

Procurement Information Messages

Rev. 5/2024

The Office of Procurement and Property Management (OPPM) occasionally issues Procurement Information Messages (PIMs). The purpose of these messages is to provide information and guidance, not policy, in an informal messageboard style. In the absence of other relevant regulations or policies, these PIMs may be controlling but are in no way intended to be replacements or substitutes for AS 36.30, 2 AAC 12, or AAM 81 and 82.

Please note that the PIMs messageboard may be occasionally updated as new PIMs are added, or old PIMs become outdated or are no longer relevant. Where the PIMs reference specific requirements in the State Procurement Code, those conditions are controlling, e.g. the elements needed to process a Single Source RAP. Over time, rules may change and where there is conflict in the PIMs and the Procurement Code, the Code controls.

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Procurement Information Message #2

**Issued January 1989
Revised November 2021**

VENDOR PERFORMANCE

We receive occasional agency comments regarding poor performance by vendors.

A Contract exists when the state accepts a bid and issues a purchase document (Contract Award, PO, DO, etc.). At that point, generally a vendor has agreed to sell the State a specific product, at a specified price, delivered by a specified time and to a specified place. The agency receiving the product has the responsibility to ensure the item delivered meets the requirements of the contract. If the vendor does not meet one or more of the contract conditions, and the condition is material, the contract may have been breached.

If the item delivered does not meet requirements of the procurement document, you have several options. In effect, the vendor is now making a counteroffer, i.e., you asked for A; you are offered B, where B could be a different product or simply the same product delivered at a different time, place, or price.

One way to handle the situation is to accept the counteroffer. If you do, you should ensure you have not paid a premium for something you did not get, e.g., expedited delivery.

A second option would be to make your own counteroffer, i.e., accept late delivery at a reduced price.

The important points to remember are:

- We do not have to accept less than what we ordered; and
- we are entitled to be made whole for damages caused by the vendor's failure to perform.

Typical example: An agency orders a product to be delivered July 1. On July 2, the product has not arrived. A call to the vendor reveals that delivery will not take place anytime soon. At this point, the agency has the right to secure the product from another source and charge the vendor the difference in cost including any extra costs incurred by the agency, such as air freight. There are variations on this scenario. For example, even though the contracted vendor might not be able to deliver by July 7, no other source may be able to deliver sooner either. Delivery by the contracted vendor may then be the easiest approach, but we would still be entitled to quantifiable damages.

In general, it is good practice to allow vendors the opportunity to cure non-performance before declaring default. However, if performance is critical, you should not feel compelled to wait before you begin to explore the possibility of default. Also remember that accepting repeated non-performance may create a situation where a court will find you have essentially changed the terms and conditions of the contract, or waived it, by allowing the non-performance.

If you have a specific example of non-performance or anticipated non-performance you would like to discuss, you should contact the Department of Law or OPPM's Policy and Oversight Section. There is also more information on the subject in AS 45.02.711 - 45.02.721.

Procurement Information Message #14

Issued July 1993

Revised May 2024

REQUEST FOR QUOTE TIPS

The goal of the request for quotes or competitive bidding process is a full and open and fair and competitive process that results in the purchase of goods and or services at the best valued price by leveraging the competitive market. In order to accomplish this, all bidders must be treated equally and fairly. They must have the same information disclosed promptly to them. And the method of award evaluation must be the same for all bidders.

DON'T:

- Give one or some bidders additional or advance information.
- Let vendors write your agency's specifications.
- Let bidders conduct your agency's technical evaluation.
- Let bidders change their prices after closing date and time.
- Tell them other bidders' prices before the closing date and time.
- Negotiate price and terms with bidders.
- Verbally state displeasure with a bidder; or
- Verbally state displeasure with a product.

The competitive quote process begins with market research by gathering the information that will be used by your agency to identify needs, write specifications and requirements. The result is a purchase of goods or services that meets your agency's need. Remember awarded contractors are not required to provide goods or services that have not been originally solicited in the request for quote document.

DO:

- Use the Request for Quotation (form #02-110) for quotes over \$50,000.
- Obtain at least three written quotes for purchases over \$25,000.
- Write general specifications or use alternate brands.
- Avoid brand name specifications.
- Include all product and contractor requirements in the request for quotation document.
- Include all terms and conditions.
- Clearly state the method of award, and do not change it after closing.
- Consider all requests for changes fairly and promptly; and
- Apply applicable preferences.

Remember, as your agency's representative, you are responsible for your actions from the start through the award process. You may have to formally defend what you tell vendors or the awarded contractor. The most innocent comment or action may be construed as a form of favoritism or discrimination. The request for quotation process should be viewed as a professional business relationship that will later form a legally binding agreement.

Procurement Information Message #18

**Issued January 1994
Revised November 2021**

ASSIGNMENTS

As they relate to procurement and contract administration, assignments generally involve the transfer of rights, interests or obligations under a contract. Assignments are necessary to ensure that the interests of the parties of a contract are protected. Per 2 AAC 12.480, a contract or subcontract may not be transferred or otherwise assigned without the prior written consent of the procurement officer responsible for the contract.

An assignment agreement is one that sets out the conditions under which the assignment is made. An assignment agreement should recognize and be signed by all parties to the contract. The agreement should stipulate that the transferee assumes all the transferor's obligations under the contract. Assignments of state contracts may not be made without the state's prior approval since the state, as a public entity, must approve the suitability of those that it does business with.

Please take time to read 2 AAC 12.480 and ensure that all assignments, transfers and novation agreements comply with this regulation.

If you have questions on this subject, please feel free to contact OPPM, Policy and Oversight.

Procurement Information Message #41

**Issued November 1997
Revised December 2021**

GSA CONTRACTS

Agencies may not purchase supplies or services from the Federal General Services Administration (GSA) federal supply schedules or other GSA awarded government-wide acquisition/contracts without first consulting OPPM for additional guidance. In the normal course of doing business, you may solicit normal quotes from GSA vendors in accordance with AS 36.30, 2 AAC 12, AAM 81, or use GSA supply schedules for benchmarking pricing.

Procurement Information Message #42

Issued April 1998

Revised November 2021

CONTRACT PRICE ADJUSTMENT CLAUSES

When it is necessary or beneficial to establish a long-term agreement, you should first consider a firm, fixed price contract. However, from time to time it may be necessary or advisable to include contract clauses which allow for adjustments to pricing over time. This message is intended to provide guidance to employees when considering price adjustment or escalation clauses.

Price adjustments should not be automatically included in all contracts. You are advised to carefully consider the potential need to adjust pricing prior to including such a clause in a contract. These clauses are intended to preserve the relative balance of price, value, and profit arrived at when a contract was initially established, and not as a means to increase the contractor's profits. When possible, utilize firm, fixed price contracts that include cost of living or other escalation value in the option year as part of the initial awarded contract to give agencies transparency for their future cost should option years be exercised.

Short term contracts and contracts in industries with stable, predictable pricing generally do not require adjustment clauses. Adjustment clauses are more appropriate for longer term contracts, especially those in an industry known for price volatility.

Once you have carefully considered the need for an adjustment clause and have decided one is necessary, you should then consider what the adjustment should be related to.

The most common type of adjustment is tied to the Consumer Price Index (CPI), maintained by the US Department of Labor. Since the CPI has consistently increased over time, these types of clauses have come to be known as escalation clauses. Another common index is the Producer Price Index (PPI) which is also maintained by the US Department of Labor.

You may also choose to tie price adjustments to an inflation rate in a specific geographic area, a manufacturer's published price list, a profit margin based on a percentage or markup of a supplier or distributor invoice, or some other industry-specific price index. However, for certain types of adjustments, care should be taken to ensure the index or price list used is not subject to undue influence by the contractor.

Arbitrary use of CPI adjustments in professional services contracts should be avoided. The measurements that the U.S. Department of Labor use to determine this index often have no relationship to these types of contracts. Including an excessive or unrelated escalation adjustment in a contract unnecessarily drives up contract prices over time e.g., increasing the cost of a personnel due to their increase in experience as a result of work on the contract.

