

STATE PROCUREMENT REGULATIONS

2014 ALASKA ADMINISTRATIVE CODE, TITLE 2, CHAPTER 12

IMPORTANT NOTE

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ARTICLE 01. SOURCE SELECTION

2 AAC 12.010. NONDISCRIMINATION IN SOURCE SELECTION.

Source selection may not be based on discrimination because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation. *(Eff. 1/1/88, Register 104; am 6/29/95, Register 134)*

Authority: AS 36.30.040

2 AAC 12.020. EXCLUSION OF PROSPECTIVE CONTRACTOR FROM COMPETITION.

A procurement officer may exclude a prospective contractor from submitting a bid or proposal, or may reject a prospective contractor's bid or proposal, after making a written determination that the prospective contractor assisted in drafting the invitation to bid or request for proposal, or gained substantial information regarding the invitation to bid or request for proposal that was not available to the general public. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.050

2 AAC 12.030. PROCURING STATE-PRODUCED SUPPLIES OR SERVICES FROM INDUSTRIES OF ALASKA CORRECTIONAL INSTITUTIONS.

Purchasing requirements of an agency may be fulfilled by procuring supplies produced or services performed by industries of Alaska correctional institutions. The Commissioner of Administration will determine whether such supplies or services meet the state's requirements and whether the price represents a reasonable cost for such supplies or services. If a procurement is to be made from the state correctional industries program, the private sector may not be solicited to compete. *(Eff. 1/1/88, Register 104)*

Authority: AS 33.32.030 AS 36.30.040 AS 36.30.100

2 AAC 12.040. PROCUREMENT OF LEGAL COUNSEL.

An agency may not contract for the services of legal counsel without the prior written approval of the Attorney General. Contracts for the services of legal counsel may incorporate clauses for adjustments in prices, time of performance, and total dollar amount. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.015 AS 36.30.040

2 AAC 12.050. PROCURING SUPPLIES OR SERVICES FROM EMPLOYMENT PROGRAMS OR FROM YOUTH EDUCATION AND EMPLOYMENT PROGRAMS.

(a) The Chief Procurement Officer shall use the list maintained by the division of vocational rehabilitation of employment programs that qualify under AS 36.30.990(12).

(b) A procurement officer may fulfill agency requirements by procuring supplies produced or services performed by an eligible employment program or an accredited youth education and employment program.

(c) Before procuring supplies or services from an eligible employment program or an accredited youth education and employment program, the procurement officer shall determine whether the supplies or services meet the state's requirements and whether the price represents a reasonable cost for the supplies or services. If it is determined that the requirements cannot be met by supplies produced or services performed by an eligible employment program or an accredited youth education and employment program, or the price is not reasonable, the procurement may be made from the private sector in accordance with AS 36.30 and this chapter. If a procurement is to be made from an employment program, it is not necessary that the private sector be solicited. (*Eff. 1/1/88, Register 104; am 3/30/90, Register 113; am 11/28/97, Register 144; am 10/3/2002, Register 163; am 02/28/2014, Register 209*)

Authority: AS 36.30.040 AS 36.30.100 AS 36.30.311

2 AAC 12.060. CONTRACTOR LISTS.

Repealed. (*Eff. 1/1/88, Register 104; am 3/30/90, Register 113; repealed 2/28/2014, Register 209*)

ARTICLE 02. SPECIFICATIONS

2 AAC 12.070. AUTHORITY TO PREPARE SPECIFICATIONS.

The Chief Procurement Officer may prepare and approve specifications for supplies or services. The Commissioner of Transportation and Public Facilities may prepare and approve specifications for construction and purchases for the state equipment fleet. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.060

2 AAC 12.080. PURPOSE OF SPECIFICATIONS.

(a) The purpose of a specification is to serve as a basis for obtaining, in a cost effective manner, a supply, service, or construction item suitable for the state's needs.

(b) Specifications must, to the extent practicable, emphasize functional or performance criteria necessary to meet the needs of the state. Specifications emphasizing functional or performance criteria are primarily applicable to the procurement of supplies and services and might not be practicable in construction, apart from the procurement of supply type items for a construction project.

(c) It is state policy to procure standard commercial products if practicable. *(Eff. 1/1/88, Register 104; am 11/28/97, Register 144)*

Authority: AS 36.30.040 AS 36.30.060

2 AAC 12.090. NO UNDULY RESTRICTIVE SPECIFICATIONS.

Except for specifications relating to procurements under 2 AAC 12.400(b), all specifications must describe the requirements to be met without having the effect of exclusively requiring a proprietary supply, service, or construction item, or procurement from a single source, unless no other manner of description will suffice. *(Eff. 1/1/88, Register 104; am 11/28/97, Register 144; am 2/28/2014, Register 209)*

Authority: AS 36.30.040 AS 36.30.060

2 AAC 12.100. BRAND NAME SPECIFICATION.

Except for specifications relating to procurements under 2 AAC 12.400(b), a specification that limits the procurement of items to a specific manufacturer's name or catalog number may be used only if the procurement officer determines in writing that only the identified brand name item or items will satisfy the state's needs. *(Eff. 1/1/88, Register 104; am 11/28/97, Register 144; am 2/28/2014, Register 209)*

Authority: AS 36.30.040 AS 36.30.060

2 AAC 12.110. QUALIFIED PRODUCTS LIST.

(a) A qualified products list may be developed with the approval of the Chief Procurement Officer, or the Commissioner of Transportation and Public Facilities, if testing or examination of the supplies or construction items before issuance of the solicitation is desirable or necessary in order to best satisfy state requirements.

(b) When developing a qualified products list, a representative group of potential suppliers must be solicited, in writing, to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.

(c) Inclusion on a qualified products list must be based on results of tests or examinations conducted in accordance with state requirements. Test results may be made public in a manner that protects the identity of the competitors, such as using numerical designations. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential if requested in writing by the supplier.

(d) The existence of a qualified products list does not constitute pre-qualification of any prospective supplier of pre-qualified products. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.060

ARTICLE 03. COMPETITIVE SEALED BIDDING; MULTI-STEP BIDDING

2 AAC 12.120. INVITATIONS FOR COMPETITIVE SEALED BIDS.

(a) An invitation to bid must include the following:

- (1) instructions and information to bidders concerning the bid submission requirements, the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the state, and any other special information;
- (2) a purchase or project description, evaluation factors, delivery or performance schedule, and the inspection and acceptance requirements that are not included in the purchase or project description;
- (3) a description of all applicable contract terms and conditions, including warranty and bonding or other security requirements;
- (4) a requirement for certification by the bidder that they comply with the applicable provisions of 42 U.S.C. 1981 and 42 U.S.C. 2000e - 2000e-17 (Civil Rights Act), 42 U.S.C. 12001 - 12213 (Americans with Disabilities Act of 1990), AS 18.80, and regulations adopted under those statutes;
- (5) a requirement for certification by the bidder that, by submitting a bid, the bidder certifies that the price submitted was independently arrived at without collusion; and
- (6) provisions, such as goals or financial incentives, established to eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, or disability.

(b) An invitation to bid may incorporate documents by reference.

(c) An invitation to bid may require the receipt of all amendments issued by the using agency to be acknowledged by bidders.

(d) An invitation to bid may require the submission of bid samples, descriptive literature, technical data, or other material. An invitation to bid may provide for any of the following before award:

- (1) inspection or testing of a product for such characteristics as quality or workmanship;
- (2) examination of such elements as appearance, finish, taste, or feel; or
- (3) other examinations to determine whether a product conforms with other purchase requirements.

(e) An invitation to bid must require the bidder to submit evidence that the bidder's subcontractor work will be allocated to meet provisions, such as goals or financial incentives, established in the bid to eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, or disability. (*Eff. 1/1/88, Register 104; am 5/16/88, Register 106; am 6/29/95, Register 134*)

Authority: AS 36.30.040 AS 36.30.110

2 AAC 12.130. PUBLIC NOTICE.

(a) Except for small purchases made under 2 AAC 12.400, notice of an invitation to bid shall be given by posting on the Alaska Online Public Notice system as required by AS 36.30.130(a). Notice may also be provided in accordance with AS 36.30.130 by one of the following methods:

- (1) repealed 2/28/14;
- (2) publication in a newspaper of general circulation, and, if practicable, in a way calculated to reach prospective contractors located in the state;
- (3) publication in a newspaper of local circulation in the area pertinent to the procurement, and, if practicable, in a way calculated to reach prospective contractors located in the state;
- (4) notices posted in public locations within the area where the work is to be performed or the material or supplies furnished;
- (5) communication in another appropriate media, including postings in electronic media, and, if practicable, in a way calculated to reach prospective contractors located in the state.

(b) The provisions of 2 AAC 12.400(e) apply to the requirements regarding public notice of procurement for leased office space of not more than 7,000 square feet.

(c) Nothing in this section limits use of additional methods of public notice in order to reach prospective contractors located in the state.

(d) The procurement officer shall provide notice of an invitation to bid to a prospective contractor upon request, regardless of the location of the prospective contractor.

(e) The procurement officer may require payment of duplication costs or a cash deposit for supplying the invitation to bid. (*Eff. 1/1/88, Register 104; am 3/30/90, Register 113; am 7/20/95, Register 135; am 11/28/97, Register 144; am 10/3/2002, Register 163; am 2/28/2014, Register 209*)

Authority: AS 36.30.040 AS 36.30.130

2 AAC 12.140. PRE-OPENING CORRECTION OR WITHDRAWAL OF BIDS.

(a) A bid may be corrected or withdrawn by written request received by the office designated in the invitation for bids before the time and date set for opening.

(b) A request under (a) of this section must provide authorization for the person making the correction or withdrawal to do so.

(c) If a bid is withdrawn, the bid security, if any, shall be returned to the bidder.

(d) All documents relating to the correction or withdrawal of a bid shall be included in the appropriate procurement file. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.160

2 AAC 12.150. RECEIPT, OPENING, AND RECORDING OF BIDS.

(a) A bid must be submitted with the invitation to bid number clearly identified. The rest of the bid must be in a form that cannot be viewed until opened by the procurement officer. Upon receipt, a bid correction shall be securely stored until the time and date set for bid opening.

