000, but not more than \$50,000, at least **three** vendors must be contacted for either a quotation or an informal proposal. The initial contact and the vendors' responses may be made verbally or in writing.

AAM 81.220 requires that the minimum number of quotations or informal proposals must be sought from Alaskan vendors before out-of-state vendors are contacted unless the procurement officer determines in writing that this is not practical. Additionally, lists of vendors should be rotated to provide as many Alaskan vendors as possible the opportunity to compete for state business.

Per **AAM 81.230** an established catalog price (be sure to include any delivery costs) may be used as a verbal quote if the catalog is regularly maintained by the manufacturer or contractor, is published or otherwise available for inspection by customers, and 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 public.

Note that using catalog prices in lieu of verbal quotes does not eliminate the need to rotate vendors set forth under **AAM 81.220**.

For written quotes under this section, you must use the **Request for Quotation (RFQ)** form and for informal proposals you may use the **Informal Request for Proposal (IRFP)** template. Both documents are located on the OPPM [Purchasing Documents](https://oppm.doa.alaska.gov/purchasing/documents) <https://oppm.doa.alaska.gov/purchasing/documents-and-forms/> page.

WRITTEN QUOTES/INFORMAL PROPOSALS: \$50,000.01 - \$100,000

For procurements costing more than \$50,000, but not more than \$100,000, at least **three** vendors must be contacted, in writing, for either a **written** quotation or a **written** informal proposal.

AAM 81.220 still applies to this level of competition, meaning that the minimum number of quotations or informal proposals must be sought from Alaskan vendors before out-of-state vendors are contacted. Also, unless the procurement officer determines in writing that this is not practical, lists of vendors should be rotated to allow as many Alaskan vendors as possible the opportunity to compete for state business.

Catalog prices may not be used in place of written quotes.

This level of competition also requires that a written **Notice of Award (NOA)** including protest rights is provided to all vendors that responded to the solicitation request.

For written quotes under this section you must use the [Request for Quotation \(RFQ\)](#) form and for informal proposals you may use the [Informal Request for Proposal \(IRFP\)](#) template. Both documents are located on the OPPM [Purchasing Documents](#) page.

PREFERENCES

The State of Alaska has nine different preferences that may be claimed by vendors. A guide to all of these preferences and examples of how to apply them may be found at: <https://oppm.doa.alaska.gov/purchasing/documents-and-forms/ Documents And Forms, Office of Procurement and Property Management, State of Alaska> .

A preference is applied as a percentage reduction of the bidder's or offeror's price **for evaluation purposes only** and if a vendor qualifies for more than one preference, the percentage of each preference will be added together and subtracted from the bid or proposal price **for evaluation purposes only**. A contract will be awarded for the full amount of the bid or proposal regardless of any preferences applied.

The most commonly claimed preference, as well as the preference that a vendor must qualify for before any other preferences may be claimed, is the Alaska Bidder Preference. This preference is worth 5%.

A vendor must meet the requirements of **AS 36.30.990(2)** to qualify for the Alaska Bidder Preference:

“Alaska bidder” means a person who

- (A) holds a current Alaska Business License;*
- (B) submits a bid for goods, services, or construction under the name as appearing on the person’s current Alaska Business License;*
- (C) 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;*
- (D) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.05 or AS 32.11 and all partners are residents of the state; and*
- (E) if a joint venture, it composed entirely of ventures that qualify under (1)-(4) of this subsection.*

Figure 1 Alaska Bidder Preference Requirements

Another common preference is the Alaska Offerors Preference, described in **2 AAC 12.260(e)**. This preference is applied only when using an informal proposal process and a numerical rating system and is worth 10% of the total points available for rating proposals. A vendor automatically qualifies for the Alaska Offerors Preference if they claim and meet the requirements of the Alaska Bidder Preference.

Other commonly applied preferences include the 3%/5%/7% Alaska Products Preferences which are applied *only* to the qualifying product excluding delivery and other costs, 5% Alaska Veterans Preference, and 15% Employment Program Preference.

No preferences may be applied if not claimed by the vendor, even if the procurement officer knows that the vendor qualifies. Seek guidance from your department’s procurement section if you need help interpreting or applying a preference.

WRITTEN DETERMINATIONS

A written determination is a document prepared by the procurement officer and kept in the procurement file detailing why a specific decision was made.

There are a number of specific written determinations required by the procurement code at different points in the procurement process. A guide to all mandatory written determinations can be found on the OPPM <https://oppm.doa.alaska.gov/policy-oversight/policy-resources/user-guide-matrixes/> *User Guide & Matrixes, Office of Procurement and Property Management, State*

of Alaska page or by following: <https://oppm.doa.alaska.gov/media/1744/written-determinations.pdf>

SMALL PROCUREMENT PROTESTS

The protest processes set forth in the procurement code provide vendors the opportunity to point out potential problems in a particular procurement. The ability for vendors to protest is important in public procurement because it provides a transparent checks and balance system that encourages fair and open competition.

Small procurement protests are governed by **2 AAC 12.695** and the process contains three basic steps:

1. The vendor attempts to informally resolve the protest directly with the procurement officer.
2. The vendor files a written protest with the commissioner of the contracting agency.
3. The commissioner or designee issues a decision, conducts a hearing, or in consultation with the protesting vendor, pursues an alternate dispute resolution, such as arbitration, mediation, or negotiation.

GUIDE TO SMALL PROCUREMENT PROTESTS page 15 of your manual. Protests shows the step-by-step process and associated timelines for handling a small procurement protest.

HANDLING A PROTEST

Protests of any type of procurement can be frustrating to a procurement officer, but it is important to keep in mind that the protest process is there to protect both the state and vendor community. Many protests have brought mistakes in the procurement process to light that were initially missed and have resulted in improvements to the procurement process. Since we are dealing with public money, allowing vendors the opportunity to bring issues to the state's attention is a critical part of ensuring we are procuring supplies and services in an efficient and effective manner.

When faced with a protest or the prospect of a protest:

Do	Do Not
Accept that a mistake may have been made.	Become defensive.
Remain calm and professional.	Spar or argue with the protestor.
Data collected by a university professor.	Data overheard and repeated by the procurement officer (hearsay).
Listen and let the vendor speak.	Try to “slam dunk” the protestor.
Look at the situation from the vendor’s point of view.	Blow off or ignore the protestor.

Figure 2 Avoiding Protests

When responding to a protest, it is important to make sure that all of the protestor’s issues have been identified and addressed individually. The response should also cite any applicable rules, the procurement officer’s interpretation of the rules, and a conclusion accepting or denying the protest in whole or in part. A way to remember this is the IRAC mnemonic – Issue, Rule, Apply, Conclusion.

SAMPLE PROTEST RESPONSE LETTER contains a sample response using the IRAC method and a follow up letter that would come from the procurement officer’s supervisor letting the protestor know that a higher level of staff has reviewed the response and agrees.

Below are some tips to help avoid protests:

- Eliminate redundancy in solicitation documents.
- Review specifications for unreasonable restrictions.
- Clearly identify evaluation and award criteria.
- Respond to all bidder questions in a timely and objective manner.
- Consistently apply policies and procedures.

BASIC CONTRACT ADMINISTRATION

Contract administration is an important, yet often overlooked, part of the procurement process. Because we as procurement officers are dealing with the expenditure of public money, it is crucial that we take steps to ensure it is being spent effectively.

While it may seem that a procurement officer's duties end once a contract is awarded, that is not the case. Without active contract administration, there is no way to know of performance problems with either the state or the contractor until far too late and at likely more cost.

Contract administration includes:

- Assuring the state fulfills its part of the contract.
- Make certain the contractor's performance complies with the requirements of the contract.
- Identify and resolve problems before they reach a critical level.
- Identify when contract changes may be required.
- Keeping detailed, complete, and accurate documentation in the procurement file.
- Track milestone dates, deliverable dates, and contract renewals.

Performance issues must be addressed immediately in writing with a cure letter. A sample cure letter is included in **LEVEL I PROCUREMENT ACADEMY MANUAL**. The cure letter must identify the problem(s), citing relevant contract language, and any corrective action required. The letter must also list the consequences for failing to correct the problem(s) and set a deadline after which the contractor may be found to be in default if corrective actions are not taken.

Finding a contractor to be in default is a serious matter with severe consequences. You will want to work with your department's procurement section to ensure you have sufficient documented evidence to justify a finding of default.

