



ALASKA PUBLIC PROCUREMENT ACADEMY LEVEL III

REVISED MAY 28, 2024



PREPARED BY THE OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT

TOM MAYER
CHIEF PROCUREMENT OFFICER
(907) 754-3533
TOM.MAYER@ALASKA.GOV

BROOKE CASHION
DEPUTY CHIEF PROCUREMENT OFFICER
(907) 269-0576
BROOKE.CASHION@ALASKA.GOV

TABLE OF CONTENTS

LEVEL III – ABOVE \$100,000	1
FORMAL PROCUREMENTS	1
Formal vs. Small Procurements	1
Public Notice Requirements	1
Pre-Solicitation Conferences	1
COMPETITIVE SEALED BIDS	4
Conditions for Use	4
Governing Statutes, Regulations, and Policy	4
Clauses	4
Evaluating Bids	5
COMPETITIVE SEALED PROPOSALS	5
Conditions for Use	5
Governing Statutes, Regulations, and Policy	5
Clauses	6
Evaluating Proposals	6
Proposal Evaluation Committee	7
Clarification of Offers	7
Proposal Discussions	7
Contract Negotiation	8
Tie Bids & Proposals	9
Notice of Intent to Award	9
Formal Procurement Protests	10
CONTRACT ADMINISTRATION	10
Why, What, and Who	10
Why?	10
What?	10
Who?	11
Contract Governance	11
Order of Precedence	11
Elements of Contract Administration	12
Checklists	12
Documentation	12
Contract File	12
Performance Monitoring	12
Acceptance	13
Contract Renewal	13
Amendments, Assignments, and Novations	13
Contract Close-Out	14

Addressing Poor Performance.....	14
Red Flags	14
Contract Controversies.....	15
Bonds.....	15
Bid Bond.....	15
Performance Bond	15
Surety Deposit.....	15
Liquidated Damages	16
FORMAL PROCUREMENT MATRIX.....	17
Guide to Formal Procurement Protests	19
Protest of Solicitation.....	19
Protest of Proposed Award or Award of Contract.....	19
Notification	19
Decision.....	19
Appeal	19
Report	19
Comments.....	19
Summary Decision	19
Hearing.....	19
Decision After Hearing.....	19
Appeal to Superior Court	19
Class Exercises	21
PROCUREMENT ACADEMY COURSE COMPLETION SHEET – LEVEL III	34

LEVEL III – ABOVE \$100,000

FORMAL PROCUREMENTS

FORMAL VS. SMALL PROCUREMENTS

A formal procurement is any procurement above \$100,000. The process, from start to finish, has many more requirements and steps than a small procurement and can take months to complete.

Formal procurements are conducted using a competitive sealed bid (price based) or competitive sealed proposal (value based) process using the Invitation to Bid (ITB) or Request for Proposals (RFP) forms.

PUBLIC NOTICE REQUIREMENTS

AS 36.30.130 requires that notice of formal procurements must be posted on the Alaska Online Public Notice System for at least 21 days. This period may be shortened for a specific procurement if the procurement officer determines in writing that a shorter notice period is advantageous and adequate competition is anticipated.

In addition to posting to the Alaska Online Public Notice System (OPN), notice may include publication in a newspaper that will reach prospective bidders and offerors and notices posted in public places in areas where the work will be performed, or materials furnished. These additional public notice methods are not mandatory but can be used when practical to reach an extended audience.

PRE-SOLICITATION CONFERENCES

Both the competitive sealed bid and competitive sealed proposal processes allow the procurement officer to hold a pre-solicitation conference after issuance of the ITB or RFP, but before the bid opening or deadline for receipt of proposals.

A pre-solicitation conference is a meeting held with potential bidders/offerors for the purpose of answering questions, clarifying any ambiguities, and responding to general issues with the solicitation. Such a conference can be very helpful to ensure that all parties have a common understanding of what the state is seeking to purchase.

If any changes are required or substantive questions are answered, an amendment to the solicitation may be issued as a result. This amendment must be distributed to all registered vendors and posted to the OPN.

Pre-solicitation conferences may be optional or mandatory, depending on the nature of the solicitation.

Be advised that if a pre-solicitation conference is held within 12 days of the opening date or deadline set for receipt of proposals, a protest of the contents of the solicitation may be filed at any time up to the closing date rather than 10 days prior as normally required (see [Guide to Formal Procurement Protests](#)).

SPECIFICATIONS

Specifications are what indicate to the vendors what the state needs. (Specifications are also sometimes referred to as a Scope of Work when dealing with services.)

Definition: AS 36.30.060

“A description of the physical or functional characteristics, or of the nature of a supply, service, professional service, or construction project; it may include requirements for licensing, inspecting, testing, and delivery.”

2 AAC 12.070 - .110 describe specifications as they relate to Alaska’s procurement code.

2 AAC 12.080(a) tells us the purpose of a specification:

The purpose of a specification is to serve as a basis for obtaining, in a cost effective manner, a supply [or] service suitable for the state’s needs.

In other words, specifications **describe** the product or service required, the **intended use** of the item or service, or the **process used to obtain** the item or service, in a way that is cost effective and meets the state’s needs.

Why Good Specifications?

Well written specifications ensure a clear understanding of what is required; that the product or service which is delivered meets the state’s needs, and allow for maximum reasonable competition.

One of the things to remember about good specifications is that they “specify”, not “explain.” Explaining instead of specifying may confuse the intent or context of what you’re describing. If this occurs, you may end up having to amend or cancel a solicitation, have delays in receiving the end product or service, or deal with disputes, contract claims, even lawsuits. These all end up costing the state more money.

Let’s look at some additional procurement statute, regulation, and policy:

- **AS 36.30.060(c):** Specifications must promote overall economy for the purposes intended and encourage competition in satisfying the state’s needs, and may not be unduly restrictive.
- **2 AAC 12.080(b) and 2 AAC 12.090:** An agency must emphasize functional or performance criteria necessary to meet the state’s needs, and must describe the requirements to be met without being unduly restrictive.

- **AAM 81.150:** An agency should write specifications to obtain standard commercial products at the least cost to the state, and a specification should never have the effect of requiring a “Mercedes” when a “Ford” will meet the state’s needs.

Here we can see that while we have the right to specify what we need, we need to remember that what we *need* isn’t always what we *want*. We are required to have specifications that encourage competition, and are not permitted to have specifications that are unduly restrictive, which can discourage competition and lead to protests, etc. We can’t require a Mercedes when a Ford will meet the state’s needs.

2 AAC 12.090 prohibits the state from using **unduly restrictive specifications**, or specifications that have the effect of reducing competition to a single source, unless there is absolutely no other option.

Similarly, **2 AAC 12.100** prohibits the state from using a **brand name specification**, or a specification that limits the procurement to a specific brand and/or model of supply, unless the procurement officer has determined in writing that only that particular brand will satisfy the state’s needs.

