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# Alaska Procurement

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## Executive Guide

Prepared By the Office of Procurement and Property Management



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## PURPOSE OF THIS GUIDE

This guide is intended to serve as a primer and resource for incoming State of Alaska leaders, managers, and others with an interest in how the State of Alaska acquires goods and services and the laws and policies that govern these acquisitions. It also provides a high-level overview of the historical events that led to Alaska’s adoption of the State Procurement Code and the roles and responsibilities articulated within.

If you have any questions on the contents of this guide or regarding procurement in general, please feel free to contact the Office of Procurement and Property Management (OPPM) team members list below.

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## BRIEF HISTORY OF PROCUREMENT IN ALASKA

### PATH TO STATEHOOD

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The state of Alaska as we know it today originated with the acquisition of the land from the Russian Empire in 1867, a move that some opponents at the time referred to as “Seward’s Folly”. The land went through several organizational iterations, at first called the Department of Alaska before being renamed the District of Alaska in 1884, then becoming the Alaska Territory in 1912, which also gave Alaska the ability to self-govern for the first time. Finally, Alaska became a state in 1959 after the Alaska Statehood Act was approved by the U.S. Congress in 1958.

### BOOM AND BUST OF ALASKA’S ECONOMY

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While the Yukon gold rush brought some attention to Alaska’s resources in the late 1800’s, it wasn’t until the oil crisis of 1973 and the subsequent development of the North Slope oil fields and construction of the Trans-Alaska Pipeline System that Alaska’s economy peaked. As Alaska historian Terrance Cole wrote of the value of the wealth generated by Prudhoe Bay and the other oil fields in Alaska, “One Prudhoe Bay is worth more real dollars than everything that has been dug out, cut down, caught or killed in Alaska since the beginning of time.”

As crude oil began flowing south to Valdez, an intense economic boom began in the early 1980’s. The population skyrocketed, the workforce grew, state government expanded, and the state budget climbed to keep pace with it all. With cash flowing as freely as the oil bringing it in, state government spend was controlled by a disjointed and loosely assembled set of homegrown statutes and policies that lent itself to handshake deals and bias. In 1985, as quickly as the boom came, so did the bust. Oil prices fell, government budgets were slashed, and the private sector took a huge hit as demand for their services slumped.

### CONTRACT CONTROVERSY

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Amidst Alaska’s transition from boom to bust, an initiative to consolidate state offices in Alaska led to scandal. In short, one of the incumbent governor’s political supporters, who also was part owner of a firm that had recently acquired a large office building in the state, worked directly with the Governor’s Office to restrict the state’s requirements for new office space such that their building was the only one that would qualify. With all other competition eliminated, a contract worth \$9.1 million—the equivalent of over \$20 million in today’s dollars—was awarded to the political supporter’s firm for the state to lease space in this firm’s office building.

Unsurprisingly, grand jury proceedings were subsequently launched. Based on findings of favoritism and a disregard for the laws of the state that existed at the time, the grand jury recommended an impeachment inquiry be launched into the governor and the lease itself was voided as advised by the attorney general’s office. The firm then accused the state of improper termination of the contract and the matter ended up in court.

Both the state’s Superior and Supreme Courts found that the purpose of competitive procurement—**“to prevent fraud, collusion, favoritism, and improvidence in the administration of public business”**—was violated and the state was within its rights and made the correct decision to terminate the agreement.

In the end, the legislature decided not to impeach the governor but nevertheless had strong words of criticism for the way the matter was handled.

## **ALASKA’S PROCUREMENT CODE**

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As a direct result of this controversy, the courts’ findings that the state did not uphold its duty to conduct the procurement in a fair manner, and the grand jury’s recommendations, the legislature began the process of adopting what has become **Alaska Statute Title 36, Chapter 30**, commonly referred to as the **State Procurement Code**.

Based heavily on the State of Arizona’s procurement code—itsself based on the American Bar Association’s (ABA) 1979 Model Procurement Code—Alaska’s procurement code was passed in 1987 and became effective in 1988. Alaska’s version of these laws addressed the full range of issues arising in public procurement, with allowances to adopt new procurement models that may provide a value to the state and preferences that favor Alaska businesses. The ABA Model Procurement Code underwent a revision in 2000 to address things like electronic commerce, cooperative purchasing, and flexibility in procurement methods, and refined processes for infrastructure facilities and services. While Alaska has not explicitly enacted the 2000 Model Procurement Code, statutory changes have been implemented since 1988 that mirror these updates to keep Alaska’s procurement code current and a **major streamlining and modernization** effort was completed in 2013 with the passage of Senate Bill 12.

## VALUE OF THE PROCUREMENT CODE

### OPEN, FAIR, AND TRANSPARENT

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As noted, the purpose of competitive procurement is to **prevent fraud, collusion, and favoritism**. Under Alaska’s procurement code, this is accomplished by following clear processes that have been developed over the years that are designed to **encourage fair and open competition**. With few exceptions, procurement files are available for public inspection, creating accountability and increasing transparency. All these things foster a competitive environment that **holds public officials accountable for their actions** and reduces the need for the vendor community to collude or otherwise attempt to subvert competition.

### BENEFITS ALASKA BUSINESSES

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Alaska has adopted several procurement preferences that favor Alaska businesses and those selling products produced in Alaska. There are preferences for businesses owned by Alaskan veterans, for Alaska businesses that run qualifying employment programs, and so on. **These are designed to help level the playing field for business owners in the state as they compete against out-of-state companies.**

### FOSTERS COMPETITION

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Fair and reasonable pricing and high-quality products and services result from a transparent, fair, and open competitive marketplace. Increasing competition drives improvements in quality, service, innovation and decrease cost while benefitting Alaska’s economy.

**Alaska’s procurement code is written so that the most competitive procurement methods are used before less competitive methods can be considered.**

### SUBJECT TO PUBLIC SCRUTINY

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Unlike private sector procurement processes, public procurement is subject to and shaped by **public scrutiny**. A particular law, policy, or practice that is found to be unfair or otherwise flawed could be questioned and challenged. The procurement code is a living set of rules, **adapting as necessary** to new times, technologies, and fiscal environments, all while being held to the public’s standards of fairness, transparency, and open competition.

## ALASKA'S PROCUREMENT STRUCTURE

### APPLICABILITY OF THE PROCUREMENT CODE

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The procurement code must be followed for any expenditure of **state money**. "State money" is any money appropriated to an agency or spent by an agency, including federal assistance. This means that **federal money awarded to state agencies in the form of a federal grant must be expended in accordance with the procurement code**.