RECORD RETENTION

As part of contract administration, a procurement officer needs to be familiar with the retention schedule for procurement files.

The Department of Education and Early Development, Division of Libraries, Archives, and Museums, Alaska State Archives Section publishes a retention schedule that shows how long certain files must be kept. This schedule can be found at: <https://archives.alaska.gov/rims/index.html>

The schedule for procurement records is Item No. 45.

In general, records relating to small procurements must be kept for the current fiscal year plus 3 years. Be sure to double-check the retention schedule before destroying any procurement files.

ETHICS

As mentioned previously, ethics plays a major role in public procurement. A grand jury stated, in a case involving corruption on a procurement matter, that:

Government officials must always aim for what is best for the public, not merely for what might be “okay.” Every public official has a duty of loyal, faithful and honest service which is clearly inherent in the responsibilities of public office at all levels.

As public procurement professionals, it is important to keep this in mind and be cognizant and accountable for all actions taken as a procurement officer.

Below are some general prohibitions contained in the [Executive Branch Ethics Act](#) and the [Executive Branch Code of Ethics](#).

MISUSE OF OFFICIAL POSITION

Alaska’s Code of Ethics states that you:

- May not use position for personal gain or give unwarranted benefit or treatment.
- May not take or withhold official action in which you have a personal or financial interest.
- May not unduly influence the award of a contract.
- May not accept money from anyone other than the state for performance of your official duties.

IMPROPER GIFTS

Public employees may not solicit or accept gifts that benefit them if it can be reasonably inferred that the gift is intended to influence their actions or judgment.

Alaska’s Code of Ethics requires that gifts valued over \$150 must be reported to your ethics supervisor. **As a public procurement professional, it is strongly encouraged that you do not accept any gifts regardless of value.** Once the appearance of an impropriety is suggested, it calls into question all work done to that point and must be defended.

IMPROPER INFLUENCE

You may not take actions or withhold action on the award or administration of a state contract if you have any personal or financial interest. A “personal or financial interest” could include an interest that would benefit yourself, your spouse, or an immediate family member or friend.

If you are ever in a position where you are unsure if you are in a situation that could be a violation of the Code of Ethics, it is important that you seek guidance from your ethics supervisor before proceeding.

OUTSIDE EMPLOYMENT

The Code of Ethics and Ethics Act does not prohibit an executive branch employee from holding another job, however no public employee may work for a person or organization other than the employee’s own department if that work is incompatible or in conflict with the discharge of their official duties.

If you have outside employment, it must be reported annually to your designated ethics supervisor.

EMPLOYMENT RESTRICTION

The Code of Ethics specifically prohibits a former public employee from working on any matter in which the former employee had personally and substantially participated while employed by the state until at least two years have passed.

This prohibition is designed to prevent a state employee from awarding or influencing the award of a contract to a vendor in exchange for future employment.

REQUEST FOR ALTERNATE PROCUREMENTS (RAPs)

GENERAL RAP INFORMATION

WHAT IS A REQUEST FOR ALTERNATE PROCUREMENT?

A Request for Alternate Procurement, or RAP, is a procurement method that is used when it is not in the state’s best interests to conduct a traditional solicitation.

There are five types of RAPs described in the procurement code:

1. Single Source (**AS 36.30.300 / 2 AAC 12.410**)
2. Limited Competition (**AS 36.30.305 / 2 AAC 12.430**)
3. Exception to Unanticipated Amendment Limitation (**2 AAC 12.485**)
4. Emergency (**AS 36.30.310 / 2 AAC 12.440**)

5. Innovative (AS 36.30.309 / 2 AAC 12.575)

Each type of RAP has unique conditions for use, evidence requirements, and approval processes. In all cases, however, when preparing a RAP, the RAP must explain the situation, list the facts, and contain factual evidence relevant to the explanation.

APPROVAL REQUIREMENTS

AS 36.30.320 grants agencies the delegated authority to approve Single Source and Limited Competition RAPs that fall within the \$100,000 small procurement threshold. However, this authority cannot be delegated below the level of administrative services director.

Single Source and Limited Competition RAPs for amounts greater than \$100,000 and all other types of RAPs must be approved by the Chief Procurement Officer.

EVIDENCE

Single Source and Limited Competition RAPs require **written evidence** to support the request.

October 2020, per PIM #92, all Single Source RAPs that require CPO approval must have supporting documentation to show a good faith effort to conduct market research, find sources of competition and allow our industry partners to provide insights on their capabilities to meet contractual requirements.

As such, in addition to all existing documentation, all future RAPs must also include the following notices, dated within the last 60 days of the RAP being submitted to OPPM:

A Request for Information (RFI), which must be posted to the Alaska Online Public Notice (OPN) for a period no less than 10 calendar days. At the conclusion of the posting period:

1. If only one response to the RFI is received from the vendor already identified as the apparent single source vendor, or no responses received, the Procurement Officer may finalize the Single Source RAP, then include evidence of the posting and the response or lack of responses and submit the package for normal processing.
2. If multiple responses to the RFI are received from interested parties, the Procurement Officer shall conclude that potential competition exists, and competitive solicitation must occur.

If multiple responses to the RFI are received and the procurement officer still considers the Single Source method to be the correct approach, please contact OPPM to discuss.

The evidence must be verifiable and allow for independent examination and determination. When a RAP is presented to a department head or the Chief Procurement Officer for approval, the RAP document should be able to stand on its own.

The type of evidence required will vary based on the supply or service covered by the RAP. A good thing to keep in mind when collecting evidence is what a competing vendor would say to a judge about the evidence or the source of the evidence to discredit it. Would a competing vendor question your expert’s qualifications? Would they question the integrity of your data? You should feel confident with your evidence before submitting a RAP.

Expert testimony is one of the most often used pieces of evidence in Single Source and Limited Competition RAPs. Black’s Law Dictionary defines “expert testimony” as:

Opinion evidence of some person who possesses special skill or knowledge in some science, profession or business which is not common to the average man and which is possessed by the expert by reason of his special study or experience.

Expert testimony is acceptable when it can be determined that the expert is unbiased, and the testimony clearly demonstrates why the person is an expert.

A state employee may be subject to a criminal penalty if false statements are intentionally included in a RAP.

Below are some general examples of what constitutes evidence and what doesn’t.

Acceptable Evidence	Not Evidence
Memo from an expert describing why they are an expert and providing testimony related to the RAP.	Memo containing argument or persuasion.
An affidavit of publication or copy of Online Public Notice showing that a notice was published.	Document stating, “several vendors were contacted.”
Data collected by a university professor.	Data overheard and repeated by the procurement officer (hearsay).
Letter from an authorized representative of a company stating that a product they manufacture is only available from them.	Letter from a state project manager stating that a product manufactured by a company is only available from that company.
A statement from a senior procurement specialist describing how long a formal procurement for a specific service will likely take.	A statement from a senior procurement specialist describing how scientific data from a different vendor will corrupt the existing data.

*Table 1 Examples of Evidence***AMENDMENTS TO RAPS**

Occasionally, a RAP is submitted by an agency but, before a contract is awarded, it is found that the time to award a contract granted by OPPM must be extended or the amount requested must be changed.

To amend a RAP after it has been approved by the chief procurement officer, submit a memo to the OPPM Contracting Officer who processed the original RAP recommendation identifying the RAP in question and explain the necessary changes.

The conditions that allowed approval of the original RAP must still exist in order for the change to be approved.

RAP TYPES**SINGLE SOURCE RAP – AS 36.30.300 / 2 AAC 12.410**

Single Source RAPs are the most common type of RAPs processed by state agencies and are subject to the highest evidentiary requirements since they are the least competitive type of procurement. You may not award a single source contract if a reasonable alternative exists.

A Single Source RAP must meet two tests:

1. It is not practical to award a contract competitively.
2. Award of a single source contract is in the state's best interests.

When addressing that award of a single source contract is in the "state's best interests," **2 AAC 12.415** requires that this determination is reasonable, not arbitrary, capricious or prompted by corruption. Further, you must cite the **specific and significant interests** to support the use of a single source procurement.