Specification Tips
The best specifications are those that are clear and written to allow for the most competition. A good goal whenever drafting specifications is to word them such that a 12-year old would be able to understand what the state is looking for.
Use “shall”, “must”, and “will” whenever possible. Words like “should” or “may” have no effect, since they give the contractor the choice to not do something.
It can be tempting to use vague or ambiguous language when it is unknown exactly what is needed. However, if vague or ambiguous language ever comes into question, an Administrative Law Judge or the courts will always side with the reader’s interpretation, not what the writer meant or intended.
Use active, specific language rather than passive, vague language. For instance, “the contractor shall perform” is active and clearly identifies who is responsible for work while “it shall be performed” does not.
Avoid open-ended phrases such as “subject to approval” or “common practice” and instead state exactly who is responsible, like “subject to approval of the project manager”, or specify a standard that the contractor must comply with.
Don’t repeat language throughout a solicitation since doing so increases the likelihood that a clause or specification will be stated differently, leading to ambiguity.
Always spell out abbreviations and acronyms when they are used for the first time.

If you are referring to external documentation as part of your solicitation, include the documentation as an attachment if possible or refer to a website where the documentation can be retrieved by vendors. (Check and double-check all links to websites.)

Table 1 Specification Tips

CLAUSES

OPPM maintains templates that contains all the clauses and instructions necessary to draft an ITB, RFP, and other document suitable for issuance. These templates are available on the OPPM <https://oppm.doa.alaska.gov/purchasing/documents-and-forms/> page.

COMPETITIVE SEALED BIDS

The competitive sealed bid process, also called the Invitation to Bid (ITB) process, is a formal price-based procurement process. When conducting competitive sealed bid procurements, an [ITB](#) is the form used to solicit responses, responses are referred to as **bids**, and respondents are referred to as **bidders**.

GOVERNING STATUTES, REGULATIONS, AND POLICY

While the procurement code applies to all procurements in general, the competitive sealed bid process is specifically governed by:

- Statute: **AS 36.30.100 - .190**
- Regulation: **2 AAC 12.120 - .210**
- Policy: **AAM 81.300 - .320**

CONDITIONS FOR USE

AS 36.30.100 states, as a general policy:

Except as otherwise provided in this chapter... an agency contract shall be awarded by competitively sealed bidding.

This means that unless there is a specific need to procure using some other method, which would require a [written determination](#), the competitive sealed bid process must be used.

A competitive sealed bid process is most used when:

- Requirements can be described in finite and specific detail.
- The contract will be awarded to the lowest responsive and responsible bidder.
- Competition is readily available.
- There is enough time for the process.
- There is no need to hold negotiations.

EVALUATING BIDS

Bids are first evaluated to determine responsiveness and responsibility (see [LEVEL I PROCUREMENT ACADEMY MANUAL](#)). A non-responsive bid, one that doesn't conform in all material respects to the ITB, must be rejected.

Bids are then evaluated to determine which bid offers the lowest cost to the state in accordance with the ITB and after all applicable preferences are considered.

The lowest bid is the apparent successful bidder.

If only one responsive bid is received, **2 AAC 12.190** states that award may be made to the single bidder if the bidder is responsible, the procurement officer finds that the price submitted is fair and reasonable, and other bidders had reasonable opportunity to respond or there is not adequate time for a re-solicitation.

If any of these conditions are not true, the bid may be rejected and: a new solicitation may be conducted, the procurement may be canceled, or the supplies/services are procured using an **alternate procurement** method (see [LEVEL II PROCUREMENT ACADEMY MANUAL](#)).

COMPETITIVE SEALED PROPOSALS

The competitive sealed proposal process, also called the Request for Proposals (RFP) process, is a formal **value-based** procurement process. When conducting competitive sealed proposal procurements, an [RFP](#) is the form used to solicit responses, responses are referred to as **proposals**, and respondents are referred to as **offerors**.

GOVERNING STATUTES, REGULATIONS, AND POLICY

While the procurement code applies to all procurements in general, the competitive sealed proposal process is specifically governed by:

- Statute: **AS 36.30.200 - .290**
- Regulation: **2 AAC 12.215 - .315**
- Policy: **AAM 81.400 - .480**

CONDITIONS FOR USE

2 AAC 12.215 allows for the use of the competitive sealed proposals process for the following supplies and services without requiring a [written determination](#):

- Professional services.
- Supplies and services for clean-up of oil and hazardous substances.
- Telephone systems and telephone system maintenance.
- Concession contracts.

- Leased office space. (Remember that the authority to procure leased office space is not delegated to agencies.)

Competitive sealed proposals for other goods and services must include a written determination by the procurement officer that documents the need for the value-based procurement.

A competitive sealed proposals process is most used when:

- Specifications cannot be made sufficiently definite and certain to permit selection based only on price.
- Judgment is required in evaluating proposals and it is advantageous to require a balancing of price, quality, qualifications, and other factors.
- Testing, experimentation, or other evaluation is required with a new product or technology.

CLAUSES

OPPM maintains an RFP template that contains all the clauses and instructions necessary to draft an RFP document suitable for issuance. This template is available on the OPPM [Purchasing Documents](https://oppm.doa.alaska.gov/purchasing/documents-and-forms/) <https://oppm.doa.alaska.gov/purchasing/documents-and-forms/> page.

One of the major differences between drafting an ITB and drafting an RFP is the addition of **evaluation criteria** to the RFP document. When developing evaluation criteria, the criteria must be clearly and concisely stated, be associated with a point value or weight, and all the criteria should have a direct link back to the specifications. *You cannot evaluate proposals against evaluation criteria not included in the RFP.*

While the RFP template contains sample evaluation criteria, it is strongly recommended that you develop your own based on the specification requirements.

Cost must always be included as an evaluation criteria.

EVALUATING PROPOSALS

The proposal evaluation process can be simple or complex, depending on the type of supplies/services being sought and the number of evaluation criteria being used.

The procurement code allows for both numerical and non-numerical proposal rating systems. OPPM recommends the use of numerical ratings, since a number speaks for itself and requires no explanation. A non-numerical rating system requires the use of narrative explanations, which may add a significant amount of time to the evaluation process.

If only one responsive proposal is received, **2 AAC 12.270** states that the procurement officer may make an award, reject the proposal, or reject the proposal and re-solicit proposals.

PROPOSAL EVALUATION COMMITTEE

The proposals may be evaluated by the procurement officer or a Proposal Evaluation Committee (PEC). If the purchasing agency uses a PEC, it shall consist of at least three State of Alaska employees or public officials selected by the procurement officer. Individuals who are neither State employees nor public officials may serve on a PEC if the required minimum number of State employees or public officials has been met and they are residents of the state. Individuals who are not residents may serve on a PEC if written permission is granted by the Commissioner of the Department of Administration. Requests for nonresident evaluators should explain the value of their participation on the PEC. In all cases, exercise caution to ensure that conflicts of interest do not exist. When using a PEC, each member must sign a form indicating that no ethical conflicts of interest exist between them and any of the offerors and PEC members must independently review and rate the proposals per **2 AAC 12.260(i)**. Once proposals have been independently ranked, the procurement officer will call a meeting to discuss and finalize scores. At no point shall ratings be assigned based on voting or consensus. All ratings must be independently made.

It is desirable that cost proposals are withheld from the PEC during evaluation since cost is objectively scored and should not be considered when rating technical scores. PEC members should also have no contact with offerors and should report any contact attempts made by an offeror to the procurement officer.

A [PEC Evaluator Memo & RFP Evaluator's Guide](https://oppm.doa.alaska.gov/purchasing/documents-and-forms/) is available on the OPPM purchasing <https://oppm.doa.alaska.gov/purchasing/documents-and-forms/> page that goes over these and more details related to PEC's. PEC members should be provided a copy of this guide before the evaluation process begins.