The most important advice we can provide is to investigate the marketplace to determine whether an adjustment clause is appropriate for the specific goods or services you will be purchasing and if so, which type of adjustment mechanism will be fair for your agency and the contractor. Another important factor to keep in mind is whether the adjustment clauses allow for price reductions as well as increases. Whenever appropriate, you should ensure that the adjustment clause you use allows for price decreases.

Procurement Information Message #43

Issued August 1998

Revised March 2020

ALASKA AGRICULTURAL AND FISHERIES PRODUCTS

AS 36.15.050 stipulates that when agricultural or fisheries products are purchased using state money, products that are harvested in the state shall be purchased 1) whenever price of instate harvest is no more than seven percent above products harvested outside the state, 2) are readily available, and 3) of like quality compared with agricultural products harvested outside the state.

It further stipulates that a solicitation for agricultural or fisheries products must specify a requirement that products harvested in the state shall be used where possible. If the state purchases products harvested outside the state, the person responsible for the purchase must certify in writing the reason that products harvested in the state were not purchased.

This requirement applies both to small and formal procurements.

Products subject to this statute may include, but are not limited to:

- Produce
- Dairy products
- Meats and Fish
- Timber and timber products.

It is incumbent upon every person purchasing these products to ensure compliance with the provisions of this statute. If you are buying products subject to this statute, you must solicit a price for an Alaska harvested product, when available.

Procurement Information Message #47

Issued November 1999

Revised November 2021

REQUESTS FOR ALTERNATE PROCUREMENTS

In addition to an explanation of why alternate procurement conditions exist, agencies are required by Statute, Regulations, and the Administrative Manual to submit findings of fact and, most importantly, factual evidence sufficient to support an independent examination and determination of the material facts of the procurement. The Chief Procurement Officer cannot make assumptions regarding the facts involved. The facts must be listed and accompanied by evidence sufficient for independent examination and verification.

Material factual evidence may consist of written documents, records, supporting data, affidavits, independent third-party statements, or other information proving that the facts are true and accurate. Mere argument or persuasion does not constitute evidence of fact.

The following guidelines should be followed when preparing Single Source and Limited Competition RAPs for contracts totaling over \$100,000 submitted to the Chief Procurement Officer for approval.

All Single Source, Limited Competition, and Emergency RAPs must include:

- A description of the item or service.
- Evidence of recent market research normally by posting a Request for Information (RFI) (Emergency RAP may be excluded from the RFI requirement on a case-by-case basis but are not excluded from the need to conduct market research).
- The reasons why alternate procurement conditions exist, including findings of fact.
- A description of the efforts used to determine that the procurement qualifies for the alternate procurement method requested.
- If necessary, the negative effects if the RAP is not approved should be discussed.

In addition, RAPs must address the following:

Single Source

- Why it is not practicable to award a contract by competitive sealed bidding, competitive sealed proposals, or small procurement procedures, as applicable;
- Why award to a single source is in the state's best interest based on the definition of "in the state's best interest" referenced under 2 AAC 12.415; and
- The specific and significant interests to support the use of a single source procurement method.

Limited Competition

- Why the solicitation should be limited; and
- Why the competitive sealed bidding, competitive sealed proposals, or small procurement procedures, as applicable, are impracticable or contrary to the public interest.

Emergency

- Why emergency conditions exist;
- Why procurement through competitive sealed bidding, competitive sealed proposals, or small procurement procedures, as applicable, are impracticable or contrary to the public interest; and
- The level of competition that will be utilized and reasons why such competition is practicable under the circumstances.

Unanticipated Amendment Exception

Unanticipated amendments requested under 2 AAC 12.485 must specifically address the following four areas:

- **Legitimacy** - whether the change is legitimate and due to unforeseen circumstances, which occurred as work progressed, and whether the reasons for the change were unforeseen at the time the contract was established, as opposed to an effort to evade procurement requirements.
- **Scope** - whether the additional work is within the scope of the original contract.
- **Contract Clause** - whether the contract contains clauses authorizing modification.
- **Extent** - whether the amendment represents any important general change which alters the essential identity or main purpose of the original contract or is of such importance as to constitute a new undertaking.

Required Review

Procurement personnel in each department should review RAPs before they are sent to OPPM Policy and Oversight. Incomplete RAPs should not be forwarded for approval.

Procurement Information Message #54

Issued December 2000

EXEMPTIONS TO THE PROCUREMENT CODE (AS 36.30.850(b)(21))

This message is issued to clarify the exemption to the State Procurement Code contained in AS 36.30.850(b)(21) for contracts for “guest speakers or performers for an educational or cultural activity.”

This exemption applies to guest speakers or performers who are hired for the main purpose of entertainment or informative, motivational, or inspirational speaking. Since it would be extremely difficult, if not impossible, to compare and evaluate these types of speakers or performers, they are exempt from the procurement code.

While each situation is unique, some examples of guest speakers or performers who would be exempt under this statutory reference are:

- * A historical speaker for an Alaska Day luncheon
- * A performing group (Chinese Acrobats, Dance Troupe, etc.)
- * A comedian, magician or other entertainer
- * A motivational speaker to talk at an awards banquet
- * A master of ceremonies

Even though a guest speaker may be speaking on an educational topic, hiring them is still exempt from the procurement code if they are being hired only as a speaker, not as an educator to conduct training. Examples of people who would not be exempt from the procurement code include:

- * Educators or speakers hired to conduct training
- * An individual hired to facilitate a meeting
- * An individual hired to teach a skill

This list may not encompass everyone who would or would not qualify for this particular exemption. Procurement officers should carefully consider each instance and make the determination based on the merits of each situation.

If you have questions on whether a procurement would qualify for the “guest speakers or performers for an educational or cultural activity” exemption, or any other exemption under 36.30.850, contact your department’s procurement manager, or give OPPM, Policy and Oversight a call.

Procurement Information Message #58

Issued May 2001

Revised May 2024

EXCEEDING SMALL PROCUREMENT THRESHOLDS (AS 36.30.320 & 2 AAC12.400)

This message serves to provide guidance when individual competitive levels are exceeded in the course of receiving quotes or informal proposals. There are three basic levels of competition for supplies and services purchased under small procurements procedures (2 AAC 12.400):

- 1) \$25,000 or less
- 2) \$25,001 to \$50,000
- 3) \$50,001 to \$100,000

To decide which level of competition applies, a procurement officer must first estimate the total cost of the contract (including any renewal options).

If the lowest quote or informal proposal exceeds the upper dollar limit established for the first or second level of competition, but there was a reasonable basis for the initial cost estimate, the procurement does not have to be cancelled and re-solicited. The reason is that these two competitive levels include language that states, “procurements estimated to cost.”

However, in order to proceed with award, the procurement officer must make a note to the file. That is, justify the reasonableness of their initial cost estimate and include any relevant documentation in the procurement file.

If the lowest quote or informal proposal grossly exceeds the upper dollar limit, the procurement must be cancelled and re-solicited using the next highest competitive level.

For example, the upper dollar limit for a procurement conducted under 2 AAC 12.400(c) is \$50,000. If the initial estimate for the contract is \$48,000, but the lowest quote received is \$95,000 (almost double), the agency must cancel and re-solicit using the next competitive level – 2 AAC 12.400(d).

For procurements made under 2 AAC 12.400(d):

Although the language under (d) includes the “estimated” disclaimer, AS 36.30.320 does not, so it specifically prohibits the use of small procurement procedures above \$100,000. Therefore, if total costs exceed \$100,000 the procurement must be cancelled and resolicited as a formal procurement.

Procurement Information Message #59

**Issued October 2001
Revised November 2021**

DISCLOSURE OF VENDOR AND PEC NAMES

There have been questions regarding what information can be disclosed during the procurement process. This message serves to provide guidance regarding the release of the names of vendors who received or responded to a solicitation and the disclosure of Proposal Evaluation Committee (PEC) membership.

