

# AAM 81. PROCUREMENT

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## CHAPTER I. GENERAL PROCUREMENT PROCEDURES

### **AAM 81.000 Introduction (06-18)**

The purpose of this section of the Administrative Manual is to supplement [AS 36.30](#) and [2 AAC 12](#). If there is any conflict between this section and the statutes and/or regulations, the statutes or regulations prevail. One of the intentions of this section is to formalize and centralize procurement policy. Much of the section sets out requirements that are in addition to those detailed in statute and regulation. Some sections contain policy clarifications that address specific questions or problems brought to our attention. Procurement personnel must have:

1. A personal procurement delegation in writing per [2 AAC 12.740\(a\)](#);
2. Ready access to [AS 36.30](#), [2 AAC 12](#), and applicable sections of the Administrative Manual;
3. Their departmental procurement delegation from the Department of Administration (DOA); and
4. A copy of their department's procurement policies and procedures.

This chapter covers the procurement of supplies, services, and professional services as defined by [AS 36.30.990\(21\), \(23\), and \(26\)](#). Expenditures that do not fall under the Procurement Code are listed in [AS 36.30.850\(b\)](#) and Appendix 1. The Department of Transportation and Public Facilities (DOTPF) has requirements that must be followed in procurements for construction, the State Equipment Fleet, and the Alaska Marine Highway.

If a procurement involves the expenditure of federal funds, and if there is a conflict between a provision of this chapter and a federal statute, regulation, policy, or requirement, then the federal statute, regulation, policy, or requirement shall prevail per [AS 36.30.890](#).

### **AAM 81.005 Procurement Delegations (07-99)**

Executive Branch procurement authority is centralized in the Department of Administration (DOA) except for construction, the State Equipment Fleet, and Alaska Marine Highway System procurements under [AS 36.30.015\(g\)](#). DOA delegates procurement authority to other departments after making a written finding that the departments are capable of implementing the delegated authority according to [AS 36.30.015](#). The Commissioner of a department may delegate the

procurement authority given to him or her to one or more employee(s) of the department by written memorandum of delegation.

**AAM 81.010**

**Procurement: Services Considerations (06-18)**

The State cannot hire employees through the procurement process. However, the procurement process may be used to acquire the services of an independent contractor. In doing so you must ensure an employer/employee relationship will not exist before using the procurement system. If you are not sure if it falls under the Procurement Code, you should refer to the guidelines issued by the Internal Revenue Service pertaining to Independent Contractor Status or check with your Department procurement staff and the State Accountant in the Division of Finance. If the services you require result in an employer/employee relationship, hire the person through the personnel system, not the procurement system.

1. The following conditions are indicators that an employer/employee relationship may exist:
  - a. The person is subject to the control of the State, not only as to what will be done but when, where, and how it will be done; as opposed to allowing the individual to set their own work schedule. It is not necessary that the State actually direct or control the way services are performed, it is only necessary that the State has the right to do so.
  - b. The State has the right to discharge the person or the person has the right to terminate services without incurring liability.
  - c. The State furnishes the tools, equipment, and a place to work for the individual performing the services.
  - d. The individual currently works for the State as an employee in the same field as the contract services.
  - e. It is expected that the State will hire this individual as an employee immediately following termination of the contract.
  - f. The individual has had an official State appointment (including temporary) to provide the same or similar services during the past 12 months prior to the date the services are to commence.
  - g. The State currently pays employees to perform essentially the same duties to be performed by the contractor.

2. The following conditions are indicators that people are independent contractors:
  - a. They are subject to control or direction of the State only as to the result to be accomplished and the work to be done, not as to the means and methods for accomplishing the result.
  - b. They are in business providing a service to the public from which they may derive a profit or suffer a loss.
  - c. They are in business to provide the same or similar services to other entities or the general public.

Under certain circumstances, such as the hiring of foreign nationals to work in foreign offices, an agreement that appears to create an employer/employee relationship may be appropriate. These employment agreements ([2 AAC 12.990\(a\)\(6\)](#)) are not procurements and they are not professional services acquisitions. DOA, Division of Personnel and the Department of Law should review any such proposed employment agreement.

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| <b>AAM 81.015 Foreign Outsourcing in State Contracts for Services (06-18)</b> |
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In an effort to ensure that funds spent on service contracts provide the maximum economic benefit to the State of Alaska and the United States, the State of Alaska requires that professional and non-professional service contracts above \$50,000 be performed in the United States, unless a waiver has been approved by the Chief Procurement Officer.

This policy affects all solicitations and contracts above \$50,000 for professional and non-professional services, including alternate and exempt procurements. Professional services and services are defined under [AS 36.30.990\(21\) and \(23\)](#).

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

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

*By signature on this solicitation, the bidder/offeree certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States. If the*

*offeror cannot certify that all work will be performed in the United States, the bidder/offeror must contact the procurement officer in writing to request a waiver at least 10 days prior to the deadline for receipt of proposals. The request must include a detailed description of the portion of work that will be performed outside the United States, where, by whom, and the reason the waiver is necessary. Failure to comply with these requirements may cause the State to reject the bid or proposal as non-responsive or cancel the contract.*

If an agency believes it is in the State's best interests to contract with a vendor to provide services from outside the United States, the agency may submit a request for waiver to the Chief Procurement Officer for approval. The request for waiver must address the following:

1. Why it is in the State's best interests to allow the services to be performed outside the United States, and
2. Why limiting competition to service providers located in the United States could damage the agency's ability to accomplish its public mission. Agencies may include discussion of cost, if that is a determining factor in accomplishing their mission.

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

If the waiver is approved, all offerors shall be required to provide a certified list verifying the country(ies) the contracted or subcontracted work will be performed. A copy of the list must be maintained in the procurement file. If a numerical scoring method is utilized, state agencies are encouraged to evaluate and consider the percentage of work to be performed outside the United States as compared to work to be performed inside the United States.

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

**Statutory Exemption** – [AS 36.30.850\(b\)\(30\)](#) “Contracts that are to be performed in an area outside the country and that require knowledge of the customs, procedures, rules, or laws of the area”.

**Foreign Offices** - Agencies with offices located overseas may require foreign contractors to perform work specifically for these offices.

**AAM 81.020    Selecting the Procurement Procedure (06-18)**

To select the applicable procurement procedure you must understand the required supply or service and know the total estimated cost. The table below provides direction for all procurements, except purchases from State Contract Awards, Employment Programs, cooperative agreements with qualifying public entities, or exempt procurements.

| <b>Amount</b>  | <b>Minimum Procurement Procedure</b>  |
|--|---|
| \$ 10,000 or less <sup>1</sup>                                   | Reasonable and adequate procedures.   |
| \$50,000 or less<br><b>See Special Note Below:</b>               | Contact at least three firms or persons for quotes or informal proposals. The solicitation and responses may be either written or verbal.   |
| \$100,000 or less <sup>2</sup><br><b>See Special Note Below:</b> | Contact at least three firms or persons for quotes, or informal bids or proposals <sup>2</sup> . The solicitation and responses must be in writing. You must provide written Notice of Award. |
| Above \$100,000  | Issue formal competitive sealed bid or proposal. Shared Services of Alaska must assign a solicitation number for all procurements above \$100,000 that are not solicited through IRIS.        |

**Special Note:** Informal requests for proposals above \$10,000 must comply with the minimum price weighting requirements identified in [AAM 81.470\(3\)](#), unless a waiver is approved by the Commissioner of the contracting agency in accordance with that section. A copy of all waivers approved under this section shall be forwarded to the Shared Services of Alaska, Statewide Contracting Office.