### PROCUREMENT AUTHORITY

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Alaska's procurement code centralizes the authority to purchase supplies, services, and professional services with the **Commissioner of the Department of Administration (DOA)** and the **Chief Procurement Officer**. A similar centralization of authority related to construction of state facilities, the Alaska Marine Highway System, and the state equipment fleet is made with the **Commissioner of the Department of Transportation and Public Facilities (DOTPF)**.

### DELEGATION OF AUTHORITY

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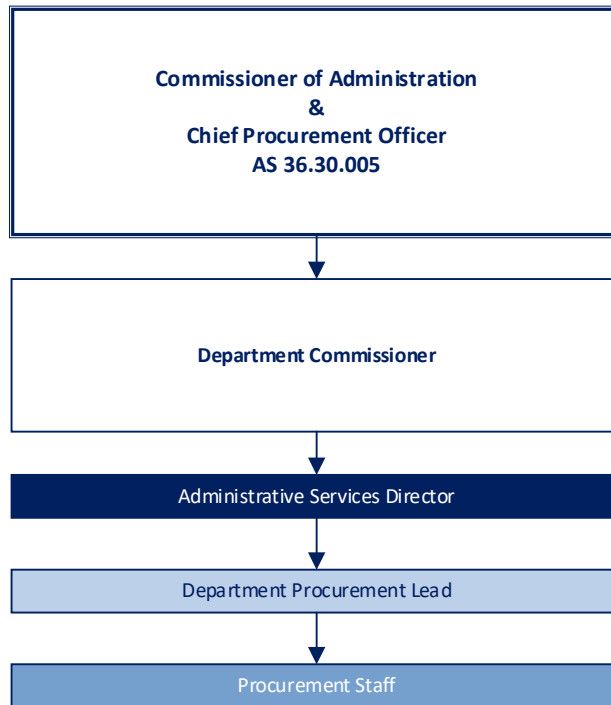
The procurement code allows the **Commissioner of DOA** and the **Chief Procurement Officer** to delegate their centralized authority over the purchase of supplies, services, and professional services to other agencies subject to the requirements of the procurement code and associated regulations. The **Commissioner of DOTPF** may similarly delegate the authority to contract for construction.

For goods and services, this delegation is exercised by the Commissioner of DOA and the Chief Procurement Officer through a **written delegation of purchasing authority** issued to the head of each executive branch department. This authority may be further delegated to those performing procurement duties.

**A written delegation of purchasing authority is required for any state employee who will be obligating or expending state money.**

In a typical executive branch department, purchasing authority is issued in writing by the Commissioner of DOA and the Chief Procurement Officer to the commissioner of the department, who further delegates to their department's procurement staff, typically through the administrative services director. **This delegation is valid until superseded and is tied to the title rather than the individual, meaning it does not need to be updated with leadership changes.**

## Typical Agency Delegation Structure of DOA Purchasing Authority for Goods and Services



## DELEGATION ALLOWANCES & RESTRICTIONS

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The current [Delegation of Purchasing Authority](#) issued by DOA for supplies, goods, and services allows agencies to:

- **Procure goods, services, and professional services in unlimited amounts for their own department**, provided that the procurement is conducted in accordance with the procurement code by a procurement officer who holds an appropriate procurement certification level as issued by OPPM.
- **Procure goods and services as necessary in response to an emergency**. There is a “72 hour” rule described in the Alaska Administrative Manual that allows agencies to procure as needed if there is less than 72 hours to respond to an emergency, obtaining as high of approval and as much competition as practical for the situation, then report the purchase(s) to OPPM. If the agency has more than 72 hours to respond, approval must be obtained from the Chief Procurement Officer before proceeding.
- **Procure goods and services from a single source or from a limited pool of vendors within the small procurement threshold of \$100,000**. Any single source or limited competition above this amount must be approved by the Chief Procurement Officer.

Agencies are **not** delegated the authority to:

- **Procure leased office space**. All requests for leased office space must be approved by DOTPF’s Statewide Leasing Team.
- **Procure non-office leased space that will cost more than \$50,000 for the life of the lease and any renewal options**. Procurements that exceed this amount must be approved by DOTPF’s Leasing Team.



- **Purchase from GSA federal supply schedules.** These schedules are typically not established using competitive procedures and therefore State agencies have limited access to their use absent an approval from the Chief Procurement Officer.
- **Hire employees through the procurement process.**
- **Award contracts on behalf of multiple agencies.** OPPM is the only agency with this authority.

## PROCUREMENT OFFICER CERTIFICATION

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Because of the decentralized nature of Alaska’s procurement structure, the **Alaska Procurement Officer Certification Program** was developed to ensure that procurement staff of all levels are educated and trained to establish a consistent understanding of fundamental procurement goals and objectives in Alaska.

Procurement certification is obtained by attending OPPM’s procurement training courses.

**Only state employees engaged in procurement activities above \$5,000 need to hold a procurement certification.**

**Certification is different from delegation.** A delegation allows an employee to obligate state funds up to the limit of their delegation. For example, an employee with a \$10,000 purchasing delegation can contact an existing contractor and place an order for \$10,000. However, if the same employee wants to order \$10,000 of goods for which there is no existing contract, then that employee must first obtain procurement certification before soliciting for and awarding a contract.

There are three levels of procurement certification depending on the dollar amount that will be procured:

### **LEVEL I PROCUREMENT CERTIFICATION**

*Required for procurement officers that perform small procurements from \$5,000 to \$10,000.*

### **LEVEL II PROCUREMENT CERTIFICATION**

*Required for procurement officers that perform small and/or alternate procurements from \$10,000 to \$100,000.*

### **LEVEL III PROCUREMENT CERTIFICATION**

*Required for procurement officers that perform formal and/or alternate procurements above \$100,000.*

**Not everyone needs to be certified in the procurement process.** For example, someone other than the procurement officer may be assigned to review proposals to ensure they meet minimum qualifications, track, and document the status of received proposals, or approve the resulting contract. They do not have to be certified if the work is overseen and checked by a certified procurement officer who is responsible for the decisions and all appropriate documents and written determinations.

**Commissioners, deputy commissioners, special assistants, administrative services directors, or others that merely sign or approve contracts, single source procurements, or limited competition procurements do not need to possess certification as long as the solicitation and/or other procurement documentation was prepared by a certified procurement officer.**

Over \$5,000, the following actions must always be performed by a certified procurement officer:

- Issue or amend a solicitation.
- Issue a small procurement Notice of Award.
- Issue a formal procurement Notice of Intent to Award.
- Award a contract.
- Respond to a protest or contract controversy.
- Conduct an alternate procurement.
- Make a procurement officer’s determination as required by the procurement code.
- Serve as the point of contact to address procurement questions for a solicitation, the process itself, or contract documents.