FORMAL PROCUREMENTS:

The ITB process requires the name of each bidder, the bid price, and other information deemed appropriate by the procurement officer to be tabulated at the bid opening (AS 36.30.140; 2 AAC 12.150).

- This information is open for public inspection as soon as practicable. However, the bids are not open for inspection until after the Notice of Intent to Award a Contract is issued. Some information (e.g., trade secrets and other proprietary data) may remain confidential even after that date.

The RFP process requires the Procurement Officer to prepare a register, including names of each Offeror and descriptions of the supply, service, or construction item offered, after the receipt of proposals (AS 36.30.230; 2 AAC 12.240).

- The register and proposals are not open for public inspection until after the Notice of Intent to Award is issued (AS 36.30.230). Therefore, no information can be provided to the public regarding who submitted a proposal until after issuance of the Notice of Intent to Award. Some information (e.g., trade secrets and other proprietary data) may remain confidential even after that date.
- In addition, all proposals, score sheets, other documentation related to the evaluation of proposals, discussions or communications with offerors, and information regarding any contract negotiations are confidential until after the Notice of Intent to Award is issued. Some information (e.g., trade secrets and other proprietary data) may remain confidential even after that date. Additionally, some information relating to contract negotiations may remain confidential until after the final contract has been executed.

SMALL PROCUREMENTS:

When using small procurement procedures, the names of firms or persons solicited, the number of bids or proposals received or information regarding the bids or proposals must not be released until after award (\$1-\$50,000) or Notice of Award (\$51,000-\$100,000).

PROPOSAL EVALUATION COMMITTEE (PEC) MEMBERS

Proposal Evaluation Committee members play an important role in the procurement process. Due to the deliberative and sometimes sensitive nature of these business decisions, PEC members should be of sufficient seniority, should have a business record of integrity, and each time, must sign Conflict of Interest and Non-disclosure forms before they participate in the evaluation of proposals for a solicitation. The names of members of a PEC are confidential and should be redacted as part of any request for records under the Alaska Public Records Act. However, if the request is made by a protestor, the protestor is entitled to this information and may call members of a PEC as witnesses in a hearing on the protest.

Procurement Information Message #61

Issued January 2003

Revised March 2020

CONSTRUCTION DEFINITION

This message serves to provide guidance when determining whether or not a procurement meets the statutory definition of construction. It is important for procurement officers to make that determination prior to initiating a procurement. There are significant differences between construction and non-construction procurement types with respect to delegated authority, certification/warrant requirements, competitive levels, public notice, forms, procedures, and reports.

Delegation – You must possess a written delegation of purchasing authority before initiating any procurement. The Department of Administration (DOA) delegates authority for non-construction procurements. The Department of Transportation and Public Facilities (DOT & PF) delegates authority for construction procurements.

Certification/Warrant – Before exercising a delegation from DOA you must possess training certification from OPPM commensurate with the type and dollar amount of the procurement. Prior to exercising a delegation from DOT & PF you must possess a Construction Contracting Warrant certification commensurate with the type and dollar amount of the procurement.

Competitive Levels – Non-construction contracts have a small procurement dollar limit of \$100,000. The small procurement limit for construction contracts is \$200,000.

Public Notice – Non-construction procurements must comply with the online posting requirements set out in the procurement code. DOT & PF has public notice and online posting requirements that must be met for construction procurements (contract DOT & PF for more information).

Forms, Procedures & Reports – Non-construction procurements are subject to Sections 81 and 82 of the Alaska Administration Manual, DOA's forms and reporting requirements. Construction procurements are subject to DOT & PF's procedure manuals, forms and reporting requirements.

The definition of construction under AS 36.30.990(7) reads:

"construction" means the process of building, altering, repairing, maintaining, improving, or demolishing a public highway, structure, building, or other public improvement of any kind to real property other than privately owned real property leased for the use of agencies; it includes services and professional services relating to planning and design required for the construction; it does not include the routine operation of a public improvement to real property nor does it include the construction of public housing;

Construction includes the following activities:

- * **Altering** - to make different without changing into something else.
- * **Building** - to form by ordering and uniting materials by gradual means into a composite whole.
- * **Demolishing** - to destroy or tear down.
- * **Improving** - to make useful additions or betterment.
- * **Maintaining** - work necessary to preserve or maintain a facility so it can be used for its designated purpose.
- * **Repairing** - to mend, remedy, restore, or renovate an existing structure to restore it to its original condition.

To assist you in making the construction vs. non-construction determination, guidelines and examples are provided for four separate contract types: 1) Supplies and Materials; 2) Services; 3) Architectural/Engineering/Land Surveying and 4) Professional Services. Keep in mind that construction

procurements related to “*privately owned real property leased for the use of agencies*” do not meet the definition of construction and thus fall under DOA’s delegation and procedures.

SUPPLIES AND MATERIALS

The definition of construction under AS 36.30.990(7) includes “*the process of building, altering, repairing, maintaining, improving, or demolishing a public highway, structure, building, or other public improvement...*” Generally, supplies and materials used in a construction project meet the statutory definition of construction and are procured under DOT & PF’s delegated authority. For example:

- * Building materials, lumber, aggregate, paint, etc.

Items that are attached to a facility by means of a hard connection would also meet the definition of construction. For example, a built-in dishwasher that is attached to the building structurally, hard wired to the electrical system and plumbed to the mechanical system meets the construction definition. However, a portable dishwasher that is easily movable, plugs into an existing outlet and attaches in some temporary fashion to the mechanical system would not be considered construction.

Supplies and materials that are not directly related to a construction project fall under DOA’s delegated authority for non-construction procurements. Examples:

- * Office equipment and supplies used to deliver the construction projects
- * Fuel, electricity, and other utilities that facilitate the routine operation of the facility

SERVICES

The following examples are provided to define services that are considered construction procurements. These procurements fall under DOT & PF’s delegated authority:

- * Maintenance, repair, or replacement of a facility’s boiler
- * Maintenance, repair, or replacement of a building’s roof
- * Painting both the interior and exterior of buildings or other state facilities
- * Heavy equipment rented for use on a construction project
- * Clearing and grubbing relating to a construction project
- * Removal of material when it relates to the demolition or construction of a state facility
- * Demolition of a building or facility
- * Carpet replacement
- * Installation of security systems, public address systems and associated maintenance contracts
- * Building caulking
- * Elevator, fire alarm and sprinkler maintenance contracts

The following examples are provided to define non-construction services that fall under DOA’s delegated procurement authority:

- * Security guards
- * Furniture installation, systems furniture
- * Environmental remediation or cleanup (e.g. oil clean up)
- * Heavy equipment rentals for environmental remediation
- * Telephones or cable television

The following routine maintenance and repair contracts may fall under the statutory definition of “construction.” Agencies may award these, and similar types of routine maintenance and repair contracts under delegations issued by DOT & PF or DOA. Agencies must comply with all aspects of the departmental delegation they select, including certification/warrant requirements, public notice, forms, procedures and reporting requirements. Depending on the delegation selected, the \$200,000 or \$100,000 small procurement threshold would also apply.

- * Janitorial
- * Parking lot maintenance, including striping, patching, snow plowing and sanding

- * Lawn care
- * Window washing

ARCHITECTURAL/ENGINEERING/LAND SURVEYING

The Request for Proposal process is used for the selection of Architects, Engineers and Land Surveyors when seeking professional services for construction projects. These contracts are subject to AS 36.30.270 which requires a qualifications-based selection process. Architectural, Engineering or Land Surveyor contracts that do not directly relate to construction fall under DOA's delegation. For example:

- * An architectural contract for space planning or the design of a systems furniture layout

PROFESSIONAL SERVICES

Since the definition of construction under AS 36.30.990(7) includes "*professional services relating to planning and design required for the construction*", a professional services contract related to a specific construction project meets the definition of construction and is procured under DOT & PF's authority. Price must be considered during evaluation of these contracts. Examples:

- * A study to determine the effect a public works project will have on wildlife populations
- * Aerial photography to assist in project development
- * Real estate appraisals and other professional services necessary to acquire land for the construction of a project

Professional services contracts that are not related to "*planning and design required for construction*" fall under DOA's delegated authority for non-construction and are subject to the non-construction procurement laws and procedures:

- * Environmental, wildlife or fisheries studies not associated with a construction project
- * Marketing / public relations services
- * Economic analysis

If you have questions regarding a particular procurement, contact OPPI or DOT & PF for assistance.