When determining the appropriate procurement procedure, you must consider the total value of all similar requirements for supplies and

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1 This level of competition is appropriate for concession contracts up to \$10,000; professional services for the Office of the Governor, or legal or hearing officer services, up to \$50,000; for supplies or services while on travel status with or for the Governor costing no more than \$30,000; or for passenger transportation or fish feed for hatchery use costing no more than \$30,000.

2 This level of competition is appropriate for construction costing no more than \$200,000.

services that your department will solicit during the same time from the same group of vendors. You must also consider any options to renew or extend the contract. For example, if the contract is for \$400/month and will last one year, but includes three one-year renewal options, you must seek the level of competition required for a \$19,200 procurement (i.e.  $((\$400 \times 12) \times 4)$ ).

[AS 36.30.320\(d\)](#) precludes "artificial division or fragmentation" to bypass a more competitive procurement process. There is no definition of artificial division or fragmentation that can address every circumstance. When deciding if a division is artificial or natural, you should consider the following:

- **Price:** The higher the price of a group of procurements, the more likely they should be consolidated. You should carefully review the cost of a group of procurements for a year to determine the appropriate level of competition.
- **Similarity of Product:** The more similar the product or the more possible it is to find a group of products from one type of vendor, the more likely that the items should be consolidated and made part of a single procurement.
- **Predictability:** The more predictable the procurement of similar products is, the more likely that the items should be consolidated and made part of a single procurement.]

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| <b>AAM 81.025    Policy Against Human Trafficking (04-14)</b> |
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In an effort to ensure that funds spent on state contracts do not directly or indirectly provide financial support to a country categorized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report, <http://www.state.gov/j/tip/>, the State of Alaska may not enter into or amend a contract above \$100,000 with a company established and headquartered or incorporated and headquartered in a Tier 3 country.

A Tier 3 country is a country whose government is taking no action to prevent human trafficking.

This policy affects all state solicitations and contracts above \$100,000 for professional and non-professional services including alternate and exempt procurements. Professional services and services are defined under [AS 36.30.990\(21\) & \(23\)](#).

The "Human Trafficking" clause found in the most current ITB and RFP shells may not be removed or modified and this clause must be included in all alternate and exempt procurement contracts and solicitations above



\$100,000 for professional and non-professional services. (The first sentence of the clause may be changed to, “By signature on this contract...” for negotiated procurements).

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| <b>AAM 81.030</b> | <b>Procurement Report Form (06-18)</b> |
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For procurements conducted outside of IRIS, agencies must complete a Procurement Report form, available at <http://doa.alaska.gov/dgs/policy.html>, for emergency procurements, single source or limited competition alternative procurements under \$100,000, and all competitive sealed bids and proposals above \$100,000 . The Procurement Report shall be forwarded to the Shared Services of Alaska, Statewide Contracting Office within five days after completion of the procurement.

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| <b>AAM 81.040</b> | <b>Statewide Contracts (06-18)</b> |
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The Shared Services of Alaska, Statewide Contracting Office awards statewide contracts for use by all agencies. These contracts are primarily based on Executive Branch needs as determined by historical requirements and discussions with departmental procurement officers. Let the Statewide Contracting Office know if you need a specific product or service placed on contract. The establishment of the contracts has two primary goals: to facilitate the procurement process, as you may purchase according to the terms of the contract without additional purchasing activity, and to secure good pricing through the State's purchasing power.

If the terms of a mandatory contract cause your agency a hardship, contact the Statewide Contracting Office's contract administrator for the contract in question. It may be possible to revise the terms of the contract.

Purchases are required to be made from mandatory contracts, no exceptions.

Agencies are encouraged to use these statewide contracts whenever practicable, as they often result in savings for the agency, especially when considering costs associated with establishing a new contract, dealing with protests, and other contract administration overhead.

Purchases from statewide contracts can be made via IRIS or as defined within the contract itself. Be sure to always cite the statewide contract number to ensure you receive statewide pricing and other terms and conditions of the contract.

**AAM 81.045 Federal General Services Contracts (06-18)**

You may not purchase supplies or services from the Federal General Services Administration (GSA) supply schedules, pending further action by GSA and procedures by Shared Services of Alaska. However, you may solicit normal quotes from GSA vendors in accordance with the requirements of Chapter II Small Procurements or use GSA supply schedules as a tool to benchmark prices from other sources.

**AAM 81.050 Not Used (4-14)**

**AAM 81.055 Employment Programs and Youth Education and Employment Programs (04-14)**

In accordance with [AS 36.30.311](#) and [2 AAC 12.050](#), agencies may purchase directly from certified employment programs or accredited youth education and employment programs. You must determine that the supplies or services meet the State's requirements and the price represents a reasonable cost. A list of certified employment programs is available from the Department of Labor and Workforce Development, Vocational Rehabilitation Division. An accredited youth education and employment program is defined in [2 AAC 12.990\(14\)](#) as a program that allows participants to earn academic credits that a school district in Alaska will recognize. If you make a procurement under this section, you do not need to solicit the private sector.

**AAM 81.060 Cooperative Purchasing Agreements (06-18)**

Competitive quotes, bids, or proposals are not required for goods or services acquired from or shared by agencies under [AS 36.30.700-730](#). However, if two or more agencies enter into a cooperative agreement for the purpose of contracting jointly with a private sector entity for the provision of goods or services, prior approval from Shared Services of Alaska must be obtained.

**AAM 81.070 Coordination with Other Agencies (06-18)**

The purchasing agency is responsible for coordination with other agencies. Any agency that provides a centralized service may ask to be included in the review process. Coordination with the following agencies is required if applicable:

| <b>Subject</b>  | <b>Agency / Division</b>                          |
|---|---|
| Legal Service Procurements  | Prior approval required from the Attorney General |
| Changes To Boiler Plate and Standard Provisions   | Dept. of Law/Civil                                |
| Payments / Encumbrances   | Administration / Finance                          |
| Insurance Questions   | Administration / Risk Management                  |
| Changes to Insurance Language   |   |
| Protest and Appeal Procedures   | Administration/Office of Administrative Hearings  |
| Banking Services  | Revenue / Treasury                                |
| * Private and public financing for energy efficiency projects and equipment acquisition | Revenue / Treasury and OMB                        |

\*When securing financing for equipment acquisition or energy efficiency improvements, state agencies must first receive approval from OMB and from the Department of Revenue, Treasury Division. The Third Party Financing Process memorandum along with the Third Party Financing Form can found on the OMB website at:

<https://omb.alaska.gov/html/formsmanuals/forms-manuals.html>

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| <b>AAM 81.080</b> | <b>Offerors with Disabilities (06-18)</b> |
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The Americans with Disabilities Act (ADA) of 1990 requires that persons with a disability be provided accommodated access to State government services. This law applies to procurement activities. Agencies must provide access to the procurement process to potential offerors or vendors with a disability, to ensure that they can participate with other offerors or vendors on an even and fair basis.