(b) Bids and corrections shall be opened at the time, date, and place designated in the invitation to bid. The name of each bidder, the bid price, and other information deemed appropriate by the procurement officer shall be tabulated. *(Eff. 1/1/88, Register 104; am 2/28/2014, Register 209)*

Authority: AS 36.30.040 AS 36.30.140

2 AAC 12.160. LATE BIDS, LATE CORRECTIONS, AND LATE WITHDRAWALS.

A bid received after the time and date set for receipt of bids is late. A correction or withdrawal of a bid received after the time and date set for opening of bids at the place designated for opening is late. A late bid correction, or withdrawal, may not be accepted unless the delay was due to an error of the contracting agency. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.160

2 AAC 12.170. INADVERTENT ERRORS DISCOVERED AFTER OPENING BUT BEFORE AWARD.

(a) Inadvertent errors discovered after opening but before award, other than minor informalities, may not be corrected. If a bidder submits proof that clearly and convincingly demonstrates that an inadvertent error other than a minor informality was made, the bidder may withdraw the bid.

(b) If, before award, a procurement officer knows of an error in a bid, the officer shall notify the bidder of the error. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.160

2 AAC 12.180. BID EVALUATION AND AWARD.

(a) Award of a bid may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the bidder. A bid shall be evaluated to determine whether the bidder responds to the provisions, such as goals or financial incentives, established in the invitation to bid in order to eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, or disability.

(b) An evaluation of product acceptability shall be conducted to determine whether a bidder's offering is acceptable as set out in the invitation to bid. A bid that does not meet the acceptability requirements shall be rejected as non-responsive.

(c) Bids may be evaluated to determine which bid offers the lowest cost to the state in accordance with the evaluation criteria set out in the invitation to bid. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors must

(1) be reasonable estimates based upon information the state has available concerning future use;
and

(2) treat all bids equitably.

(d) Nothing in this section permits contract award to a bidder submitting a higher quality item than that designated in the invitation for bids if the bidder is not also the lowest bidder as determined under (c) of this section. This section does not permit negotiations with a bidder. *(Eff. 1/1/88, Register 104; am 5/16/88, Register 106; am 6/29/95, Register 134)*

Authority: AS 36.30.040 AS 36.30.150

2 AAC 12.190. ONLY ONE RESPONSIVE BID RECEIVED.

If only one responsive bid is received in response to an invitation to bid, including multi-step bidding, an award may be made to the single bidder if the bidder is responsible and if the procurement officer finds that the price submitted is fair and reasonable and that either other prospective bidders had reasonable opportunity to respond or there is not adequate time for re-solicitation. Otherwise the bid may be rejected and

(a) new bids or offers may be solicited;

(b) the proposed procurement may be canceled; or

(c) if the procurement officer determines in writing that the need for the supply or service continues, but that the price of the one bid is not fair and reasonable, and there is no time for resolicitation or it is unlikely that resolicitation would increase the number of bids, the procurement may be conducted under 2 AAC 12.410 (single source procurement), 2 AAC 12.430 (limited competition procurement), or 2 AAC 12.440 (emergency procurements), as appropriate. *(Eff. 1/1/88, Register 104; am 11/28/97, Register 144)*

Authority: AS 36.30.040 AS 36.30.350

2 AAC 12.200. DOCUMENTATION OF AWARD.

Following award, a record showing the basis for determining the successful bidder shall be made a part of the procurement file. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.500

2 AAC 12.210. NOTICE OF INTENT TO AWARD.

Notice of intent to award does not constitute a formal award of a contract. The notice of intent to award must include

(1) a statement of the bidder's right under AS 36.30 to protest the award, including the time within which the protest must be received; and

(2) the name of the successful bidder. *(Eff. 1/1/88, Register 104; am 3/30/90, Register 113)*

Authority: AS 36.30.040 AS 36.30.365 AS 36.30.565

ARTICLE 04. COMPETITIVE SEALED PROPOSALS

2 AAC 12.215. EXCEPTIONS TO COMPETITIVE SEALED BIDDING.

(a) The following types of supplies and services, for which the use of competitive sealed bidding is either not practicable or not advantageous to the state, may be procured by competitive sealed proposals without a written determination by the procurement officer:

- (1) professional services;
- (2) supplies and services for clean-up of oil and hazardous substances;
- (3) telephone systems and telephone system maintenance;
- (4) concession contracts;
- (5) repealed 11/28/97;
- (6) leased office space.

(b) The procurement officer may procure other supplies or services not listed in (a) of this section by competitive sealed proposals only if the procurement officer determines that the use of competitive sealed bidding is not practicable or not advantageous to the state. The determination under this subsection must comply with AS 36.30.200(b). (*Eff. 3/30/90, Register 113; am 6/29/95, Register 134; am 11/28/97, Register 144*)

Authority: AS 36.30.040 AS 36.30.200

2 AAC 12.220. PUBLIC NOTICE OF COMPETITIVE SEALED PROPOSALS.

Public notice shall be given by distributing the request for proposals or notice of requests for proposals in the manner provided in 2 AAC 12.130. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.210

2 AAC 12.230. CORRECTION, MODIFICATION, OR WITHDRAWAL OF PROPOSALS.

A proposal may be corrected, modified, or withdrawn before the time and date set for receipt of proposals, in the manner described in 2 AAC 12.140. (*Eff. 1/1/88, Register 104; am 3/27/93, Register 125; am 2/28/2014, Register 209*)

Authority: AS 36.30.040

2 AAC 12.240. RECEIPT AND REGISTRATION OF PROPOSALS.

Proposals, modifications, and corrections shall have the date and time of receipt recorded upon receipt, and shall be held securely. After the date set for receipt of proposals, a register of proposals must be prepared. The register must include the name of each offeror and a description of the supply, service, or construction item offered. (*Eff. 1/1/88, Register 104; am 2/28/2014, Register 209*)

Authority: AS 36.30.040 AS 36.30.230

2 AAC 12.250. LATE PROPOSALS, LATE CORRECTIONS, LATE MODIFICATIONS, AND LATE WITHDRAWALS.

Unless otherwise provided in the request for proposals, a proposal, correction, modification, or withdrawal received after the date and time set for receipt of proposals is late, and may not be accepted unless the delay is due to an error of the contracting agency. (*Eff. 1/1/88, Register 104; am 3/27/93, Register 125*)

Authority: AS 36.30.040 AS 36.30.210

2 AAC 12.260. EVALUATION OF PROPOSALS.

(a) The procurement officer, or a procurement evaluation committee consisting of at least three state employees or public officials, shall evaluate proposals. The procurement officer may be one of the members on a procurement evaluation committee.

(b) The evaluation must be based only on the evaluation factors set out in the request for proposals. The relative importance or weighting value of each evaluation factor shall be set out in the request for proposals. Numerical rating systems may be used, but are not required. If a numerical rating system is not used, the procurement officer, or each member of the evaluation committee, as applicable, shall explain his or her ranking determination in writing.

(c) Price must be an evaluation factor unless the services or supplies sought are selected in accordance with AS 36.30.270(a) and (b). The proposal with the lowest price must receive the highest available rating allocated to price. A proposal that has a higher price than the next lowest must receive a lower rating for price.

(d) For the purposes of evaluating price, the proposed price of an offeror who qualifies as an Alaska bidder under AS 36.30.990(2) shall be reduced by five percent. All other applicable preferences must be applied. This subsection does not apply to solicitations or contracts lease space under AS 36.30.080.

(e) If a numerical rating system is used, an Alaska offeror's preference of at least 10 percent of the total possible value of the rating system must be assigned to a proposal of an offeror who qualifies as an Alaska bidder under AS 36.30.990(2). This subsection does not apply to solicitations or contracts for lease space under AS 36.30.080.

(f) The following are some additional evaluation factors that may be considered:

- (1) the offeror's experience in Alaska performing work similar to that sought in the request for proposals;
- (2) the percentage of work that will be performed in Alaska;
- (3) the location of the office of the offeror where the work will be performed;
- (4) the offeror's past performance, including conformance to specifications and standards of good workmanship, forecasting and containment of costs or prices, history of reasonable and cooperative behavior and overall concern for the interests of the customer, and adherence to contract schedules.

(g) A proposal from an offeror debarred or suspended under AS 36.30.635 - 36.30.655 must be rejected.

(h) Meetings may be held by a procurement evaluation committee to discuss the request for proposals, the evaluation process, the weighting of evaluation factors, and proposals received.

(i) If the evaluation is performed by a procurement evaluation committee, each member shall exercise independent judgment and the vote of one member may not be weighted more than the vote of any other member.

