

INVITATIONS TO BID WRITTEN DETERMINATIONS

Purpose:

This procedure is to provide guidance to the Procurement Officer when preparing determinations required by statute in preparing, issuing or awarding Invitations to Bid (ITB).

General:

When the statutes or regulations require a determination by the Procurement Officer, Chief Procurement Officer or Commissioner of Administration, a written determination must be prepared. Depending on the determination called for and the specific delegation of authority provided to the person preparing the determination, either a recommendation requiring a higher approval or the final determination must be prepared by the Procurement Officer.

The listed determinations must be reviewed for every procurement action, and the required determinations shall be made. In the event that additional information is needed by the Procurement Officer, they should consult the statute and the regulation referenced. If circumstances warrant an alternate format, you may use an alternate approach provided it meets the minimum requirements of statute and regulation.

The Determinations are categorized as follows:

- A. A WRITTEN DETERMINATION IS REQUIRED (**IN GENERAL**)
- B. A WRITTEN DETERMINATION IS REQUIRED **PRIOR TO ISSUANCE OF AN ITB**
- C. **DURING ITB CIRCULATION**, A WRITTEN DETERMINATION IS REQUIRED
- D. **AFTER BID OPENING**, A WRITTEN DETERMINATION IS REQUIRED
- E. **WHEN A PROTEST IS FILED** CONCERNING AWARD OF A CONTRACT, THE PROPOSED AWARD OF A CONTRACT, OR A SOLICITATION, A WRITTEN DETERMINATION IS REQUIRED
- F. IN THE EVENT OF **A CONTRACT CONTROVERSY** UNDER AS 36.30.620, A WRITTEN DETERMINATION IS REQUIRED

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A. A WRITTEN DETERMINATION IS REQUIRED:

- A1. by the Procurement Officer to contract directly in response to an emergency if there is not sufficient time for the Chief Procurement Officer to make the determination per AS 36.30.310 (generally, if action needs to be taken within 72 hours). The procurement must be made in accordance with 2 AAC 12.450. If practical, approval by the head of the agency must be obtained before an emergency procurement of \$25,000 or more is made. A record of each agency emergency determination, including a copy of the determination, the procurement document, and a Procurement Report (Form 02-115), must be prepared and forwarded to DGS within 5 days of completion of the procurement.
- A2. by the head of an agency to approve Requests for Alternate Procurement (RAP) (Form 02-100) in amounts which do not exceed the statutory limit for Small Procurements for:
- [a] Single Source procurements for supplies, services, and professional services, in accordance with AS 36.30.300, 2 AAC 12.410-420 and the Administrative Manual.
 - [b] Limited Competition procurements for supplies, services, and professional services, in accordance with AS 36.30.305, 2 AAC 12.430 and the Administrative Manual.

This approval authority may not be sub-delegated below the level of Deputy Commissioner, Assistant Commissioner, or Director of Administrative Services.

- A3. by the Chief Procurement Officer prior to making a single source, or limited competition procurement above \$50,000, an innovative procurement, or an emergency procurement if sufficient time exists (Ref. AS 36.30.040, 300, 305, 308 & 310, and 2 AAC 12.410, 430 440, 575). **Form: RAP**
- A4. by the Chief Procurement Officer to exceed the contract amendment limitation of the lesser of 20% of the current contract term value or \$50,000 (Ref. 2 AAC 12.485) **Form: RAP**
- A5. by the Procurement Officer prior to using a competitive sealed proposal instead of a competitive sealed bid (Ref. AS 36.30.200(b) & 2 AAC 12.215(b)). **Form: Written Determination**
- A6. by the Commissioner of Administration to determine whether supplies or services produced by industries of Alaska Correctional Institutions (ACI) meet the State's requirements, meet marketability standards and whether the price represents a reasonable cost for such supplies or services (Ref. AS 33.32.030 & 313, 2 AAC 12.030). **Form: Written Determination**

Agency Commissioners have been delegated the authority to approve one-time determinations under AS 33.32.030 to purchase non-contract award items from ACI valued at \$25,000 and less. Guidelines and forms are found in departmental delegations of purchasing authority. **Form: Written Determination**

- A7. by the Procurement Officer before procuring supplies or services from State employment programs or youth education and employment programs (Ref. AS 36.30.311, 2 AAC 12.050). **Form: Written Determination**
- A8. by the Procurement Officer before a contract or subcontract is transferred or otherwise assigned (Ref. AS 36.30.040, 2 AAC 12.480). **Form: Written Determination**
- A9. by the Department of Commerce & Economic Development, Division of Occupational Licensing to determine if a bidder possesses a valid Alaska business license (Ref. AS 36.30.110(b), 2 AAC 12.990(a)(1)). **Form: Memo to Commerce**
- A10. by the Procurement Officer before an ITB is issued for a multiple contracts. 2 AAC 12.920, MULTIPLE AWARD, says that multiple awards may be made if award to two or more bidders of similar products is required for the State to get adequate delivery, service, or product compatibility. The ITB must specify how the multiple contracts will be utilized by the State. **Form: Written Determination**

Multiple awards may not be made:

- if a single award will meet the State's needs without sacrificing economy or service,
- based on the product preference of a user when that preference is not related to the utility or economy of the product, or
- for the sole purpose of dividing the procurement among certain bidders.