While certification allows for certain dollar ranges to be procured, these ranges can be restricted in a specific staff’s **purchasing delegation**. For instance, a Level II certification allows an employee to conduct procurements up to and including \$100,000, but the employee’s agency may choose to restrict this amount to \$50,000 or some other lower amount through that employee’s purchasing delegation.

## EXEMPT AGENCIES

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Several state agencies, including some located in the executive branch hierarchy, are exempt from **AS 36.30**. In most cases however, the exemption is made on the condition that the agency will adopt procurement regulations with similar competition requirements as those found in **AS 36.30**. Exempt agencies include:

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|--|------------------------|
| • <a href="#">University of Alaska</a>                               | <b>AS 36.30.005(c)</b> |
| • <a href="#">Legislature</a>  | <b>AS 36.30.020</b>    |
| • <a href="#">Court System</a>                                       | <b>AS 36.30.030</b>    |
| • <a href="#">Alaska Aerospace Development Corporation</a>           | <b>AS 36.30.015(e)</b> |
| • <a href="#">Alaska Railroad Corporation</a>                        | <b>AS 36.30.015(e)</b> |
| • <a href="#">Alaska Housing Finance Corporation</a>                 | <b>AS 36.30.015(f)</b> |
| • <a href="#">Alaska Industrial Development and Export Authority</a> | <b>AS 36.30.015(f)</b> |
| • <a href="#">Alaska Retirement Management Board</a>                 | <b>AS 36.30.015(f)</b> |
| • <a href="#">Knik Arm Bridge and Toll Authority</a>                 | <b>AS 36.30.015(f)</b> |
| • <a href="#">Alaska Seafood Marketing Institute</a>                 | <b>AS 36.30.015(h)</b> |

## THE PROCUREMENT PROCESS

### SMALL PROCUREMENTS

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Any procurement with a total value, including all renewal options, of **\$100,000 or less** is considered a **small procurement**. Small procurement procedures are simplified to expedite the procurement process, provide greater flexibility to State agencies to acquire products and services and reduce administrative burden to procurement staff and suppliers.

Small procurement procedures are broken into three levels of competition as the value of the procurement increases:

#### **UP TO AND INCLUDING \$10,000 REASONABLE & ADEQUATE PROCEDURES**

Procurements of goods and services up to and including \$10,000 may be completed using “reasonable and adequate” procedures. This means that, as practical, competition should increase as the dollar limit increases, but going to one Alaska source within this dollar limit satisfies the competitive requirement. If you go straight to a source outside of the state, a written determination must be made to the file explaining why the good/service could not be purchased from an Alaska vendor.

For instance, for the purchase of a \$5 pack of pencils, getting three quotes doesn’t make sense. Rather, the employee should look to purchase from a single source. However, if the employee is looking for \$9,000 worth of pencils, he or she may want to check one or two other sources to see if a better value exists.

#### **OVER \$10,000 - \$50,000 AT LEAST 3 WRITTEN/VERBAL QUOTES FROM ALASKA VENDORS**

For the procurement of goods and services over \$10,000 and up to and including \$50,000, the procurement officer must solicit verbal or written quotes from at least three Alaska vendors. More than three vendors may be solicited if necessary and once at least three Alaska vendors have been contacted, out-of-state vendors may be considered without any further action. However, if the minimum number of quotes cannot be solicited from Alaska vendors, a written determination must be made to the file explaining why.

#### **OVER \$50,000 - \$100,000 AT LEAST 3 WRITTEN QUOTES FROM ALASKA VENDORS**

For the procurement of goods and services over \$50,000 and up to and including \$100,000, the procurement officer must solicit written quotes from at least three Alaska vendors. More than three vendors may be solicited if necessary and once at least three Alaska vendors have been contacted, out-of-state vendors may be considered without any further action. However, if the minimum number of quotes cannot be solicited from Alaska vendors, a written determination must be made to the file explaining why.

## FORMAL PROCUREMENTS

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Procurements with a total value that exceed \$100,000, including all renewal options, are considered **formal procurements**, and must be procured according to a more stringent set of rules. Some major differences are covered in this section.

### REQUEST FOR PROPOSALS (RFP) VS. INVITATION TO BID (ITB)

There are two basic ways to approach a formal procurement – low price or best value.

#### LOW PRICE

A low-price procurement will typically be used for goods or services when the agency has a clear understanding of the need and the requirement being sought can be described or standardized where comparison between different vendors' products can be made. In this case, the procurement officer will choose to use a competitive sealed bid process and will issue an **Invitation to Bid (ITB)** solicitation document and evaluate bid based on whether they meet the state's needs, then award to the lowest cost bidder.

#### BEST VALUE

If the state wishes to consider other factors besides cost, agencies would utilize a best value procurement. Best value procurements are suitable when the State wants greater emphasis on factors such as technical expertise, management plan, experience, etc. Best value may also be suitable in situations where there could be various solutions to a problem. In addition to cost, the state may consider experience and qualifications, the offeror's understanding of the project, and their methodology. The procurement officer will use a competitive sealed proposal process and will issue a **Request for Proposals (RFP)** solicitation document and evaluate proposals based on cost and other factors. Though cost is still a significant factor, the final award may go to a higher priced vendor that offer a superior solution.

### PUBLIC NOTICE

At a minimum, formal procurements must be posted to the Online Public Notice System for a period of at least 21 days. This time period may be shortened by the procurement officer by drafting a written determination to file explaining why.

Public notice may be made in other ways that will reach potential contractors, such as in magazines, trade journals, bulletin boards, and so on, but this is not a requirement.

### PROTEST PERIOD

When a vendor has been identified as the most advantageous and susceptible to a contract award, the state must issue a **Notice of Intent to Award** to all vendors who submitted a response. This notice starts a **10-day protest period**, and the contract may not be awarded until after this period has passed.

## CONFIDENTIALITY

From the time evaluation of bids or proposals start until the time the Notice of Intent to Award is issued, most information related to the procurement is confidential, including the number of responses received, the content of the responses, cost information, and so on. Once the Notice of Intent to Award is issued, this information becomes available for public inspection upon request.