Agencies must provide accommodations needed to participate in the procurement process on an equal basis with other offerors. No qualified individual with a disability shall, because of disability, be excluded from participating in the procurement process. With the exception of preferences identified in [AS 36.30.790](#), offerors with a disability will not be given special treatment that would give them an unfair competitive advantage.

You should designate the person responsible for responding to a potential offeror with a disability if the offeror requests special accommodations. All procurement documents shall include accommodation request instructions. The Division of Vocational Rehabilitation in the Department of Education is available should you require assistance with any of the ADA requirements.

There are requirements for procurement documents, public notices, and meetings to ensure that persons with a disability have access to the procurement process.

1. **Procurement Document -- Special Assistance Provisions:** The procurement document must contain the following provision advising all potential offerors or bidders how to obtain special assistance if needed to understand the contents of the document or participate in the process:

The State of Alaska complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to submit a quote/proposal/bid should contact [insert name of department or division representative, his or her telephone and TDD numbers, email address] no later than [insert date] to make any necessary arrangements.

2. **Procurement Document -- Certification of Compliance with ADA:** The offeror or bidder must certify that the bidder or offeror complies with the Americans with Disabilities Act of 1990. Services or activities furnished to the general public on behalf of the State must be fully accessible. This is intended to ensure that agencies are in compliance with 28 CFR Part 35 Subpart 35.130 and that services, programs, or activities furnished to the public through a contract do not subject qualified individuals with a disability to discrimination based on the disability. To ensure compliance with these requirements, all Invitations to Bid and Requests for Proposals must include the following:

By signing the bid/proposal, the bidder/offeror certifies that the bidder/offeror complies with the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government, and certifies that programs, services, and activities provided to the general public on behalf of the State under a contract resulting from this solicitation comply with the Americans with Disabilities Act of 1990, 28 CFR, Part 35, Subpart B 35.130.

3. **Notices:** When advertising is placed in a newspaper or other publication, the following clause must be included that advises potential respondents how to obtain special assistance if needed to understand the notice or to participate in the process advertised in the notice:

The State of Alaska complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who need auxiliary aids, services, or special modifications to participate in this procurement should contact [insert name of department or division representative, and their telephone and TDD numbers,

email address] no later than [insert date] to make any necessary arrangements.

4. **Meetings:** Any meetings, including pre-bid or proposal conferences, bid openings, proposal presentations, and proposal discussions must be accessible to a potential offeror or bidder with a disability. You may also need signing interpreters or other accommodations. The following clause must be included in all public procurement meeting notices:

The State of Alaska complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who need auxiliary aids, services, or special modifications to participate in this meeting should contact [insert name of department or division representative, and their telephone and TDD numbers, email address] no later than [insert date] to make any necessary arrangements.

## **AAM 81.090**

### **Public Notice of Formal Procurements (06-18)**

Public notice of formal procurements must be provided in accordance with [AS 36.30.130](#) and [2 AAC 12.130](#). Notice must be published on the State of Alaska Online Public Notice system and IRIS Vendor Self Service (VSS) at least 21 days before the deadline for receipt of bids or proposals. More time should be provided if necessary for respondents to prepare their responses.

Note that if you publish your solicitation using IRIS VSS, the system will automatically post the notice on the Alaska Online Public Notice system as well, satisfying the notice requirements.

Notice may also be provided in accordance with [2 AAC 12.130\(a\)](#). The notice shall include the IRIS solicitation number or the number issued by the Shared Services of Alaska, Statewide Contracting Office, as applicable.

The procurement officer may shorten the 21-day period by making a written determination, pursuant to [AS 36.30.130](#).

If it is impracticable to follow the rules concerning soliciting from Alaska vendors only, you may request an exception from the Shared Services of Alaska, Statewide Contracting Office, using a written determination. The request must be approved by the Chief Procurement Officer before soliciting out-of-state vendors.

If an out-of-state vendor requests a copy of a solicitation, you must provide a copy. You also must evaluate bids or proposals received from out-of-state vendors.

**AAM 81.100 Questions Received Before Opening Bids, Quotes, or Proposals (06-18)**

There are generally two types of questions. One involves directing the questioner to the specific section of the procurement document where the questioner may find the answer. You may answer these questions over the telephone.

The second type of question involves clarifying or interpreting parts of the procurement document or the intent of the procurement document. It is advised that these questions be submitted in writing and that any telephone conversations where these types of questions are asked are confirmed in writing.

You must prepare a transcript of all substantive questions and answers in a written amendment and provide it to registered vendors. Adding the amendment to the Online Public Notice system and notifying registered vendors satisfies this requirement.

**AAM 81.110 Pre-Proposal or Pre-Bid Conferences (06-18)**

If your agency plans to have a pre-proposal or pre-bid conference, you should either record the proceedings and prepare a transcript or keep accurate written notes and prepare meeting minutes. If your agency responds to substantive questions during the conference, you must reaffirm those answers in writing via a written amendment issued after the conference that is provided to registered vendors. Adding the amendment to the Online Public Notice system and notifying registered vendors satisfies this requirement.

**AAM 81.120 Alaska Business License (06-18)**

[AS 36.30.110\(b\)](#) and [AS 36.30.210\(e\)](#) require that bidders and offerors possess a valid Alaska business license at the time the contract is awarded. However, in order to receive the Alaska Bidder Preference and its related preferences, the bidder or offeror must have a valid Alaska business license prior to the deadline for receipt of bids or proposals and qualify as an Alaskan Bidder as defined by [AS 36.30.990\(2\)](#).

Acceptable evidence that the offeror possesses a valid Alaska business license consists of any one of the following:

1. Copy of the Alaska business license.
2. Certification on the bid or proposal that the bidder/offeror has a valid Alaska business license and has written the license number in the space provided on the bid or proposal.
3. A canceled check that demonstrates payment for the Alaska business license fee.
4. A copy of the Alaska business license application with a receipt stamp from the State's business license office.
5. A sworn notarized affidavit that the bidder/offeror applied and paid for the Alaska business license.
6. Other forms of evidence acceptable to the Department of Law.

Invitations to Bid (ITB) and Requests for Proposals (RFP) shall contain a clause requiring the bidder to have a valid Alaska business license at the time the contract is awarded, and prior to the deadline for receipt of bids or proposals in order for the bidder or offeror to qualify for the Alaska Bidder Preference and its related preferences.

For small procurements, a business license is not required for small procurements if the vendor is located out of State and ships a product to Alaska or performs a service out of state.

For other questions related to Alaska Business and Corporation Licensing, contact the Department of Commerce, Community, and Economic Development's Division of Corporations, Business, and Professional Licensing:

<https://www.commerce.alaska.gov/web/cbpl/>

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| <b>AAM 81.130</b> | <b>Preferences (06-18)</b> |
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A guide to the various bidder and product preferences are available at the Shared Services of Alaska, Statewide Contracting Office's web site:  
<http://doa.alaska.gov/dgs/pdf/pref1.pdf>

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| <b>AAM 81.140</b> | <b>Written Determinations (06-18)</b> |
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There are a number of written determinations that must be made throughout the procurement process. When the statutes or regulations

require a determination by the procurement officer, Chief Procurement Officer, or the Commissioner of DOA, a written determination must be prepared and kept in the procurement file. A list of the required written determinations is available at the Shared Services of Alaska, Statewide Contracting Office's website: <http://doa.alaska.gov/dgs/policy.html>.