(j) An evaluation may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror. A proposal shall be evaluated to determine whether the offeror responds to the provisions, including goals and financial incentives, established in the request for proposals in order to eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror. *(Eff. 1/1/88, Register 104; am 5/16/88, Register 106; am 7/2/88, Register 106; am 3/30/90, Register 113; am 3/27/93, Register 125; am 6/29/95, Register 134; am 11/28/97, Register 144; am 2/28/2014, Register 209)*

Authority: AS 36.30.040 AS 36.30.230 AS 36.30.321
AS 36.30.210 AS 36.30.250

2 AAC 12.265. EVALUATION FACTORS FOR HEAVY TRUCKS AND EQUIPMENT.

If a state agency uses competitive sealed proposals to procure heavy trucks and heavy equipment, the state agency may use other evaluation factors in addition to the evaluations factors set out in 2 AAC 12.260(c) - (f), including

- (1) the price;
- (2) the quality of the article offered;
- (3) the performance capabilities of the offerors and the manufacturers;
- (4) the suitability of the article offered;
- (5) the service requirements, including warranty, parts availability, and parts locations;
- (6) durability as measured by projected operating and maintenance costs;
- (7) the resale value;
- (8) the transportation charges;
- (9) the date of delivery and performance; and
- (10) other factors determined to be pertinent or peculiar to the procurement. *(Eff. 3/27/93, Register 125; am 11/28/97, Register 144)*

Authority: AS 36.30.040 AS 36.30.250

2 AAC 12.270. ONLY ONE RESPONSIVE PROPOSAL.

If after evaluation under 2 AAC 12.260 and discussion under 2 AAC 12.290 only one responsive and responsible proposal is available for award, the procurement officer may make an award in accordance with AS 36.30.250, may reject the proposal, or may reject the proposal and re-solicit proposals. *(Eff. 1/1/88, Register 104; am 6/29/95, Register 134)*

Authority: AS 36.30.040 AS 36.30.350

2 AAC 12.280. DUTY OF OFFERORS.

Repealed. *(Eff. 1/1/88, Register 104; repealed 6/29/95, Register 134)*

2 AAC 12.285. CLARIFICATION OF OFFERS.

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or the procurement evaluation committee are permitted with an offeror for clarification of uncertainties or elimination of confusion concerning the contents of a proposal that does not result in a material or substantive change to the proposal. The evaluation by the procurement officer or the procurement evaluation committee may be adjusted as a result of a clarification under this section. *(Eff. 11/28/97, Register 144; am 2/28/2014, Register 209)*

Authority: AS 36.30.040 AS 36.30.240

2 AAC 12.290. PROPOSAL DISCUSSIONS WITH INDIVIDUAL OFFERORS.

(a) Offerors of proposals reasonably susceptible for award as determined in the evaluation conducted under 2 AAC 12.260 may be offered the opportunity to discuss their proposals with the procurement officer or evaluation committee at the discretion of the procurement officer. The procurement officer may limit discussions to specific sections of the proposals received or specific sections of the request for proposals. The opportunity for confidential discussions, if held, must be extended to all offerors submitting proposals deemed reasonably susceptible for award. Auction techniques that reveal one offeror's price to another, and disclosure of any information derived from competing proposals, are prohibited.

(b) Any oral modification of a proposal resulting from proposal discussions under (a) of this section shall be reduced to writing by the offeror.

(c) Following discussions, the procurement officer may set a date and time for the submission of best and final proposals. Best and final proposals may be submitted only once. However, the Chief Procurement Officer or the head of a purchasing agency may make a written determination that it is in the state's best interest to conduct additional discussions or change the state's requirements and require another submission of best and final proposals. Otherwise, discussion of or changes in the best and final proposals may not be allowed before award. If an offeror does not submit a best and final proposal or a notice of withdrawal, the offeror's previous proposal is considered the offeror's best and final proposal.

(d) The evaluation of a proposal may be adjusted as a result of a discussion under this section. The conditions, terms, or price of the proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the request for proposals. After best and final proposals are received, final evaluations will be conducted as described in 2 AAC 12.260. *(Eff. 1/1/88, Register 104; am 11/28/97, Register 144)*

Authority: AS 36.30.040 AS 36.30.240

2 AAC 12.295. AMENDMENTS TO REQUESTS FOR PROPOSALS.

If, after receipt of proposals, there is a need for any substantial clarification of or material change in the request for proposals, the request must be amended to incorporate the clarification or change, and a date and time established by the procurement officer for receipt of new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals. *(Eff. 11/28/97, Register 144)*

Authority: AS 36.30.040 AS 36.30.210

2 AAC 12.300. DOCUMENTATION OF CONTRACTOR SELECTION.

When a contractor has been selected by competitive sealed proposal, the procurement officer shall enter into the procurement file a written record of the basis on which the selection was found to be most advantageous to the state. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.250

2 AAC 12.310. NOTICE OF AWARD.

Notice of intent to award shall be issued in accordance with 2 AAC 12.210. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.365

2 AAC 12.315. CONTRACT NEGOTIATIONS.

After final evaluation of proposals, including an adjustment of an evaluation of a proposal as authorized under 2 AAC 12.290(d) and 2 AAC 12.295, the procurement officer may negotiate with the offeror of the highest ranked proposal for the purpose of obtaining contract terms consistent with the solicitation and with terms favorable to the state. If changes are made to the proposal during contract negotiations, the changes must be reasonable; however, the changes may not have the effect of changing the ranking of the highest ranked proposal. If the procurement officer determines that the offeror of the highest ranked proposal fails to negotiate in good faith or fails to negotiate within the time period set by the procurement officer, the procurement officer may terminate negotiations and begin contract negotiations with the offeror of the next highest ranked proposal in the manner prescribed in this section. *(Eff. 11/28/97, Register 144; am 2/28/2014, Register 209)*

Authority: AS 36.30.040

ARTICLE 05. COMPETITIVE SEALED PROPOSALS FOR ARCHITECT, ENGINEER, OR LAND SURVEYING SERVICES

2 AAC 12.320. PROCUREMENT OF ARCHITECT, ENGINEER, OR LAND SURVEYING SERVICES.

(a) Except as otherwise provided in this section, architect, engineer, or land surveyor services must be procured under 2 AAC 12.220 - 2 AAC 12.310, 2 AAC 12.320 - 2 AAC 12.390, and 2 AAC 12.400. In the case of inconsistency, the provisions of 2 AAC 12.320 - 2 AAC 12.390 control.

(b) Procurement of minor or incidental architect, engineer, or land surveying work associated with and performed during construction, is not subject to 2 AAC 12.320 - 2 AAC 12.390. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.270

2 AAC 12.330. DETERMINATIONS REQUIRED BEFORE PROCUREMENT OF SERVICES.

Before announcing the need for architect, engineer, or land surveying services, the head of the purchasing agency must determine

(a) that the services to be acquired are services subject to AS 36.30.270 ;

(b) that a reasonable inquiry has been conducted, and it has been determined that state personnel are unable or unavailable to perform the services required under the proposed contract;

(c) that the purchasing agency has developed, and fully intends to implement, a written plan for use of the services. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.270

2 AAC 12.340. PUBLIC ANNOUNCEMENT OF REQUIRED ARCHITECT, ENGINEER, OR LAND SURVEYING SERVICES.

(a) Notice of the need for architect, engineer, or land surveying services shall be given as described in 2 AAC 12.130.

(b) A solicitation must be prepared which describes the state's requirements, sets out the evaluation criteria, and includes notice of any conference to be held.

(c) The procurement officer may require a payment of a fee or deposit to supply a solicitation. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.270

2 AAC 12.350. ARCHITECT, ENGINEER, OR LAND SURVEYOR SELECTION COMMITTEE.

(a) If a contract for architect, engineer, or land surveying services is expected to exceed the dollar threshold for construction set out in 2 AAC 12.400(d), the chief procurement officer, commissioner of transportation and public facilities, or commissioner of natural resources, as appropriate, shall designate a minimum of

three state employees or public officials to serve as members of an architect, engineer, and land surveying selection committee for that contract. The committee must consist of

(1) a majority of registered persons if registration is required under AS 36.30.270 (d), or, if registration is not required under AS 36.30.270 (d), a majority of state employees who are well qualified in architecture, engineering, or land surveying, as appropriate; and

(2) a procurement officer representing the purchasing agency requiring the services, and preferably qualified in architecture, engineering or land surveying, and other members as appropriate.

(b) The Chief Procurement Officer, Commissioner of Transportation and Public Facilities, or Commissioner of Natural Resources, as appropriate, shall designate one member to chair the committee and to negotiate a contract with the most qualified and suitable firm or person in accordance with AS 36.30.270. (*Eff. 1/1/88, Register 104; am 3/27/93, Register 125; am 4/25/97, Register 142; am 2/28/2014, Register 209*)

Authority: AS 36.30.040 AS 36.30.270

2 AAC 12.360. EVALUATION OF STATEMENTS OF QUALIFICATIONS AND PERFORMANCE DATA; SELECTION OF FIRMS OR PERSONS FOR DISCUSSIONS.

(a) The selection committee shall evaluate

(1) statements submitted in response to the solicitation for architect, engineer, or land surveying services, including proposals for joint ventures; and

(2) supplemental statements of qualifications and performance data, if submission of such statements was required.

(b) All statements and supplemental statements of qualifications and performance data shall be evaluated in light of the criteria set out in the solicitation.

(c) Criteria to be used in evaluating the statement of qualifications and performance data may include

(1) experience in providing the required services;

(2) qualifications and competence of the individuals who would be assigned to perform the services, as reflected by technical training and education;

(3) ability to perform the services expeditiously, as reflected by workload and the availability of adequate personnel, equipment, and facilities; and

(4) past performance, as reflected by the evaluations of private persons and officials of other government entities that have retained the services of the firm or person, with respect to such factors as control of costs, quality of work, and ability to meet deadlines.

(d) The selection committee may select firms or persons evaluated as being professionally and technically qualified for discussions and reasonably susceptible for award of a contract. The procurement officer shall notify each firm or person in writing of the date, time, and place of discussions, and, if necessary, shall provide each firm or person with additional information on the project and the services required. The notice

may provide that a representative of a firm or person must attend discussions in order for the firm or person to be considered further. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.270

2 AAC 12.370. DISCUSSIONS.

The selection committee may hold discussions regarding the proposed contract with the firms or persons selected. The purpose of such discussions is to explore the scope and nature of the required services and the relative utility of alternative methods of approach. The conditions, terms, or price of the proposed contract may be altered or otherwise changed during the course of the discussions. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.270

2 AAC 12.380. SELECTION OF THE MOST QUALIFIED AND SUITABLE FIRMS OR PERSONS.

After discussions, if held under 2 AAC 12.370, the selection committee shall reevaluate and select, in order of preference, no fewer than three firms or persons that the committee considers to be the most highly qualified and suitable to provide the required services. The selection committee shall prepare a memorandum of the selection process which indicates how the evaluation criteria were applied to determine the ranking of the three most highly qualified and suitable firms or persons. The memorandum shall be included in the procurement file. (*Eff. 1/1/88, Register 104; am 3/27/93, Register 125*)

Authority: AS 36.30.040 AS 36.30.270

2 AAC 12.390. NEGOTIATION AND AWARD OF CONTRACT.

(a) The procurement officer shall negotiate with the most qualified and suitable offerors in the order in which they are ranked. Contract negotiations shall be directed toward

- (1) making certain that the offeror has a clear understanding of the scope of the work and the requirements involved in providing the required services;
- (2) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
- (3) agreeing upon compensation that is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the required services.