CLARIFICATION OF OFFERS

2 AAC 12.285 allows the procurement officer or the PEC to communicate with an offeror for clarification of uncertainties or elimination of confusion concerning the contents of a proposal. These communications cannot result in a material or substantive change to the proposal. The procurement officer or the PEC may adjust their scores as the result of clarifications.

PROPOSAL DISCUSSIONS

2 AAC 12.290 sets forth a process that allows the procurement officer to enter into discussions with all the offerors of proposals deemed to be reasonably susceptible for award to ensure full understanding of the RFP and proposal and must be limited to specific sections of these documents.

Following discussions, the procurement officer may set a deadline for receipt of best and final proposals from those offerors with whom discussions were held. Proposals may be re-evaluated after receipt of best and final submissions.

Unlike clarifications, best and final offers may result in a material or substantive change to the proposal.

CONTRACT NEGOTIATION

2 AAC 12.315 allows for the procurement officer to negotiate with the offeror of the highest-ranked proposal for the purpose of obtaining contract terms consistent with the RFP and terms favorable to the state. Changes may be made to the proposal during negotiations, but they must be reasonable and must not have the effect of changing the ranking of the highest-ranked proposal. For instance, during negotiations, an offeror cannot increase their cost to add services if doing so would cause them to lose points and thus no longer have the highest-ranked proposal.

If the procurement officer determines that the offeror fails to negotiate in good faith or within the time period set, negotiations may be terminated with that offeror. The procurement officer may then begin contract negotiations with the offeror of the next highest ranked proposal.

TIE BIDS & PROPOSALS

From time to time, a procurement may result in a tie between two or more low bids or two or more tied proposals.

2 AAC 12.900 provides guidance in these situations and states:

If tied bids or proposals exist, award shall be made through a random drawing. Award may not be made by dividing the procurement among identical bidders.

When choosing the method of random drawing (names in a hat, drawing straws, etc.), it is essential that the process is documented and witnessed by others.

NOTICE OF INTENT TO AWARD

Unlike a small procurement requiring written quotes where award is made and all respondents are notified of the award after the fact, the formal procurement process requires the issuance of a [Notice of Intent to Award \(NOIA\)](#), which lets interested parties know that the state will enter into a contract with the identified vendor.

The NOIA must include protest rights and be issued at least 10 days prior to contract award.

FORMAL PROCUREMENT PROTESTS

When dealing with formal procurements, the procurement code allows for an interested party to protest the award of a contract, the proposed award of a contract, the contents of a solicitation, or the cancellation of a solicitation.

2 AAC 12.990(7) defines an interested party as:

An actual or prospective bidder or offeror whose economic interest might be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract.

In general, before bid opening or the deadline set for receipt of proposals, an interested party is any vendor who was sent a copy of the solicitation or registered to receive amendments. After bid opening or the deadline set for receipt of proposals, an interested party is any vendor who submitted a response. This is a general interpretation, however, and may not apply depending on the circumstances.

Protests of formal procurements are dealt with in the following areas of the procurement code:

- Statute: **AS 36.30.560 - .615, .670 - .699**
- Regulation: **2 AAC 12.210, .615, .650 - .670, .990**
- Policy: **AAM 82.100 - .260**

[Guide to Formal Procurement Protests](#) contains step-by-step instructions and timelines for handling a formal procurement protest.

CONTRACT ADMINISTRATION

WHY, WHAT, AND WHO

Contract administration encompasses a wide variety of ongoing day-to-day activities that take place after a contract is awarded and may continue until after it expires.

WHY?

Active contract administration is critical to ensure that requirements set forth in the contract are adhered to and satisfied.

WHAT?

Contract administration includes the management of all actions taken after award of a contract to assure compliance with the contract.

These actions include ensuring the timely delivery of goods or services, compliance with contractual schedules and milestones, inspection, and timely acceptance of deliverables, ensuring all payments are made in accordance with the contract terms, exercising optional renewals as necessary, and terminating the contract at the appropriate time.

WHO?

The procurement officer for a procurement may not always be the contract administrator. In many cases, the end-user, project manager, or other stakeholder takes on the day-to-day administration of a contract after it is awarded.

Regardless of who is assigned the task of contract administration, they should be very familiar with and understand the solicitation and contract, including knowing the roles and responsibilities of both the state and contractor. The contract administrator may be put into situations where there is no clear answer, so good problem-solving skills and the ability to maintain composure and professionalism in case of conflict are excellent qualities for the contract administrator to have as well.

CONTRACT GOVERNANCE

In order to properly administer a contract, the administrator must be familiar with how the contract is structured and have access to the guidance of a procurement professional that is knowledgeable in the bodies of law that the contract is based on.

The contract is made up of all terms and conditions within the contract award document as well as any documents incorporated by reference, which may include the solicitation and any appendices or attachments, and is governed not only by the procurement code, but in areas where the procurement code is silent, the Uniform Commercial Code (**AS 45.02**) and contract law.

ORDER OF PRECEDENCE

Because a contract award document may be made up of many other documents, it is important to establish a clear order of precedence in case of conflicting terms or conditions between the documents.

For example, the order of precedence for a contract awarded as the result of a competitive sealed proposal process might look like this:

In case of conflict, the following order of precedence shall govern:

- 1. This contract document (Standard Contract Form, Appendices A – D)*
- 2. Appendix E: RFP 2010-0200-9999 issued by the Department of Administration on July 12, 2010.*
- 3. Appendix F: Best and Final Offer submitted by Vendor on August 15, 2010.*
- 4. Appendix G: Proposal submitted by Vendor on August 10, 2010.*

If, after the contract is awarded and day-to-day administration is happening, if there is conflicting language found between the RFP and the proposal submitted by the contractor, the contract administrator can refer to this order of precedence to determine that the language in the RFP would prevail.

ELEMENTS OF CONTRACT ADMINISTRATION

Contract administration can be made into a more routine task if broken down into its basic elements:

CHECKLISTS

Keeping a checklist of administrative duties related to a contract can help to ensure that no duties or deadlines are missed, such as deliverable deadlines, payments, testing, and so on. Scheduling these tasks using your calendar or project management software can also help.

DOCUMENTATION

The most important part of contract administration is documenting all contract actions taken, problems encountered, and solutions agreed to. Proper documentation is critical in resolving disputes and pursuing claims. Whenever there are non-compliance issues or other concerns, it is important that the contractor is made aware of them in writing for additional followed-up later on.

CONTRACT FILE

Documentation is no good if it cannot be easily and quickly located. A well-organized procurement and contract file is key. This file should contain the solicitation document, all responses and communications received, the contract award, all correspondence, payment records, documentation of receipt and acceptance/rejection of deliverables, performance logs, contractor evaluation, and close-out letter.

PERFORMANCE MONITORING

A contract administrator should always be actively monitoring all aspects of a contractor's performance so that potential problems can be identified and corrected before they grow into major issues. Effective written communication is vital to this process so that documentation is kept and to assist the administrator in following up on problems to ensure they are being addressed.

ACCEPTANCE

Accepting supplies or other deliverables includes inspecting and testing per the contract to ensure they meet the specifications set forth in the solicitation document.

CONTRACT RENEWAL

It is very important that renewal dates are tracked, since an expired contract cannot be resurrected, leading to a need to conduct an entirely new procurement.