## **AAM 81.150 Specifications (06-18)**

Specifications should include items grown or manufactured in Alaska whenever practicable. You should construct lots in a manner that maximizes the opportunity for Alaskan vendors to bid.

If Alaskan grown timber, agricultural, or seafood products from Alaskan vendors are not acceptable, the agency must provide a written determination that states the specific reason why they are not acceptable.

Solicitation specifications must include a statement that the bidder or offeror will receive the preference granted under [AS 36.30.328](#) if the bid or proposal includes Alaskan products as applicable.

When preparing a description or specification for a supply or service you should list all the essential characteristics that are necessary to meet your mission-related needs. Vendors will use the characteristics specified to select the product they offer and the procurement officer must use the characteristics to determine if the product offered is responsive to the solicitation. If the product does not meet or exceed all the characteristics set out in the specification, then it is nonresponsive and is rejected as unacceptable.

There is no set number of essential characteristics that you should provide in a specification. There should be enough characteristics listed to ensure that any product that only minimally meets all of them would still meet your needs. On the other hand, if there are too many essential characteristics listed, the description may eliminate products that would otherwise meet your needs.

Keep in mind that you cannot consider a product unacceptable or nonresponsive in the solicitation if it meets all the essential characteristics of the specifications. You cannot consider a product that exceeds the essential characteristics any more favorably than a product that just meets the essential characteristics, unless you are evaluating factors other than cost.

When writing specifications, make them as definitive as possible. You must carefully and completely describe the specific services that the bidder or offeror will have to provide. All items must be clearly defined, and describe levels of acceptable performance in specific terms. If you do



not specify a required service, you may not receive it. If you specify unnecessary work, the State may pay for services that it does not need.

You should write specifications to obtain standard commercial products at the least cost to the State. A specification should never have the effect of requiring a "Mercedes" when a "Ford" will meet the State's needs.

There are three common types of specifications. These are performance specifications (sometimes called functional specifications), design specifications, and brand name specifications.

### Performance Specifications

Performance specifications are generally the best and should be used whenever practicable. When using this type of specification, you must provide a description of the functional or performance-related characteristics a product must possess to do the job you want done.

Example: An agency needs a table. Using performance specifications, the specifications would include a requirement that the table must support a minimum of 200 pounds.

### Design Specifications

Design specifications describe how an item is designed, manufactured, or the process by which the successful vendor will make the product or provide services. When using this type of specification, you must provide plans, drawings, materials lists, or a description of the manufacturing process. The successful vendor will then build the product following your instructions.

Example: An agency needs a table. Using design specifications, the specifications would include a requirement that the table must be constructed of 20-gauge steel.

### Brand Name Specifications

Except for procurements of \$10,000 or less, if no other manner of description will suffice except that of a brand name description, a "State approved equivalent" clause shall be included in any resultant solicitation unless there has been a sole brand determination. You must make a written determination before using a brand name specification that limits a procurement to a specific manufacturer's name or catalog number, i.e., sole brand -- no substitute. The determination must provide an explanation of why only the proposed brand will satisfy the State's needs, as required by [2 AAC 12.100](#). When you use a brand name description as a specification, you shall try to identify other sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve the level of competition that is practicable. If only one

source can supply the requirement, you must make the procurement under single source requirements after obtaining an approved Request for Alternate Procurement form, available at <http://doa.alaska.gov/dgs/policy.html>.

**AAM 81.160      Contracts Taking Place in More Than One Fiscal Year (06-18)**

When contracts are not funded by a continuing appropriation and you wish them to cross fiscal years, the procurement document and the resulting contract must contain a "subject to funding" clause, such as, "the contract resulting from this [ITB, RFQ, or RFP] is subject to legislative appropriations." If funding for a contract that crosses fiscal years is dependent upon approval of the next year's budget, this section indicates to the contractor that funding for work taking place in the subsequent fiscal year is subject to approval by the legislature.

**AAM 81.170      Standard Contract Clauses (06-18)**

The Chief Procurement Officer, in consultation with the Attorney General, has established standard contract clauses for State contracts in accordance with [AS 36.30.340](#) and [2 AAC 12.470](#). These clauses are found in various procurement documents such as the Request for Quotation and Addendum 1, Standard Terms and Conditions for Invitations to Bid, Standard Terms and Conditions for High Technology Contracts, Standard Agreement Form, and Appendix A Standard Contract Terms and Conditions. These procurement documents are available at <http://doa.alaska.gov/dgs/policy.html>.

You may modify a standard clause only with the prior written approval of the Attorney General, as required by [AS 36.30.340](#) and [2 AAC 12.470](#). Any revision of the standard insurance or indemnification clauses requires prior approval of the Division of Risk Management.

**AAM 81.180      Notice of Intent to Award (06-18)**

Notice of Intent to Award (NOIA) must be made using the form available at <http://doa.alaska.gov/dgs/policy.html>, or a form acceptable to the Shared Services of Alaska, Statewide Contracting Office. The NOIA must be sent to all respondents at least ten days before the award of a contract whenever formal bids or proposals have been solicited.

Procurement records are public information and are subject to the provisions in the Alaska Public Records Act AS 40.25 and the Alaska Uniform Trade Secrets Act AS 45.50.910-.945. A contracting agency will prepare and maintain procurement and contract records that contain all documents and information that are pertinent and relevant to the procurement process and contract management.

To the extent applicable, the procurement record will contain:

1. An approved RAP and all accompanying and supporting materials, including the written findings of fact.
2. A copy of the solicitation and all amendments.
3. The procurement plan for innovative procurements.
4. The question and answer minutes, transcript, or audio created from a pre-bid or pre-proposal meeting.
5. All pertinent correspondence with potential offerors or bidders, including a summary of verbal communications. Pertinent correspondence means any communications containing important information or decisions relevant to the procurement or the procurement process.
6. A copy of each submitted bid, proposal, or quote. This will include any that are late, rejected, returned, withdrawn, or found non-responsive.
7. The written reasons for any cancelled solicitation; for any rejected bids, quotes, or proposals; and for any delayed opening of bids or proposals.
8. Bid register prepared under AS36.30.140 or proposal register prepared under AS36.30.230.
9. All materials related to the Proposal Evaluation Committee, such as score sheets and notes.
10. Justification for award.
11. Any written determinations required by AS36.30 or 2 AAC 12.
12. A copy of the Notice of Intent to Award for formal procurements or Notice of Award for small procurements.
13. Written reasons for an award to a non-Alaskan vendor.
14. Records received from the contractor concerning its efforts to use Alaskan products.

15. A copy of the resulting contract and all amendments.
16. Documentation of performance or compliance issues, remedy, breach, or termination of a contract.

Bidders and offerors may designate trade secrets and proprietary information to be withheld from public disclosure in accordance with the Alaska Public Records Act AS 40.25 and the Alaska Uniform Trade Secrets Act AS 45.50.910-.945. If the procurement officer agrees in writing with the designation, those materials will be placed on a confidential enclosure within the procurement file.

Contract files will contain all documentation and records pertinent to the management and performance of a contract. To the extent applicable, the contract file will contain:

1. A copy of the contract and all amendments
2. Invoicing and payment records as applicable
3. Work product, deliverables, and reports as applicable
4. All pertinent correspondence with the contractor, to include a summary of verbal conversations.
5. Documentation of all actions taken to communicate and address performance or compliance issues.