## REQUESTS FOR ALTERNATE PROCUREMENTS (RAPs)

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Competitively soliciting for goods or services using a small or formal procurement method may not work in all situations. In these rarer cases, there are flexibilities in the procurement code for exceptions, referred to as **alternate procurements**. These are requested by agencies using a Request for Alternate Procurement (RAP) form. There are five types of alternate procurements:

### SINGLE SOURCE

If it's in the best interest of the state to make a purchase from a single source or where competition is impractical, a single source alternate procurement may be pursued, provided there is sufficient written evidence supporting the request. **Compatibility issues, standards, or proprietary technology are examples where a single source procurement may be appropriate.**

### LIMITED COMPETITION

Similar to a single source, if it's in the best interest of the state to make a purchase from among a restricted pool of vendors rather than to all vendors, and there is supporting written evidence, a limited competition alternate procurement may be pursued. **Typically, limited competition alternate procurements are conducted when a clear number of capable vendors are available, and a time constraint exists.**

### EXCEPTION TO UNANTICIPATED AMENDMENT LIMITATION

Contracts over \$100,000 may only be amended by up to 20% of their current term or \$100,000, whichever is less. If this threshold is met, either through a single amendment or the aggregated value of multiple amendments, approval by the Chief Procurement Officer via an alternate procurement is required. **The current term amount is only the amount of the contract term at the time the amendment is required, not the total amount of the contract to date including the initial term and renewal options. Renewal options begin a new contract term. This type of RAP is not required for contracts that have a total value of \$100,000 or less.**

### EMERGENCY

If more than 72 hours exists to respond to an emergency, approval to conduct an emergency procurement must be obtained before proceeding and must describe the emergency, what is being sought in response to the emergency, and the procurement method(s) that will be used. **Examples of an emergency where more than 72 hours exists to respond might be 1) a disease outbreak in a location where vaccines are running low and will be gone within a few weeks or 2) an intercom system in a detention facility needs to be replaced, but interim measures are sufficient until the replacement can happen.**

### INNOVATIVE

The procurement code allows for procurement methods that might not have been specifically called out in the code, but nonetheless are acceptable and legal methods to solicit for good and services, e.g., using reverse auctions. In these cases, the agency must both describe why the procurement cannot be made within the current procurement code and include a plan that demonstrates the procurement process and methodologies that will be used. Chief Procurement Officer and Department of Law approval is required for these types of alternate procurements.

**Agencies are delegated the authority to approve Single Source and Limited Competition RAPs of \$100,000 or less.** Any Single Source or Limited Competition RAP that exceeds this limit or any other RAP type must be approved by the Chief Procurement Officer.

## PROTESTS

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The procurement code incorporates an administrative protest process for interested parties who wish to challenge a decision by the state. Interested parties are those who would or could be directly impacted by the state's award of or intent to award a contract, the cancellation of a solicitation, or the contents of the solicitation (i.e. if it unfairly favors one vendor or is otherwise too restrictive.)

### YOUR ROLE IN A PROTEST

Your involvement in a procurement protest depends on your title and the value of the procurement.

#### SMALL PROCUREMENTS

Vendors who wish to file a **small procurement protest** must first attempt to informally resolve the protest with the **procurement officer**. If the vendor is not satisfied with the response, they may file a written protest with the **commissioner of the buying agency**.

The commissioner **or designee** may issue a decision, refer the matter to the **Office of Administrative Hearings (OAH)**, or work with the vendor to pursue another form of resolution such as arbitration, mediation, or negotiation.

There are no further administrative actions available if the protest is not resolved at this point. If the vendor wishes to pursue the matter further, the only option is to take it to court.

## **FORMAL PROCUREMENTS**

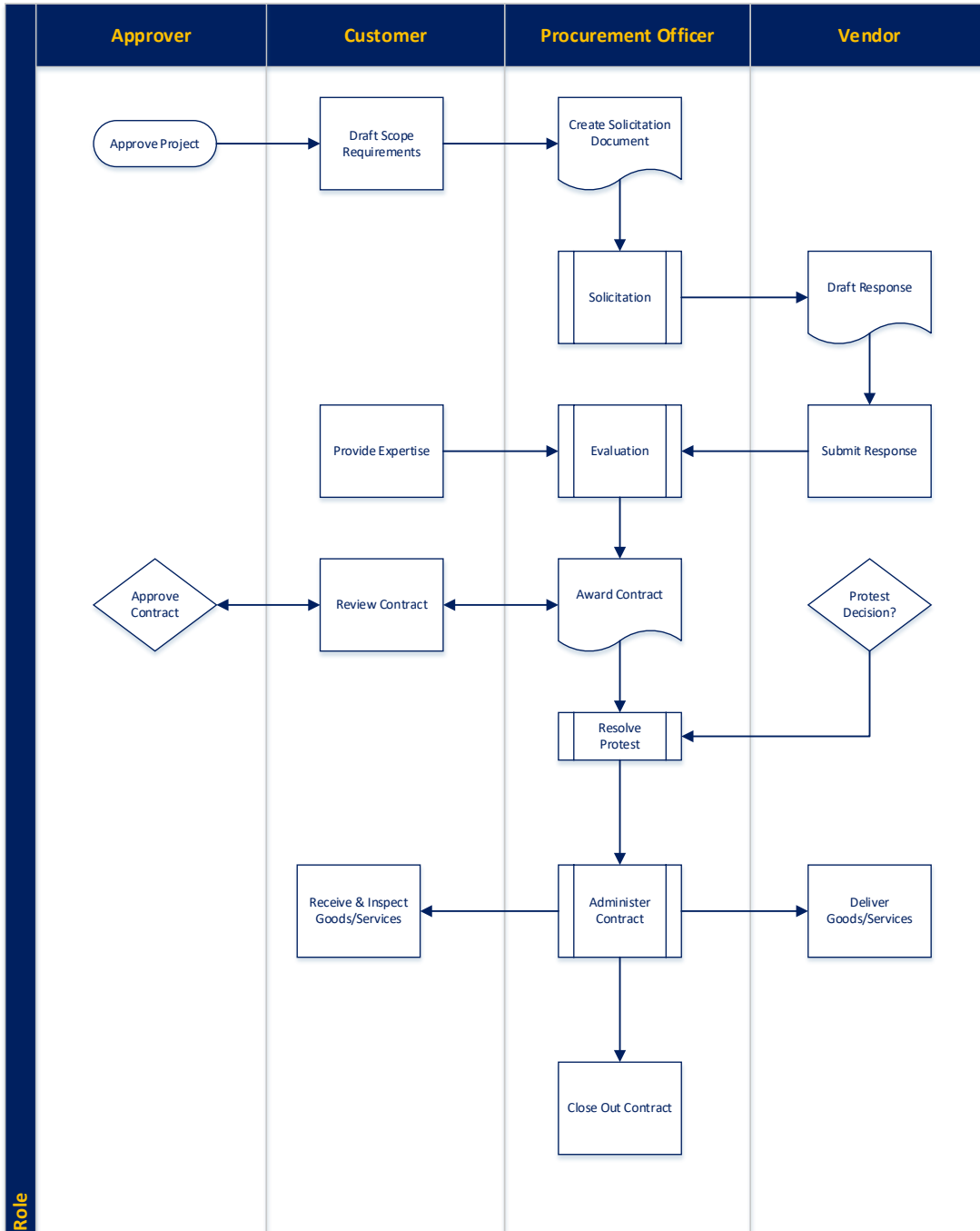
Vendors who wish to file a **formal procurement protest** must do so in writing with the **procurement officer**. In general, the vendor must file protests over the award or intent to award a contract or the cancellation of a solicitation within 10 days. Protests based on the contents of the solicitation must be filed within 10 days of the closing date. Protests filed late must still be considered if they have merit.