2 AAC 12.410(d) sets forth examples of circumstances in which a single source procurement may be appropriate, including:

- If the compatibility of equipment, accessories, or replacement parts is the main consideration.
- If there exists a sole source of expertise required to perform a specific professional service.
- If the procurement is for the services of legal counsel for the purpose of advising or representing the state in specific civil or criminal proceedings or on a specific matter before a federal or state regulatory agency, board, or commission.

LIMITED COMPETITION RAP – AS 36.30.305 / 2 AAC 12.430

A Limited Competition RAP is a request to restrict competition to a specific vendor pool. Once approved, the agency may solicit offers or conduct negotiations equally with each vendor to identify the most advantageous vendor and make award.

Like Single Source RAPs, a Limited Competition RAP must meet two tests:

1. Why solicitation should be limited.
2. Why a traditional competitive process is impractical or contrary to the public interest.

EMERGENCY – AS 36.30.310 / 2 AAC 12.440

There are two methods of procuring supplies and/or services related to an emergency, depending on the situation.

AAM 81.510 provides a “72 hour” rule that basically says if there is an imminent threat to public health, welfare, or safety that requires action in less than 72 hours, agencies are delegated the authority to make emergency determinations.

In this situation, an agency would document the emergency in a memo to the procurement file describing the emergency, why procurement action is required in less than 72 hours and identifying each purchase. The agency would then procure using reasonable means. Within 5 days after the procurement, a procurement report must be submitted to OPPM to document the purchases.

When an agency has more than 72 hours to take action, an Emergency RAP form must be completed, explaining why emergency conditions exist and why the normal procurement process is impractical or contrary to the public interest. The RAP must identify the items or services to be purchased and level of competition to be used.

The agency must then submit the RAP to OPPM for approval by the chief procurement officer.

In all cases, emergency purchases are limited to the supplies and services directly related to the emergency.

EXCEPTION TO UNANTICIPATED AMENDMENT LIMITATION – 2 AAC 12.485

The Exception to Unanticipated Amendment Limitation (EUAL) RAP is needed when an unanticipated amendment exceeds the lesser of 20% of the current contract term or \$100,000.

When calculating 20% of the current contract term, the “current contract term” is only the current amount of the contract, not counting any past or future terms. For example, if you have awarded a 1- year contract for \$50,000 and there are four 1-year optional renewals each worth \$50,000 and you are in the final year of the contract, the current contract term is \$50,000. 20% of this amount is \$10,000, so any unanticipated amendments exceeding this amount would require an EUAL RAP.

This type of RAP is not applicable to small procurement contracts **unless** an amendment would increase the contract beyond \$100,000. Otherwise, a procurement officer may amend a small procurement contract within the small procurement threshold provided the amendment is within the scope of the original contract.

An EUAL RAP **must** address the following topics. Addressing each topic under clearly identified headings will help OPPM to process the RAP faster:

- **Legitimacy:** What caused the need for the unanticipated amendment?
- **Scope:** Is the unanticipated work within the scope of the original contract?
- **Contract Clause:** Does the original contract contain a clause authorizing modifications?
- **Extent:** Does the unanticipated work appear to constitute a new undertaking?

INNOVATIVE – AS 30.30.308 / 2 AAC 12.575

The Innovative RAP process is used to create a procurement procedure that would not otherwise be allowed within the state’s procurement code. It requires two levels of approval, by OPPM and the Department of Law, and is the least used RAP.

An Innovative RAP must address how the procurement procedure will achieve the best value or why it is advantageous to the state due to new or unique state needs or new technologies. It must be accompanied by a detailed procurement plan.

PROCUREMENT VIOLATIONS

WHAT IS A PROCUREMENT VIOLATION?

A procurement violation is a violation of any part of the procurement code – **AS 36.30, 2 AAC 12, AAM Sections 81 or 82**, or the written delegation of purchasing authority issued by the Department of Administration.

A violation of an agency’s internal procurement policy does not constitute a procurement violation that would require a violation report to be submitted to OPPM.

Examples of procurement violations include:

- Purchasing a \$75,000 item using reasonable & adequate procedures instead of obtaining three written quotes as required by **2 AAC 12.400**.
- Procuring leased office space in violation of an agency’s written delegation of purchasing authority.
- Artificially fragmenting an order to avoid more stringent procurement procedures in violation of **AS 36.30.320(d)**.

INVESTIGATING A PROCUREMENT VIOLATION

The investigation process for procurement violations is set out in **AAM 82.300**.

The department's procurement section investigates the procurement violation and prepares a report for submission to the chief procurement officer.

The report prepared by the department must include the following information:

- **Description of the violation:** What type of violation (exceeded authority, lack of competition, etc.), what was purchased, how it was discovered, if it happened once or was repetitive, chronological list of events leading to the violation, and what led to the breakdown in the process.
- **Status of the invoice:** Is the invoice paid or unpaid pending the results of the investigation?
- **Interviews with principles:** Determine the level of procurement knowledge among those involved, their reasoning, and whether they had access to sufficient guidance.
- **Impact to agency:** Did the violation cause excessive costs? Was there a savings achieved? Did it cause public embarrassment or a perception of impropriety?
- **Closing statement:** Describe any actions already taken (training, review process, workload shift, etc.) and whether the violation was inadvertent, process related, planned, or intentional.
- **Department recommendation:** Describe any corrective actions, disciplinary actions, or civil or criminal actions, that are recommended.

The report should also include any supporting documentation as attachments.

Upon receipt of the violation report, OPPM will conduct any further investigation as appropriate and make a final recommendation to the chief procurement officer, who will approve or disapprove the recommended actions.

CIVIL AND CRIMINAL PENALTIES

AS 36.30.930 sets out civil and criminal penalties for knowingly violating the procurement code.

This law reads as follows:

- (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;*
- (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.*

GUIDE TO SMALL PROCUREMENT PROTESTS

FIRST STEP

An interested party (vendor) is required to contact the state agency's procurement officer and attempt to informally resolve a concern or dispute.

An interested party is an actual or prospective vendor whose economic interest may be affected substantially and directly by the issuance of a solicitation, award of the procurement, or failure to award the procurement. Whether or not there is an economic interest will depend on the circumstances.

SECOND STEP

If the attempt to informally resolve a problem is unsuccessful – the vendor may then file a written protest with the commissioner of the department performing the procurement. Must also provide copy of the protest to the procurement officer.

1. If protesting a solicitation, the protest must be filed before the date and time set for receipt of the quotes or proposals.
2. If protesting an award less than \$50,000, the protest must be filed within 10 days of the solicitation or award, whichever is later.
3. If protesting an award from \$50,000.01 to \$100,000, the protest must be filed within 10 days from the date the notice of award is issued.

Protest must contain:

- Name, address, and telephone number of protester;
- Signature of protestor or the protestor's representative;
- Identify the state agency performing the solicitation;
- Identify the solicitation or award at issue;
- Detailed statement of the legal and factual grounds of the protest;
- Form of relief requested (what you want the agency to do).

THIRD STEP

When a protest is received, the procurement officer will 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. The appropriate commissioner or commissioner's designee may use one of the following options to resolve the protest:

- Issue a decision that sustains the protest, in whole or in part, and provides an appropriate remedy.
- Issue a decision denying the protest.
- With the concurrence of the protestor, assign the protest to the procurement officer or other responsible state official for a final administrative resolution under alternate dispute resolution.
- Conduct a hearing consistent with the procedures contained in AS 36.30.670(b).

There are no provisions for administrative appeal under the small procurement protest process. If an interested party is not satisfied with the final decision or resolution, the only option is to take the matter to court.

For specific detailed process refer to AS 36.30.550 and 2 AAC 12.695

SAMPLE PROTEST RESPONSE LETTER

Mr. J. Doe
Ajax Company
999 Goodnews St.
City, State 99999

Dear Mr. Doe:

This is in response to your protest regarding ITB (insert *number*). Your protest was received on (*insert date*). In preparing this response I read your letter carefully and examined the ITB file, still, I find that I must deny your protest for the reasons set out below.

ISSUE

The basis of your protest is that the state should have accepted your bid even though it was late because the courier had guaranteed a delivery date prior to the bid opening.

RULE

The relevant statute is AS 36.30.160(a) LATE BIDS:

(a) Bids received after the bid due date and time indicated on the invitation to bid may not be accepted unless the delay was due to an error of the contracting agency.

APPLY

The requirement that bids be received before the bid due date is set by statute. We do not have the authority to change statute.