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| <b>AAM 81.195</b> | <b>Confidentiality of Trade Secrets and Proprietary Data (06-18)</b> |
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Procurement records are public information and are subject to the provisions in the Alaska Public Records Act AS 40.25 and the Alaska Uniform Trade Secrets Act AS 45.50.910-.945. Bidders and offerors may request certain information, such as trade secrets or other proprietary data, to be withheld from public disclosure. Requests for confidentiality must be in writing, clearly identify the specific information to be held confidential, and include a statement that describes why the information is a trade secret or otherwise proprietary. The procurement officer must agree in writing with the request for the information to be held confidential. Unless the procurement officer agrees in writing, the information may become public.

If a determination is made to hold certain information confidential prior to distribution of proposals to the Proposal Evaluation Committee (PEC), the procurement officer should mark the applicable sections of the proposals as confidential and ensure that the confidential information is properly protected after completion of evaluation. If this determination is made after proposal evaluation, the procurement officer shall ensure that the

information is removed or redacted from all copies of the proposals retained by the agency.

## CHAPTER II SMALL PROCUREMENTS

### AAM 81.200 Small Procurements (04-14)

Small procurements are defined by [AS 36.30.320\(a\)](#) and [2 AAC 12.400](#). The Alaska bidder, offeror, and product preferences apply to all small procurements. Protest procedures are governed by [2 AAC 12.695](#).

A written notice of award is required for small procurements above \$50,000. The notice must be provided to each firm or person providing a quotation or informal proposal, describe protest rights under [2 AAC 12.695](#), and the time limitations within which a protest must be received by the purchasing agency.

### AAM 81.210 Reasonable and Adequate Procedures (07-99)

Reasonable and adequate procedures do not mean that it is always acceptable to contact only one offeror. Reasonable and adequate procedures are defined in [2 AAC 12.990\(17\)](#) as procedures that ensure fairness to potential offerors and competition commensurate with the circumstances of the procurement, when considering price, mission requirements, and available competition. This may include contacting only one potential offeror in appropriate circumstances. When determining if competition is reasonable and adequate, you should consider the following:

- **Price:** The higher the price, the more competition you should seek;
- **Mission Requirements:** If delay will hamper the mission, less competition is acceptable;
- **Competition:** The more vendors who can meet the need, the more competition you should seek.

### AAM 81.220 Mandatory Solicitation of Alaskan Vendors (06-18)

The minimum number of quotations or proposals must be sought from Alaskan vendors prior to soliciting any non-Alaskan vendors unless you determine in writing that soliciting the minimum number of quotes or proposals from Alaskan vendors is not practicable.

Under reasonable and adequate procedures, the minimum number of quotes or proposals that must be sought from Alaskan vendors is one. For all

other small procurements, the minimum number of quotes or proposals that must be sought from Alaskan vendors is three.

**AAM 81.230      Established Catalog Prices (06-18)**

When seeking verbal quotations for small procurements, you may use established catalog prices or published discounts from established catalog prices in place of direct contact with a vendor. This does not eliminate the need to rotate vendors when making procurements. When using catalogs, the cost of delivery must be calculated and included when determining the low offer.

Established catalog price means the price included in a current catalog, price list, schedule, website, or other form that:

1. Is regularly maintained by a manufacturer or contractor;
2. Is either published or otherwise available for inspection by customers; and
3. States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public.

**AAM 81.240      Written Quotations (06-18)**

Agencies must seek written quotations for procurements that exceed \$50,000. You must use a Request for Quotations form available at <http://doa.alaska.gov/dgs/policy.html>. For purchases of "high tech" supplies, you must use the Addendum 1 boilerplate, which is also available at the same web site.

**CHAPTER III      COMPETITIVE SEALED BIDDING**

**AAM 81.300      Competitive Sealed Bidding (06-18)**

Competitive sealed bid procurements must be made in accordance with [AS 36.30](#) and [2 AAC 12](#). For competitive sealed bid procurements conducted outside of IRIS, agencies must obtain a solicitation number from the Shared Services of Alaska, Statewide Contracting Office.

You must use the "Standard Terms and Condition" boilerplate in ITBs for supply and service contracts. You must use the "Standard Terms and Condition for High Technology Contracts" boilerplate for the purchase of computers and other technology acquisitions. These boilerplate provisions

are available at the Statewide Contracting Office's web site, <http://doa.alaska.gov/dgs/policy.html>.

You are encouraged to use the ITB shell document maintained by the Statewide Contracting Office to create formal ITBs. The ITB shell includes various terms and conditions and is also available at the above web site.

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| <b>AAM 81.310</b> | <b>Receipt of Bids (04-14)</b> |
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Bids must be received and stored in a manner or form that cannot be viewed until opened by the procurement officer.

Upon receipt, you must record the date and time of receipt in a register of bids. The register must include the name of each bidder and a description of the supply, service, or construction item offered.

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| <b>AAM 81.320</b> | <b>Procedure if Only One Responsive Bid is Received (04-14)</b> |
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If only one responsive bid is received, you may award the contract to that bidder if you determine in writing that the price submitted is fair and reasonable, and that other prospective bidders had a reasonable opportunity to respond or that there is not enough time for a new solicitation, as required by [2 AAC 12.190](#). If you cannot make those determinations, you may cancel the procurement under [2 AAC 12.860](#) and solicit new bids.

If the one bid received is not fair and reasonable, but additional formal procurement procedures are not likely to further the State's interests, you may seek approval of an alternative procurement method.

#### CHAPTER IV      COMPETITIVE SEALED PROPOSALS

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| <b>AAM 81.400</b> | <b>Competitive Sealed Proposals (06-18)</b> |
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When technical and other non-cost criteria need to be considered, it is necessary to procurement using competitive sealed proposals rather than by competitive sealed bids. For procurements of \$100,000 and less, you may use an informal request for proposals (IRFP) for supplies, services, or professional services, employing the level of competition set out in [AAM 81.020](#).

You may always use competitive sealed proposals to procure professional services; supplies and services for oil and hazardous waste clean-up; telephone systems and telephone system maintenance; concession

contracts; and leased office space, as set out in [2 AAC 12.215\(a\) and \(b\)](#). This means you do not have to prepare a determination under [AS 36.30.200\(b\)](#) in order to use the competitive sealed proposal process instead of competitive sealed bidding when procuring these items.

You may procure other supplies or nonprofessional services above \$100,000 using the competitive sealed proposal process only if you determine in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State, as required by [AS 36.30.200\(b\)](#). You must set out the reasons for the determination in detail. Unless specifically limited to professional services, all sections in this chapter apply to all competitive sealed proposal procurements.

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| <b>AAM 81.410</b> | <b>Preparing a Competitive Sealed Proposal (06-18)</b> |
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No matter how limited the service you require, you must prepare some type of specification and you must provide the same information to all potential offerors. If you anticipate the contract will continue from year to year, or in phases, you must state that in the original request.

It may be helpful to review the actual wording of contract provisions or RFPs that other agencies have used. Language is included in the most current RFP shell under “Required Review” that requires offerors to carefully review the solicitation and notify the procurement officer of any concerning defects or questionable material at least 10 days before the deadline. This language must be included, unmodified, in all solicitations.

Note that if a shortened public notice period is used or if a pre-proposal conference is held within 12 days of the deadline for receipt of proposals, a protest does not have to be filed at least 10 days before the deadline for receipt of proposals; protests may be filed at any time before the deadline for receipt of proposals. If that is the case, the language may be modified to reflect this.