The **procurement officer** will then prepare a written protest response and may reach out to **stakeholders, OPPM, and/or the Department of Law** for information, advice, and guidance. The **procurement officer** has 15 days to prepare this response and may sustain the protest in whole or in part or deny the protest. An extension may be sought upon written request to the **Commissioner of DOA** by the procurement officer if additional time is necessary. If the procurement officer fails to respond to the protest within 15 days and does not obtain an extension, the vendor may proceed as if their protest was denied.

If the vendor is not satisfied with the procurement officer's response, they may file an **appeal** directly with the **Commissioner of DOA**. Upon appeal, the **procurement officer** has 10 days to produce a protest report and submit it to the Commissioner of DOA. The vendor will then have 10 days to comment on the report. The **Commissioner of DOA** has 15 days to issue a decision if there are no genuine issues of fact. Otherwise, the matter will be referred to **OAH** to conduct a hearing and make a recommendation. The **Commissioner of DOA** has 20 days to issue a final decision and may adopt **OAH's** recommended decision.

If the vendor wishes to appeal the **Commissioner of DOA's** final decision, they may do so in superior court within 30 days.

## BASIC PROCUREMENT ROLES & WORKFLOW





## TIPS TO ENSURE PROCUREMENT SUCCESS

### KNOW YOUR PROCUREMENT OFFICE'S PURPOSE

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Your agency's procurement office and staff exist to help you get the most value out of the state's money while complying with the procurement code's aim to do so in an **openly competitive, fair, and transparent way** that protects the state's interests. Procurement staff are keenly aware of the laws and regulations that govern the various competitive processes available to the state and how to use them, in addition to considering **ethical implications, potential personnel impacts, and so on**. Procurement staff can also assist with pre-solicitation market research, benchmarking, negotiation, and a variety of other areas of procurement expertise.

Think of your procurement office as your strategic business advisor, there to offer guidance and assistance and steer the procurement process to avoid running into costly protests and delays. While they may not always be able to say "Yes" to a specific plan of action, there is likely another way to achieve the same result legally and within the framework of the procurement code.

### ENGAGE YOUR PROCUREMENT STAFF EARLY

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One of the most common misconceptions about procurement staff is that they do not need to be involved in a project until it's ready to go out for bid or proposal. This misconception could cause significant delays. At best, this can result in plenty of wasted work and effort putting together a solicitation document for a good or service that is already under contract. At worst, **protests can result from a hastily run solicitation** where procurement staff were involved late in the process and given unreasonable deadlines to work against, leading to unclear or ambiguous requirements, confusion, and poor vendor responses.

Engaging your procurement staff early and including them in project planning allows them to add value by suggesting appropriate procurement methods, reviewing scope of work language for overly restrictive requirements, conducting research to find what has worked in other jurisdictions, and so on. This also helps your procurement office plan for projects and allocate resources in a proactive and constructive way, rather than reacting to pages of specifications dropped on their desk on a Monday with the expectation that an RFP will be issued Friday of the same week.

### AVOID PROCUREMENT PITFALLS

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A procurement project gone wrong—or sometimes even the appearance of such—can put your agency in a defensive posture, whether defending against a protest or defending against public opinion, and cause embarrassment, cost money, and result in a complete cancelation of the effort.

Five of the most common procurement pitfalls are noted here, but the primary thing to keep in mind is that **if something seems "off," do not hesitate to contact your procurement office, your ethics supervisor, or the Department of Law**. Being up-front and open about potential issues makes everyone's lives easier!

- 1) **ARTIFICIAL FRAGMENTATION:** Also referred to as "splitting requirements" in some jurisdictions, artificial fragmentation is the act of purposely breaking up a purchase to evade competitive requirements and is

prohibited by law. Knowingly engaging in this practice carries a criminal penalty. All purchases must consider **price, similarity, and predictability** to ensure the proper level of competition is utilized.

**RED FLAGS:** Repetitive purchases of the same thing from the same vendor without a contract in place; sequential invoices priced suspiciously close to a competitive threshold, such as \$9,999 or \$24,999; multi-year contracts competed based on the cost of one year rather than considering all renewal years.

- 2) **USING THE PROCUREMENT PROCESS TO HIRE STAFF:** The procurement process is used to award contracts for the provision of goods and/or services to the state. If a contract is awarded and the state is treating the contractor as an employee, the contract will likely need to be terminated and the personnel process used to hire an employee to perform the work. An employer/employee relationship with a contractor opens the state up to a number of risks, from IRS tax liabilities to union issues. Any contracts for “staff augmentation” or “temporary staff” must be reviewed by the Division of Personnel and Labor Relations and it may be necessary to get additional approvals before proceeding.

**RED FLAGS:** The contractor is subject to the control of the state as to what will be done, when, where, and how; the state has the right to discharge or “fire” the contractor and/or contractor’s employee assigned to the project; the state furnishes the tools, equipment, and workplace for the contractor.

- 3) **WRITING UNDULY RESTRICTIVE SPECIFICATIONS:** Prohibited by regulation unless there is no other option—which would be handled under a Single Source RAP with associated evidence requirements—unduly restrictive specifications are those that have the effect of reducing competition to a single source. An unduly restrictive specification included in a solicitation gives the appearance of open competition while effectively driving the award to a pre-selected vendor.

**RED FLAGS:** Small competitive pool; questions from vendors; protests.

- 4) **INAPPROPRIATE VENDOR RELATIONSHIPS:** Alaska is a large state geographically but is much like a small town in terms of people. It is inevitable that at some point, we are going to have a connection to someone who is awarded a state contract or otherwise performs work under a state contract. Even the appearance of impropriety can be enough to raise questions and bring a project to a halt. When such a situation becomes known, it is important to immediately notify your agency’s ethics supervisor so the situation can be reviewed, documented, and next steps identified.