Keep in mind that the criteria used to determine the applicability of Wage and Hour determinations is different than the criteria discussed in this document. Contact the Department of Labor with questions regarding Little Davis-Bacon prevailing wage requirements.

Procurement Information Message #62

**Issued February 2003
Revised November 2021**

MODIFICATION TO INSURANCE AND INDEMNIFICATION REQUIREMENTS

INTRODUCTION

There has been confusion about negotiating the standard insurance and indemnification requirements (Appendix B1, Appendix B2, or now contained in the RFP shell and ITB shell) of a procurement. This document serves to provide guidance to procurement officers as to when material changes¹ to the standard insurance or indemnification requirements may be negotiated, and when they may not be negotiated during the procurement process.

REQUIRED APPROVAL

Per AAM 81.170, the Division of Risk Management must approve any requested changes to the standard insurance or indemnification requirements.

DURING THE SOLICITATION PROCESS

The ITB and RFP shells contain language clearly instructing potential bidders or offerors to notify the procurement officer in writing at least 10 days prior to the deadline for receipt of bids or proposal. It is recommended that if you hold a pre-bid or pre-proposal conference, to point this requirement out so that you may seek Risk Management's approval.

Once Risk Management has granted approval of a material change to the standard insurance requirements, such as a reduction in the required coverage, the change must be addressed in the form of an amendment to the solicitation and sent to all parties who were originally solicited. The date/time set for bids or proposals may need to be adjusted accordingly.

AFTER RESPONSES ARE DUE, BUT BEFORE AWARD

The Request for Proposal and Informal Proposal methods of procurement both allow for amendments to the solicitation after the date/time set for receipt of responses has passed. In most cases, changes to the standard insurance or indemnification requirements are considered material. Therefore, once approved by Risk Management, the change must be addressed in an amendment to the solicitation and a new date/time established for receipt of revised responses.

In addition, there is some flexibility within the Single Source and Emergency (certain circumstances) categories of the Alternate Procurement process about making material changes under these circumstances.

In other methods of procurement, material changes to a solicitation are not allowed after the date/time set for receipt of responses has passed. If a material change is deemed necessary under these circumstances, the solicitation must be cancelled, and the requirement resolicited.

AFTER CONTRACT AWARD

Making a material change such as lowering the levels of required insurance after a contract has been awarded is generally not acceptable. However, there may be some exceptions to this rule. Some possible exceptions are:

1. Contracts awarded because of single source or certain emergency type procurements involving only one vendor.
2. A change in the insurance industry has caused the State's insurance requirements to be an undue financial burden on the contractor. In this case, after approval from Risk Management to lower the

¹ A change that has more than a negligible effect on price, quantity, quality, or delivery.

required levels of insurance, the most appropriate course of action would be to continue the contract on a temporary basis until the requirement can be resolicited.

In most cases, if Risk Management agrees to lower the insurance requirements after the award of a contract and the contractor receives a cost benefit, the State should negotiate a comparable reduction in value, e.g., reduction in the contract price.

If you have any question as to whether a requested modification to the standard insurance or indemnification requirements is considered a material change or not, please contact Risk Management.

Procurement Information Message #64

Issued April 2003

Revised November 2021

CHANGES IN PUBLIC NOTICE REQUIREMENT FOR FORMAL SOLICITATIONS AND ALTERNATE PROCUREMENTS

This message serves to inform state agencies of changes to the public notice requirements for formal solicitations and instances when newspaper advertisements are used to confirm and/or document alternate procurements. The following advertisement recently appeared in the Juneau, Anchorage and Fairbanks newspapers:

The State of Alaska does not plan to run newspaper advertisements in the future as a method to confirm and/or document Alternate Procurement situations under the State Procurement Code (AS 36.30.300 - 310). Instead, appropriate notices will be placed on the Alaska Online Public Notice system.

The State of Alaska also utilizes the Online Public Notice system to provide public notice of invitations to bid (ITB) and requests for proposals (RFP). A change to State Regulation 2 AAC 12.130(a) allows such postings to serve as the minimum public notice requirement. As such, the state may not provide additional public notice of formal solicitations via vendor bid lists or newspaper advertisements.

Interested parties should visit the Alaska Online Public Notice system frequently to learn of State procurement opportunities.

Keep in mind that posting the intent to award an alternate procurement online does not automatically mean that an alternate procurement will be approved. Sufficient factual evidence must also be provided to allow the independent determination that the procurement is eligible for the alternate method requested (AS 36.30.315). OPPM may require the submittal of additional forms of evidence when online posting is the primary justification for an alternate procurement.

The posting of formal solicitations at the Online Public Notice system now meets the minimum public notice requirement under 2 AAC 12.130(a). However, additional forms of public notice such as vendor lists, newspaper advertisements, etc. may be appropriate, and in some instances required when the sole use of online posting will not result in adequate notification to the appropriate vendor community.

Procurement Information Message #70

Issued May 2004

Revised May 2024

BRAND SPECIFIC DETERMINATIONS AND SPECIFICATIONS

The purpose of this policy is to provide guidance for making brand specific purchases due to standardization issues, e.g., purchasing a particular item due to compatibility reasons or Information Technology products based on statewide standards.

For procurements over \$25,000, procurement officers must include a written brand specific determination per 2 AAC 12.100 in the procurement file when competition is limited to a single brand or product, even if the limitation is based on standardization. Since a brand specific determination can limit competition, increase the risk for protest, and lead to a dependency on particular supplier, it must be legitimate and identify why the brand name is the only one that will meet the state's needs.

Brand Name or Approved Equivalent

If limiting a specification to only one brand cannot be justified but no other manner of description of the product will suffice except a brand name description, AAM 81.150 requires that, for procurements over \$25,000, a "state approved equivalent" clause be included in any solicitation. If you use a brand name specification, you should list as many salient characteristics of the product as necessary so potential bidders can determine whether the product they can offer is equivalent to the identified brand name. Brands meeting the described requirements will then be accepted on a state-approved basis.

Technology Purchases

The Department of Administration, Office of Information Technology, may establish statewide technology standards. However, the procurement officer is still required to make a written determination for brand specific technology purchases above \$25,000. The written determination should include the following language:

In accordance with 36.30.060 and 2 AAC 12.100, I have determined that only (*Insert brand and model number*) will satisfy the state's needs. The Department of Administration, Office of Information Technology, has established a standard for this item. State agencies are not allowed to procure other brands.

RAPs and Existing Contracts

If only one source can supply a brand specific requirement, a single source Request for Alternate Procurement (RAP) must be approved by the Chief Procurement Officer for all purchases above \$100,000.

Neither a brand specific determination nor a single source RAP is required if the purchase is made from an existing state contract.

Therefore, for purchases based on standardization issues, Procurement Officers must still make a written brand specific determination per 2 AAC 12.100 unless a RAP is approved, or the purchase is made from an existing contract.

Procurement Information Message #71

Issued September 2004

Revised December 2022

FOREIGN OUTSOURCING IN STATE CONTRACTS FOR SERVICES

As a result of A.O. 216 issued by Governor Murkowski on August 5, 2004, the following policy and procedures apply regarding foreign outsourcing (ref. AAM 81.015). This policy affects all state solicitations and contracts above \$50,000 for professional services and non-professional services, including alternate and exempt procurements. Professional services and services are defined under AS 36.30.990(21) and AS 36.30.990(23).

NOTE: This policy does not apply to contracts for “supplies” as defined under AS 36.30.990 (26), even though some items purchased may include warranty and/or maintenance services that are provided by vendors located outside the United States.