(b) The offeror selected for award shall submit and certify cost and pricing data.

(c) Upon failure to negotiate a contract with the most qualified and suitable offeror, the procurement officer shall enter into negotiations with the next most qualified and suitable offeror.

(d) If the procurement officer is unable to negotiate a contract with any of the offerors initially selected as the most highly qualified and suitable offerors, additional offerors may be selected in preferential order based on their respective qualifications.

(e) Written notice of the intent to award must comply with 2 AAC 12.310 and must be sent to each offeror. Notice of intent to award must be made available to the public.

(f) After award of the contract, a memorandum setting out the principal elements of the negotiation shall be prepared by the procurement officer. The memorandum shall be included in the procurement file and be made available to the public upon request. *(Eff. 1/1/88, Register 104; am 3/27/93, Register 125)*

Authority: AS 36.30.040 AS 36.30.270 AS 36.30.400

ARTICLE 06. SMALL PURCHASES.

2 AAC 12.400. AUTHORITY TO MAKE SMALL PURCHASES.

(a) Repealed 2/28/14.

(b) A purchasing agency shall use reasonable and adequate procedures and make records that facilitate auditing of the purchasing agency, when procuring

(1) supplies, services, professional services, or construction estimated to cost not more than \$10,000;

(2) concession contracts estimated to have gross receipts of not more than \$10,000;

(3) supplies or services while on travel status with, or on behalf of the governor, estimated to cost not more than \$30,000;

(4) passenger transportation, or fish feed for hatchery use, estimated to cost not more than \$30,000;

(5) professional services for the office of the governor, or legal or hearing officer services, estimated to cost not more than \$50,000.

(c) Except for procurements under (b) of this section, a purchasing agency shall use the following procedures in the procurement of supplies, services, professional services, or construction estimated to cost more than \$10,000, but not more than \$50,000, or for concession contracts estimated to have gross receipts of more than \$10,000, but not more than \$50,000:

(1) for the solicitation,

(A) at least three firms or persons shall be contacted for a quotation or informal proposal and the procurement officer shall designate whether the response may be made in writing or verbally; and

(B) the solicitation may be made verbally or in writing and shall include the specifications, the award criteria, and the date and time responses are due;

(2) for the award, the purchasing agency shall make the award

(A) in accordance with the specifications and award criteria in the solicitation; and

(B) to the responsive and responsible firm or person that submitted the lowest quotation or the informal proposal that is the most advantageous to the purchasing agency;

(3) as part of the file on the procurement, the procurement officer shall include the

(A) name of the person who made the solicitation and the date of the solicitation;

(B) information provided by the purchasing agency under (1) (B) of this subsection;

(C) names of the firms or persons contacted, a summary of any verbal responses, and copies of all quotations or informal proposals received; and

(D) justification for the award.

(d) A purchasing agency shall use the following procedures for the procurement of supplies, services, or professional services estimated to cost more than \$50,000, but not more than \$100,000; for concession contracts estimated to have gross receipts of more than \$50,000, but not more than \$100,000; or for construction estimated to cost more than \$50,000, but not more than \$200,000:

(1) for the solicitation,

(A) at least three firms or persons shall be contacted for a quotation or informal proposal and the procurement officer shall require the response to be made in writing; and

(B) the solicitation shall be made in writing and shall include the specifications, the award criteria, and the date and time responses are due;

(2) for the award, the purchasing agency shall

(A) make the award

(i) in accordance with the specifications and award criteria in the solicitation; and

(ii) to the responsive and responsible firm or person that submitted the lowest quotation or the informal proposal that is the most advantageous to the purchasing agency

(B) provide written notice of the award, including the name of the successful offeror, to each firm or person providing a quotation or informal proposal, and shall describe protest rights under 2 AAC 12.695 and the time limitations within which a protest must be received by the purchasing agency.

(3) as part of the file on the procurement, the procurement officer shall include

(A) a copy of the solicitation made under (1)(B) of this subsection;

(B) the names of the firms or persons contacted and copies of all written quotations or informal proposals received; and

(C) documentation of and justification for the award.

(e) For procurement of lease of space that does not exceed 7,000 square feet, the procedures described in (b) - (d) of this section shall be followed for the appropriate estimated cost limitations, except as provided in this subsection. A notice of award under this subsection shall be in writing. Notwithstanding 2 AAC 12.130 or any other provision of this section, for a procurement of lease of space that does not exceed 7,000 square feet and estimated to cost more than \$100,000 for the term of the lease, including extensions, the procurement officer shall provide public notice by at least one of the following notification methods for the solicitation:

(1) repealed 2/28/2014;

(2) publication in a newspaper of general circulation, and, if practicable, in a way calculated to reach prospective contractors located in the state;

(3) publication in a newspaper of local circulation in the area pertinent to the procurement, and, if practicable, in a way calculated to reach prospective contractors located in the state;

(4) notices posted in public locations within the area where the work is to be performed or the material or supplies furnished;

(5) publication in other appropriate media, including postings in electronic media, and, if practicable, in a way calculated to reach prospective contractors located in the state.

(f) A procurement made under this section shall be solicited from Alaskan vendors, whenever practicable, and is subject to applicable Alaskan bidder and Alaskan products preferences as set out in AS 36.30 and 2 AAC 12.260(e).

(g) Nothing in this section prevents postings in electronic media to satisfy the competitive solicitation and notice of award requirements. Quotes and informal proposals may be submitted in electronic media if permitted by the procurement officer. *(Eff. 1/1/88, Register 104; am 3/30/90, Register 113; am 3/27/93, Register 125; am 6/29/95, Register 134; am 4/25/97, Register 142; am 11/28/97, Register 144; am 2/28/2014, Register 209)*

Authority: AS 36.30.040 AS 36.30.320

ARTICLE 07. SINGLE SOURCE PROCUREMENT.

2 AAC 12.410. CONDITIONS FOR USE OF SINGLE SOURCE PROCUREMENT.

- (a) A request by a purchasing agency that a procurement be restricted to one potential contractor shall be accompanied by a written explanation that meets the requirements of 2 AAC 12.415 as to why it is not practicable to award a contract by competitive sealed bidding, competitive sealed proposals, or small procurement procedures, and why award to a single source is in the state's best interests. An agency may advertise its intent to make a single source award to determine if such an award is appropriate. The agency shall include in the written explanation the evidence needed for an independent examination and determination of the material facts of the procurement, subject to AS 36.30.315. Except for a procurement that does not exceed the amount for small procurements under AS 36.30.320, the award of a single source procurement may not be made without the prior written approval of the Chief Procurement Officer or the Commissioner of Transportation and Public Facilities, as appropriate under AS 36.30.300 (a).
- (b) A determination under AS 36.30.300 (a) must specify the duration of the determination's effectiveness.
- (c) A procurement officer shall conduct negotiations, as appropriate, as to the price, delivery, and terms of a single source procurement.
- (d) The following are examples of circumstances in which single source procurement might be appropriate:
- (1) if the compatibility of equipment, accessories, or replacement parts is the main consideration;
 - (2) if a specific item is needed for trial use or testing, including testing of a prototype;
 - (3) if an item is to be procured for resale;
 - (4) repealed 6/29/95;
 - (5) if there exists a sole source of expertise required to perform a specific professional service;
 - (6) if the procurement is for operation of a concession contract on State of Alaska property by a nonprofit organization whose sole purpose is to operate the concession and provide other public services on the property;
 - (7) if the procurement is with a government police agency to provide investigative, enforcement, or support services in support of state law enforcement objectives;
 - (8) if the procurement is for the services of legal counsel for the purpose of advising or representing the state in specific civil or criminal proceedings or on a specific matter before a federal or state regulatory agency, board, or commission;
 - (9) if the procurement is by the Office of the Governor for lobbying, labor negotiation, or consulting by a foreign national. (*Eff. 1/1/88, Register 104; am 6/29/95, Register 134; am 11/28/97, Register 144*)

Authority: AS 36.30.040 AS 36.30.300 AS 36.30.315

2 AAC 12.415. SINGLE SOURCE DETERMINATION.

A determination by a state procurement official that a specific course of action is or is not "in the state's best interest" under AS 36.30.300 means a determination that is reasonable under the circumstances and is neither arbitrary, capricious, or prompted by corruption. A request to employ the single source procurement method under AS 36.30.300 that is based on a determination that it is "in the state's best interest" shall cite the specific and significant interests to support use of the single source procurement method. (*Eff. 11/28/97, Register 144*)

Authority: AS 36.30.040 AS 36.30.300

2 AAC 12.420. RECORD OF SINGLE SOURCE PROCUREMENT.

A record of every single source procurement shall be made and forwarded to the Chief Procurement Officer, and must include

- (1) the supplier's or contractor's name;
- (2) the amount and type of each contract;
- (3) a listing of the supplies, services, or construction procured under each contract; and
- (4) the identification number of each procurement file. (*Eff. 1/1/88, Register 104; am 11/28/97, Register 144*)

Authority: AS 36.30.040 AS 36.30.300 AS 36.30.520

ARTICLE 08. LIMITED COMPETITION PROCUREMENTS

2 AAC 12.430. CONDITIONS FOR USE OF LIMITED COMPETITION PROCUREMENT.

(a) A request by a purchasing agency to limit a procurement to two or more potential contractors must be accompanied by a written explanation as to why the solicitation should be limited and why the competitive sealed bidding, competitive sealed proposals, or small procurement procedures are impracticable or contrary to the public interest. The agency must include with the written explanation the evidence necessary for an independent examination and determination of the material facts of the procurement, subject to AS 36.30.315. To determine if other sources are available and interested in a procurement, an agency may advertise an intent to make a limited competition procurement. Except for a procurement that does not exceed the amount for small procurements under AS 36.30.320, the award of a limited competition procurement may not be made without the prior written approval of the Chief Procurement Officer, the Commissioner of Transportation and Public Facilities, or the Attorney General, as appropriate under AS 36.30.305(a).

(b) A procurement for construction under this section must be for less than \$100,000.