**RED FLAGS:** Vendors providing input on a procurement project’s requirements and/or specifications (which may result in their inability to be considered for the resulting contract); state staff having meals with vendors and/or contractors; vendors communicating directly with program staff during a solicitation.

- 5) **TREATING THE PROCUREMENT CODE AS A GUIDELINE:** As mentioned, the procurement code is a set of laws put in place by Alaska’s legislature and regulations enacted by the Commissioner of DOA that have the effect of law. Not following the procurement code, regardless of whether it was done accidentally or knowingly, is breaking the law and can result in criminal penalties. While it might be easier to “ask forgiveness rather than permission,” doing so puts your project, your staff, your agency, and the State of Alaska at risk.

**RED FLAGS:** Program staff avoiding the procurement office / process; staff talking about how to avoid or “get around” procurement rules; expenditures exceeding procurement delegation/certification limitations; artificial fragmentation.

If the procurement code is not followed, **it must be reported and investigated as a procurement violation**. Typically, simply being unaware of procurement laws is at the root of violations and can be remediated with procurement-related training. However, if procurement rules are found to be knowingly and intentionally violated and/or circumvented, that is a much more serious offense and can result in disciplinary actions and criminal penalties.

## BE FAMILIAR WITH PUBLIC RECORDS LAWS

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You’ve likely heard of the Freedom of Information Act (FOIA), but did you know that applies only to agencies within federal government? The State of Alaska has its own set of laws that govern public records, known as the **Alaska Public Records Act**, located in **Alaska Statute Title 40, Chapter 25**.

Essentially, unless otherwise specifically provided, the procurement records of all State of Alaska agencies, including intra-agency emails, communications with vendors, vendor proposals, and contracts, are open to inspection by the public upon request and there are processes and timelines associated with distributing public records that you should be aware of.

The [Department of Law, Civil Division, Information & Project Support Section](#) provides periodic training on public records handling that you should attend if you are in a position that responds to public records requests. Your agency also has a public records resource that you can reach out to with questions.

## ASK QUESTIONS

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While the procurement code may seem like a set of rules meant to delay any project subjected to it, **it is surprisingly adaptable to many situations**. There are very few expenditures of state money that can’t be successfully and expeditiously accomplished within the procurement code.

As mentioned, **engage your procurement office early** in a procurement project to allow for consideration of various procurement methods, discussion of what’s needed for the project to be successful, and reconciling that against what the procurement code requires to find the best path forward. Being open about the goals of a project, timelines, and asking questions about how to get there, whether to your internal staff or to **OPPM**, helps ensure risks are identified and mitigated, leading to success of the project.

## PROCUREMENT RESOURCES

### INTERNAL PROCUREMENT STAFF

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Your agency's internal procurement staff will be the most familiar with your specific procurement policies, procedures, and line-of-business contracts. They should be your first stop for any agency-specific procurement questions or issues.

### OPPM CONTRACTING STAFF

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OPPM is a customer service agency that provides guidance, expertise, and other assistance to all state agencies, political subdivisions of the state, and the vendor community. The OPPM contracting staff is on call to answer any questions about procurement that you might have.

### OPPM STATEWIDE CONTRACTING OFFICE WEBSITE

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OPPM's website contains plenty of information relating to everything procurement in Alaska. You can visit it at:

<https://oppm.doa.alaska.gov/home/>

### OPPM'S CENTERS OF EXCELLENCE AND CONTRACT AWARD MANUAL

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OPPM maintains a list of contracts that are available to all state agencies and, in some cases, political subdivisions of the state (school districts, city governments, etc.) to purchase from.

Some contracts are **mandatory** and are labeled as such. If a mandatory contract exists for an item you wish to purchase, you must purchase from that contract unless there is a waiver process. Failure to do so constitutes a procurement violation.

OPPM's Statewide Contracting Resources are located online at:

<https://oppm.doa.alaska.gov/alaska-centers-of-procurement-excellence/alaska-centers-of-procurement-excellence-acopec/>

### **BECAUSE THE PROCUREMENT FOR THESE CONTRACTS HAS ALREADY BEEN CONDUCTED, IT IS NOT NECESSARY TO POSSESS A PROCUREMENT CERTIFICATION TO PURCHASE FROM THESE CONTRACTS. PROCUREMENT STATUTES, REGULATIONS, & POLICIES**

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The laws, regulations, and policies that govern procurement in Alaska are available from OPPM's website, formatted for easy reference. These documents can be found at:

<https://oppm.doa.alaska.gov/policy-oversight/policy-resources/resource-links/>

## PROCUREMENT ACRONYMS AND TERMS

### COMMON ACRONYMS

<b>AAC</b>	Alaska Administrative Code (regulations). Alaska’s procurement regulations have been adopted under 2 AAC 12.
<b>AAM</b>	Alaska Administrative Manual (policies). Alaska’s procurement policies reside under AAM 81 and 82.
<b>AS</b>	Alaska Statutes (laws), Alaska’s procurement laws have been enacted under AS 36.30.
<b>ASPS</b>	Authority to Seek Professional Services. This form is used within some departments to establish financial approval before the solicitation is issued.
<b>BAFO</b>	Best and Final Offer. A BAFO is submitted by vendors during discussions, which can only be held as a part of a competitive sealed proposal (RFP) process.
<b>CA</b>	Contract Award. Simple unilateral contract award document.
<b>CAM</b>	Contract Award Manual - <a href="https://oppm.doa.alaska.gov/alaska-centers-of-procurement-excellence/statewide-master-agreements/">https://oppm.doa.alaska.gov/alaska-centers-of-procurement-excellence/statewide-master-agreements/</a>
<b>CPI</b>	Consumer Price Index
<b>CPO</b>	Chief Procurement Officer
<b>DO</b>	Delivery Order. Used to place an order against an existing contract.
<b>IRFP</b>	Informal Request for Proposals. Used for small, value-based procurements \$100,000 or under.
<b>IRIS</b>	Integrated Resource Information System
<b>ITB</b>	Invitation to Bid. Used for formal, price-based procurements above \$100,000.
<b>MMCAP</b>	Minnesota Multistate Contracting Alliance for Pharmacy
<b>NAPM</b>	National Association of Purchasing Management
<b>NASPO</b>	National Association of State Procurement Officials
<b>NIGP</b>	National Institute of Governmental Purchasing
<b>NOA</b>	Notice of Award. Required when awarding contracts valued greater than \$50,000 to \$100,000 using written quotes or informal proposals. This document notifies parties of their protest rights and starts the 10-day protest period. Award may be made before the protest period ends.
<b>NOIA</b>	Notice of Intent to Award. Required when awarding contracts valued greater than \$100,000 using a competitive sealed bid or proposal process. This document notifies parties of their protest rights and starts the 10-day protest period. Award may <b>not</b> be made until the protest period ends.
<b>PEC</b>	Proposal Evaluation Committee. A committee made up of at least three state employees or public officials convened by the procurement officer to evaluate proposals submitted in response to an IRFP or RFP.
<b>PIM</b>	Procurement Information Message. These are periodically issued by SSoA to clarify or interpret procurement policies and/or alert departmental procurement staff of procurement related issues.