POLICY: In an effort to ensure that funds spent on state service contracts provide the maximum economic benefit to the State of Alaska and the United States, the State of Alaska shall require all service contracts above \$50,000 to be performed in the United States, unless a waiver is approved by the Chief Procurement Officer or designee, not to be delegated below the level of Deputy Chief Procurement Officer.

PROCEDURE: To assist agency procurement officers, the following language has been added to the ITB, RFP, and IRFP shell documents located on the following website:

<http://doa.alaska.gov/oppm/forms.html>

“By signature on this solicitation, the bidder / offeror certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States. If the bidder / offeror cannot certify that all work will be performed in the United States, the bidder / offeror must contact the procurement officer in writing to request a waiver at least 10 days prior to the deadline for receipt of bids / proposals. The request must include a detailed description of the portion of work that will be performed outside the United States, where, by whom, and the reason the waiver is necessary. Failure to comply with these requirements may cause the state to reject the bid / proposal as non-responsive or cancel the contract.”

The clause must also be included in all informal RFPs, RFQs, alternate and exempt procurement solicitations and contracts above \$50,000 for professional and non-professional services. The first sentence of the clause may be changed to, “By signature on this contract...” for negotiated procurements.

If an agency believes that it is in the state’s best interest to contract with a vendor to provide services from outside the United States, the agency may submit a request for waiver to the Chief Procurement Officer or designee, not to be delegated below the level of Deputy Chief Procurement Officer, for approval. The request for waiver must address the following:

1. Why it is in the state’s best interest to allow the services to be performed outside the United States, and
2. Why limiting competition to service providers located in the United States could damage the agency’s ability to accomplish its public mission.

Requests for exemptions for services to be performed in Canada will be given special consideration. Because of Alaska’s extensive border with Canada, our history of cooperation, common cultures and trade relations, it is presumed that provision of services from Canada may be appropriate and, in the State’s best interests, in many circumstances. Requests for services performed in Canada will be afforded special consideration, especially when cost, logistics, proximity, or a lack of availability of the services from within the United States or Alaska are an issue.

If the waiver is approved, all offerors shall be required to provide a certified list verifying the country(ies) the contracted or subcontracted work will be performed. A copy of the list must be maintained in the procurement

file. If a numerical scoring method is utilized, state agencies are encouraged to evaluate and consider the percentage of work to be performed outside the United States as compared to work to be performed inside the United States.

The following types of contracts may involve services provided outside the country and do not require a waiver:

Statutory Exemption - AS 36.30.850(31) "Contracts that are to be performed in an area outside the country and that require a knowledge of the customs, procedures, rules, or laws of the area."

Foreign Offices - Agencies with offices located overseas may require foreign contractors to perform work for the State of Alaska.

SPECIAL NOTE: The Office of Information Technology, Security Policy 112, requires review and approval from the State Security Office (SSO) prior to "conducting business with vendors, contractors, business partners, and other third-party entities with authorized access to SOA information and information assets operating within or on behalf of the SOA." When requesting a foreign outsourcing waiver, if the vendor may also have access to SOA information and information assets operating within or on behalf of the SOA or may have SOA data stored outside the United States, the SSO approval must be attached with your waiver.

If you have any questions, please contact OPPM, Policy and Oversight Section.

Procurement Information Message #72

Issued January 2006
Revised November 2021

CANCELLING SOLICITATIONS

The purpose of this Procurement Information Message is to provide guidance and standardize the process for canceling formal solicitations, before and after the bid opening or proposal deadline. The most notable change is that agencies are directed to use the new Notice of Cancellation form when canceling a formal RFP or ITB after the bid opening or proposal deadline.

Canceling before bid opening or proposal deadline:

Per 2 AAC 12.850(b), before the bid opening or proposal deadline, a solicitation may be canceled in whole or in part if the Chief Procurement Officer or the head of a purchasing agency issuing a solicitation determines that cancellation is in the state's best interest.

Reasons for cancellation include:

1. the state no longer requires the supplies, services, or construction;
2. the state no longer can reasonably expect to pay for the procurement;
3. proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable; or
4. the Procurement Officer, after consultation with the Attorney General's office, determines that a solicitation is in violation of the law.

Public Notice of Cancellation: May be accomplished using a formal amendment to the solicitation, or the new Notice of Cancellation form located on the OPPM website at:

<http://doa.alaska.gov/oppm/forms.html>

The Notice of Cancellation, or cancellation amendment must include the reason(s) for cancellation and be sent directly to any vendor who received a copy of the solicitation, including vendors who registered from the Online Public Notice system. The cancellation notice may also be posted on the State of Alaska Online Public Notice System.

Disposition of Bids: Before opening, the Procurement Officer may return bids upon request. A list of returned bids must be retained. Note that after opening, all bids must be retained in the procurement file per 2 AAC 12.880(a).

Disposition of proposals: The Procurement Officer may return proposals after the cancellation, when the time for filing a protest has expired and if a protest has not been filed (ref. 2 AAC 12.880 Disposition of Bids or Proposals). A list of returned proposals must be retained in the file.

Written Determination: Required for Invitations to Bid and Requests for Proposals cancelled prior to bid opening or proposal deadline.

Canceling after bid opening or proposal deadline:

Per 2 AAC 12.860, after the opening of bids or after notice of intent to award but before award, all bids may be rejected in whole or in part by the Chief Procurement Officer or the head of a purchasing agency issuing the solicitation.

Reasons for rejection include the following:

1. the supplies, services, or construction being procured are no longer required;
2. ambiguous or otherwise inadequate specifications were part of the solicitation;

3. the solicitation did not provide for consideration of all factors of significance to the state;
4. prices exceed available money and it would not be appropriate to adjust quantities to accommodate available money;
5. all otherwise acceptable bids or proposals received are at unacceptable prices;
6. there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or
7. the award is not in the best interests of the state.

Public Notice of Cancellation: Must be accomplished using the new Notice of Cancellation form located on the OPPM website listed above.

If a solicitation is cancelled in accordance with 2 AAC 12.860, the notification must include an explanation stating the general reason(s) for cancellation. If all bids or proposals are rejected for responsiveness/responsibility issues, the notice must include the specific reasons why individual responses were rejected.

The Notice of Cancellation must be sent directly to all vendors that responded to the solicitation and may be posted on the State of Alaska Online Public Notice System.

Note: If an ITB or RFP is cancelled under 2 AAC 12.860, it is not necessary to list the individual bids or proposals received on the Notice of Cancellation.

Disposition of Bids: After opening, rejected bids shall not be returned and must be retained in the procurement file.

Disposition of Proposals: The Procurement Officer may return proposals after the cancellation when the time for filing a protest has expired and a protest has not been filed [ref. 2 AAC 12.880(b) Disposition of Bids or Proposals].

Written Determination: Required when bids or proposals are rejected for one of the seven reasons listed above, however, a written determination is not required when all the bids or proposals are non-responsive.

Procurement Information Message #73

Issued January 2006

Revised March 2020

POLICIES AGAINST HUMAN TRAFFICKING

As a result of A.O. 227 issued by Governor Murkowski on December 13, 2005, the following policy and procedure applies regarding contracts with companies established and headquartered, or incorporated and headquartered, in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report.

A Tier 3 country in this report is one whose government does not fully comply with United States minimum standards for the elimination of human trafficking and is not making significant efforts to do so. This policy affects all state solicitations and contracts above \$100,000, including alternate and exempt procurements.

POLICY: In an effort to ensure that funds spent on state contracts do not directly or indirectly provide financial support to a Tier 3 country and thus enable the continuation of human trafficking operations, the State of Alaska may not enter into or amend a contract above \$100,000 with a company established and headquartered, or incorporated and headquartered, in a Tier 3 country unless the company has submitted a certified copy of its policy regarding human trafficking and such policy is approved by the State of Alaska.