(c) A procurement officer shall solicit offers or conduct negotiations, as appropriate, as to price, delivery, and terms, equally with each potential contractor for a limited competition procurement. (*Eff. 1/1/88, Register 104; am 3/30/90, Register 113; am 6/29/95, Register 134; am 11/28/97, Register 144*)

Authority: AS 36.30.040 AS 36.30.305

ARTICLE 09. EMERGENCY PROCUREMENTS

2 AAC 12.440. DETERMINATION OF EMERGENCY CONDITIONS.

(a) For the purposes of AS 36.30.310, emergency conditions include

- (1) fire, flood, epidemic, riot, environmental accident, or a similarly compelling reason;
- (2) equipment failure, if the need for timely repair is essential;
- (3) a situation in which procurement through competitive sealed bidding or competitive sealed proposals is impracticable or contrary to the public interest; or
- (4) a need to protect public or private property.

(b) Unless a determination of emergency is made as provided in (c) of this section, before a procurement may be made under this section, a written determination of emergency is required from the Chief Procurement Officer, or from the Commissioner of Transportation and Public Facilities for a construction contract or a procurement for the state equipment fleet. An agency requesting a determination of emergency shall provide a written explanation as to why emergency conditions exist. The agency shall include with its explanation the evidence necessary for the independent examination and determination of the material facts of the procurement, subject to AS 36.30.315.

(c) A determination of emergency under this section

(1) may be made by a responsible agency official if

(A) immediate action is necessary to protect public health, welfare, or safety, or to protect public or private property; and

(B) insufficient time exists for

(i) the agency to provide the explanation and evidence required under (b) of this section; and

(ii) the Chief Procurement Officer or the Commissioner of Transportation and Public Facilities to make the written determination of emergency required under AS 36.30.310 and (b) of this section; and

(2) is subject to AS 36.30.315. (*Eff. 1/1/88, Register 104; am 3/30/90, Register 113; am 6/29/95, Register 134; am 11/28/97, Register 144*)

Authority: AS 36.30.005 AS 36.30.040 AS 36.30.310

2 AAC 12.450. PROCUREMENT METHODS FOR EMERGENCY CONDITIONS.

(a) When emergency procurement is authorized by AS 36.30.310 and 2 AAC 12.440, and emergency procurement is limited to the supplies, services, professional services, or construction necessary to meet the emergency, the procurement shall be made with competition that is practicable under the circumstances.

(b) An agency may make an emergency procurement by any reasonable means. If practical, approval by the head of the agency must be obtained before an emergency procurement of \$50,000 or more is made.

(c) A procurement by the Department of Natural Resources during a fire suppression emergency shall be made in accordance with the procedures established by that department. *(Eff. 1/1/88, Register 104; am 11/28/97, Register 144; am 2/28/2014, Register 209)*

Authority: AS 36.30.040 AS 36.30.310

2 AAC 12.460. RECORD OF EMERGENCY PROCUREMENT.

The procurement officer or the agency official responsible for the procurement shall make and promptly forward to the Chief Procurement Officer a record of each emergency procurement. The record must set out

- (1) the contractor's name;
- (2) the amount and type of the contract;
- (3) a listing of the supplies, services, or construction procured under the contract; and
- (4) the identification number of the procurement file. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.310

ARTICLE 10. CONTRACT FORMATION AND MODIFICATION

2 AAC 12.470. STANDARD CONTRACT CLAUSES.

The Chief Procurement Officer and the Commissioner of Transportation and Public Facilities, in consultation with the Attorney General, may establish standard contract clauses for state contracts. A procurement officer may modify a standard clause only with the prior written approval of the Attorney General as to form. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.340

2 AAC 12.475. CHANGES, LIQUIDATED DAMAGES, AND TERMINATIONS.

(a) A state contract may include a clause that provides for adjustment of the contract price, adjustment of the time of performance, liquidated damages, termination of the contract, or a term that the procurement officer deems appropriate.

(b) A contract clause allowing the imposition of liquidated damages must specify their purpose, their amount, and the circumstances for which they are authorized.

(c) A contract clause allowing termination of a contract for cause must specify the circumstances under which the state may terminate the contract, the procedural steps required for a termination to be effective, and the rights and responsibilities of the parties regarding payment and work in progress.

(d) A contract clause allowing termination of a contract for convenience of the state must specify the procedural steps required for a termination to be effective and the rights and responsibilities of the parties regarding payment and work in progress. (*Eff. 7/20/95, Register 135*)

Authority: AS 36.30.040 AS 36.30.430

2 AAC 12.480. NOVATION OR CHANGE OF NAME.

(a) A state contract or subcontract may not be transferred or otherwise assigned without the prior written consent of the procurement officer responsible for the contract.

(b) If the procurement officer responsible for the contract determines it is in the best interests of the state, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee agree that

- (1) the transferee assumes all of the transferor's obligations under the contract;
- (2) the transferor waives any and all rights it has under the contract against the state; and
- (3) the transferee furnishes satisfactory performance and payment bonds, if required by the procurement officer.

(c) If a contractor requests to change the name in which it holds a contract with the state, the procurement officer responsible for the contract may, when it is in the best interests of the state, enter into an agreement

with the requesting contractor to effect the name change. The agreement changing the name must specifically indicate that no other terms and conditions of the contract are changed.

(d) An assignment of payments of a state contract may not be made without the prior written consent of the contracting agency responsible for the contract. (*Eff. 1/1/88, Register 104; am 3/30/90, Register 113; am 11/28/97, Register 144*)

Authority: AS 36.30.040

2 AAC 12.485. CONTRACT AMENDMENTS.

(a) Except for contract amendments in a contract with a clause that authorizes adjustment under 2 AAC 12.475 (a), all amendments to contracts shall be made in accordance with this section.

(b) The procurement officer may amend a contract for construction, as "construction" is defined under AS 36.30.990, but only if the amendment is within the scope of the original contract.

(c) The procurement officer may amend a contract established under 2 AAC 12.400 within the scope of the original contract, but the amendment may not increase the contract beyond the small procurement limits established under AS 36.30.320.

(d) Except for amendments established under (b) or (c) of this section, unanticipated contract amendments that exceed the lesser of 20 percent of the amount of the original term of the contract, or a subsequent current term of the contract, as applicable, or \$100,000, may be made only if the chief procurement officer or, for state equipment fleet contracts, the commissioner of transportation and public facilities, or, for contracts for the services of legal counsel, the attorney general, determines in writing that the amendment is in the state's best interest. A request by a purchasing agency to amend a contract that exceeds these limits must be accompanied by a written explanation listing specific reasons why the amendment is in the state's best interests, and must address

(1) 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;

(2) whether the additional work is within the scope of the original contract;

(3) whether the contract contains clauses authorizing modification; and

(4) 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.

(e) An amendment to a contract which the procurement officer determines does not address each provision set out in (d)(1) - (4) of this section but which is determined by the procurement officer to be in the state's best interest may qualify as a single source procurement under 2 AAC 12.410. (*Eff. 11/28/97, Register 144; am 2/28/2014, Register 209*)

Authority: AS 36.30.040

2 AAC 12.490. RESPONSIBILITY OF PROSPECTIVE CONTRACTORS.

Repealed 3/27/93.

2 AAC 12.500. STANDARDS OF RESPONSIBILITY.

(a) Factors that may be considered in determining whether a prospective contractor is responsible include whether the prospective contractor

- (1) has a satisfactory record of performance;
- (2) is qualified legally to contract with the state; and
- (3) has supplied all necessary information in connection with the inquiry concerning responsibility.

(b) The procurement officer may require the prospective contractor to demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel, by submitting

- (1) evidence that the contractor possesses the necessary items;
- (2) acceptable plans to subcontract for the necessary items;
- (3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items; or
- (4) other information required by the procurement officer.

(c) The state's determination of responsibility does not relieve the contractor from the requirements for performance under the contract. (*Eff. 1/1/88, Register 104; am 5/26/2004, Register 170*)

Authority: AS 36.30.040 AS 36.30.360

2 AAC 12.510. ACCESS TO PLANT OR PLACE OF BUSINESS.

(a) If an inspection is made in the plant or place of business of a contractor or subcontractor, the contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

(b) On-site inspection of construction shall be performed in accordance with the terms of the contract. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.410

2 AAC 12.520. INSPECTION AND TESTING OF SUPPLIES AND SERVICES.

(a) The state will, in its discretion, inspect supplies and services at the contractor or subcontractor's facility and may perform tests to determine whether they conform to solicitation requirements, or after award, to contract requirements. Inspections and tests will be conducted at any reasonable time.

(b) The Chief Procurement Officer may establish operational procedures governing the testing and trial use of equipment, materials, and other supplies by a state agency, and the application of resulting information and data to specifications or procurements. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.410

2 AAC 12.530. RETENTION OF BOOKS AND RECORDS.

Books and records that relate to a state contract or subcontract shall be retained so that all actual costs related to the contract or subcontract can be easily determined. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.420

2 AAC 12.540. PRICE ANALYSIS.

The Chief Procurement Officer and the Commissioner of Transportation and Public Facilities may establish procedures for price analysis in the bid evaluation process. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040

2 AAC 12.550. COST AND PRICING DATA.

A procurement officer may not waive the requirements of AS 36.30.400 (a) concerning submission of cost and pricing data. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.400

2 AAC 12.560. GUIDELINES FOR COST PRINCIPLES.

(a) The Commissioner of Administration, the Commissioner of Transportation and Public Facilities, or the Chief Procurement Officer may establish guidelines for cost principles that may be used to determine allowability of incurred costs for the purpose of reimbursement under contract provisions that provide for the reimbursement of costs.

(b) Cost principles may be modified by contract upon approval of the head of the using agency. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040

2 AAC 12.570. USE OF FEDERAL COST PRINCIPLES.

In dealing with contractors operating according to federal cost principles, such as Defense Acquisition Regulations, Section 15, or Federal Procurement Regulations, Part 1-15, the procurement officer may use the federal cost principles as guidance in contract negotiations. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.480

ARTICLE 11. INNOVATIVE PROCUREMENT

2 AAC 12.575. CONDITIONS FOR USE OF INNOVATIVE PROCUREMENT.

(a) A request to use an innovative procurement procedure shall be submitted in writing by a purchasing agency to the Chief Procurement Officer or, for construction contracts or procurements for the state equipment fleet, to the Commissioner of Transportation and Public Facilities. The agency must include in the written request an explanation of the proposed innovative procurement procedure, how this procedure will achieve the best value, or why it is advantageous to the state due to new state needs, unique state needs, or new technologies.