Before renewing a contract, however, it is good practice to take another look at the market conditions and contract pricing to determine if the state could save money by re-procuring or by using another contract or cooperative agreement. When making this determination, the costs to the state in time and resources of conducting a new procurement must be taken into consideration.

If the contract administrator decides to renew the contract, the contractor's insurance certificates should be checked to make sure they are still valid and if not, make sure that new ones are obtained.

The contract renewal (or a month-to-month extension) **must** happen in its entirety, in writing, before the contract expires.

AMENDMENTS, ASSIGNMENTS, AND NOVATIONS

If an amendment was included in the solicitation and the contractor provided a cost that was evaluated, it is considered an anticipated amendment and may be exercised per the terms of the contract. The most common anticipated amendment is an optional renewal.

If there is a need for additional work that was not included as part of the solicitation and contract award, it is an unanticipated amendment and is subject to the unanticipated amendment limitations set forth in 2 AAC 12.485(d).

An **assignment** is when a contractor transfers rights, such as the right to be paid, under a contract to a third party. Assignment of a contract requires written approval from the procurement officer.

A **novation** transfers all rights and obligations to a new party. This process requires the consent of all original parties to the contract and written approval of the procurement officer. A novation happens most commonly when a business is sold to a new party and/or the business changes names.

CONTRACT CLOSE-OUT

When the contract comes to an end, the contract administrator should communicate the notice of contract expiration or termination to the contractor in a letter. This will prevent the contractor from providing services to the state past their obligated timeframe, which could potentially be a procurement violation if the state were to continue accepting and paying for the services. This close-out may include a contractor evaluation.

ADDRESSING POOR PERFORMANCE

In the course of administering contracts, it is likely that a contract administrator will encounter an underperforming contractor at some point.

As mentioned, active contract administration is vital to recognize and resolve problems before they reach a greater magnitude. However, sometimes even active contract administration isn't enough, and the contractor continues performing poorly.

In these cases, a performance remedy must be sought. Available options are:

- Document all problems as they happen, including any correspondence with the contractor, and request a cure. A sample cure letter is included as an attachment to the Level I manual. Escalate when necessary, on both sides, meaning that you, your supervisor, or your director may need to contact a manager, VP, or CEO who works for the contractor.
- Terminate the contract for cause or convenience and re-procure.
- Accept the poor performance with the understanding that the longer poor performance is accepted, the weaker the state's case is to pursue any future recourse.
- Pursue a contract claim under **AS 36.30.620**.

The importance of documentation in all of these options cannot be stressed enough. Anytime a contractor's performance is called into question, the possibility of other parties becoming involved grows significantly, and it is crucial that the state is in a position to defend the actions being taken.

RED FLAGS

Below are some common examples of things that may come up during a contract that could indicate a performance issue that needs to be addressed:

- Delayed or no response to correspondence or phone calls.
- Requests for exceptions to contract requirements.
- Lack of progress on milestones or failure to provide deliverables.
- Repeated changes in contractor personnel.
- Calls from creditors or suppliers.

CONTRACT CONTROVERSIES

Contract controversies are claims levied against a contractor by the state or against the state by the contractor and are governed under **AS 36.30.620**.

For example, if a contractor has been providing supplies for the state under a contract and it comes to light that the contractor has been knowingly overcharging on each order, the state may choose to pursue a claim against the contractor to recover the amount overcharged.

The contract controversy process is similar to the protest process.

BONDS

The procurement code allows for the state to require bid bonds, performance bonds, and surety deposits from a contractor before contract award. Bonds are typically seen in construction procurements and are required by law in some cases; however, they may also be used in procurements of supplies and services. Before including a bond requirement in a solicitation, it is recommended that you check with your procurement section and possibly the attorney general's office.

BID BOND

A bid bond protects the state in the event that the bidder or offeror refuses to enter into a contract after the award or the bidder or offeror withdraws their bid/proposal before award. Bid bonds discourage those who don't actually intend to follow through from responding to a solicitation.

PERFORMANCE BOND

A performance bond is a bond that guarantees that the contractor will fully perform the contract and guarantees against breach of contract. In the case that a performance bond is paid out, the proceeds are used to complete the contract or compensate for loss in the event of nonperformance.

SURETY DEPOSIT

Per **2 AAC 12.810**, a surety deposit may be used in place of a bond and may be made as an irrevocable letter of credit or cash. A surety deposit must be approved by the commissioner of the purchasing agency before it is submitted.

LIQUIDATED DAMAGES

A liquidated damages clause may be included in a solicitation and is a way to assure timely completion of a contract. Use of a liquidated damages clause is rare as it can prove to be administratively burdensome to both the state and the contractor, so be sure it is really necessary before including it.

Typically, a liquidated damages clause is structured so that if a contractor fails to perform a certain task or set of tasks by a specific date, the state will then begin to collect liquidated damages.

The amount of the liquidated damages must represent a good faith estimate of the actual damages incurred due to non-performance and must be supported by reasonable calculations. Liquidated damages cannot be punitive.