PROCEDURE: To assist agency procurement officers, variations of the following clause have been added to the ITB and RFP shell located on the following website:

<http://doa.alaska.gov/oppm/forms.html>

HUMAN TRAFFICKING: *By signature on their bid / proposal, the bidder / offeror certifies that the bidder / offeror is not established and headquartered or incorporated and headquartered in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report.*

The most recent United States Department of State's Trafficking in Persons Report can be found at the following website:

<https://www.state.gov/trafficking-in-persons-report/>

Failure to comply with this requirement will cause the state to reject the bid or proposal as non-responsive or cancel the contract.

This clause must also be included in all alternate and exempt procurement solicitations and contracts for goods and services above \$100,000. The first sentence of the clause may be changed to, "By signature on this contract..." for negotiated procurements.

If you have any questions regarding this policy, please contact OPPM, Policy and Oversight Section.

Procurement Information Message #79

Issued March 2008

Revised November 2021

NONDISCLOSURE AND CONFIDENTIALITY OF INFORMATION TECHNOLOGY CONTRACTS

OPPM has developed a nondisclosure and confidentiality clause that has been included in the ITB and RFP shells located on the following website:

<http://doa.alaska.gov/oppm/forms.html>

The following clause must be included in all small, alternate, and exempt procurement contracts, regardless of the dollar amount, when a contractor might have access to confidential information such as the state's technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data (operating systems, security tools, IP addresses, etc.).

Contractor agrees that all confidential information shall be used only for purposes of providing the deliverables and performing the services specified herein and shall not disseminate or allow dissemination of confidential information except as provided for in this section. The contractor shall hold as confidential and will use reasonable care (including both facility physical security and electronic security) to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, the confidential information. "Reasonable care" means compliance by the contractor with all applicable federal and state law, including the Social Security Act and HIPAA. The contractor must promptly notify the state in writing if it becomes aware of any storage, disclosure, loss, unauthorized access to or use of the confidential information.

Confidential information, as used herein, means any data, files, software, information or materials (whether prepared by the state or its agents or advisors) in oral, electronic, tangible or intangible form and however stored, compiled or memorialized that is classified confidential as defined by State of Alaska classification and categorization guidelines provided by the state to the contractor or a contractor agent or otherwise made available to the contractor or a contractor agent in connection with this contract, or acquired, obtained or learned by the contractor or a contractor agent in the performance of this contract. Examples of confidential information include, but are not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data (operating systems, security tools, IP addresses, etc.).

Additional information that the contractor shall hold as confidential during the performance of services under this contract include:

XXXXXXX
XXXXXXX
XXXXXXX

If confidential information is requested to be disclosed by the contractor pursuant to a request received by a third party and such disclosure of the confidential information is required under applicable state or federal law, regulation, governmental or regulatory authority, the contractor may disclose the confidential information after providing the state with written notice of the requested disclosure (to the extent such notice to the state is permitted by applicable law) and giving the state opportunity to review the request. If the contractor receives no objection from the state, it may release the confidential information within 30 days. Notice of the requested disclosure of confidential information by the contractor must be provided to the state within a reasonable time after the contractor's receipt of notice of the requested disclosure and, upon request of the state, shall seek to obtain legal protection from the release of the confidential information.

The following information shall not be considered confidential information: information previously known to be public information when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach of confidentiality hereof; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

If you have any questions regarding this message, please contact OPPM, Policy and Oversight Section.

Procurement Information Message #81

Issued June 2009

Revised November 2021

STATE EQUIPMENT FLEET

The following serves to define the types of vehicles, equipment, and services that fall under the State Equipment Fleet's (SEF) delegation. Per AS 36.30.005(b) all rights, powers, duties, and authority relating to the procurement of SEF equipment or services is delegated to the Department of Transportation and Public Facilities.

The following narrative describes the vehicles, equipment, and services that are included in the SEF inventory:

1. On highway vehicles and equipment that require license plates or registration per Alaska statute.
2. Vehicles and equipment that require an operator to have a valid driver's license or CDL.
3. Off highway equipment that is engine driven, wheeled or tracked, including forklifts.
4. All attachments designed for use with, are towed or powered by, or are permanently affixed to vehicles and equipment mentioned above.
5. Excludes all snow machines/snowmobiles, single rider ATV's, boats and personal watercraft.
6. All vehicle/equipment parts except those expressly mentioned in SEF user agreements 1) as operator maintenance wear parts to set up, repair or maintain the vehicles, or 2) equipment and attachments, as noted above.
7. All services for repair, maintenance, and modifications of the above except those expressly mentioned in SEF user agreements. Agencies may not modify any fleet asset without written consent of the district equipment manager or the fleet manager.

Any questions should be directed to the SEF: <https://dot.alaska.gov/sef/>

Procurement Information Message #83

June 2010

Revised November 2021

CONTRACT AMENDMENTS AND RENEWALS

This procurement information message is being issued to stress the importance of processing contract amendment and renewal documents in a timely manner.

Amendment documents that are not fully executed by all parties prior to the expiration date of the contract are generally invalid and thus the entire contract is expired. At the expiration of a contract, parties are released of their legal obligations and as such, as a general rule and practice, it is not possible to amend or renew a contract that has expired.

On August 27, 1992, a memorandum was written by the Attorney General's Office to provide advice regarding the timely execution of a particular contract renewal based upon specific and unique facts. It was not intended as establishing a rule or guideline to be used for other contract renewals.

The Contract Administrator should track contract expiration dates, and allow sufficient time to review the contract, develop the written amendment, and obtain all signatures prior to contract expiration.

Prior to contract expiration, the Contract Administrator is responsible for reviewing market conditions and contract pricing. The Contract Administer should also contact the end user(s) to ensure the continued need for the goods or services, confirm availability of funding, and request feedback regarding the contractor's performance.

Options for contract renewal, price adjustments, or other anticipated contract amendments, that were included in the solicitation and the original contract should be processed in accordance 2 AAC 12.475. All other contract amendments should be processed in accordance with 2 AAC 12.485.

All month-to-month extension of contracts must be finalized in writing prior to the expiration of the contract. The total cumulative dollar amount of each month-to-month extension must not exceed the unanticipated amendment limitations stated in AAM 81.700.

Contract amendment forms should clearly indicate the contract terms and conditions that will be affected by the amendment.

For example: A contract amendment may address one or more of the following:

- Any change to the contract period of performance.
- Any change in the dollar amount of the contract.
- The total amended dollar amount of the contract.
- Changes to any other specific contract terms and conditions.

All contracts and contract amendments must be documented using the correct forms (See PIM 94 for more information). All contract and contract amendment documents and forms are available for download on the OPPM website:

<http://doa.alaska.gov/oppm/forms.html>

Procurement Information Message #85

September 2010

PUBLIC PROCUREMENT PREFERENCE FOR ALASKA VETERAN-OWNED BUSINESS

This message is to advise all agencies that as of September 4, 2010, implementation of the Alaska veterans' preference will begin. The passage of HB24 amended the State Procurement Code to provide an Alaska veterans' preference for those qualifying under AS 36.30.170(b) as an Alaska bidder and meeting the requirements as a qualifying entity.

AS 36.30 is amended by adding a *new section* to read;

Sec. 36.30.175 Alaska veterans' preference.

- (a) Notwithstanding a provision in AS 36.30.170 to the contrary, if a bidder qualifies under AS 36.30.170(b) as an Alaska bidder and is a qualifying entity, a five percent bid preference shall be applied to the bid price. The preference may not exceed \$5,000. In this subsection, "qualifying entity" means a
 - (1) sole proprietorship owned by an Alaska veteran;
 - (2) partnership under AS 32.06 or AS 32.11 if a majority of the partners are Alaska veterans;
 - (3) limited liability company organized under AS 10.50 if a majority of the members are Alaska veterans; or
 - (4) corporation that is wholly owned by individuals and a majority of the individuals are Alaska veterans.
- (b) A preference under this section is in addition to any other preference for which the bidder qualifies.
- (c) To qualify for a preference under this section, a bidder must add value by the bidder itself actually performing, controlling, managing and supervising a significant part of the services provided, or the bidder must have sold supplies of the general nature solicited to other state agencies, governments, or the general public.
- (d) In this section, "Alaska veteran" means an individual who is a
 - (1) resident of this state; and
 - (2) veteran; in this paragraph, "veteran" means an individual who
 - (A) served in the
 - (i) armed forces of the United States, including a reserve unit of the United States armed forces; or
 - (ii) Alaska Territorial Guard, the Alaska Army National Guard, the Alaska Air National Guard, or the Alaska Naval Militia; and
 - (B) was separated from service under a condition that was not dishonorable.