Your bid was received and date/time-stamped by our office at 1:33pm on April 16, 2014. The bid due date was 5:00pm on April 14, 2014. The delay was not due to an error of the contracting agency, therefore your bid cannot be accepted.

CONCLUSION

You have not provided a reason for me to conclude that the bid was improperly awarded. Therefore your protest is denied. I hope my decision in this matter does not dissuade you from competing for state contracts in the future.

Sincerely,
T. Boon Procurer

NOTE: Use this follow-up letter for FORMAL PROCUREMENT protests only.

Dear Mr. Doe:

This is to advise you that I have reviewed the response to your protest issued by T. Boon Procurer and that I agree with the decision.

If you wish, you may appeal the decision. Your appeal must be received by the commissioner of the Department of Administration within ten days of the date you receive the procurement officer's decision. The appeal period begins with the first calendar day following your receipt of the procurement officer's decision and ends at the close of business on the tenth calendar day, unless the tenth day falls on a weekend or State holiday. If the tenth day falls on a weekend or holiday, the appeal period ends the first working day following weekend or holiday.

If you file an appeal you must send a copy of the appeal to the procurement officer. In accordance with AS 36.30.590, the appeal must be signed by you or your representative and include the following:

- your name, address and telephone number;
- identification of the bid or contract you are appealing;
- a detailed statement of the legal and factual grounds of your protest and appeal;
- copies of **all** relevant documents;
- the form of relief you want;
- a copy of the procurement officer's decision; and
- identification of the factual and/or legal errors, in the procurement officer's decision, that form the basis of your appeal.

The appeal must be written. Telephone notice of your intent to appeal will not be accepted. FAX copies are acceptable, but because there is no signature, telegrams are not. When your appeal is received you will be sent a copy of the protest report developed by the procurement officer and submitted to the commissioner. You will then have seven days from the date that you received the report to submit additional comments. Your comments should be sent to the commissioner.

After considering the information submitted the commissioner will decide:

- if your appeal will be upheld and the procurement officer's decision overturned; or
- if your appeal will be denied; or
- if a hearing will be conducted.

If you have questions about the appeal procedure you should contact the Office of Administrative Hearings:

- Anchorage 907 269-8170
- Juneau 907 465-1886

Sincerely,

J. Smith Procurer
Contracting Manager

AN ANTITRUST PRIMER FOR PROCUREMENT PROFESSIONALS

AUTHOR

Robert E. Connolly

Robert E. Connolly, Chief, Middle Atlantic Office, U.S. Department of Justice, Antitrust Division, The Curtis Center, Suite 650 West, 170 South Independence Mall West, Philadelphia, Pennsylvania 19106, (215) 597-7405, e-mail:

robert.connolly@usdoj.gov.

ABSTRACT

Bid rigging, price fixing and other typical antitrust violations have a more devastating effect on the American public than any other type of economic crime. Such illegal activity contributes to inflation, shakes public confidence in the country's economy, and undermines our system of free enterprise. In the case of government procurement, such crimes increase the costs of government, increase taxes and undermine the public's confidence in its government. If all those involved in procurement have a working knowledge of the antitrust laws and understand how to identify violations, they can make a significant contribution to law enforcement.

FEDERAL ANTITRUST ENFORCEMENT.

The federal antitrust laws were enacted to preserve our system of free competition. They serve as our primary defense against unlawful attempts to limit competition and increase the purchase price of products and services. As purchasers of goods and services, purchasing departments can be both prime targets for, and sensitive detectors of, antitrust violations.

The Sherman Act prohibits any agreement among competitors to fix prices. Criminal enforcement of the Sherman Act is the responsibility of the Antitrust Division of the United States Department of Justice. Violation of the Sherman Act is a felony punishable by a fine of up to \$10 million for corporations, and up to \$350,000 or three years imprisonment (or both) for individuals. Civil actions for injunctive relief and treble damages under 15 U.S.C. § 15 is also an effective enforcement tool. In addition, collusion among competitors may violate the federal mail fraud statute, Racketeer Influenced Corrupt Organization (RICO) statute or constitute making false statements to a government agency if false information is provided on a non-collusion affidavit. All of these are felony violations punishable by a fine and imprisonment.

BID RIGGING, PRICE FIXING, AND OTHER TYPES OF COLLUSION

Commencement of criminal prosecution under Section 1 of the Sherman Act requires that the unlawful "contract, combination or conspiracy" occurred within the previous five years. The offense most likely to arise in a procurement context is commonly known as "price fixing" or "bid rigging," and is also referred to as "collusion." An express agreement is not always necessary, and the offense can be established either by direct evidence (such as the testimony of a participant) or by circumstantial evidence (such as big awards that establish a pattern of business being rotated among competitors).

Any agreement or informal arrangement among independent competitors by which prices or bids are fixed is per se unlawful. Where a per se violation is shown, defendants cannot offer any evidence to demonstrate the reasonableness or the necessity of the challenged conduct. Thus, competitors may not justify their conduct by arguing that price fixing was necessary to avoid cut-throat competition, or that price fixing actually stimulated competition, or that it resulted in more reasonable prices.

Price fixing among competitors can take many forms. For example, competitors may take turns being the low bidder on a series of contracts, or they may agree among themselves to adhere to published list prices. It is not necessary that all competitors charge exactly the same price for a given item; an agreement to raise present prices is enough to violate the law. Other examples of price fixing include: (1) agreements to establish or adhere to uniform price discounts; (2) agreements to

eliminate discounts; (3) agreements to adopt a standard formula for the computation of selling prices; (4) agreements not to reduce prices without prior notification to others; (5) agreements to maintain specified discounts; (6) agreements to maintain predetermined price differentials between different quantities, types or sizes of products; and (7) agreements not to advertise prices. Usually, but not always, price-fixing conspiracies include mechanisms for policing or enforcing adherence to the prices fixed.

TYPICAL ANTITRUST BID RIGGING VIOLATIONS

The following describes common bid-rigging patterns you may be able to recognize.

- **Bid Suppression** - In "bid suppression" or "bid limiting" schemes, one or several competitors (who would otherwise be expected to bid or who have previously bid) refrain from bidding or withdraw a previously submitted bid, so that a competitor's bid will be accepted.
- **Complementary Bidding** - "Complementary bidding" (also known as "protective" or "shadow" bidding) occurs when competitors agree to submit token bids that are too high to be accepted (or if competitive in price, then on special terms that will not be acceptable). Such bids are not intended to secure the buyer's acceptance, but are merely designed to give the appearance of genuine bidding. Having multiple bidders can lead a purchaser to believe that prices are competitive when this may not be the case, as collusive complementary bids have been arranged.
- **Bid Rotation** - In "bid rotation," all vendors participating in the scheme submit bids, but by agreement take turns being the low bidder. A strict bid rotation defies the law of chance and suggests collusion.

Competitors may also take turns on contracts according to the size of the contract. Many cases of bid rigging have been exposed in which certain vendors or contractors get contracts valued above a certain figure, while others get contracts worth less than that figure.

- **Subcontracting** - Subcontracting is another area for attention. If losing bidders or non-bidders frequently receive subcontracts from the successful low bidder, the subcontracts (or supply contracts) may be a reward for submitting a non-competitive bid or for not bidding at all.
- **Market Division** - Market division schemes are agreements to refrain from competing in a designated portion of the market. Competing firms may, for example, allocate specific customers or types of customers, so that one competitor will not bid (or will submit only a complementary bid) on contracts let by a certain class of potential customers. In return, his competitors will not bid on a class of customers allocated to him. For example, a vendor of office supplies may agree to bid only on contracts let by certain Federal agencies, and refuse to bid on contracts for private companies.

Allocating territories among competitors is also illegal. This is similar to the allocation-of-customers scheme, except that geographic areas are divided instead of customers.

Detecting Bid Rigging, Price Fixing, and Other Types of Collusion. Certain patterns of conduct suggest that illegal restraints on trade have occurred. The following is a checklist of some factors, any one of which may indicate collusion. You should therefore be sensitive to their occurrence.