B. A WRITTEN DETERMINATION IS REQUIRED PRIOR TO ISSUANCE OF AN ITB:

- B1. by the Chief Procurement Officer in order to provide public notice outside Alaska. When providing public notice of an ITB, advertisements may be placed only in newspapers or media intended to reach prospective Alaskan offerors. However, if an out-of-state contractor requests a copy of the ITB during the solicitation, the Procurement Officer must provide one.

Situations may arise that make it impracticable to solicit only from Alaskan offerors. The Chief Procurement Officer will consider exceptions to this requirement if the Procurement Officer demonstrates that it is impracticable to solicit competition from Alaskan vendors only (Ref. AS 36.30.130) **Form: Memo approved by Chief Procurement Officer**

- B2. by the Procurement Officer to limit the procurement of items to a specific manufacturer's name or catalog numbers (Ref. AS 36.30.040 & 060, 2 AAC 12.100). **Form: Written Determination**
- B3. by the Procurement Officer to exclude a potential contractor from bidding (Ref. AS 36.30.040 & 050, 2 AAC 12.020). **Form: Written Determination**
- B4. by the Procurement Officer to develop a qualified products list if testing or examination of the supplies or construction items, before issuance of the solicitation, is desirable or necessary in order to satisfy State requirements (Ref. AS 36.30.040 & 060, 2 AAC 12.110). **Form: Memo approved by the Chief Procurement Officer, or the Commissioner of Transportation and Public Facilities**
- B5. by the Procurement Officer prior to conducting multi-step bidding (Ref. AS 36.30.190). **Form: Written Determination**
- B6. by the Procurement Officer before using a multi-term or multi-year contract. (Ref. AS 36.30.390). **Form: Written Determination**
- B7. by the Procurement Officer to limit the circulation period of an ITB to less than 21 calendar days. (Ref. AS 36.30.040 & 130, 2 AAC 12.130). **Form: Written Determination**
- B8. by the Procurement Officer to include a bid performance or payment bond into an ITB. The Procurement Officer shall establish a need for the bond. The amount shall be calculated to cover the risk to the State based on the cost of the premium price to obtain performance after a default (Ref. 2 AAC 12.810). **Form: Memo approved by the Chief Procurement Officer, the Head of a Purchasing Agency, or designee**
- B9. by the Procurement Officer to vary the clauses adopted under AS 36.30.430 (boilerplate) for inclusion in a particular State contract (Ref. AS 36.30.460). **Form: Memo approved by AG's Office**
- B10. by the Procurement Officer to exclude local forest products and local agricultural and fisheries product preferences from an ITB. (Ref. AS 36.15.010 and 36.15.050) **Form: Written Determination**
- B11. by the Procurement Officer to use a point of delivery outside the State of Alaska. (Ref. AS 36.30.331). **Form: Written Determination**

- B12. by the Procurement Officer to include a liquidated damages clause into an ITB. The Procurement Officer shall establish a need for the liquidated damages clause. The amount shall be calculated to cover actual damages that may be incurred by the State.
Form: Written Determination
- B13. by the Procurement Officer to exclude the Alaska business license requirement; the Alaska Bidder Preference; or the Alaska Product Preference, from an ITB where Federal Assistance or money is involved 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. (Ref. AS 36.30.040 & 890 and 2 AAC 12.730) **Form: Written Determination**
- C. DURING ITB CIRCULATION, A WRITTEN DETERMINATION IS REQUIRED:**
- C1. to amend an ITB (even if the amendment only extends the bid opening). (Ref. AS 36.30.040 & 350, 2 AAC 12.850). **Form: Written Determination**
- C2. to cancel an ITB in whole or in part before opening bids (even if the amendment only cancels one line item) (Ref. AS 36.30.040 & 350, 2 AAC 12.850). **Form: Written Determination**
- D. AFTER BID OPENING, A WRITTEN DETERMINATION IS REQUIRED:**
- D1. by the Procurement Officer to reject a prospective contractor's bid if they assisted in drafting the Invitation to Bid or gained substantial information regarding the ITB. (Ref. AS 36.30.040 and 2 AAC 12.020)
Form: Written Determination
- D2. by the Procurement Officer (concerning mistakes by bidder) to permit the correction or withdrawal of a bid, or to cancel an award of contract based on a bid mistake (Ref. AS 36.30.040 & 160, 2 AAC 12.170). **Form: Written Determination**
- D3. by the Procurement Officer when only one responsive bid is received, award may then be made to the single bidder (Ref. AS 36.30.040 & 350, 2 AAC 12.190).
Form: Written Determination
- D4. by the Procurement Officer to determine that the prospective contractor is not a responsible bidder. (Ref. AS 36.30.040 & 360, 2 AAC 12.490). **Form: Written Determination**
- D5. by the Procurement Officer to reject all bids in whole or in part or to cancel all, or a portion, of the ITB. This determination is not required when all bids in a lot are nonresponsive or when all bids in an ITB are nonresponsive. It is only required when bids are rejected for one of the reasons listed in the determination (Ref. AS 36.30.040 & 350, 2 AAC 12.860). **Form: Memo Approved by the Head of an Agency**
- D6. by the Procurement Officer when the ITB requires security. The Procurement Officer shall reject a bid that does not comply with the bid security requirement unless, in accordance with regulations, the Procurement Officer determines that the bid fails to comply in a non-substantial manner with the security requirements. (Ref. AS 36.30.120).
Form: Written Determination