The statute does not require verification that a bidder qualifies for the preference. However, the military issues its personnel either a DD Form 214 or a NGB Form 22 discharge certificate when they separate from service. The discharge certificates include the discharge status. Agencies may choose to request a copy of either form if they believe it necessary to verify qualification under AS 36.30.175(d). Questions about discharge certification can be directed to the Office of Veterans Affairs at (907) 428-6016.

These changes take effect September 4, 2010. Please assist us by notifying your procurement staff of this important statutory change.

Procurement Information Message #86

September 2010

Revised November 2021

FEDERALLY DEBARRED/SUSPENDED VENDORS (EXCLUDED PARTIES LIST SYSTEM)

Federal Acquisition Regulation (FAR) 9.4 requires state agencies to refer to the Excluded Parties List System (EPLS) when procurement projects are funded with federal funds and, make a determination as to whether federal policies on this matter apply to the project. State agencies are responsible for spending federal funds appropriately according to grant-specific guidelines and regulations and for ensuring that goods/services are not obtained from federally excluded vendors per the SAM Excluded Parties List System (EPLS). SAM has consolidated many capabilities under one umbrella including the EPLS.

ELPS is a web-based system maintained by the federal General Services Administration (GSA). A federal agency can exclude via the debarment or suspension process, any business or individual(s) from receiving contracts or assistance for cause, such as a conviction of or indictment for a criminal or civil offense or a serious failure to perform according to the terms of a contract. The U.S. Department of Labor has extended this provision to state agencies spending federal funds.

Suggested boilerplate language:

FEDERAL DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

Expenditures from this contract may involve federal funds. The U.S. Department of Labor requires all state agencies that are expending federal funds to have a certification filed in the bid (by the bidder) that they have not been debarred or suspended from doing business with the federal government. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions (Appendix _) must be completed and submitted with your bid.

Links:

- [SAM website](#)
- [SAM Exclusion Access](#)
- [FAR Subpart 9.4 – Debarment, Suspension, and Ineligibility](#)
- [Federal Debarment Certification Form](#)

Procurement Information Message #88

August 2016

Revised November 2021

ELECTRONIC APPROVALS

OPPM has had questions recently regarding the proper use of electronic approvals on contract documents. The purpose of this Procurement Information Message is to provide guidance for when electronic approval in a contract document is appropriate and when having an executed and signed document is necessary.

When Electronic Approval is Appropriate:

When a procurement document is created in or outside of IRIS and an agency is able to approve the necessary steps electronically, it is not necessary to print the document to get a wet signature, only to re-scan the document back into pdf format for the next approver. The electronic approval during this phase of procurement is acceptable.

Examples of this type of approval are:

- Financial coding approval on PO's, DO's, or CT's.
- Director of Admin Services approval on RAP forms
- Purchasing Officer preparer information on RAP forms

When a Signature is Required on a Document:

Generally, Contracts and Master Agreements are bilateral agreements and must contain at least one signature from both the authorized State representative and a representative from the awarded contractor, so as to minimize the risk of legal enforceability and disputes with mutuality of agreement. After a Contract or Master Agreement have been created and approved internally, the Procurement Officer will need to ensure the completed document is signed either electronically or with a wet signature by both parties involved (commonly referred to as fully executed) before it can be finalized.

Delivery Orders (DO's) are orders that are tied to a Master Agreement. Because the Master Agreement has been signed by both the State and the contractor and is legally binding, a DO does not require an electronic or wet signature, as it is simply a request for items off a legally binding contract. While it does require internal approvals for financial coding, etc., it is not the actual contract document, so the signature requirement does not apply.

Purchase Orders (PO's) are not directly tied to a legally binding contract. Thus, unlike a DO, PO's are independent procurement documents. A procurement officer must follow the rules in the State Procurement Code (AS 36.30) and Regulations (2 AAC 12) for purchasing items through use of the PO document. The signature on the quote, proposal, or bid so long as it is still within the valid date of the document, is the electronic or wet signature of the contractor. As such, only an electronic or wet signature is required on the PO document from the Purchasing Officer for it to be considered legally binding.

A contract, Master Agreement, or Purchase Order that has been internally approved, but does not contain a signature is not legally binding.

Procurement Information Message #89

Revised August 2017

CONTRACT CONSIDERATION

In order for a contract to be legal, there has to be some form of consideration (something of value) exchanged for the goods or services being provided.

While AS 36.30.850(b) states that the procurement code “applies to every expenditure of state money by the state,” the procurement code must be read to cover cases where instead of money some other type of valuable consideration is provided by the state in exchange for a good or service.

Examples of other types of consideration may include:

- Money paid by a customer directly to a contractor as a result of a contract established by the state, such as a collections contract where a percentage of money collected is retained by the collections contractor. Another example is a reservation system contract where a fee is paid directly to the contractor by an end user. These types of arrangements are sometimes also known as revenue contracts where the State is receiving revenue based on the contract it has with a vendor who is performing some kind of function related to government operations.
- Access to information that is valuable to the contractor in exchange for services, i.e., bartering.
- Any other form of bartering, which involves the exchange of goods or services for other goods or services, without the use of money.

In these cases, the potential monetary value of the consideration must be determined and used as the contract amount.

Also note that preferences still apply in these cases *unless* specifically prohibited by a federal funding source.

If you have a question about what constitutes consideration or whether the above applies in a particular case, please contact the OPPM, Policy and Oversight Section.

Procurement Information Message #90

January 2018

Revised January 2022

Third-Party Service Providers & Standards for Attestation Engagements (SSAE)

SSAE is the auditing standard, developed by the American Institute of Certified Public Accountants, for reporting on internal controls at service providers. These providers, hired by another entity to process confidential transactions and data, perform services in the following areas:

Accounting	Cloud-based services	Investment
Benefits	Collection	Information technology (IT)
Billing	Finance	Market research
Clearing house	Insurance	Payroll

Agencies should not remove the following language from the Request for Proposals shell (Section 3.11) when obtaining these third-party services:

The contractor must provide, on an annual basis, a Type 2 Statement on Standards for Attestation Engagements (SSAE) **SOC 1, SOC 2, OR SOC 3** report(s). Failure to provide this report may be treated as a material breach and may be a basis for a finding of default.

Type 2 Statement: A Type 2 Statement reports on the controls in operation and tests of operating effectiveness of a third-party service provider. Reports are available in three levels referred to as Service Organization Controls.

Service Organization Controls (SOC): Is a standardized report that gives service providers a mechanism to deliver insight into the design and operating effectiveness of internal controls relevant to entities.

There are two primary types of the reports:

- A SOC 1 is related to internal controls that impact financial reporting or internal controls of the customers of the service organization.
- A SOC 2 and 3 is related to internal controls that impact system security or availability, processing integrity, confidentiality, or the privacy of customer data.

Report Comparison			
	Who the users are	Why	What
SOC 1	Management of the service organization, user entities, and user auditors	Audit of financial statements	Controls relevant to user entity financial reporting
SOC 2	Management of the service organization and user entities Regulators Others	Governance, risk, and compliance programs Oversight Due diligence	Concerns regarding a system's security, availability, processing integrity, confidentiality, or privacy
SOC 3	Any users with need for confidence in the security, availability, processing integrity, confidentiality, or privacy of a service organization's system.	Marketing purposes; detail not needed	Seal and report on controls

Source: AICPA

Procurement Information Message #91

January 2018

Revised November 2021

STATE OF ALASKA AMAZON BUSINESS ACCOUNT

Beginning February 1, 2018, in order to leverage total State spend activities and save cost, all work-related purchases made by State of Alaska employees from Amazon must be made under the State of Alaska's Amazon Business account. All employee accounts must be registered to their @alaska.gov email and only use the State of Alaska OneCard as the method of payment.