CHECKLIST FOR POSSIBLE COLLUSION

- Some bids are much higher than published price lists, previous bids by the same firms, or engineering cost estimates. (This could indicate complementary bids.)
- Fewer competitors than normal submit bids. (This could indicate a deliberate plan to withhold bids.)
- The same contractor has been the low bidder and has been awarded the contract on successive occasions over a period of time.
- There is an inexplicably large dollar margin between the winning bid and all other bids.
- There is an apparent pattern of low bids regularly recurring, such as corporation "X" always winning a bid in a certain geographical area for a particular service, or in a fixed rotation with other bidders.
- A certain company appears to be bidding substantially higher on some bids than on other bids with no logical cost differences to account for the differences.
- A successful bidder repeatedly subcontracts work to companies that submitted higher bids on the same projects.
- There are irregularities (e.g., identical calculation errors) in the physical appearance of the proposals, or in the method of their submission (e.g., use of identical forms or stationery), suggesting that competitors had copied, discussed, or planned one another's bids or proposals. If the bids are obtained by mail, there are similarities of postmark or post metering machine marks.
- Two or more competitors file a "joint bid," even though at least one of the competitors could have bid on its own.
- A bidder appears in person to present his bid and also submits the bid (or bond) of a competitor.
- Competitors regularly socialize or appear to hold meetings, or otherwise get together in the vicinity of procurement offices shortly before bid filing deadlines.
- Competitors meet as a group with procurement personnel to discuss or review terms of bid proposals. (This may facilitate subtle exchanges of pricing information.)
- Competitors submit identical bids or frequently change prices at about the same time and to the same extent.
- Bidders that ship their product short distances to the buyer charge the same price as those that ship long distances. (This may indicate price fixing, since otherwise the distant sellers would probably charge more for a given item to account for the extra cost of transportation.)
- Local competitors are bidding higher prices for local delivery than for delivery to points farther away. (This may indicate rigged prices in the local market.)
- Bid prices appear to drop whenever a new or infrequent bidder submits a bid.

SUSPICIOUS STATEMENTS

Statements made by marketing representatives or suppliers may suggest that price fixing is afoot. Examples of such statements, and other representations that are suspicious and may be indicative of price fixing, include:

- Any reference to "association price schedules," "industry price schedules," "industry suggested prices," "industry-wide" or "market-wide" pricing.
- Justification for the price or terms offered "because they follow industry (or industry leaders') pricing or terms," or "follow (a named competitor's) pricing or terms."
- Any reference to "industry self-regulation," etc., such as justification for price or terms "because they conform to (or further) the industry's guidelines" or "standards."
- Any references that the representative's company has been meeting with its competitors for whatever reason.
- Justification for price or terms "because our suppliers, etc., require it" or "because our competitors, etc., charge about the same," or "we all do it."
- Any reference that the representative's company "does not sell in that area," or that "only a particular firm sells in that area," or "deals with that business."
- Statements to the effect that "such and such salesman (of a competitor) should not be making a particular proposal to you," or "should not be calling on you."
- Statements to the effect that it is a particular vendor's "turn" to receive a particular job or contract.
- Statements by a bidder that it was "protecting" another supplier or was submitting a "courtesy," "complementary," "token," or "cover" bid.
- Statements by bidder that suppliers have discussed their prices or bids or that they have some deal or understanding about prices or bids.

CONDITIONS FAVORABLE TO COLLUSION

While price fixing can occur in almost any industry, it is most likely to occur in industries where only a few firms compete, and where the products of those firms are similar. You should be sensitive to industry conditions that increase the probability of collusion.

- Collusion is more likely to occur if there are few sellers. The fewer the sellers, the easier it is for them to get together and agree on prices. Collusion may also occur when the number of firms is fairly large, but there are a small group of major sellers and the rest are "fringe" sellers who control only a small fraction of the market.
- The probability of collusion increases if the product cannot easily be substituted for another product. The gains from colluding will be high if the product has few, if any, good substitutes.
- The more standardized a product is, the easier it is for competing firms to reach agreement on a common price structure. It is much harder to agree on other forms of competition such as quality or service.

WHAT YOU CAN DO

You can assist in the enforcement of the antitrust laws not only by playing an active role in the detection of collusive bidding, but also by taking positive steps to stimulate competition and prevent collusive behavior. Some of the procedures that can be established to discourage anticompetitive activity include:

- Expand the list of bidders to make it more difficult to collude. To reduce the ability of conspirators to coordinate illegal activities, buyers should solicit as many reliable sources as economically possible. As the number of bidders increases, the probability of successful collusive bidding decreases. Soliciting numerous suppliers will not necessarily prevent a conspiracy, but it can reduce the effectiveness of a conspiracy by providing a larger competitive base. While there is no magic number of bidders above which collusion does not occur, past experience suggests that collusion is more likely to arise where there are five or fewer competitors.
- Consolidate purchases as a defensive tactic. The existence of a large number of contract opportunities facilitates collusion among sellers. When buyers are numerous, and each purchases only a small amount, sellers have less incentive to grant price cuts. Consolidation of purchases tends to increase the value of winning the bid. A firm, even if part of a conspiracy, may be tempted to cheat and take the prize.
- Consider the process of awarding contracts when a tie bid occurs. Not all identical bids are the result of a price-fixing conspiracy. However, you should not inadvertently encourage tie bids by assuring identical bidders an equal or reasonable share of the buyer's business. From a seller's standpoint, it may be better to share business equally with other suppliers at significantly higher prices than to have an uncertain share of the business at lower, competitive prices. Thus, in a tie-bid situation, agencies should consider re-letting the contract, or find some way to award the bid to one of the tied bidders. A lottery system of awarding contracts should not be used.
- Ensure that you understand the elements of collusion, such as bid rigging and market allocation. Provide information to others on how to detect collusion.
- Have procurement records, e.g., bid lists, abstracts and awards, readily available. Looking at a single contract is not enough because records of past bids are needed to determine if a pattern of allocation or rotation is present.
- Report all suspected collusion (based upon a bid analysis, an audit, a complaint from other competitors, or statements by persons who appear knowledgeable, e.g., former employees) to the Antitrust Division for appropriate action.

The State of Alaska believes it is important for all employees who are involved in procurement or purchasing to report suspicious behavior that raises antitrust concerns. Such behavior should be reported to:

*Assistant Attorney General
Civil Division, Commercial & Fair Business
Department of Law
1031 W 4th Ave, #200
Anchorage, AK 99501*

ESTIMATED PRICE OF PROCUREMENT	MINIMUM COMPETITION REQUIRED	FORMS USED BY AGENCY	PUBLIC NOTICE REQUIREMENT	AWARD METHOD	KEEP IN PROCUREMENT FILE
<p>\$25,000 or Less*</p> <p>AS 36.30.320 and 2 AAC 12.400(b)</p> <p>*Reasonable and adequate procedures also apply purchases with a State Purchasing Card and to certain higher value procurements up to \$50,000, see 2 AAC 12.400(b).</p> <p>TOTAL value of procurement must include all options to renew or extend. For example:</p> <ul style="list-style-type: none"> • If contract runs for 3 years, it is the total for the 3 years. • If contract runs for 1 year with 2 one-year renewal options, it is the total for 3 years. <p><i>If professional service, ensure contract meets definition per AAM 81.430.</i></p>	<p>Use reasonable and adequate procedures that ensure fairness to potential bidders and competition commensurate with the circumstances of the procurement considering price, mission requirements, and available competition.</p> <p>Quote(s) or informal proposal(s) must be solicited from Alaskan vendors prior to soliciting non-Alaskan vendors, unless the procurement officer determines in writing that soliciting Alaskan vendors is not practicable.</p> <p>May not artificially fragment the purchase to avoid a higher level of competition.</p> <p>Postings in electronic media may satisfy the competitive solicitation requirement.</p>	<p>Contract Award, Delivery Order, invoice, or other forms that provide record keeping and accountability.</p> <p><i>Professional Services contracts must be in writing. The ASPS form may be required by agency Policy & Procedure (if used, the number is assigned by agency).</i></p>	<p>No minimum requirement.</p>	<p>Select the low quote or most advantageous proposal.</p> <p>Include 5% Alaska Bidder Preference, 5% Alaska Veteran Preference, 10% Alaskan Offeror Preference (for informal proposals if a numerical rating system is used), and all other statutory and regulatory preferences that apply.</p> <p>Written determination required if awarding to a non-resident per AS 36.30.362.</p> <p>Protest procedures under 2 AAC 12.695 apply.</p>	<p>Identify agency official responsible for the purchase of supply or service acquired and the vendor's name and price.</p> <p>Copy of contract and any amendments.</p> <p>If reasonable and adequate procedures involve contacting more than one vendor, identify each vendor solicited and their response.</p> <p>Written determination if impracticable to solicit quote(s) or informal proposal(s) from Alaska vendors only.</p> <p>Written determination if awarding to a nonresident (AS 36.30.362)</p> <p><i>Copy of ASPS (if used).</i></p>