(b) Following approval under (a) of this section, the requesting agency shall submit a detailed procurement plan to the Department of Law for review and approval as to form before issuing public notice as required under AS 36.30.130. The plan shall, at a minimum, address the method of solicitation, scope, method of award, protest procedures, and proposed contract provisions. If the plan is submitted for a construction contract, the plan may address the use of a bonus in lieu of preferences. (*Eff. 11/28/97, Register 144*)

Authority: AS 36.30.040 AS 36.30.308

2 AAC 12.577. RECORD OF INNOVATIVE PROCUREMENT.

(a) An agency that, under 2 AAC 12.575, requests use of innovative procurement shall maintain its innovative procurement files open for inspection as required under AS 36.30.140 (b) and AS 36.30.230. The innovative procurement files must contain:

- (1) a copy of the contract;
- (2) the written determination of the Chief Procurement Officer or the Commissioner of Transportation and Public Facilities to use the innovative procurement procedure;
- (3) the procurement plan as approved to form by the Department of Law;
- (4) the record of notice as required under AS 36.30.130 ; and
- (5) the record of respondents to the solicitation.

(b) A summary of the information contained in a file described in (a) of this section will be provided by the requesting agency to the Commissioner of the Department of Administration. (*Eff. 11/28/97, Register 144*)

Authority: AS 36.30.140 AS 36.30.230 AS 36.30.522

ARTICLE 12. SUPPLY MANAGEMENT

2 AAC 12.580. INVENTORIES.

The Chief Procurement Officer, the Commissioner of Transportation and Public Facilities, and the head of a purchasing agency may establish procedures to determine appropriate stock levels and the management of agency supplies. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040

2 AAC 12.590. SUPPLIES INVENTORY RECORDS.

(a) State agencies shall submit inventory records as directed by the Chief Procurement Officer. Inventory records must include the following:

- (1) all nonconsumable supplies with a unit acquisition cost of more than \$5,000;
- (2) supplies determined by the Chief Procurement Officer to be sensitive, regardless of cost;
- (3) lease purchase or installment purchase equipment or long term rental equipment; and
- (4) supplies on loan for contractor or grantee use.

(b) Inventory records must be based on a physical inventory and adjusted for subsequent purchases, property traded in, transferred to another state agency, salvaged, or disposed of.

(c) A state agency may be required by the Chief Procurement Officer to take physical inventory of supplies annually and at other times as the Chief Procurement Officer directs.

(d) Theft of supplies valued at \$500 or more shall be immediately reported to the appropriate law enforcement agency. All lost, stolen, or destroyed supplies shall be reported to the Chief Procurement Officer by the agency. (*Eff. 1/1/88, Register 104; am 3/30/90, Register 113; am 11/28/97, Register 144; am 2/28/2014, Register 209*)

Authority: AS 36.30.040 AS 36.30.070 AS 37.05.160

2 AAC 12.600. STATE SURPLUS SUPPLIES.

(a) The Chief Procurement Officer may act on behalf of the state in all matters pertaining to the disposition of surplus supplies. A purchasing agency may not transfer or otherwise dispose of supplies owned by the state without separate statutory authorization or authorization of the Chief Procurement Officer. The authorization, if granted by the Chief Procurement Officer, shall be in writing and include disposal procedures. This subsection does not apply to disposition of surplus supplies by the University of Alaska, the Alaska Court System, or the legislative branch.

(b) A purchasing agency shall notify the Chief Procurement Officer of all surplus supplies on the forms and at the times prescribed by the Chief Procurement Officer.

(c) The Chief Procurement Officer shall offer surplus supplies through spot bids, competitive sealed bids, public auction, established markets, lease, trade or posted prices. If unusual circumstances render the methods required by this subsection impractical, the Chief Procurement Officer may employ other disposition methods, including appraisal or barter.

(d) If the Chief Procurement Officer offers surplus supplies by competitive sealed bid, notice of sale of the surplus supplies must be publicly available from the Chief Procurement Officer at least 10 days before the date set for opening bids.

(e) An employee, contractor, or grantee of an agency that owns or disposes of surplus supplies may not directly or indirectly purchase or agree with another person to purchase surplus supplies if the employee, contractor, or grantee is, or has been, directly or indirectly involved in the disposal, maintenance, or preparation for sale of the surplus supplies. However, the Chief Procurement Officer may authorize the employee, contractor, or grantee to purchase surplus supplies in advance in writing.

(f) The Chief Procurement Officer may offer surplus supplies by negotiated sale, transfer, lease, or donation to local governments, public procurement units, or tax exempt nonprofit organizations when the Chief Procurement Officer determines it to be in the state's best interests. *(Eff. 1/1/88, Register 104; am 3/30/90, Register 113; am 11/28/97, Register 144)*

Authority: AS 36.30.040 AS 36.30.070

2 AAC 12.610. FEDERAL SURPLUS MATERIAL PROGRAM.

The Department of Administration will, at its discretion, acquire and distribute from the United States Government surplus property that may be usable and necessary for public purposes by a state agency or a political subdivision of the state. The Chief Procurement Officer may

- (1) prepare and file a state plan of operation with the United States General Services Administration;
- (2) act on behalf of the state with federal agencies or other surplus property agencies regarding federal surplus property; and
- (3) distribute federal surplus property to eligible entities. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.070

ARTICLE 13. LEGAL AND CONTRACTUAL REMEDIES

2 AAC 12.615. PROTEST OF CANCELLATION OF SOLICITATION.

(a) Repealed 11/28/97.

(b) An interested party may protest the cancellation of an invitation to bid or request for proposals by filing with the procurement officer a written protest that includes the information required by AS 36.30.560 no more than 10 days after a notice of cancellation is issued by the procurement officer. (*Eff. 3/30/90, Register 113; am 3/27/93, Register 125; am 11/28/97, Register 144*)

Authority: AS 36.30.040

2 AAC 12.620. DECISION TO SUSPEND.

(a) If a determination to suspend a contractor or prospective contractor is made under AS 36.30.635, the written decision shall be sent to the person to be suspended. The decision must state that

(1) the suspension is for the period it takes to complete an investigation into possible debarment, but not for a period in excess of three months;

(2) bids or proposals will not be solicited from the suspended person, and, if they are received, they will not be considered during the period of suspension; and

(3) if a hearing has not been held, the suspended person may request a hearing.

(b) A contractor or prospective contractor is suspended upon issuance of the written decision to suspend. The suspension remains in effect during an appeal. The suspension may be ended by the officer who issued the written decision to suspend or by a court. Otherwise, the suspension ends when it has been in effect for three months or when a debarment decision takes effect. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.635

2 AAC 12.630. INITIATION OF DEBARMENT ACTION.

(a) Written notice of a proposed debarment action shall be sent by certified mail, return receipt requested, to the last known address of the contractor or prospective contractor. This notice must

(1) state that debarment is being considered;

(2) set out the reasons for the action;

(3) state that the contractor or prospective contractor may be represented by counsel.

(b) Notice of proposed debarment must also be sent to the Attorney General and the purchasing agency. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.635

2 AAC 12.640. EFFECT OF DEBARMENT DECISION.

A debarment decision takes effect upon issuance of the written decision. After the debarment decision takes effect, the contractor remains debarred until a court or the commissioner of the department that issued the decision orders otherwise, or until the debarment period specified in the decision expires. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.635

2 AAC 12.650. REQUEST FOR HEARING.

A person entitled to a hearing under AS 36.30 must request in writing that a hearing be held. The request must be received by the Commissioner of Administration or the Commissioner of Transportation and Public Facilities, as appropriate, within the applicable time period set out in AS 36.30 and must set out specific grounds for the hearing. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.695

2 AAC 12.660. NOTICE OF TIME AND PLACE OF HEARING.

The hearing officer shall send a written notice of the time and place of a hearing to the last known addresses of the person requesting the hearing and other affected persons. A copy shall be sent to the purchasing agency. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.670

2 AAC 12.670. HEARING PROCEDURES.

(a) A hearing shall be as informal as is reasonable and appropriate under the circumstances. The weight to be attached to evidence presented is within the discretion of the hearing officer. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The hearing officer may require evidence in addition to that offered by the parties.

(b) A hearing shall be recorded. All evidence produced at a hearing shall be preserved by the Commissioner of the Department of Administration or the commissioner's designee.

(c) Opening statements may be made at the hearing at the discretion of the hearing officer.

(d) The particular principles of law listed in AS 36.30.860 will be considered by the hearing officer if they are specifically argued by a party.

(e) A witness must testify under oath or affirmation. A witness may be cross-examined. (*Eff. 1/1/88, Register 104; am 11/28/97, Register 144*)

Authority: AS 36.30.040 AS 36.30.670

2 AAC 12.680. REPORTING SUSPECTED ANTI-COMPETITIVE PRACTICES.

The Chief Procurement Officer, in consultation with the Attorney General, shall develop procedures, including forms, for reporting suspected anti-competitive practices. A procurement officer who suspects that an anti-competitive practice has occurred or may be occurring shall follow these procedures. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.635 AS 36.30.920

2 AAC 12.690. MISREPRESENTATIONS AND FRAUDULENT CLAIMS.

In accordance with AS 36.30.687, upon a finding that the recipient of a state contract made misrepresentations or fraudulent claims at any stage of proceedings relating to a procurement or contract controversy, the procurement officer or the head of a purchasing agency may, after consulting with the Attorney General, declare the contract void. (*Eff. 1/1/88, Register 104; 11/28/97, Register 144*)

Authority: AS 36.30.040 AS 36.30.687

2 AAC 12.695. PROTESTS OF SMALL PROCUREMENTS.

(a) An interested party shall attempt to informally resolve a dispute with the procurement officer regarding a small procurement. If the attempt is unsuccessful, the interested party may protest the solicitation or the award of a small procurement contract under AS 36.30.320. The protest must be filed with the commissioner of the purchasing agency or the commissioner's designee. The protester must file a copy of the protest with the procurement officer for the purchasing agency.