To ensure you are including the most recent solicitation clauses and language, you should always use the RFP shell developed by the Shared Services of Alaska available at the Division of General Service’s website: <http://doa.alaska.gov/dgs/policy.html>

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| <b>AAM 81.420</b> | <b>Professional Services (06-18)</b> |
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Consider the following when preparing to procure professional services:

1. Ensure the project qualifies as a professional service;



2. Coordinate with any agencies that would normally provide the desired service; and
3. Address budgetary considerations and funding requirements.

Some procurements involve a combination of professional services and nonprofessional services and/or supplies. There is no exact separation that determines whether you should make the procurement as a professional service or not. However, a general rule is if 50 percent or more of the cost of the procurement consists of professional services as defined in [AAM 81.430](#), then the procurement may be made as a professional service. You should first determine whether it is reasonable to separate the professional services from the nonprofessional services and/or supplies. If you determine that separation is reasonable, you should follow the appropriate procedure for each portion of the procurement.

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| <b>AAM 81.430</b> | <b>Definition of Professional Services (06-18)</b> |
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It is important to understand the meaning of the term professional services. The provision of a service by a professional does not define that service as a "professional service." Professional services are any professional, technical, or consultant services predominantly intellectual in character, result in the production of a report or the completion of a task, and include analysis, evaluation, prediction, planning, or recommendation. A professional services contract requires specialized knowledge and training (often through long and intensive academic preparation) or in-depth experience in a specific field or discipline.

If your requirement does not meet the above definition and description, it should not be procured as a professional service. This does not mean that a competitive sealed proposal process may not be appropriate; it means that you may not make the procurement under the statutory professional services exclusion. If you have doubts that what you are seeking is a professional service, contact the Shared Services of Alaska, Statewide Contracting Office.

The following are examples of ways to decide if you require professional services.

1. If your agency needs a specific computer program, you may purchase the program under a professional services contract only if the program has to be designed specifically for your agency's unique needs, or if the cost of developing the application would be more than the cost of the "off-the-shelf" program. If the program is "off-the-shelf" and usable "as is," you cannot purchase it under a professional services contract.

2. A graphic designer may perform a professional service when providing a design for a document, or presentation. In this case, the work required to implement the design would require the unique talent of the designer, and therefore qualifies as a professional service. However, after the graphic designer has completed the camera-ready materials for the document or the materials for the presentation, any printing services required should not be included in the contract as they are not professional services. Any procurement of supplies included with professional services, when you estimate the value of the supplies to exceed 50 percent of the contract price, should not be purchased under this chapter.
  
3. Carpenters can perform a professional service, but only if their expertise is used in a consultant mode. For example, they are performing a professional service when they review a construction or remodeling project or specification to verify the feasibility or quality of the project; however, they cannot actually perform any manual carpentry work under a professional services contract.

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| <b>AAM 81.440</b> | <b>Authority to Procure Professional Services (07-99)</b> |
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DOA has the statutory authority to procure professional services other than those related to construction. Construction-related professional services, including architects, engineers, and land surveyors, are under the authority of DOTPF. Construction is defined by [AS 36.30.990\(6\)](#). DOA delegates its authority to agencies upon determination that they are capable of implementing the delegated authority. You must procure these services according to [AS 36.30](#), [2 AAC 12](#), and this Chapter.

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| <b>AAM 81.450</b> | <b>Forms for Professional Services Contracts (06-18)</b> |
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The minimum requirements for professional services contracts are as follows:

| <b>Amount</b>    | <b>Minimum Contract Form Requirements</b>  |
|------------------|--|
| \$10,000 or less | The contract must be in writing, but the standard contracting/agreement form is not required. The requirement of Attorney General review does not apply. |

| Amount                | Minimum Contract Form Requirements  |
|-----------------------|---|
| Greater than \$10,000 | Use an IRIS CT document with the appropriate appendices or a Standard Agreement Form for Professional Services Contract, available at <a href="http://doa.alaska.gov/dgs/policy.html">http://doa.alaska.gov/dgs/policy.html</a> ), or other form approved by the Department of Law. The contract must be in writing and include appropriate appendices. If the standard agreement form is not used, you must submit the contract to the Attorney General's Office for approval (see <a href="#">AAM 81.170</a> ). |

**AAM 81.460 Receipt of Proposals (07-99)**

Proposals should be received and held securely in a manner or form that cannot be viewed until opened by the procurement officer.

Upon receipt, you must record the date and time of receipt in a register of proposals. The register must include the name of each offeror and a description of the supply, service, or construction item offered.

**AAM 81.470 Evaluating Proposals (06-18)**

Proposals must be evaluated according to [AS 36.30.240-250](#) and [2 AAC 12.260-315](#). You must include the Alaska bidder and offeror preferences unless doing so would conflict with federal funding requirements, in which case the federal funding requirements prevail.

With proposals, you do not base award solely on the lowest-priced offer. Instead, you use evaluation criteria, including price, to determine the most advantageous offer. You must evaluate all proposals using the factors set out in the RFP. The importance or weighting value of each factor must be set out in the RFP.

The proposals may be evaluated by the procurement officer or a Proposal Evaluation Committee (PEC). If the purchasing agency uses a PEC, it shall consist of at least three State of Alaska employees or public officials. Individuals who are neither State employees nor public officials may serve on a PEC if the required minimum number of State employees or public officials has been met and they are residents of the state. Individuals who are not residents may serve on a PEC if written permission is granted by the Commissioner of the Department of Administration. Requests for nonresident evaluators should explain the value of their participation on the PEC.

In all cases, exercise caution to ensure that conflicts of interest do not exist.

The procurement officer must review all proposals for responsiveness before distributing them to the PEC. Proposals deemed non-responsive should not be evaluated by the PEC.

For IT procurements that exceed \$25,000, Investment Review Board (IRB) approval may be required prior to issuing the solicitation procurements of information technology that will interact with information technology systems and infrastructure managed by OIT. Contact OIT if you have questions about the IRB and whether IRB approval is required for your procurement.

### **AAM 81.470(1) Evaluation Criteria (04-14)**

You should divide evaluation criteria into two areas: minimum requirements and evaluated criteria. The minimum criteria should include every requirement that is necessary to accomplish the task addressed by the RFP and which offerors must meet to be deemed responsive. This should include such items as professional licenses, certifications, and specific staffing, experience, and location requirements. Any offeror who meets the minimum requirements should be able to accomplish the required task.

The purpose of the evaluated criteria is to select the best proposal from a group that has already been determined to be responsive. Specific weights should be based on the relative importance of the criteria being evaluated with the more important criteria receiving the higher weight.

### **AAM 81.470(2) Experience Factor (06-18)**

It may be valuable to consider specific experience when evaluating proposals. If this criterion is used, you should consider task-related experience and not agency-related experience. A description of the experience considered valuable should be limited to those specific characteristics necessary to accomplish the goal of the RFP.

A good example of necessary experience might be:

Experience designing Oracle database applications in a Windows NT environment.

If this experience is necessary for the project, then you should make it a minimum requirement and not evaluate it using points. You may use a combination of minimum experience and points evaluation.

A bad example of necessary experience might be:

Previous experience working with department Y, division X.