<b>PO</b>	Purchase Order. May be used to create a contract as the result of a small procurement.
<b>PPI</b>	Producer Price Index
<b>PR</b>	Purchase Requisition. Used by a requestor to initiate a purchase.
<b>RAP</b>	Request for Alternate Procurement. May be one of five types – Single Source, Limited Competition, Exception to Unanticipated Amendment Limitation, Emergency, or Innovative.
<b>RFP</b>	Request for Proposals. Used for formal, value-based procurements above \$100,000.
<b>RFQ</b>	Request for Quotes. Used for small, price-based procurement \$100,000 or less.
<b>RQS</b>	Requestor. This is an IRIS document that is used to initiate a purchase. Replaces paper PR's.
<b>SAF</b>	Standard Agreement Form. Contractual document used for formal contracts over \$100,000 for professional services.
<b>SCF</b>	Standard Contract Form. Contractual document used for formal contracts over \$100,000 for goods and non-professional services.
<b>SOW</b>	Statement of Work
<b>SR</b>	Stock Request. Used in agencies with warehouses to request replenishment of a particular stocked item.
<b>T's &amp; C's</b>	Terms and Conditions

## COMMON TERMS

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The below selection of terms and definitions are from the **NIGP Dictionary of Procurement Terms**. The entire dictionary is available online and is searchable by visiting:

<http://www.nigp.org/home/find-procurement-resources/resources/dictionary-of-terms>

<b>ABA Model Procurement Code for State and Local Government</b>	Developed by the American Bar Association (ABA) and adopted in 1979, it is a collection of statutory principles and policies that provides guidance to public policy managers who wish to responsibly manage public procurement. State and larger local governments have individually codified it into procurement law and policy to effectively guide their procurement organizations. The code was updated in 2000 and contains enhancements in the following areas: Electronic Commerce, Cooperative Purchasing, Flexibility in Purchasing Methods and Processes for Delivery of Infrastructure Facilities and Services. Also called Model Procurement Code.
<b>Aggregate</b>	To gather or collect quantities of a specific item (product or service) to achieve savings by leveraging economies of scale. An enabler of the economic theory that the larger the quantity the smaller the unit price.
<b>Best Value</b>	A procurement method that emphasizes value over price. The Best Value might not be the lowest cost. Generally achieved through the Request for Proposals (RFP) method.

<b>Bid</b>	The response submitted by a Bidder to an Invitation for Bids (IFB) or to a multi-step Bid. Sometimes the complete Bid document may be referred to as “the Bid.” The response to a Request for Proposals (RFP) is called a Proposal or Offer.
<b>Bid Opening</b>	The official process in which sealed Bids are opened, usually in the presence of one or more witnesses, at the time and place specified in the Invitation for Bid. The amount of each Bid is recorded, and Bids are made available for public inspection. It may be open to the public.
<b>Bulk Purchasing</b>	To purchase in volume with the expectation of reducing the unit price of an item. To aggregate quantities of material in hope of achieving deeper discounts and better pricing.
<b>Certified Professional Public Buyer (CPPB)</b>	A certification program offered by the Universal Public Purchasing Certification Council (UPPCC). This designation certifies competency in the essential areas of public procurement at the Buyer level through application and examination. Unlike other certification programs available in the purchasing field, UPPCC certifications are the only programs designed to meet the needs of purchasing professionals employed in the public sector.
<b>Certified Public Procurement Officer (CPPO)</b>	A certification program offered by the Universal Public Procurement Certification Council (UPPCC). This designation certifies competency in the essential areas of public procurement at the supervisory and/or management level through application and examination. Unlike other certification programs available in the purchasing field, UPPCC certifications are the only programs designed to meet the needs of purchasing professionals employed in the public sector.
<b>Certified Purchasing Manager (C.P.M.)</b>	A certification issued to qualified individuals by the Institute of Supply Management (ISM). The Certified Purchasing Manager (C.P.M.) designation is globally the most recognized designation for supply management professionals. The program focuses on managerial and leadership skills, plus a variety of specialized functions designed to enhance the value of the profession.
<b>Contract Administration</b>	Following the award of a Contract, the management actions that must be taken to assure full compliance with all the Terms and Conditions contained within the Contract document, including price. Action steps that assure that the Contractor is in full compliance with the entire Contract. Contract Administration activities include payment, monitoring of progress, Inspection and Acceptance, Quality Assurance, Monitoring and Surveillance, Modifications, Negotiations, contract closeout, and other activities.
<b>Contract Renewal</b>	A renewal clause allows an agreement to continue for a defined period if the existing agreement is not renegotiated within a specified time, measured from the expiration of the current Contract. The term of renewal depends on the

specific Contract language, but such clauses generally provide that the Contract shall be automatically renewed for the same period (or some lesser term) unless either party, at some stipulated and predetermined time (i.e., 60 days before expiration), gives notice to the other of its desire to end the agreement.

**Cooperative Purchasing**

A variety of arrangements under which two or more governmental entities pool their commodity and/or service requirements to purchase aggregated quantities thus achieving economies of scale. The process usually involves a single combined bid or request for proposals in which all the participating entities are named or their participation implied.

**Delegation of Authority**

The conferring of authority by someone who has it, to another person, in order to accomplish a task.

**eProcurement  
(Electronic Procurement)**

Conducting all or some of the procurement function over the Internet through point, click, buy, and ship Internet technology. Also called ePro.

**Federal Acquisition Regulations  
(FAR)**

The primary document in the Federal Acquisition Regulation System, containing uniform policies and procedures that govern the acquisition activity of all federal agencies. The FAR is prepared, issued, and maintained jointly by the Secretary of Defense, the Administrator of General Services, and the NASA Administrator.