ESTIMATED PRICE OF PROCUREMENT	MINIMUM COMPETITION REQUIRED	FORMS USED BY AGENCY	PUBLIC NOTICE REQUIREMENT	AWARD METHOD	KEEP IN PROCUREMENT FILE
<p>\$25,000.01 to \$50,000</p> <p>AS 36.30.320 and 2 AAC 12.400(c)</p> <p>TOTAL value of procurement must include all options to renew or extend. For example:</p> <ul style="list-style-type: none"> If contract runs for 3 years, it is the total for the 3 years. If contract runs for 1 year with 2 one-year renewal options, it is the total for 3 years. <p><i>If professional service, ensure contract meets definition per AAM 81.430.</i></p>	<p>At least three firms or persons shall be contacted for quotes or informal proposals. The solicitation and responses may be either written or verbal. You must include the specifications, award criteria, and date and time responses are due.</p> <p>Seek minimum number of quotes or informal proposals from Alaskan vendors prior to soliciting non-Alaskan vendors, unless the procurement officer determines in writing that soliciting from Alaskan vendors is not practicable.</p> <p>May not artificially fragment to avoid a higher level of competition.</p> <p>Postings to the OPN may satisfy the competitive solicitation requirement.</p>	<p>Contract Award, Delivery Order, invoice, or other forms that provide record keeping and accountability.</p> <p>RAP if required.</p> <p><u>PROFESSIONAL SERVICES</u></p> <p><i>The ASPS form may be required by agency Policy & Procedure (if used, the number is assigned by agency).</i></p> <p><i>Standard Agreement Form (#02-093) or Standard Contract Form (SCF), appropriate appendices, or a document approved by the AG's Office.</i></p>	<p>Public notice of solicitation occurs when vendor is contacted for quote or informal proposal.</p> <p>Verbal notice of award provided if contacted by vendors.</p>	<p>Award in accordance with the specifications and award criteria in the solicitation to the responsive and responsible bidder providing the low quote or most advantageous informal proposal.</p> <p>Include 5% Alaska Bidder Preference, 5% Alaska Veteran Preference, 10% Alaskan Offeror Preference (for informal proposals if a numerical rating system is used), and all other statutory and regulatory preferences that apply.</p> <p>Written determination required if awarding to a nonresident per AS 36.30.362.</p> <p>Informal RFP's must weight price no lower than 40% for professional/non-professional services and 60% for supplies, unless department Commissioner approves a waiver in advance.</p> <p>Protest procedures under 2 AAC 12.695 apply.</p>	<p>Identify person who made the solicitation, the specifications, award criteria, date of solicitation, date & time responses were due, names of vendors contacted, summary of verbal responses, copies of all quotes or informal proposals received, and justification for award.</p> <p>Copy of contract, amendments and ASPS or RAP forms if used.</p> <p>Written determination if impracticable to solicit three quotes or informal proposals from Alaska vendors only.</p> <p>Written determination if awarding to a nonresident (AS 36.30.362)</p> <p>RAP if used.</p>

ESTIMATED PRICE OF PROCUREMENT	MINIMUM COMPETITION REQUIRED	FORMS USED BY AGENCY	PUBLIC NOTICE REQUIREMENT	AWARD METHOD	KEEP IN PROCUREMENT FILE
<p>\$50,000.01 to \$100,000</p> <p>AS 36.30.320 and</p> <p>2 AAC 12.400(d)</p> <p>TOTAL value of procurement must include all options to renew or extend. For example:</p> <ul style="list-style-type: none"> If contract runs for 3 years, it is the total for the 3 years. If contract runs for 1 year with 2 one-year renewal options, it is the total for 3 years. <p><i>If professional service, ensure contract meets definition per AAM 81.430.</i></p>	<p>At least three firms or persons shall be contacted for quotes or informal proposals. The solicitation and responses must be in writing.</p> <p>Seek minimum number of quotes or informal proposals (three) from Alaskan vendors prior to soliciting non-Alaskan vendors, unless procurement officer determines in writing that soliciting quotes from Alaskan vendors is not practicable.</p> <p>May not artificially fragment the purchase to avoid a higher level of competition.</p> <p>Postings in electronic media may satisfy the competitive solicitation requirement.</p> <p>Service contracts above \$50,000 must be performed in the United States unless a waiver has been approved by the Chief Procurement Officer in advance.</p>	<p>Request for Quotation and Addendum I as applicable,</p> <p>Or</p> <p>Informal Request for Proposals (written).</p> <p>Contract Award, Delivery Order, invoice, or other forms that provide record keeping and accountability.</p> <p>RAP if required.</p> <p><u>PROFESSIONAL SERVICES</u></p> <p><i>The ASPS form may be required by Agency P&P (if used, the number is assigned by agency).</i></p> <p><i>Standard Agreement Form (#02-093) or Standard Contract Form (SCF), appropriate appendices, or a document that has been approved by the AG's Office.</i></p>	<p>Public notice of solicitation occurs when vendor is contacted for quote or informal proposal.</p> <p>Written notice of award is sent to all vendors who provided a quote or informal proposal.</p>	<p>Award in accordance with the specifications and award criteria in the solicitation to the responsive and responsible offer providing the low quote or most advantageous informal proposal.</p> <p>Include 5% Alaska Bidder Preference, 5% Alaska Veteran Preference, 10% Alaskan Offeror Preference (for informal proposals if a numerical rating system is used), and all other statutory and regulatory preferences that apply.</p> <p>Notice of Award must be in writing to all vendors who responded to solicitation.</p> <p>Written determination required if awarding to a nonresident per AS 36.30.362.</p> <p>Informal RFP's must weight price no lower than 40% for professional/non-professional services and 60% for supplies, unless department Commissioner approves a waiver in advance.</p> <p>Postings in electronic media may satisfy the notice of award requirement.</p> <p>Protest procedures under 2 AAC 12.695 apply.</p>	<p>A copy of the solicitation, the names of the firms or persons contacted and copies of all written quotations or informal proposals received, notice of award, and justification for award.</p> <p>Copy of contract and any amendments.</p> <p>Written determination if impracticable to solicit three quotes or informal proposals from Alaska vendors only.</p> <p>Written determination if awarding to a nonresident (AS 36.30.362).</p> <p>RAP if used.</p>

SAMPLE CURE LETTER

CERTIFIED MAIL NO. _____

RETURN RECEIPT REQUESTED

Date

Contractor

Address

City, ST ZIP

Attn: _____

RE: Contract # _____ - Potential Default Action

Dear Mr./Ms. _____:

This is to advise you that **[CONTRACTOR]** has failed to comply with the terms and conditions of Contract # _____.

The award of this contract was based on your firm's response to RFQ # _____. On page 1 of the solicitation, under Delivery, your firm guaranteed delivery within 30 calendar days after the receipt of an order. **[CONTRACTOR]** received the order on May 1, 2014. Delivery was required on or before May 31, 2014. As of today, June 3, 2014, we have not received the order.

Per RFQ # _____, page 3, item 28. Default:

In case of default by the contractor, for any reason whatsoever, the State of Alaska may procure the goods or services from another source and hold the contractor responsible for any resulting excess cost and may seek other remedies under law or equity.

If **[CONTRACTOR]** fails to deliver the 15 Acme widgets within **XX** calendar days after the receipt of this letter, the state will have no choice but to consider **[CONTRACTOR]** in default and terminate the contract. If that occurs, the state will procure the widgets from another source and **[CONTRACTOR]** will be responsible for any excess costs, which will be calculated as the difference between your firm's bid price and the actual cost of 15 Acme widgets that are purchased from another source. The state may also consider **[CONTRACTOR]** a non-responsible bidder on future solicitations based on its failure to perform under the terms and conditions of Contract # _____.

This matter requires your immediate attention. If you have any questions or need additional clarification, please contact me at (907) XXX-XXXX.

Sincerely,

T. Boone Purchaser
Procurement Officer

CLASS EXERCISES

WHAT'S YOUR PREFERENCE?