FORMAL PROCUREMENT MATRIX

ESTIMATED PRICE OF PROCUREMENT	MINIMUM COMPETITION REQUIRED	FORMS USED BY AGENCY	PUBLIC NOTICE REQUIREMENT	AWARD METHOD	KEEP IN PROCUREMENT FILE
Request for Proposals (RFP) Process – Supplies, Services, or Professional Services					
<p>Greater than \$100,000</p> <p>AS 36.30.200</p> <p>The TOTAL procurement value must include all options to renew or extend. For example:</p> <ul style="list-style-type: none"> If contract runs for 1 year with 2 one-year renewal options, use the total value for all 3 years. <p>Purchase Requisition (form #02-099) must be sent to the Division of Enterprise Technology Services for telephone systems, radios, and other telecommunications equipment (see agency delegation of authority).</p> <p>Agencies are to submit requirements for construction, State Equipment Fleet vehicles, mobile homes, portable shelter units and prefabricated and/or sectional office, housing, or shelter units directly to the Department of Transportation and Public Facilities.</p> <p>Agencies may not procure leased office space without a specific delegation of authority from the Shared Services of Alaska (OPPM).</p> <p>Note: Procurements for legal services must be approved in advance by the Attorney General's Office. RFPs for Architects, engineers, and land surveys follow different procedures.</p>	<p>Issue formal Request for Proposals (RFP) in accordance with AS 36.30.130 and 2 AAC 12.130.</p> <p>The Competitive Sealed Proposals (CSP) process may be used for non-professional service contracts if the procurement officer determines in writing, with particularity, that the use of a CSP is more advantageous to the state than an ITB AS 36.30.200(b).</p> <p>No determination is required to use a CSP for professional service contracts.</p> <p>Service contracts above \$25,000 must be performed in the United States unless a waiver has been approved by the Chief Procurement Officer in advance.</p>	<p>Agencies should use OPPM's RFP shell (see OPPM's internet home page for copies of the document). Request for Proposal must contain:</p> <ol style="list-style-type: none"> date, time, place for delivery of proposals; specific description of service, supply or professional service; contract terms and conditions; sufficient information for an offeror to submit proposal; evaluation criteria and its relative importance or weight; and price must be an evaluation criteria. <p>If professional service, ensure contract meets definition per AAM 82.430.</p> <p>Clearly state all mandatory requirements.</p> <p>An ASPS form for Professional Services may be required by an agencies P&P (if used, the number is assigned by the agency).</p> <p>A Standard Agreement Form (#02-093) and appropriate appendices for Professional Services that has been approved by AG's Office.</p> <p>Delivery order may be used for non Professional Services contracts.</p> <p>RAP form (#02-100) if applicable.</p>	<p>Circulate RFP for 21 days unless procurement officer determines in advance and in writing that a shorter notice period is advantageous and adequate competition is anticipated. Agencies should "time/date" stamp proposal envelopes immediately upon receipt.</p> <p>Advertise on the State of Alaska Online Public Notice system and when practicable, at least one of the following advertising methods may be used per AS 36.30.130 and 2 AAC 12.130:</p> <ul style="list-style-type: none"> Publication in a newspaper of general or local circulation. Notices posted in public places where work will be performed or material/supplies furnished. Publication in other appropriate media, including electronic media. <p>The Chief Procurement Officer must approve requests to provide out-of-state notice if it is impracticable to solicit only from Alaskan vendors.</p>	<p>Award is made to the proposal determined in writing to be the most advantageous to the state taking into consideration price and the evaluation factors in the RFP (AS 36.30.250).</p> <p>The evaluation committee is made up of a procurement officer, or at least three state employees or public officials (2 AAC 12.260).</p> <p>Only in-state residents can participate on the evaluation committee unless an exception is approved by the Commissioner of Administration (AAM 81.470).</p> <p>Include a 5% Alaska bidder preference, 5% Alaska veteran preference, 10% Alaskan offerors preference (if a numerical rating system is used), and all other statutory and regulatory preferences that apply.</p> <p>Only timber, lumber or manufactured lumber products originating in Alaska shall be used unless it is determined to be impracticable under AS 36.15.010.</p> <p>A valid Alaska business license is required at the time the contract is awarded (AS 36.30.210).</p> <p>You must issue a written Notice of Intent to Award (AS 36.30.365).</p> <p>A written determination required if awarding to a nonresident (AS 36.30.362).</p> <p>RFP's must weight price at 40% or higher for professional/non-professional services and 60% or higher for supplies unless the Chief Procurement Officer approves a waiver.</p>	<p>Copy of:</p> <ul style="list-style-type: none"> ASPS (if required by Agency P&P). RAP (if used). Original RFP. All proposals including late proposals. All RFP amendments. Register of Proposals prepared under AS 36.30.230 Vendor list or advertising order. Required licenses, permits, insurance coverage, etc. Relevant RFP correspondence. Written determination of award prepared under AS 36.30.250. Contract document. Procurement summary report prepared under AS 36.30.510 - 520. All determinations required by statute, regulation, or the Alaska Administrative Manual. Notice of Intent to Award. Protest, if filed; procurement officer's decision, protest report, appellant comments, appeal, Commissioner's decision if applicable. List of PEC members. All scoring sheets and notes. <p>Confidential items identified under AS 36.30.230(a).</p>
Invitation to Bid (ITB) Process – Supplies or Services					

ESTIMATED PRICE OF PROCUREMENT	MINIMUM COMPETITION REQUIRED	FORMS USED BY AGENCY	PUBLIC NOTICE REQUIREMENT	AWARD METHOD	KEEP IN PROCUREMENT FILE
<p>Greater than \$100,000</p> <p>AS 36.30.100.</p> <p>The TOTAL procurement value must include all options to renew or extend. For example:</p> <ul style="list-style-type: none"> If the contract will run for 1 year with 2 one-year renewal options, use the total value for all 3 years <p>Purchase Requisition (form #02-099) must be sent to the Division of Enterprise Technology Services for telephone systems, radios, and other telecommunications equipment (see agency delegation of authority).</p> <p>Agencies are to submit requirements for construction, State Equipment Fleet vehicles, mobile homes, portable shelter units and prefabricated and/or sectional office, housing, or shelter units directly to the Department of Transportation and Public Facilities.</p> <p>Agencies may not procure leased office space without a specific delegation of authority from the Shared Services of Alaska (OPPM).</p>	<p>Issue a formal Invitation to Bid (ITB) in accordance with AS 36.30.130 and 2 AAC 12.130.</p> <p>Service contracts above \$25,000 must be performed in the United States unless a waiver has been approved by the Chief Procurement Officer in advance.</p>	<p>Agencies must use the Standard Terms and Conditions boilerplate, and High-Tech boilerplate, if applicable (see OPPM's internet home page for copies of the documents). The AG's Office must approve any changes to these documents.</p> <p>Agencies should use OPPM's ITB shell (see OPPM's internet home page).</p> <p>Delivery Order (form #02-601) may be used for contract document.</p>	<p>Circulate ITB for 21 days unless procurement officer determines in advance and in writing that a shorter notice period is advantageous and adequate competition is anticipated. Agencies should "time/date" stamp bid envelopes immediately upon receipt.</p> <p>Advertise on the State of Alaska Online Public Notice system and when practicable use at least one of the following methods per AS 36.30.130 and 2 AAC 12.130:</p> <ul style="list-style-type: none"> Publication in a newspaper of general or local circulation. Notices posted in public places where work will be performed or material/supplies furnished. Publication in other appropriate media, including electronic media. <p>The Chief Procurement Officer must approve requests to provide out-of-state notice if it is impracticable to solicit only from Alaskan vendors.</p>	<p>Award to the lowest responsive and responsible bidder per AS 36.30.170.</p> <p>Include in evaluation:</p> <ul style="list-style-type: none"> * 5% Alaska bidder preference per AS 36.30.321(a). * 5% Alaska veteran preference per AS 36.30.321(f). * 3%, 5%, or 7% Alaska product preference per AS 36.30.332. * 15% Employment program preference per AS 36.30.321(b). * 10% Alaskans with disabilities preference per AS 36.30.321(e). * 7% Local agricultural and fisheries product preference per AS 36.15.050. * Recycled product preference per AS 36.30.337. <p>Only timber, lumber or manufactured lumber products originating in Alaska shall be used unless it is determined to be impracticable under AS 36.15.010.</p> <p>Valid Alaska business license required at the time the contract is awarded per AS 36.30.110. To qualify as an Alaska bidder, as defined under AS 36.30.990(2), a valid Alaska business license is required at the time designated for bid opening.</p> <p>You must issue a written Notice of Intent to Award (AS 36.30.365).</p> <p>Written determination required if awarding to a nonresident per AS 36.30.362.</p>	<p>Copy of:</p> <ul style="list-style-type: none"> Original ITB. RAP (if used). All bids including late bids. All bid amendments. ITB bid log. Vendor list or advertising order. The name of each bidder, bid prices, and other appropriate information tabulated under AS 36.30.140 and 2 AAC 12.150. Relevant ITB correspondence. Contract document. All determinations required by statute, regulation, or the Alaska Administrative Manual. Notice of Intent to Award. Protest, if filed; procurement officer's decision, protest report, appellant comments, appeal, Commissioner's decision if applicable.