**Field Purchase Order (FPO)**

A type of Purchase Order with a pre-approved maximum value used to expedite the acquisition of non-recurring goods and services necessary for normal operations. An FPO may be used for occasional, unexpected expenditures.

**Force Majeure**

Unexpected or uncontrollable events, including those caused by nature that can impact the contracts price, terms, and conditions. These events are not due to contractor negligence and may excuse contractor performance during the events and under certain conditions caused by them. Acts of God or disruptive conditions for which a Contractor or Carrier will not be held responsible.

**Free on Board (F.O.B.) Destination**

Title changes hands from the Supplier to the public entity at the destination of the shipment when the public entity signs for the goods; the Supplier owns the goods in transit, assumes responsibility for carrier selection, and files any claims for damages incurred during this period. It does not address the responsibility for the cost of transportation (freight charges), which must be specified with the inclusion of additional language.

**Intergovernmental Contract**

An agreement in which one government contracts with another for the delivery of goods and services. These types of contracts are exempt from the procurement code.



<b>Late Bid/Proposal</b>	A bid, proposal, withdrawal, or modification received at the designated place for receipt after the established due date and time. Procurement policies should be established to provide guidance regarding how late bids/proposals are handled administratively. In Alaska, late bids/proposals are not opened and may be returned to the bidder/proposer advising that the bid/proposal was received late (after the due date and time) and cannot be accepted.
<b>Material Defects</b>	Defects that are a matter of substance that affect price or quality and do not conform to the solicitation requirements.
<b>Minor Informality</b>	A variation from the solicitation procedure that does not affect the price of the contract or does not give an offeror an advantage or benefit not enjoyed by other offerors or does not adversely impact the interests of the contracting party.
<b>Offeror</b>	A generic term that refers to a person or entity who submits an Offer in response to an RFP.
<b>Performance Based Contract</b>	A results-oriented Contracting method that focuses on the outputs, quality, or outcomes that may tie at least a portion of a Contractor's payment, Contract extensions, or Contract renewals to the achievement of specific, measurable performance standards and requirements. These Contracts may include monetary and non-monetary incentives as well as specific remedies.
<b>Pre-Bid/ Pre-Proposal Conference</b>	A meeting held by the Buyer with potential Bidders/Proposers, prior to the opening of the Solicitation for the purpose of answering questions, clarifying any ambiguities, and responding to general issues in order to establish a common basis for understanding all of the requirements of the Solicitation. May result in the issuance of an addendum to all potential providers. In certain situations, a mandatory conference may be advisable.
<b>Pre-Solicitation Conference</b>	An informal, typically non-mandatory, meeting inviting comments, and suggestions from a representative group of Suppliers on the draft of a proposed Solicitation; this conference provides useful market analysis information to the Buyer; usually used for Solicitations involving high technology or complex services.
<b>Procurement</b>	Purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction; includes all functions that pertain to the acquisition, including description of requirements, selection, and solicitation of sources, preparation and award of Contract, and all phases of Contract Administration. The combined functions of purchasing, inventory control, traffic and transportation, receiving, inspection, storekeeping, salvage, and disposal operations.
<b>Procurement Officer</b>	Any person duly authorized to enter into and administer a Contract and make written determinations and findings thereto. Also includes an authorized

representative of the procurement officer acting within the limits of his or her authority. To procure on behalf of the State of Alaska executive branch, the procurement officer must have a sufficient written delegation of authority and appropriate procurement certification level.

**Professional Services**

Services rendered by members of a recognized profession or possessing a special skill. Such services are generally acquired to obtain information, advice, training, or direct assistance.

**Public-Private Partnership (P3)**

A public-private partnership (also referred to as a PPP or P3) is an umbrella term used to describe public facility and infrastructure contracts that: include a combination of two or more design, construction, renovation, financing, operations, maintenance, or management components; allocate risks to the party (government or contractor) best able to manage those risks; and assign a higher level of responsibility for means and methods to the contractor.

**Responsible Bidder/Offeror**

A Contractor, business entity or individual who is fully capable to meet all the requirements of the Solicitation and subsequent Contract. Must possess the full capability, including financial and technical, to perform as Contractually required. Must be able to fully document the ability to provide good faith performance.

**Responsive Bidder/Offeror**

A Contractor, business entity or individual who has submitted a Bid or Proposal that fully conforms in all material respects to the ITB/RFP and all its requirements, including all form and substance.

**Sealed Bid/Proposal**

A formal submission from a Bidder/Proposer submitted in response to an Invitation to Bid (ITB). It is submitted in a sealed envelope to prevent its contents from being revealed before the time and date set for the Bid opening.

**Service Level Agreement (SLA)**

An agreement between a customer and a service provider that details the level of service and the quality of the service to be provided. May be a legally binding agreement.

**Single Sourcing**

A procurement decision whereby purchases are directed to one source because of standardization, warranty, or other factors, even though other competitive sources may be available.

**Sole Sourcing**

Selection of one supplier to the exclusion of all others. This decision may be based on lack of competition, proprietary technology, copyright, or a supplier's unique capability.

**Solicitation**

An Invitation for Bids, a Request for Proposals, telephone calls, or any document used to obtain Bids or Proposals for the purpose of entering into a Contract.

**Strategic Sourcing**

A systematic continuous improvement process that directs supply managers to assess, plan, manage, and develop the supply base in line with the entity's

stated objectives. It involves the constant re-evaluation of purchasing activities to insure alignment with long-term organizational goals.

**Surplus**

Refers to goods or materials that are obsolete or no longer needed by the entity and are designated for disposal. Surplus becomes available for disposal outside of the entity because of some unforeseen situation that affects the use of the item. An example would be chairs or desks that have been replaced with new items.

**Total Cost of Ownership (TCO)**

A measure of all the cost components associated with the procurement of a product or service. The sum of all fixed and variable costs attributed to a product or service. A philosophy for understanding all supply chain related costs of doing business with a particular Supplier for a particular good or service.

**Uniform Commercial Code (UCC)**

First published in 1952, it was formulated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute. It covers a wide range of commercial activities. The UCC does NOT apply to the purchase of services and is not applicable to Federal Government Contracting. The UCC determines rights and obligations based on fairness and reasonableness in the light of accepted business practice. The UCC has been adopted by all the States. 2003 marked the conclusion of a fifteen-year-long process of re-writing the UCC. In that period, every article was either completely revised or substantially amended. The most important part of the UCC for the public purchasing officials is Article 2, entitled "Sale of Goods." Absent a specific state or federal statute or administrative regulation, Article 2 will govern the public purchasing official's Contract for the sale of goods.