Practical Application #1

The Department of Education and Early Development issued a solicitation for the fabrication and installation of custom-built cabinetry at Mt. Edgecumbe High School.

The bid breakdown, and preference(s) that each vendor is claiming are as follows:

INSTRUCTIONS: Please apply all applicable preferences for each vendor and determine the low bidder.

NOTE: For the purpose of this exercise, assume that each vendor meets the minimum qualifying criteria for each preference that they are claiming.

MENDENHALL MILLWORKS

Claiming – Alaska Bidder (5%) preference / Class III (7%) product preference

Cabinet design and fabrication	\$40,000.00
Delivery and installation costs	<u>\$5,000.00</u>
Total Bid Price	\$45,000.00

EMPLOYMENT PROGRAMS CABINETRY, INC.

Claiming – Alaska Bidder (5%), Employment Program (15%), and Local Agricultural (7%) preferences

Cabinet design and fabrication	\$49,000.00
Delivery and installation costs	<u>\$1,000.00</u>
Total Bid Price	\$50,000.00

TUNDRA CABINETRY

Claiming – Alaska Bidder (5%) preference

Cabinet design and fabrication	\$39,500.00
Delivery and installation costs	<u>\$500.00</u>
Total bid price	\$40,000.00

WHAT'S YOUR PREFERENCE?

Practical Application #1

The bid breakdown, and preference(s) that each vendor is claiming are as follows:

MENDENHALL MILLWORKS

Claiming – Alaska Bidder (5%) preference & Class III product preference

Cabinet Design & Fabrication	\$40,000.00
Delivery & Installation Costs	<u>\$5,000.00</u>
Total Bid Price	\$45,000.00

Preference Valuation

Alaska Bidder Preference	<i>(\$45,000 x 5% = \$2,250)</i>	5%
Class III Product Preference	<i>(\$40,000 x 7% = \$2,800)</i>	7% (product only)

Preference Application

Total Bid Price	\$45,000.00
Total Preference Value	- \$2,250.00
Total Product Preferences	<u>- \$2,800.00</u>
Revised Bid Price for Evaluation Purposes	\$39,950.00

EMPLOYMENT PROGRAMS CABINETRY, INC. – Awarded Contract

Claiming – Alaska Bidder (5%), Employment Program (15%), & Local Agricultural (7%) preferences

Cabinet Design & Fabrication	\$49,000.00
Delivery & Installation Costs	<u>\$1,000.00</u>
Total Bid Price	\$50,000.00

Preference Valuation

Alaska Bidder Preference		5%
Employment Program Preference		15%
Local Agricultural & Fisheries Product		<u>7%</u>
Value of Preferences	<i>(\$50,000 x 27% = \$13,500)</i>	27%

Preference Application

Total Bid Price	\$50,000.00
Total Preference Value	<u>- \$13,500.00</u>
Revised Bid Price for Evaluation Purposes	\$36,500.00

TUNDRA CABINETRY

Claiming Alaska Bidder Preference

Cabinet Design & Fabrication	\$39,500.00
Delivery & Installation Costs	<u>\$500.00</u>
Total Bid Price	\$40,000.00

Preference Valuation

Alaska Bidder Preference	<i>(\$40,000 x 5% = \$2,000)</i>	5%
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Preference Application

Total Bid Price	\$40,000.00
Total Preference Value	<u>\$2,000.00</u>
Revised Bid Price for Evaluation Purposes	\$38,000.00

WHAT'S YOUR PREFERENCE?

Practical Application #2

The Department of Natural Resources issued a solicitation for the printing of brochures to educate the residents of Alaska on their department's process for reforesting a section of land. They received three bids for this service.

The bid breakdown, and preference(s) that each vendor is claiming are as follows:

INSTRUCTION: Please apply all applicable preferences for each vendor and determine the low bidder.

NOTE: For the purpose of this exercise, assume that each vendor meets the minimum qualifying criteria for each preference that they are claiming.

ABC PRINTING

Claiming – Alaska Bidder (5%) and Veteran (5% / \$5,000 max) preferences / Class III (7%) product preference

Printing cost	\$1,200.00
Delivery cost	<u>\$100.00</u>
Total Bid Price	\$1,300.00

REACH, INC.

Claiming – Alaska Bidder (5%) and Employment Program (15%) preferences

Printing cost	\$1,300.00
Delivery cost	<u>No Charge</u>
Total Bid Price	\$1,300.00

LOWER 48 PRINTING AND BINDING

Claiming no preferences

Printing cost	\$1,000.00
Delivery cost	<u>\$150.00</u>
Total bid price	\$1,150.00

WHAT'S YOUR PREFERENCE?

Practical Application #2

The Department of Natural Resources issued a solicitation for the printing of brochures to educate the residents of Alaska on their department's process for reforesting a section of land. They received three bids for this service.

The bid breakdown, and preference(s) that each vendor is claiming are as follows:

ABC PRINTING

Claiming – Alaska Bidder and Veteran preferences & Class III product preference

Printing Cost (including graphic layout, paper, ink, & labor)	\$1,200.00
Delivery Cost	<u>\$100.00</u>
Total Bid Price	\$1,300.00

Preference Valuation

Alaska Bidder Preference	5%
Alaska Veteran Preference	<u>5%</u>
Value of Preferences	(\$1,300 x 10% = \$130) 10%

Class III Product Preference	(\$1,200 x 7% = \$84)	7% (product only)
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Preference Application

Total Bid Price	\$1,300.00
Total Preference Value	- \$130.00
Total Product Preference	- <u>\$84.00</u>
Revised Bid Price For Evaluation Purposes	\$1,086.00

REACH, INC. – Awarded Contract

Claiming – Alaska Bidder & Employment Program preferences

Printing Cost (includes graphic layout, ink, & labor)	\$1,300.00
Delivery Cost	<u>No Charge</u>
Total Bid Price	\$1,300.00

Preference Valuation

Alaska Bidder Preference	5%
Employment Program Preference	<u>15%</u>
Value of Preferences	(\$1,300 x 20% = \$260) 20%

Preference Application

Total Bid Price	\$1,300.00
Total Preference Value	- <u>\$260.00</u>
Revised Bid Price For Evaluation Purposes	\$1,040.00

LOWER 48 PRINTING AND BINDING

Claiming no preferences

Printing Cost (including graphic layout, paper, ink, & labor)	\$1,000.00
Delivery Cost	<u>\$150.00</u>
Total Bid Price	\$1,150.00

Total Bid Price For Evaluation Purposes	\$1,150.00
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SMALL PROCUREMENT CASE STUDY

The Department of Fish & Game (DFG) has a need for three widgets. DFG has determined Echo Widgets is the only brand that will meet the agency's needs and placed phone calls to the four vendors. There is a 30-day delivery requirement.

The quotes received include:

The Great Alaska Widget Co. Fairbanks, Alaska	\$19,000
Industrial Widgets, Inc. Seattle, Washington	\$21,900
Widgets-R-Us Anchorage, Alaska	\$23,000
Bridget's Widgets Anchorage, Alaska	\$22,000

Note:

- The Great Alaska Widget Co. offered delivery within 34 days. The DFG Project Manager has agreed to accept the new terms.
- Bridget's Widgets has been in business in Alaska for two months.

Questions:

1. Do any preferences apply to this solicitation?
2. Are any written determinations required? If so, which one(s) and when?
3. Who would be awarded a contract?

RAP QUESTIONS

1. Can a state employee provide “expert” testimony to justify an alternate procurement?
2. If a formal contract (above \$100,000) is placed on a month-to-month extension, is an unanticipated amendment exception RAP required?
3. *True or False:* A requestor must identify the vendors they will contact if an emergency RAP is approved, but they do not need to explain why that level of competition is practicable under the circumstances.
4. A one-year contract, with four one-year renewal options has a total value of \$250,000 (\$50,000 per contract term). During the last term, can you increase the contract by \$50,000 within your own authority?
5. Can a procurement officer provide expert testimony regarding the reasons why there is insufficient time to conduct a formal procurement?
6. A procurement officer has sufficient factual evidence that justifies a single source, but the agency places a \$45,000 order before the RAP is prepared. Is it acceptable to obtain approval of the RAP after an order is placed, but before the item is actually delivered?
7. An agency awards an \$80,000 contract to a vendor who is the only source for a particular service. They want to amend the contract by \$50,000 due to an unanticipated increase in the amount of services required. Can they amend the contract within their authority?
8. An agency submits a RAP for approval. The only evidence furnished is a previous RAP that was approved for the same service. Can a previously approved RAP be used as factual evidence?
9. An agency requests approval of a single source contract for professional services. They believe a particular consultant possesses unique experience and there are no other reasonable sources. Will the consultant’s resume serve as sufficient factual evidence to document a single source?
10. Is the following statement from a department program manager sufficient to justify approval of an emergency RAP:

Time is of the essence. The database that houses our central file of clients will crash in 10 days unless we contract with a firm to upgrade the system. If we lose the information, it cannot be recreated, and our program will suffer irreparable harm. We use information to provide critical services to our clients. Detailed information has been collected from all our clients during office visits, there are no hard copies or backups. It would be impossible to recreate the data.”