It is legitimate to consider the offeror's experience in Alaska performing similar work, but it may be unduly restrictive to require experience with a specific division or section within a State of Alaska department.

### **AAM 81.470(3) Cost Evaluation Factor (06-18)**

Except for those services procured under [AS 36.30.270](#) (architectural, engineering, and land surveying contracts), price is a mandatory evaluation factor. You are strongly encouraged to give price a minimum weight of 75% for supplies, 60% for both professional and non-professional services, and between 60% and 75% for procurements involving a combination of both. If these suggested minimums are contrary to the public interest, you may, at your discretion, weigh price no lower than 40% for professional services and non-professional services or 60% for supply contracts. To go below these minimums, a written request must be forwarded to the Chief Procurement Officer. The request must explain with particularity why it is not in the State's best interest to use the minimum percentages identified above for price evaluation, and why those minimums will prevent the agency from accomplishing its public mission.

The procurement officer should require that costs be submitted separately to avoid the possibility of price influencing the scoring. The procurement officer should always apply any applicable preferences and convert the evaluated price to points.

Normalization is one means of determining the distribution of points available for cost proposals, and the formula is as follows:

$$\frac{(\text{Price of Lowest Cost Proposal}) \times (\text{Maximum Points for Cost})}{\text{Price of Each Higher Cost Proposal}} = \text{Points}$$

### **AAM 81.470(4) Alaskan Offeror's Preference (04-14)**

As required by [2 AAC 12.260\(e\)](#), you must include an evaluation factor that considers whether an offeror qualifies as an Alaska bidder under [AS 36.30.990\(2\)](#). You must assign at least 10 percent of the total value of the rating system to the Alaskan offeror's preference.

### **AAM 81.470(5) Clarification of Offers (07-99)**

During the evaluation process, the procurement officer or the PEC may communicate with an offeror to clarify uncertainties or eliminate confusion. This communication may not result in a material or substantial change to the proposal, but it may result in an adjustment to the procurement officer or PEC's evaluation.

### **AAM 81.470(6) Other Discussions with Individual Offerors (07-99)**

The procurement officer or PEC may give offerors whose proposals are reasonably susceptible for award the opportunity to meet with the procurement officer or PEC, as set out in [2 AAC 12.290](#). If you hold discussions under [2 AAC 12.290](#), you must offer an opportunity to participate in the discussions to all those deemed reasonably susceptible for award.

### **AAM 81.480 Contract Negotiations (05-18)**

After final evaluation of proposals, you may negotiate certain, non-material contract terms with the offeror of the highest rated proposal. Any changes made must be reasonable and may not have the result of changing the ranking of the proposal. If the offeror fails to negotiate in good faith or fails to negotiate within the time schedule you set, you may terminate negotiations and begin negotiations with the offeror of the next highest ranked proposal.

## **CHAPTER V ALTERNATIVE PROCUREMENT**

### **AAM 81.500 Requesting an Alternate Procurement Method (06-18)**

If it is in the State's interest to use an alternative procurement method, you must obtain approval using a Request for Alternate Procurement (RAP) form, available at <http://doa.alaska.gov/dgs/policy.html>. (Guides on [Unanticipated Amendment Exception](#) and [Single Source](#) RAPs can be found on this site as well.)

In addition to the specific requirements set out below, each RAP must include findings of fact supporting the conclusion that the agency should use an alternate procurement method. The RAP must be accompanied by evidence, which consists of material facts sufficient for independent examination and verification per [AS 36.30.315](#). Evidence may consist of written documents, records, supporting data, affidavits from subject matter experts, or other information proving that the findings of fact are true and

accurate. Mere argument or persuasion does not constitute evidence. RAPs that are submitted without evidence sufficient to independently determine the validity of the request will not be considered.

The agency head may approve a single source or limited competition RAP for small procurements, if permitted under the department's delegation of procurement authority. All other RAPs must be submitted to the Shared Services of Alaska, Statewide Contracting Office for approval.

Requests for approval of alternate procurements for construction, the State Equipment Fleet, and Alaska Marine Highway procurements under [AS 36.30.015\(g\)](#) must be forwarded to the Commissioner of DOT&PF for approval.

If the request is approved, the agency must make the procurement in accordance with instructions on the approved RAP. For contracts not entered into IRIS, that agency must send a copy of the procurement document and the Procurement Report, available at <http://doa.alaska.gov/dgs/policy.html> to the Statewide Contracting Office.

| <b>RAP Type</b>            | <b>Value of Procurement</b>                        | <b>Delegation of Authority</b>   |
|----------------------------|--|--|
| <b>Single Source</b>       | \$100,000 or less                                  | Commissioner or Commissioner's designee.   |
|                            | Above \$100,000 (above \$200,000 for construction) | Chief Procurement Officer or, for construction or state equipment fleet, the commissioner of DOT&PF. This authority cannot be delegated  |
| <b>Limited Competition</b> | \$100,000 or less                                  | Commissioner, Commissioner's designee, or Chief Procurement Officer, as set out in delegation of procurement authority. This authority cannot be delegated further.  |
|                            | Above \$100,000                                    | Chief Procurement Officer or, for services of legal counsel, the Attorney General. This authority may not be delegated further. No limited competition procurements may be conducted for construction valued over \$100,000. |

| <b>RAP Type</b>                           | <b>Value of Procurement</b>  | <b>Delegation of Authority</b>   |
|---|--|--|
| <b>Emergency</b>                          | All values   | A written determination must be completed by the Chief Procurement Officer. If there is insufficient time (less than 72 hours) for the CPO to make the determination, this authority is delegated to the agency.   |
| <b>Unanticipated Amendment Exceptions</b> | Values less than the lesser of 20% of the current term, or \$100,000 | Amendments valued less than 20% of the current term or \$100,000, whichever is less, are not considered unanticipated amendments, and as such, may be made by written determination of the procurement officer. A procurement officer may amend a contract established under 2 AAC 12.400, so long as the amendment does not increase the contract beyond the small procurement limits established under AS 36.30.320. |
|   | Values more than the lesser of 20% of the current term, or \$100,000 | Chief Procurement Officer, or for state equipment fleet contracts, the Commissioner of DOT&PF, or for contracts for the services of legal counsel, the Attorney General.   |
| <b>Innovative</b>                         | All values   | Chief Procurement Officer, or for construction or state equipment fleet contracts, the Commissioner of DOT&PF.   |

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| <b>AAM 81.510</b> | <b>Emergency Procurements (06-18)</b> |
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Emergency procurements are authorized by [AS 36.30.310](#) and [2 AAC 12.440-460](#). Emergency conditions exist when a timely decision is required to prevent loss of life or damage to property, or to mitigate an imminent threat to public health, welfare, or safety. Emergency conditions may also exist when acquisition through the normal procurement process would be impracticable or contrary to the public interest because of inherent delays.

Before you make the procurement, you must send a completed RAP, available at <http://doa.alaska.gov/dgs/policy.html> to the Chief



Procurement Officer. The RAP must explain the situation that exists and why procurement through the normal process is impracticable or contrary to the public interest. The explanation must define the public interest and illustrate the negative consequences if the RAP is not approved. It must also state the level of competition the agency will use and the reasons for determining the level of competition. Emergency procurements are limited to the procurements necessary to meet the emergency.