(b) If protesting a solicitation issued under 2 AAC 12.400, a protest shall be filed before the date and time that quotations or informal proposals are due to the purchasing agency.

(c) If protesting the award of a small procurement contract of not more than \$50,000, the protest shall be filed within 10 days from the date of the solicitation or award, whichever is later.

(d) If protesting the award of a small procurement contract greater than \$50,000, a protest shall be filed within 10 days from the date that notice of award is made.

(e) To be accepted by the purchasing agency, a protest filed under (a) - (d) of this section shall contain the information required under AS 36.30.560.

(f) The procurement officer shall immediately give notice of the protest to the contractor or, if no award has been made, to all firms or persons that were solicited for the small procurement.

(g) The appropriate commissioner or commissioner's designee shall

(1) with the concurrence of the protester, assign the protest to the procurement officer or other responsible state official for a final administrative resolution under alternate dispute resolution;

(2) issue a decision denying the protest and stating the reasons for denial;

(3) issue a decision that sustains the protest, in whole or in part, and instruct the procurement officer to implement an appropriate remedy; or

(4) conduct a hearing on the protest consistent with the procedures contained in AS 36.30.670(b).
(*Eff. 4/25/97, Register 142; am 2/28/2014, Register 209*)

Authority: AS 36.30.040 AS 36.30.550

ARTICLE 14. INTERGOVERNMENTAL RELATIONS

2 AAC 12.700. REQUESTS FOR PERSONNEL, INFORMATION, AND SERVICES.

(a) A request made to a public procurement unit by another public procurement unit to provide or make available personnel, services, information, or technical services under AS 36.30.730 must be complied with only to the extent that is mutually agreed upon.

(b) A request made to a state public procurement unit by another state public procurement unit to provide or make available personnel, services, information, or technical services under AS 36.30.730 must comply with the procedures established by the office of management and budget.

(c) A request made to a state public procurement unit by another public procurement unit to provide or make available personnel, services, information, or technical services under AS 36.30.730 must comply with AS 37.07, the Executive Budget Act. (*Eff. 1/1/88, Register 104*)

Authority: AS 44.17.030 Art. III, sec. 1, Ak. Const. Art. III, sec. 16, Ak. Const.
Art. III, sec. 24, Ak. Const.

2 AAC 12.710. DEFINITION.

In AS 36.30.790 (5), "agency" means the same as in AS 36.30.990. (*Eff. 1/1/88, Register 104*)

Authority: AS 44.17.030 Art. III, sec. 1, Ak. Const. Art. III, sec. 16, Ak. Const.
Art. III, sec. 24, Ak. Const.

ARTICLE 15. MISCELLANEOUS PROVISIONS

2 AAC 12.720. APPLICABILITY.

This chapter applies to every transaction to which AS 36.30 applies. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.850

2 AAC 12.725. PROCUREMENT LIMITATIONS RELATING TO HUMAN TRAFFICKING.

(a) Procurement may not be made from a person that has headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C).

(b) The commissioner may restrict procurement from a person that conducts business in, but does not have headquarters in, a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). *(Eff. 1/15/11, Register 197)*

Authority: AS 36.30.040

2 AAC 12.730. FEDERAL ASSISTANCE.

If a procurement involves the expenditure of federal money or requires federal assistance and there is a conflict between a provision of this chapter and a federal statute, regulation, policy, or requirement, the procurement officer shall comply with the federal statute, regulation, policy, or requirement. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.890

2 AAC 12.735. USE OF FEDERAL GENERAL SERVICES ADMINISTRATION CONTRACTS.

When making or planning a purchase through the General Services Administration or from federal supply schedules of the General Services Administration as authorized by AS 36.30.910, a procurement officer

- (1) shall review the scheduled price lists that are reasonably available when purchasing through the General Services Administration under AS 36.30.910 or from federal supply schedules;
- (2) may not purchase under this section if a mandatory state contract exists for the item or service;
- (3) shall place the order with the schedule contractor offering the lowest delivered price unless the purchase is made under (4) of this section;
- (4) may order an item that has a higher price than the lowest delivered price but only if the procurement officer makes a written determination that only the higher priced item will satisfy the state's needs; and
- (5) may purchase only from a person that qualifies as an Alaska bidder under AS 36.30.990(2). *(Eff. 11/28/97, Register 144; am 2/28/2014, Register 209)*

Authority: AS 36.30.040 AS 36.30.910

2 AAC 12.740. AUTHORITY TO DELEGATE.

(a) Except as otherwise provided by AS 36.30 or this chapter, the Chief Procurement Officer, Commissioner of Administration, Commissioner of Transportation and Public Facilities, or the Commissioner of Commerce and Economic Development will, in their discretion, delegate their authority under AS 36.30 to an employee in a department or agency. Authority conferred on the head of a purchasing agency by AS 36.30 may be delegated by that officer to an employee in that purchasing agency. A delegation of authority must be in writing.

(b) The Chief Procurement Officer, Commissioner of Administration, Commissioner of Transportation and Public Facilities, Commissioner of Commerce and Economic Development, or the head of a purchasing agency may revoke authority that the officer has delegated.

(c) An employee who is delegated authority by the Chief Procurement Officer, Commissioner of Administration, Commissioner of Transportation and Public Facilities, Commissioner of Commerce and Economic Development, or the head of a purchasing agency, may exercise that authority only in accordance with the delegation, AS 36.30, and this chapter. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.015

2 AAC 12.750. PURCHASE REQUESTS BY AGENCIES.

(a) If the Chief Procurement Officer believes that a purchase request is not in the best interests of the state or that further review is needed, the officer shall return the purchase request to the requesting agency.

(b) The Chief Procurement Officer may decide when a procurement will be initiated. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040

2 AAC 12.760. PURCHASE OF ITEMS SEPARATELY FROM CONSTRUCTION CONTRACT.

The Commissioner of Transportation and Public Facilities is authorized to determine whether a supply item or group of supply items will be included as a part of, or procured separately from, a contract for construction. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.005 AS 36.30.040

2 AAC 12.770. TRADE SECRETS AND CONFIDENTIAL TECHNICAL DATA.

The Chief Procurement Officer and the Commissioner of Transportation and Public Facilities may establish procedures to protect the confidentiality of trade secrets and confidential technical data. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.140 AS 36.30.230

2 AAC 12.780. DETERMINATION OF CONTRACTUAL TERMS AND CONDITIONS.

(a) The Chief Procurement Officer may determine the contractual provisions, terms, and conditions of solicitations and contracts, if the provisions, terms, and conditions are not contrary to statutory or regulatory requirements governing the procurement and if all standard contract terms have been reviewed and approved as to form by the Attorney General.

(b) The Commissioner of Transportation and Public Facilities may determine the contractual provisions and conditions of solicitations and contracts for construction and procurement of equipment or services for the state equipment fleet if the provisions, terms, and conditions are not contrary to statutory or regulatory requirements governing the procurement, and if all standard contract terms have been reviewed and approved as to form by the Attorney General. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.340

2 AAC 12.790. NO RESTRICTIVE TERMS AND CONDITIONS.

Contractual terms and conditions may not have the effect of unnecessarily limiting competition or exclusively requiring a proprietary supply, service, or construction item or procurement from a single source unless no other requirements will suffice. *(Eff. 1/1/88, Register 104; am 11/28/97, Register 144)*

Authority: AS 36.30.040 AS 36.30.060

2 AAC 12.800. NON-COLLUSION CERTIFICATION.

Solicitations must provide that by submitting a bid or offer, the bidder or offeror certifies under penalty of perjury that the price submitted was independently arrived at without collusion. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040

2 AAC 12.810. BID, PAYMENT, AND PERFORMANCE BONDS FOR CONTRACTS.

Bid, payment, and performance bonds or other security shall be required for all construction contracts over \$100,000, and may be required for contracts as the Chief Procurement Officer, the head of a purchasing agency, or the officer's designee deems advisable to protect the interests of the state. Any such requirements must be set out in the solicitation. Irrevocable letters of credit may be substituted for the required bond at the discretion of the head of the purchasing agency. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040 AS 36.30.120

2 AAC 12.820. INSTALLMENT PURCHASE CONTRACTS.

Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. If the procurement is made by competitive sealed bid or competitive sealed proposal, an installment payment agreement may not be used unless a provision for installment payments is included in the solicitation. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040

2 AAC 12.830. ALTERNATE BIDS OR PROPOSALS.

Alternate bids or proposals are non-responsive unless the solicitation states that such bids or proposals may be accepted. (*Eff. 1/1/88, Register 104; am 3/27/93, Register 125*)

Authority: AS 36.30.040 AS 36.30.110 AS 36.30.210

2 AAC 12.840. CONDITIONING BIDS OR PROPOSALS.

(a) A bid or proposal that is conditioned upon receiving award of both the particular contract being solicited and another state contract is non-responsive unless conditioned bids are specifically authorized in the invitation to bid.

(b) A bid that is conditioned by the bidder and the condition requires a change to a material term of the solicitation is nonresponsive unless conditioned bids are specifically authorized in the invitation to bid.

(c) A proposal that is conditioned by the offeror and the condition requires a change to a material term of the solicitation may be rejected. The reasons for the rejection include the following:

- (1) the condition does not meet the goals of the solicitation;
- (2) the condition would violate AS 36.30 or other statutes and regulations;
- (3) the condition is not in the best interest of the state.

(d) For purposes of this section, "material term" includes a

- (1) novation or assignment;
- (2) term that affects price, quality, quantity, or delivery. (*Eff. 1/1/88, Register 104; am 10/3/2002, Register 163*).

Authority: AS 36.30.040 AS 36.30.110 AS 36.30.210

2 AAC 12.850. EXTENSION OF SOLICITATION OPENING TIME; CANCELLATION OF SOLICITATION; AMENDMENT OF SOLICITATION.

(a) Before the opening of bids or proposals, a solicitation may be amended, or time for opening may be extended, upon the procurement officer's determination that the extension or amendment is in the state's best interest. All potential bidders or offerors known to have copies of the solicitation shall be advised of the extension or amendment.