RAP ANSWERS

1. Yes. However, expert testimony from a state employee is not always sufficient to serve as the only factual evidence. In some cases, their statements could be considered as biased. You should attempt to collect additional factual evidence.
2. Yes, if the value of the extension will exceed the lesser of 20% of the current term or \$100,000. Ref. 2 AAC 12.485(d)
3. False. The agency must identify the level of competition they intend to use *and* the reason(s) for determining that level of competition. In addition, the agency must explain why emergency conditions exist and why procurement through the normal process is impracticable or contrary to the public interest. The explanation must define the public interest and illustrate the negative consequences if the RAP is not approved. Ref. AAM 81.510
4. No, since the value of the amendment would exceed 20% of the amount of the current term (\$50,000). In this situation, an unanticipated amendment exception (UAE) RAP is required because the increase exceeds \$10,000 ($\$50,000 \times 20\% = \$10,000$). Ref 2 AAC 12.485(d)
5. Usually not. Factual evidence that documents the specific reasons *why* there is insufficient time for a normal procurement will usually be provided by someone other than the procurement officer in the form of written material or testimony. However, a procurement officer may provide testimony regarding their area of expertise - procurement. In many RAP situations, the procurement officer will provide a timeline that shows how long it would take their department to conduct a formal procurement.
6. No. RAPs cannot be approved retroactively. In this instance a purchasing violation occurred when the order was placed and must be investigated and reported in accordance with AAM 82.320.
7. No. In this case a UAE RAP is required since the \$100,000 small procurement threshold will be breached. Only the Chief Procurement Officer can approve UAE RAPs.
8. Yes, but additional factual evidence is almost always required. The reliability of evidence tends to weaken with age due to changes in the marketplace. New or updated evidence is required to confirm that the circumstances in place when the original RAP was approved still exist.
9. No. Additional factual evidence is required to document why it is impractical to solicit competition and why the award of a single source contract is in the state's best interest. This type of RAP based on a firm or person's "unique" qualifications and experience is probably the most difficult to prove. In almost all instances, a substantial amount of independent third-party evidence/expert testimony is required.
10. Probably not. The program manager is qualified to describe the database itself, explain how it was created and why it's important to preserve the system. However, statements related to the database crashing in 10 days should likely come from a technical person who is trained and has experience in the area of database management.

SMALL PROCUREMENT QUESTIONS

1. If an agency is aware of only two vendors that can provide a \$20,000 item, can they solicit quotes from *only* those two vendors?
2. Does a consultant based in Las Vegas need an Alaska Business License if they present a two-day training course in Anchorage?
3. Is it okay to contact only one vendor to purchase an item valued at \$25,000?
4. Can a \$12,000 contract be amended by \$6,000? Can a \$12,000 contract be amended by \$30,000?
5. If your brother-in-law works as a salesperson for a plumbing supply company and you need to purchase plumbing supplies, what should you do?
6. What two tests must be addressed with factual evidence when completing a single source RAP?
7. You discover that a computer was purchased in violation of your agency's Policy & Procedures governing IT purchases. What do you do?
8. Can you purchase an item that is on a mandatory contract award from another source if the item is substantially less expensive?
9. In response to a written RFQ, a vendor offers a 10% discount if payment is made within 15 days. Can the discount be considered during the evaluation of price in determining the low bidder?
10. Is a Notice of Award required for a \$50,000 procurement? A \$75,000 procurement?

SMALL PROCUREMENT ANSWERS

1. No, unless a limited competition or emergency alternate procurement is approved.
2. Yes, a business license is required since the service is physically performed in Alaska.
3. It depends. This level of competition requires “reasonable and adequate procedures” to ensure fairness to potential bidders or offerors and competition commensurate with the circumstances of the procurement, considering price, mission requirements, and available competition; “reasonable and adequate procedures” can include contacting only one potential bidder or offeror in appropriate circumstances.
4. As long as the amendment is within the “scope” of the original contract, then yes.

However, a \$30,000 amendment would most likely be considered outside the scope of the original contract. Remember, when assessing the scope of the original contract, the dollar value must also be considered. More than doubling a contract is usually considered outside of the scope.
5. Advise your supervisor of a potential conflict of interest. The procurement should probably be reassigned to another person to avoid even the appearance of a conflict of interest.
6. 1. That it is not practical to award a contract competitively and 2. that award of a single source contract is in the state’s best interests.
7. You would likely investigate why the error occurred and how to prevent it, however because it is a violation of internal policy, not of the procurement code or delegation of authority, it is not a procurement violation that would require a written report to be submitted to OPPM.
8. No. We must always purchase from mandatory contract awards unless the contract specifies a waiver process. However, if the prices associated with a mandatory contract seem excessive or if the contract cause your agency a hardship or does not meet your needs, contact OPPM.
9. No. The standard terms and conditions attached to the RFQ documents state that *“Discounts for prompt payment will not be considered in evaluating the price you quote. However, the state shall be entitled to take advantage of any payment discount(s) offered by the vendor provided payment is made within the discount period.”*
10. The Notice of Award is only required for procurements that are *more* than \$50,000.

PROCUREMENT ACADEMY COURSE COMPLETION SHEET – LEVEL II

Course Location

Course Date

I request credit for this course towards completing the Level II Alaska Procurement Officer Certificate. I certify:

- I attended the entire course.
- I understand the course topic information presented in this course as follows:
 1. Define basic purchasing principals and legal requirements needed to conduct small procurements. Course topics include:
 - Contracting for small procurements in accordance with AS 36.30, 2AAC 12, AAM Chapters 81 and 82, and agency policies and procedures
 - Applying statutes and regulations regarding source selection and exemptions
 - Identifying and applying preferences
 - Avoiding artificial fragmentation
 - Applying statutes and regulations regarding informal proposals and quotations using standard State procurement forms
 - Including requirements/specifications for small procurements
 - Ensuring legal competition at the appropriate level
 - Evaluating quotes and proposals and awarding contracts
 - Recording, documenting and managing contract administration with regard to small procurements
 - Adhering to statutes and regulations regarding alternate procurements, protests, appeals, and violations
 - Adhering to Alaska Statute Title 39.52, Code of Ethics in performing all procurements
 - Define the need and procedures for handling small procurement protests
 2. Define the need and procedures for procurements situations requiring an alternate procurement
 3. Define the need and procedure for handling purchasing violations
 4. Recognize the concepts and identify the regulations required to legally conduct procurements up to \$100,000
 5. Demonstrate legal, ethical, and competent performance on the job when conducting small procurements, alternate procurements, adhering to the critical path of handling protests, avoiding purchasing violations, and adhering to the administrative manual policy and procedures when investigating purchasing violation incidents.
- I recognize the importance of the concepts presented.
- I understand I am now accountable for competent, effective, legal, and ethical interpretation and application of this information.

We want your feedback! Please help us improve by answering the following questions:

	<i>Poor</i>			<i>Great</i>
1. What was your overall satisfaction with this course?	1	2	3	4
2. Was the course content clear and easy to understand?	1	2	3	4
3. Was the course length and pace appropriate for the topic?	1	2	3	4

Additional comments?

SIGNATURE	PRINTED NAME	DATE

Please note that if you feel unable to demonstrate competent performance on the job in this subject matter area, do not sign this Course Completion Sheet. You may register for this course again in order to learn the course material and become competent to apply the information. There is no charge to your agency to re-take this course within the next year.

Please complete and Email to lois.lemus@alaska.gov.

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