GUIDE TO FORMAL PROCUREMENT PROTESTS

PROTEST OF SOLICITATION

A protest alleging improprieties or ambiguities in a solicitation (ITB, RFP, or other) **must be filed with the procurement officer at least 10 days prior to the date bids or proposals are due** unless the solicitation is on shortened notice or another date is provided in the solicitation. If a pre-bid or pre-proposal conference is held within 12 days of the closing date, the protest must be filed prior to closing. (AS 36.30.565) A protest of the cancellation of a solicitation must be filed within 10 days. (2 AAC 12.615)

PROTEST OF PROPOSED AWARD OR AWARD OF CONTRACT

A protest alleging improprieties in a proposed award or award of contract **must be filed with the procurement officer within 10 days of the Notice of Intent to Award**. (AS 36.30.565) These are typically based on the scoring or evaluation of bids and proposals, or determinations regarding responsiveness or responsibility.

NOTIFICATION

The procurement officer must immediately notify all “interested parties” of the filing of a protest of a solicitation or a proposed award. AS 36.30.570) If the protest is filed after the contract award, only the contractor is notified. (AS 36.30.570)

DECISION

A written decision **must be issued by the procurement officer within 15 days after the protest is filed** unless the Commissioner of Administration extends the time. (AS 36.30.580)

APPEAL

An appeal **must be filed with the Commissioner of Administration within 10 days of receipt of the decision**. (AS 36.30.590) The procurement officer provides notice to parties who were notified of the protest; copies are provided only to parties requesting them. (AS 36.30.595)

REPORT

The procurement officer must file a “complete report” with the Commissioner of Administration **within 10 days after receipt of the report**, unless the Commissioner of Administration extends the time. Copies are provided to the protestor and to parties who have requested them. (AS 36.30.605)

COMMENTS

The protestor may file comments on the report with the Commissioner of Administration **within 10 days after receipt of the report**, unless the Commissioner of Administration extends the time. The protestor must send copies of the comments to the procurement officer and to parties who have requested them. (AS 36.30.605)

SUMMARY DECISION

The Commissioner of Administration may, within 15 days after the protestor’s comments are due, reject an appeal as untimely or issue a decision without a hearing if there are no genuine issues of fact. (AS 36.30.610) Otherwise, a hearing is scheduled before a hearing officer in coordination with the parties. (AS 36.30.630)

HEARING

The hearing officer may hold a conference to settle, simplify, or identify the factual and legal issues, may require the parties to submit evidence and to state their position on the issues, and may rule on motions. An evidentiary hearing at which witnesses testify under oath will be conducted if necessary. (AS 36.30.670)

DECISION AFTER HEARING

The hearing officer issues a recommended decision. The Commissioner of Administration must issue a final decision within 20 days after the hearing. (AS 36.30.675 -.680)

APPEAL TO SUPERIOR COURT

The final decision of the Commissioner of Administration may be appealed to superior court **within 30 days**. (AS 36.30.685)

CLASS EXERCISES

PROPOSAL EVALUATION EXERCISE

RFP Title: Data Entry Services

RFP Number: 2015-0200-1104

Procurement Officer

T. Boone Procurer

Purpose of RFP

Provide data entry services for various state agencies in Juneau, Alaska.

Scope of Work

A complete set of keypunch instructions and form samples will be provided to the contractor upon contract award. The contractor must, within 30 days and at no cost to the state:

- meet with each agency to discuss the work required under the contract;
- develop software programs, templates, form sets, or other technologies for each application to facilitate entry of the data; and
- process sample application batches to demonstrate the ability to produce the work required by this RFP.

Minimum Qualifications

To be considered responsive, offerors must meet the following minimum qualifications:

- Must possess at least 3 years of data entry experience.
- Must have experience processing at least 1 million documents annually.
- All data entry staff must have at least 2 years of data experience as described in this RFP.

Evaluation Criteria

Data Entry/Verification Process	10 points
Priority Work Completion	10 points
Experience & Qualifications	10 points
Cost	60 points
Alaska Offerors Preference	10 points

Offeror - Data Express

Data Entry/Verification Process

Please describe your organization's entire data entry/verification process after receipt of the data and keypunch instructions from the state.

After jobs have been logged in and their due dates recorded, our data entry supervisor will distribute the work to the most qualified operator(s). Once the job has been keyed, she will then determine who will verify the work and ensure such verification is done timely.

Priority Work Completion

Please describe your procedures for completing priority work sooner than the required delivery dates.

We always attempt to complete our work as quickly as possible, regardless of the scheduled due date. We maintain a large enough staff to accommodate special, early turn-around times, or out of the ordinary jobs. We do take our obligations very seriously, so if a small one-time priority job arises during a period when we are busy with another priority assignment, we will contact both agencies and attempt to reach mutually acceptable deadlines.

Experience & Qualifications

Please describe your organization's experience and qualifications, specifically how you meet the minimum qualifications of at least 3 years of data entry experience, processing at least 1,000,000 documents each year, and that each data entry staff member has at least 2 years of data entry experience as described in this RFP.

We have been the provider of data entry services to state agencies in Juneau for the past 22 years. We have specific experience with every job contained in the RFP and are familiar with each document, form, and respective data entry instruction. Over the last five years our company has processed more than 1.5 million source documents each year.

The attached resumes confirm that the supervisor has 22 years experience as a data entry operator and she has been our supervisor for the past 6 years. Our assistant supervisor has six years of prior data entry experience. Our four data entry operators each have over nine years experience; two of them have over 20 years experience.

Alaska Offerors Preference

Does your organization qualify for the Alaska Bidder Preference?

Yes.

PROPOSAL EVALUATION FORM

Person or Firm Name Data Express

Name of Proposal Evaluation (PEC) Member _____

Date of Review _____

RFP Number 2015-0200-1104

Proposals will be evaluated against the questions set out below.

Data Entry/Verification Process — 10 points **Points** _____

How well does the proposal indicate an acceptable data entry/verification process after receipt of the data and keypunch instructions from the state?

EVALUATOR'S NOTES _____

Priority Work Completion — 10 points **Points** _____

To what extent does the proposal allow for the flexibility to complete work sooner than the required delivery dates?

EVALUATOR'S NOTES _____

Experience & Qualifications — 10 points **Points** _____

To what extent do the offeror's firm and staff members exceed the minimum experience requirements?

EVALUATOR'S NOTES _____

Total Points _____

Offeror – Crazy Dan’s Data Shack

Data Entry/Verification Process

Please describe your organization’s entire data entry/verification process after receipt of the data and keypunch instructions from the state.

Once documents are picked up, they will be logged in with time of arrival and due date noted. Documents will be keyed and verified. It is the responsibility of the supervisor to log all documents and batches in and out to ensure they are accounted for before and after the staff has keyed and verified the data. The documents are never out of the control of either the supervisor or the employee, so public access is avoided.

Priority Work Completion

Please describe your procedures for completing priority work sooner than the required delivery dates.

Our staff prides itself on quick turn-around.

Experience & Qualifications

Please describe your organization’s experience and qualifications, specifically how you meet the minimum qualifications of at least 3 years of data entry experience, processing at least 1,000,000 documents each year, and that each data entry staff member has at least 2 years of data entry experience as described in this RFP.

Our company has provided data entry services in Alaska for the past 10 years and over the past 3 years, we have processed over 1,000,000 source documents each year. The attached resumes confirm that each of our data entry technicians has over two years data entry experience.

Alaska Offerors Preference

Does your organization qualify for the Alaska Bidder Preference?

Yes.

PROPOSAL EVALUATION FORM

Person or Firm Name Crazy Dan's Data Shack

Name of Proposal Evaluation (PEC) Member _____

Date of Review _____

RFP Number 2015-0200-1104

Proposals will be evaluated against the questions set out below.