The Amazon Business account is not a contract. All applicable procurement rules and determinations still apply to purchases made from Amazon Business and any item covered by a mandatory statewide contract must still be purchased from that contract.

Amazon Business is very similar to Amazon in how it's used. Additional benefits include:

- Free 5 – 8 Day Shipping on orders over \$25 fulfilled by Amazon
- Business-specific pricing and quantity discounts on some items
- Enhanced reporting and transparency
- Dedicated Amazon Business Customer Service

Moving all state-related purchases to Amazon Business also serves to clearly separate business and personal purchases. Doing so:

- Avoids violating Amazon Prime's Conditions of Use, which prohibit using personal Prime accounts for commercial purposes.
- Protects Amazon Prime account users' personal purchase history, which is potentially subject to public records requests if it contains both personal- and business-related purchases.
- Reduces the potential risk of commingling personal and business purchases on the State of Alaska OneCard.
- Maintains tax compliance, when and where applicable.

Procurement Information Message #93

**November 2021
Revised May 2024**

Clarification on Use of Request for Alternate Procurements (RAP's)

Use of a Request for Alternative Procurement shall be considered as the exception to the rule and is not accepted as the preferred method of procurement.

As stated in AS 36.30.100 (a), except as otherwise provided in this chapter, or unless specifically exempted by law, an agency contract shall be awarded by competitive sealed bidding. And again, in AS 36.30.200 (a), except as otherwise provided in this chapter, or unless specifically exempted by law, an agency contract shall be awarded by competitive sealed proposals if it is not awarded by competitive sealed bidding.

Single Source:

A Single Source RAP shall only be considered if the chief procurement officer determines that the facts submitted by the requestor clearly show:

1. It is not practicable to award a contract by competitive sealed bidding under AS.36.30.100, competitive sealed proposals under AS 36.30.200, or limited competition under AS 36.30.305; and,
2. Award of the contract under this section is in the state's best interest.

Such determination may require, at the discretion of the Chief Procurement Officer, evidence that the requesting agency has done its due diligence to perform market research to locate multiple sources of competition or supply of the requested items or services. This may include, but is not limited to, issuance of a Request for Information (RFI) prior to making the Single Source RAP request.

Unanticipated Amendment Exception:

An Unanticipated Amendment Exception (UAE) RAP shall only be considered for approval if the requestor can clearly explain how the requested amendment was truly unanticipated at time of contract award, or contract renewal. Then the request may only be approved when the Chief Procurement Officer determines that the facts submitted by the requestor clearly show:

1. The requested amendment is an unforeseen circumstance which occurred as work progressed,
2. It was unforeseen at the time the contract was established or renewed, and in no way an attempt to evade procurement requirements.

Procurement Information Message #94

November 2021

Revised February 2022

BILATERAL VS. UNILATERAL CONTRACT AMENDMENTS

OPPM has recently noticed confusion by procurement staff on the correct usage of the bilateral and unilateral contract amendment forms. The purpose of this procurement information message is to provide guidance for determining when to use a bilateral contract amendment, and when to use the unilateral amendment forms.

Bilateral contract:

A bilateral contract is a legally enforceable agreement that is fully executed by both parties, evidenced by signature(s) from each party with appropriate signature authority to bind the party and where each agrees to fulfill their side of the bargain. Typically, equal consideration or obligation is present.

An example of a bilateral contract is a sales agreement. A car buyer may agree to pay the seller a certain amount of money in exchange for the title to the car. The seller agrees to deliver the car title in exchange for the specified sale amount. ... **Business contracts are almost always bilateral.**

Unilateral contract:

Unlike the more common bilateral contract – is a type of agreement where one party (sometimes called the offeror) makes an offer to a person, organization, or the public.

A unilateral contract is a contract created by an offer that can only be accepted by performance. **In this type of contract, the offeror is the only party with a contractual obligation. The offeree has no legal obligation to the contract.**

A unilateral contract is a contract agreement in which an offeror promises to pay after the occurrence of a specified act. Acceptance of a unilateral contract happens when the offeree performs their part of the contract. When the offeree completes performance, the offeror must abide by the contract, usually by paying money for completion of the act. The only way to accept a unilateral contract is by completion of the task.

Can a bilateral contract be unilaterally amended?

The general principle is that a contract is agreed to by both parties for the terms that are provided for at the time of its execution; therefore, it **is not possible for one party to unilaterally modify the terms of a bilateral contract.**

However, there is one exception to this principle with State contracting which is, if both parties agree and sign on the original contract document that there will be a certain number of renewal options at a certain cost each year, which may be utilized at the sole discretion of the State, a unilateral contract amendment may be used for these renewals, **if** there are no other changes to the original signed contract document. This type of unilateral contract amendment must be signed by the State Contracting Officer in order to be legally executed.

If however, there are **any changes of any kind from the original signed contract document**, i.e., in renewal dollar amount, scope, or any other term and condition, a bilateral contract amendment **must** be used for the renewal of the contract, even if the original contract document states renewals are at the sole discretion of the State.

Where a unilateral contract amendment is otherwise executed on a bilateral contract, a unilateral contract amendment may **only** be used for insignificant changes to a contract (a change that has no bearings on the terms agreed to by both parties). An example of an insignificant change would be to correct grammatical errors or correct financial coding errors in a contract.

Absent an express condition as part of the original bilateral contract agreement, typically a unilateral contract amendment cannot be used to extend the term of the contract, add additional work to the scope of the contract, or add additional money to the contract.

Procurement Information Message #95

Issued June 2023

SOLICITING FOR MULTIPLE-YEAR CONTRACTS

When soliciting for a single award that covers multiple years or an award that contains multiple renewal options, you must consider total cost of the award, including all renewal options when selecting the appropriate procurement method (AAM 81.020).

Example: Cost is estimated to be \$6000/month, and contract term is one-year initial term with 2 one-year renewal options. You must consider all three years when selecting your procurement method ($\$6,000 \times 12 = \$72,000 \times 3 = \$216,000$). In this example you would need to conduct a formal procurement.

When preparing your bid/cost schedule you must gather pricing for the full length of the award including any renewal options. If your contract is a single term award that includes multiple years, the bid/proposed cost must include all years of that single term.

Example Bid/Cost Schedule:

Description	Price
Year One	\$ _____
Year Two	\$ _____
Year Three	\$ _____
Total Cost to be evaluated:	\$ _____ (includes yr.1+ yr.2 + yr.3).

For the award of an ITB:

Because the ITB becomes the contract body behind the Contract Award document, the bid schedule is part of the contract and lists all costs for all years in the contract, including any renewal options.

For the award of an RFP:

1. The Standard Agreement Form, Page 1, Article 4.1 the “not to exceed” sum will be the amount up to and including the current contract term but should not include any possible future renewal option costs.
2. Appendix D of the contract should mirror the cost schedule submitted by the vendor during the solicitation, listing the cost of the original term of the contract plus the costs quoted for each additional optional renewal year, and should have a “not to exceed” amount that equals the total for all years combined.

To allow for anticipated price increases over the life of a contract, the solicitation and award must contain CPI/PPI language or, the bid sheet must be developed to allow vendors to bid firm fixed price with set escalation costs for each term.

It is not permissible to capture and evaluate pricing only for a single term of the contract and then allow the awardee to submit new pricing at each renewal term. Think of that as conducting a single source award for each renewal term; no other vendor is permitted to bid, only the awardee, simply because they won the first term.

Not including all anticipated years of a contract, including the optional renewal year costs in your solicitation can allow a vendor to charge a lower rate the first year so they can win the award, and then over-charge for each renewal year, as the need to keep costs competitive no longer exists, which is not in the best interest of the State.