- E. WHEN A PROTEST IS FILED CONCERNING AWARD OF A CONTRACT, THE PROPOSED AWARD OF A CONTRACT, OR A SOLICITATION, A WRITTEN DETERMINATION IS REQUIRED:**
- E1. The Procurement Officer shall immediately give notice of a protest to the contractor if a contract has been awarded or, if no award has been made, to all bidders. (Ref. AS 36.30.570). **Form: Letter to Interested Parties**
- E2. The award may be made unless the Procurement Officer determines in writing that a reasonable probability exists that the protest will be sustained or the stay of award is not contrary to the best interests of the State. (Ref. AS 36.30.575). **Form: Written Determination**
- E3. The Procurement Officer shall issue a written decision containing the basis of their decision within 15 calendar days after a protest has been filed. A copy of the decision shall be furnished to the protester by certified mail. **Form: Letter to Protestor**
- E4. The time for the decision may be extended up to 30 calendar days for good cause by the Commissioner of Administration. If an extension is granted, the Procurement Officer shall notify the protester in writing of the date the decision is due. (Ref. AS 36.30.580). **Form: Memo approved by Commissioner of Administration**
- E6. Within ten (10) calendar days after the Procurement Officer's decision is received by the protester, they may file an appeal with the Commissioner of Administration. The protester shall also file a copy of the appeal with the Procurement Officer (Ref. AS 36.30.590).
- E7. The Procurement Officer shall immediately give notice of an appeal filed under AS 36.30.590 to the contractor if a contract has been awarded or, if no award has been made, to all bidders (Ref. AS 36.30.595, 2 AAC 12.990 (a)(7)). **Form: Letter to Interested Parties**
- E8. If a protest appeal is filed before a contract is awarded and the award was stayed under AS 36.30.575, the filing of the appeal automatically continues the stay until the Commissioner makes a written determination that the award of the contract without further delay is necessary to protect substantial interests of the State (Ref. AS 36.30.600).
- E9. When a protest appeal is filed, the Procurement Officer shall prepare and submit to the Commissioner of Administration a complete report regarding the protest and decision. The Procurement Officer shall submit this report within ten (10) calendar days of the date the protest appeal is filed. A copy of the report is to be sent to the protester and to all bidders that have requested a copy of the appeal under AS 36.30.595 (Ref. AS 36.30.605). **Form: Memo to Commissioner of Administration**
- E10. Within 15 calendar days after receipt of an appeal, the Commissioner of Administration shall notify the appellant of the acceptance or rejection of the appeal and if rejected, the reason for rejection (Ref. AS 36.30.610).
- E11. A hearing on a protest appeal shall be conducted in accordance with AS 36.30.670 and regulation adopted by the Commissioner (Ref. AS 36.30.615).
- E12. The Hearing Officer shall recommend a decision to the Commissioner. (Ref. AS 36.30.675).
- E13. The decision by the Commissioner shall be sent within 20 calendar days after the hearing to all parties by certified mail. (Ref. AS 36.30.680).

**F. IN THE EVENT OF A CONTRACT CONTROVERSY UNDER AS 36.30.620,
A WRITTEN DETERMINATION IS REQUIRED:**

- F1. If a contract controversy asserted by a contractor cannot be resolved by agreement, the Procurement Officer shall, after receiving a written request by the contractor for a decision, issue a written decision with ninety (90) calendar days after receipt of all necessary information from the contractor. **Form: Letter to Contractor**

This time period may be extended by the Commissioner of Administration. The Procurement Officer shall furnish a copy of the decision to the contractor by certified mail. The decision shall include: (see AS 36.30.620). If a controversy cannot be resolved by agreement, the matter shall be immediately referred to the Commissioner of Administration. (Ref. AS 36.30.620).

- F2. An appeal from a decision of the Procurement Officer on a contract controversy may be filed by the contractor with the Commissioner of Administration. The appeal shall be filed within 14 calendar days after the decision is received by the contractor (Ref. AS 36.30.625).
- F3. Within 15 calendar days after receipt of an appeal on a contract controversy the Commissioner may adopt the decision of the Procurement Officer as the final decision without a hearing. (Ref. AS 36.30.630).
- F4. A hearing will be conducted according to AS 36.30.670 and regulations adopted by the Commissioner.
- F5. The Hearing Officer shall recommend a decision to the Commissioner. (Ref. AS 36.30.675).
- F6. The decision by the Commissioner shall be sent within 20 calendar days after the hearing to all parties by certified mail (Ref. AS 36.30.680).