Data Entry/Verification Process — 10 points **Points** _____

How well does the proposal indicate an acceptable data entry/verification process after receipt of the data and keypunch instructions from the state?

EVALUATOR'S NOTES _____

Priority Work Completion — 10 points **Points** _____

To what extent does the proposal allow for the flexibility to complete work sooner than the required delivery dates?

EVALUATOR'S NOTES _____

Experience & Qualifications — 10 points **Points** _____

To what extent do the offeror's firm and staff members exceed the minimum experience requirements?

EVALUATOR'S NOTES _____

Total Points _____

Offeror – Business Exchange

Data Entry/Verification Process

Please describe your organization’s entire data entry/verification process after receipt of the data and keypunch instructions from the state.

Our courier will pick up the documents and our staff will then enter and verify the data.

Priority Work Completion

Please describe your procedures for completing priority work sooner than the required delivery dates.

Since the number of documents per week will fluctuate, we will take the stance that the fastest turn-around possible is the only viable option.

Because of our production based pay schedule, there is plenty of incentive to work extra to make a deadline, and the existing staff is willing and able to do just that.

Unanticipated workloads could easily be handled by our staff doing extra work, or in the event of a very large increase, by drawing from our list of “temps.” There are a number of people who have “temped” for us on a part-time ongoing basis for several years who have experience in data entry. We have ongoing employment agreements in place for all our temps.

Experience & Qualifications

Please describe your organization’s experience and qualifications, specifically how you meet the minimum qualifications of at least 3 years of data entry experience, processing at least 1,000,000 documents each year, and that each data entry staff member has at least 2 years of data entry experience as described in this RFP.

Business Exchange has not specifically keyed information from large volumes of source documents in the past. However, we have experience typing large certified transcripts and have provided secretarial services in Juneau for 15 years. Whether it’s word processing or data processing, they both require strong keyboard skill which are already in place at our company. We also provide computerized telephone answering, which is another form of data entry.

We have attached resumes of our supervisor who has 12 years of experience managing Business Exchange. Resumes of 4 secretary/typists are also attached. Each has over 3 years of experience.

Alaska Offerors Preference

Does your organization qualify for the Alaska Bidder Preference?

Yes.

PROPOSAL EVALUATION FORM

Person or Firm Name Business Exchange

Name of Proposal Evaluation (PEC) Member _____

Date of Review _____

RFP Number 2015-0200-1104

Proposals will be evaluated against the questions set out below.

Data Entry/Verification Process — 10 points **Points**_____

How well does the proposal indicate an acceptable data entry/verification process after receipt of the data and keypunch instructions from the state?

EVALUATOR'S NOTES _____

Priority Work Completion — 10 points **Points**_____

To what extent does the proposal allow for the flexibility to complete work sooner than the required delivery dates?

EVALUATOR'S NOTES _____

Experience & Qualifications — 10 points **Points**_____

To what extent do the offeror's firm and staff members exceed the minimum experience requirements?

EVALUATOR'S NOTES _____

Total Points_____

PROTEST AND APPEAL QUESTIONS

1. A bidder protests the evaluation criteria in your RFP two days before the deadline for receipt of proposals. Your RFP states:

“Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the procurement officer, in writing, at least ten days before the deadline for receipt of proposals.”

Can you reject the protest based solely on this language?

2. After you issue the Notice of Intent to Award a contract (NOI), an interested party asks for copies of all Proposal Evaluation Committee (PEC) score sheets and notes. Do you have to provide this information?
3. The NOI lists a total of five bidders. Can the fifth highest bidder protest the award to the lowest bidder?
4. An ITB will result in a one-year term contract. There are 15 items listed in the bid schedule and award will be made as one lot based on the quantity of “one” for each item. The ITB provided estimated annual quantities for each of the 15 items in excess of the quantities listed on the bid schedule. A protest is received prior to the deadline for receipt of bids. The protestor requests that the item quantities on the bid schedule be increased to reflect the annual estimated quantities. Do you have to amend the ITB?
5. A protestor raises new issues under an appeal to the Commissioner of Administration. These issues were not included in the protest. Should you address the new issues in your protest report to the Commissioner?
6. Can an interested party protest an award under a Single Source Alternate Procurement?
7. You fail to respond to a protest within the 15 days or obtain an extension of time from the Commissioner of Administration. What happens next?
8. Your ITB specifies a Honda Generator, Model A145 – no substitute. A bidder files a protest prior to the deadline for receipt of bids and states that the brand/model they offer is equivalent to the Honda. Can you deny the protest because your agency wants a Honda, Model A145?
9. You receive a timely protest concerning your NOI. There are no legal or factual issues identified, but instead the protestor wants to reserve the right to file a protest a later date. What should you do?

PROTEST AND APPEAL ANSWERS

1. No. If the protest identifies material issues and your agency is not under a valid time constraint to award a contract, you should extend the deadline for receipt of proposals and respond to the protest.

Keep in mind that protests based on alleged improprieties or ambiguities in the solicitation may be filed before the deadline for receipt of bids or proposals if a pre-bid or pre-proposal conference is held within 12 days of the deadline, or if your solicitation has a shortened public notice period - AS 36.30.565

2. Yes, PEC score sheets and notes are considered public information after the Notice of Intent to Award a contract (NOI) has been issued.
3. Possibly. An interested party must have a direct and substantial economic interest that may be affected by the award. If the protest has merit, you should accept the protest, remedy the situation and re-issue the NOI.
4. Yes. Also note that if your ITB did *not* have annual estimated quantities and but you can obtain reasonably accurate estimates; you should still amend the ITB.
5. Yes. Respond to the new issues, but also point out that these new issues were not raised in the original protest and should not be considered under the appeal.
6. Yes. AS 36.30.560 states that an interested party may protest “the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction.” Interested parties may protest alternate procurements.
7. Per AS 36.30.580(c), “If a decision is not made the date it is due, the protester may proceed as if the procurement officer had issues a decision adverse to the protester.”
8. Not unless the procurement officer has determined in writing that only the identified brand/model number will satisfy the state’s needs and the determination has a reasonable basis in fact.
9. Advise the protestor, as soon as possible that there are no procedures under law which allow an interested party to “reserve the right” to file a late protest.

Keep in mind that AS 36.30.565(b) states that “If a protester shows good cause, the procurement officer of the contracting agency may consider a file protest that is not timely.” Generally, a procurement officer should accept a late protest if it has merit.

CONTRACT AMENDMENT QUESTIONS

1. Can a \$20,000 contract be amended by \$30,000 if the services are within the scope of the original contract?
2. A \$200,000 contract contains the following language:

The State reserves the sole right to purchase 20 additional widgets (valued at \$100,000) during the term of the contract if its budget request is approved by the Legislature.

Is an Unanticipated Amendment Request for Alternate Procurement (RAP) required?

3. A contract for helicopter maintenance specifically states under Contract Intent:

This is a mandatory maintenance contract for the State's Bell 206B helicopter, N3445Z.

If the State sells this helicopter and purchases another brand/model that is more expensive to maintain, can they amend the contract to include the new helicopter and increase the maintenance rates?