(b) Before the opening of bids or proposals, 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 the following:

- (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 officer, after consultation with the Attorney General, determines that a solicitation is in violation of the law. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.350

2 AAC 12.860. REJECTION OF ALL BIDS OR PROPOSALS.

After the opening of bids or proposals or after notice of intent to award but before award, all bids or proposals 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. (*Eff. 1/1/88, Register 104*)

Authority: AS 36.30.040 AS 36.30.350

2 AAC 12.870. REJECTION OF INDIVIDUAL BIDS OR PROPOSALS.

Reasons for rejecting an individual bid or proposal include the following:

- (1) the business that submitted the bid or proposal is not responsible as determined under standards set out in 2 AAC 12.500;
- (2) the bid or proposal is non-responsive;
- (3) the bidder or offeror did not meet the qualification requirements of 2 AAC 12.875;
- (4) the supply, service, or construction item fails to meet the specifications or other acceptability criteria set out in the solicitation; or
- (5) the bid or proposal fails to meet the goals or other provisions set out in the solicitation to eliminate and prevent in state contracting discrimination because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, or disability. (*Eff. 1/1/88, Register 104; am 5/16/88, Register 106; am 6/29/95, Register 134; am 10/3/2002, Register 163*).

Authority: AS 36.30.040 AS 36.30.350

2 AAC 12.875. QUALIFIED BIDDERS OR OFFERORS.

(a) Unless provided for otherwise in the solicitation, to qualify as a bidder or offeror for award of a contract issued under AS 36.30, a bidder or offeror must

- (1) add value in the contract by actually performing, controlling, managing, or supervising the services to be provided; or
- (2) be in the business of selling and have actually sold on a regular basis the supplies that are the subject of the solicitation.

(b) If a bidder or offeror leases services or supplies or acts as a broker or agent in providing the services or supplies in order to meet the requirements of (a) of this section, the procurement officer may not accept the bidder or offeror as a qualified bidder or offeror under AS 36.30. *(Eff. 10/3/2002, Register 163)*

Authority: AS 36.30.040

2 AAC 12.880. DISPOSITION OF BIDS OR PROPOSALS.

(a) If an invitation to bid is canceled before opening, bids may be returned upon request. If bids are rejected after opening, the bids must be retained in the procurement file.

(b) If anytime during the solicitation process a request for proposals is canceled, the procurement officer may return proposals if the time for filing a protest has expired and a protest has not been filed.

(c) The procurement officer shall keep a list of returned bids or proposals in the procurement file. *(Eff. 1/1/88, Register 104; am 11/28/97, Register 144)*

Authority: AS 36.30.040 AS 36.30.230 AS 36.30.250
AS 36.30.350

2 AAC 12.890. APPLICATION OF PREFERENCES.

Except for the Alaska products preference under AS 36.30.328, if multiple preferences apply to a solicitation, the values of the applicable preferences shall be summed and applied to the qualifying bid. If applying the Alaska products preference, the preference shall only be applied to the qualifying product. *(Eff. 1/1/88, Register 104; am 7/20/95, Register 135; am 2/28/2014, Register 209)*

Authority: AS 36.30.040 AS 36.30.328 AS 36.30.336

2 AAC 12.900. LOW TIE BIDS OR PROPOSALS.

Tie bids are low bids that are responsive, responsible, and identical in price after application of preferences under AS 36.30.321. Tied proposals are highest ranked proposals that are responsive, responsible, and identical in score after application of preferences under AS 36.30.321. If tied bids or proposals exist, award shall be made through a random drawing. Award may not be made by dividing the procurement among identical bidders. *(Eff. 1/1/88, Register 104; am 2/28/2014, Register 209)*

Authority: AS 36.30.040 AS 36.30.150

2 AAC 12.910. EXTENSION OF TIME FOR BID OR PROPOSAL ACCEPTANCE.

After opening bids or proposals, a procurement officer may request bidders or offerors to extend the time during which the state may accept a bid or proposal. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040

2 AAC 12.920. MULTIPLE AWARD.

A multiple award may be made if award to two or more bidders or offerors of similar products is necessary for adequate delivery, service, or product compatibility. A multiple award shall be made in accordance with the provisions relating to competitive sealed bidding, competitive sealed proposals, small purchases, and emergency procurements, as applicable. Multiple awards may not be made if a single award will meet the state's needs without sacrifice of economy or service. Awards may not be made for the purpose of dividing the procurement, or to allow for user preference unrelated to utility or economy. *(Eff. 1/1/88, Register 104)*

Authority: AS 36.30.040

ARTICLE 16. DESIGN-BUILD CONSTRUCTION CONTRACTS

This section is excluded from this document as section 16 is specific to the Department of Transportation and Public Facilities (DOT&PF). Further guidance on this section may be obtained by contacting DOT&PF.

ARTICLE 17. CONSTRUCTION ARBITRATION PROCEDURES

This section is excluded from this document as section 17 is specific to the Department of Transportation and Public Facilities (DOT&PF). Further guidance on this section may be obtained by contacting DOT&PF.

ARTICLE 18. GENERAL PROVISIONS

2 AAC 12.990. DEFINITIONS.

(a) In this chapter

(1) "business license" means a license required under the Alaska Business License Act (AS 43.70) and, for a person engaging in a business subject to licensing provisions of a regulatory nature, a license, certificate, permit, registration, or similar evidence of authority issued for an occupation by competent legal authority;

(2) "chief procurement officer" means the officer appointed under AS 36.30.010 as the chief procurement officer;

(3) "concession contract" means a contract

(A) in which the primary method of compensation is based on commissions paid to the contractor;

(B) the commissions are generated from the collection of receipts, or fees for services, charged to customers other than the state; and

(C) generally, the commissions are based on a percentage of gross sales or an established fee schedule and do not involve the expenditure of state funds;

(4) "cost analysis" means the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed;

(5) "cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been actually incurred or that are expected to be incurred by the contractor in performing the contract;

(6) "employment agreement" means an agreement or contract between an employer and an employee in which the terms and conditions of employment are set out, and includes a contract with a citizen of a foreign country for services to be performed primarily in the foreign country, if the contract provides for such matters as state control of the work performed, the hours of work, the benefits that will be provided to a person who performs work under the contract, and the state's right to discharge a person who performs work under the contract;

(7) "interested party" means an actual or prospective bidder or offeror whose economic interest might be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract;

(8) "minor informalities" means matters of form rather than substance which are evident from the bid document, or are insignificant matters that have a negligible effect on price, quantity, quality, delivery, or contractual conditions and can be waived or corrected without prejudice to other bidders;

- (9) "nonresponsive" means a bid or proposal that does not conform in all material respects to the solicitation;
- (10) "price analysis" means the evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed;
- (11) "price data" means factual information concerning offered or proposed selling prices, historical selling prices, and current selling prices, including profit, for supplies, services, or construction substantially similar to those being procured;
- (12) "responsive bidder" means a firm or person who has submitted a bid that conforms in all material respects to the solicitation;
- (13) "solicitation" means an invitation to bid, a request for proposals, a request for quotations, or any other method of soliciting bids, proposals, or quotes to perform a state contract;
- (14) "accredited youth education and employment program" means a program that allows participants to earn academic credits that are recognized by a school district in this state;
- (15) "alternate dispute resolution" means an informal technique that is voluntarily used to resolve issues in controversy; "alternate dispute resolution" includes negotiation, mediation, facilitation, and arbitration;
- (16) "practicable" has the meaning given in (b) of this section;
- (17) "reasonable and adequate procedures" means procedures that ensure fairness to potential offerors and competition commensurate with the circumstances of the procurement, considering price, mission requirements, and available competition; "reasonable and adequate procedures" includes contacting only one potential offeror in appropriate circumstances;
- (18) "Alaska Online Public Notice System" means the system developed under AS 44.62.175;
- (19) "division of vocational rehabilitation" means the division of vocational rehabilitation in the Department of Labor and Workforce Development.

(b) In AS 36.30,

- (1) "medical doctor" means
 - (A) a person who is licensed to practice medicine in the state under AS 08.64;
 - (B) a person who is authorized to practice in the state as an advanced nurse practitioner because of specialized education and experience and who is certified to perform acts of medical diagnosis and to prescribe medical, therapeutic, or corrective measures under regulations adopted by the Board of Nursing (12 AAC 44.400);
 - (C) or a physician assistant as defined in 12 AAC 40.990;
- (2) "other governments" includes a

(A) federally recognized tribe; and

(B) foreign government;

for purposes of this paragraph, “federally recognized tribe” means a Native entity within the State of Alaska that is on the list published by the United States Bureau of Indian Affairs, Department of the Interior, in 67 Federal Register, 46331 – 46333 (July 12, 2002);

(3) “place of business” means that location at which normal business activities are conducted, services are rendered, or goods are made, stored, or processed; a post office box, mail drop, telephone, or answering service does not, by itself, constitute a “place of business”;

(4) "protestor" means an actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files a protest;

(5) "practicable" means what may reasonably be accomplished or applied;

(6) "practical" has the meaning given "practicable" in this subsection;

(7) “staffed” means that the bidder or at least one employee of the bidder is a resident of this state under AS 16.05.415(a).

(c) In the definition of "procurement officer" set out in AS 36.30.990 (20), "authorized" means authorized by a written delegation under 2 AAC 12.740 by the head of an agency that has a delegation of procurement authority based on a written determination of capability under AS 36.30.015.

(d) repealed 2/28/2014.

(e) repealed 2/28/2014.

(f) In the definition of “external procurement activity” set out in AS 36.30.790(2), an agency of a foreign government is an external procurement activity. *(Eff. 1/1/88, Register 104; am 3/30/90, Register 113; am 3/27/93, Register 125; am 4/25/97, Register 142; am 11/28/97, Register 144; am 10/3/2002, Register 163; am 1/15/2011, Register 197; am 2/28/2014, Register 209)*

Authority: AS 36.30.040