4. An agency's contract expired last week. Can they submit an Unanticipated Amendment RAP to renew the contract retroactively?
5. Is a renewal option considered an anticipated or unanticipated amendment?
6. An agency awards a \$200,000 contract for the design and development of a new computerized inventory system. During design, the agency identifies new and additional functionality they want incorporated into the system. The additional work will cost \$45,000. Is an Unanticipated Amendment RAP required?
7. Is it acceptable to award a contract that does not specify a maximum contract amount?
8. An agency awards a \$200,000 contract for consulting services. They amend the contract by \$40,000 to include additional work within the scope of the original contract. Next, they secure approval via an Unanticipated Amendment RAP to amend the contract by \$140,000 to include additional work within the scope of the original contract.

Finally, the agency identifies even more additional work within the scope of the original contract. The value of this work is \$120,000. What should the agency do?

9. A contract states:

The State and the successful bidder/contractor agree: (1) any holding over of the contract excluding any exercised renewal options, will be considered as a month-to-month extension, and all other terms and conditions shall remain in full force and effect and (2) to provide written notice to the other party of the intent to cancel such month-to-month extension at least 30 days before the desired date of cancellation.

If the total contract term is 12 months and the value of each month is \$20,000, can the procurement officer extend the contract on a month-to-month basis for 6 months without processing an Unanticipated Amendment RAP?

CONTRACT AMENDMENT ANSWERS

1. No, a \$30,000 unanticipated amendment would probably not be considered within the scope of a \$20,000 contract.
2. No, this type of amendment would be considered anticipated. The requirement was contemplated under the contract, provided the agency's budget request was approved. The State would simply issue a contract amendment.
3. No, the scope of the original contract limited the maintenance work to a specific brand and model of helicopter.
4. No, a dead contract cannot be renewed retroactively. The agency must conduct a new procurement, or seek approval of an emergency or single source Request for Alternate Procurement (RAP) if sufficient factual evidence exists to document an alternate procurement.
5. Anticipated, a renewal option that is mentioned in both the solicitation and resulting contract is considered an anticipated amendment.
6. Yes, since the value of additional work exceeds the lesser amount of 20% of the current contract term, or \$100,000 (Ref 2 AAC 12.485).
7. No, statutes require that all contracts identify a maximum dollar amount. Otherwise, how do you know when to apply the "lesser of 20% of the current contract term or \$100,000" unanticipated amendment rule under 2 AAC 12.485?
8. Conduct a new procurement, or seek the approval of a single source RAP. The value of unanticipated amendments is cumulative. In this case, a \$200,000 contract has already been amended by \$180,000. An additional unanticipated amendment valued at \$120,000 would increase the total of all unanticipated amendments to \$300,000 which is probably outside the scope of a \$200,000 contract.
9. No, this type of extension would be considered an unanticipated amendment subject to the limits of 2 AAC 12.485. based on the current contract amount of \$240,000 (\$20,000 per month), the contract could be extended for two months (\$40,000) which is less than 20% of the contract value. However, an Unanticipated Amendment RAP is required if the extension will exceed \$48,000 (20% of the value of the contract term).

TOP 10 QUESTIONS

1. If I receive only one bid or proposal in response to a formal procurement (above \$100,000), do I still have to issue a Notice of Intent to Award?
2. The day before a deadline for receipt of bids or proposals (either small or formal procurement) a vendor calls and asks for an extension of time. Should the deadline date be extended?
3. Does a state employee need to possess a OPPM procurement certification certificate in order to purchase from an existing contract?
4. I solicited three verbal quotes in response to a small procurement as the cost was estimated to be less than \$50,000. However, the lowest quote received was \$52,000. Can I proceed with the award, even though the verbal quote threshold is \$50,000?
5. I received only one proposal. Does it still need to be scored?
6. I work in the Department of Public Safety. Can I purchase from a contract established by the Department of Fish and Game?
7. A bid arrived 10 minutes late, but the delay was caused by the carrier (United States Postal Service, Fed Ex, UPS, etc.). Can I accept the bid?
8. Does a vendor responding to a formal RFP or ITB have to possess a valid Alaska Business License when they submit their proposal or bid if they will perform all the services outside Alaska, or if they are located outside Alaska and will merely ship a product to the state?
9. Same question as above, but what if it's a small procurement?
10. How much authority do Proposal Evaluation Committee (PEC) members have? For example, can they determine responsiveness, cancel a solicitation, etc.?

TOP 10 ANSWERS

1. Yes. AS 36.30.365 expressly states “At least 10 days before the formal award of contract... the procurement officer shall provide to each bidder or offeror notice of intent to award a contract.” There is no exception provided in statute for instances when a single bid or proposal is received.
2. It depends on the circumstances. Unless you are under a critical time constraint to award a contract, you should seriously consider extending the deadline. In many cases, it’s in the state’s best interest to extend the deadline in order to increase competition.
3. No. OPPM Procurement Officer Certification is required in order for an individual to *conduct* procurements. If you are purchasing from an established contract, the “procurement” has already occurred. However, departments should delegate some type of authorization to individuals in order for them to purchase from state contracts.
4. Yes, if there was a *reasonable basis* for the initial cost estimate (see PIM #58). This policy also applies to “reasonable and adequate” procurements under the \$25,000.01 or less threshold [2 AAC 12.400(b)]. The procurement officer must justify the reasonableness of their initial cost estimate and include any relevant documentation in the procurement file. However, if the lowest quote grossly exceeds the upper dollar limit, the procurement must be cancelled and re-solicited using the next highest competitive level. Also, since AS 36.30.320 specifically prohibits the use of small procurement procedures for procurements above \$100,000, if all quotes exceed \$100,000, the procurement must be cancelled.
5. Yes, it should be scored for several reasons. All solicitations must state that each proposal will be evaluated according to specific evaluation criteria and we must always follow the terms and conditions of a solicitation during evaluation. Further, both AS 36.30.250 (formal RFPs) and 2 AAC 12.400 (informal RFPs) state that award must be made to the “most advantageous” proposal. *Criteria for determining the most advantageous proposal should not be ignored simply because only one proposal was received.*
6. No. Unless the Chief Procurement Officer has made a specific one-time delegation to the department, departments do not have the delegated authority to establish multi-department contracts.
7. No. Late bids cannot be accepted unless the state was responsible for the delay, such as misplacing or misfiling a bid.
8. Trick question! Prior to recent revisions to the procurement code, vendors were required to possess a valid Alaska Business License *prior to the deadline for receipt of bids or proposals*, regardless of where they were located, where the work would be performed, or if they were merely shipping a product to the state. Vendors are still required to possess a valid Alaska Business License, but *not until the time the contract is awarded - AS 36.30.110 (b).*
9. An Alaska Business License is not required for small procurements if the offeror is located outside of Alaska and all work will be performed out of state (this includes merely shipping products to the state).
10. PEC members participate in the scoring of the proposals and may make recommendations to the procurement officer. However, they do not have the authority to determine responsiveness or responsibility, cancel a solicitation, etc. Only the procurement officer has the authority to make those determinations.

PROCUREMENT ACADEMY COURSE COMPLETION SHEET – LEVEL III

Course Location

Course Date

I request credit for this course towards completing the Level III 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 and above \$100,000
 5. Recognize the purpose and goals of contract administration
 6. Demonstrate legal, ethical, and competent contract administration and performance on the job when conducting small and formal 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 leave in the classroom or if you have class online email to
lois.lemus@alaska.gov.**