Agencies are delegated the authority to make emergency determinations in situations when there is not sufficient time for the agency official to prepare documentation, submit the RAP to the Chief Procurement Officer, and obtain a written determination prior to responding to the emergency. In general, there is not sufficient time to obtain a written determination from the Chief Procurement Officer when action must be taken in less than 72 hours. In this situation, an emergency determination must be made by a responsible agency official, the highest practical level of competition should be sought considering the dollar amount, and documentation shall be placed in the procurement record. A Procurement Report must be submitted to the Shared Services of Alaska, Statewide Contracting Office within five days..

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| <b>AAM 81.520</b> | <b>Limited Competition (04-14)</b> |
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Limited competition procurements are authorized by [AS 36.30.305](#) and [2 AAC 12.430](#). Requests for approval of a limited competition procurement must be made on a completed RAP, available at <http://doa.alaska.gov/dgs/policy.html>. The RAP must contain findings of fact that support the determination that other sources are not suitable or acceptable, and that the competitive sealed bidding, competitive sealed proposal, or small procurement processes are impractical or contrary to the public interest. The RAP must be approved by your Commissioner, the Commissioner's designee, or by the Chief Procurement Officer, as set out in your delegation of procurement authority.

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| <b>AAM 81.530</b> | <b>Single Source (04-14)</b> |
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Single source procurements are authorized by [AS 36.30.300](#) and [2 AAC 12.415-420](#). Requests for approval of single source procurements must be made on a completed RAP, available at <http://doa.alaska.gov/dgs/policy.html>. The RAP must contain findings of fact that support by clear and convincing evidence the determination that competitive sealed bidding, competitive sealed proposals, limited competition, or small procurement procedures are impractical or are contrary to the public interest, and that award of a single source contract is in the state's best interest. The findings must specify the state interest that will be advanced by using a single source procurement. For examples of

appropriate single source procurements, see [2 AAC 12.410\(d\)](#). The RAP must be approved by your Commissioner, the Commissioner's designee, or by the Chief Procurement Officer, as set out in your delegation of procurement authority.

#### **AAM 81.540 Innovative Procurements (04-14)**

Innovative procurements are authorized by [AS 36.30.308](#) and [2 AAC 12.575](#). Requests for approval of an innovative procurement must be made on a completed RAP, available at <http://doa.alaska.gov/dgs/policy.html>. The RAP must contain findings of fact that support the determination that it is advantageous to the State to use an innovative competitive procurement process in the procurement of new or unique requirements of the State, new technologies, or to achieve best value. The RAP must be approved by the Chief Procurement Officer.

You must submit a procurement plan to the Department of Law for review and approval as to form before issuing public notice. The plan must address the method of solicitation, scope, method of award, protest procedures, and contract provisions.

#### **AAM 81.550 Requests for Contract Amendments Exceeding Limits (06-18)**

When an unanticipated amendment to an existing contract would be beyond the limits described in [AAM 81.700](#), the agency must send its request to exceed the amendment limits to the Shared Services of Alaska, Statewide Contracting Office on a completed RAP, available at <http://doa.alaska.gov/dgs/policy.html>.

If the contract is for construction, the State Equipment Fleet, or Alaska Marine Highway procurements under [AS 36.30.015\(g\)](#), the agency must send the RAP to the Commissioner of DOT&PF. If the contract is for legal services, the agency must send the RAP to the Attorney General.

The RAP must be accompanied by a written explanation listing specific reasons why the amendment is in the State's best interest, and must address the following:

1. **Legitimacy:** Whether a change is legitimate and due to unforeseen circumstances that 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. **Scope:** Whether the additional work is within the scope of the original contract;

3. **Contract Clauses:** Whether the contract contains clauses authorizing modification;
4. **Extent:** Whether the amendment represents any important general change that alters the essential identity or main purpose of the original contract or is of such importance as to constitute a new undertaking.

The Chief Procurement Officer, the Commissioner of DOT&PF, or the Attorney General, as applicable, must determine in writing that the amendment is in the State's best interests. If the RAP is approved, the agency may amend the contract.

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| <b>AAM 81.560</b> | <b>Amendments to RAPs (06-18)</b> |
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If it is necessary to request an amendment to an approved RAP, agencies should send an email to the contracting officer who processed the original RAP within the Shared Services of Alaska, Statewide Contracting Office, explaining the needed changes and indicate if any conditions in the original RAP have changed. If no conditions have changed, then a statement such as, "All other conditions supporting the original approval of this RAP remain the same," should be included.

## CHAPTER VI      PREPARING A CONTRACT

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| <b>AAM 81.600</b> | <b>Types of Contracts (06-18)</b> |
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Any type of contract that will meet the State's needs and promote the state's best interests is acceptable, except a cost-plus-a-percentage-of-cost contract. Cost-plus-percentage-of-cost contracts are identifiable by the Contractor being reimbursed for costs, then a percentage "markup" for profit being added to those costs, with no not to exceed or fixed rates. This type of contract provides no incentive for the contractor to contain costs, because the more they spend, the more they make.

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| <b>AAM 81.610</b> | <b>Award to Nonresident (06-18)</b> |
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If you award a contract to an offeror who does not reside in or maintain a place of business in Alaska, and if the services, supplies, or construction that are the subject of the contract could have been obtained in the state, you must make a written determination that contract award to the non-resident is in the state's best interest, as required by [AS 36.30.362](#). You must keep the written determination in the procurement file. This section does not apply to competitive sealed bids or competitive sealed proposals.

## AAM 81.620 Contracting for Software (07-99)

When contracting for software development or enhancement, you should address the following questions:

Who owns the code in the software developed by the contractor?

Who owns the rights to software that is derived from software developed by the contractor?

Who owns the rights to any pre-existing code included in software developed under contract for your department?

What rights did your department buy?

Does your department have exclusive rights to the software?

Are your department's rights time-limited?

How may your department use the software?

Can other departments use the software?

Can you use the software at multiple sites?

Can the software be ported to additional hardware platforms?

## CHAPTER VII CONTRACT AMENDMENTS

### AAM 81.700 Contract Amendments (06-18)

There are two basic types of amendments: anticipated and unanticipated. There are differences in the way you should handle each type.

**Anticipated:** These are amendments that were foreseen at the time of procurement. To qualify as an anticipated amendment, the solicitation and resulting contract must advise offerors of the potential of the amendment. Most anticipated amendments involve contract renewals. Examples of solicitation and contract language you should use are:

**In Solicitations:** "The State of Alaska wishes to establish a one-year contract with the State's option to renew for two additional one-year periods."

**In Contracts:** "Renewal--The State of Alaska reserves the right to renew this contract for two additional one-year periods."

Language regarding anticipated amendments cannot be so broad that it eliminates the statutory requirements for competition.

**Unanticipated:** These are amendments that were not foreseen at the time of procurement and must be addressed dependent on value and effect. Agencies may handle amendments that do not cause any increase in the original contract cost within the requirements of the contracting department. Agencies may amend contracts for supplies and services established under small procurement procedures 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](#), without approval of a RAP. Agencies may amend contracts whose original price exceeded \$100,000 within the scope of the original contract by the lesser of 20 percent of the original term of the contract, or a subsequent current term of the contract, as applicable, or \$100,000.

If the unanticipated amendment would exceed the applicable limit in the preceding paragraph, the agency must treat it as a new procurement or as an amendment pursuant to [2 AAC 12.485](#) and as set out in [AAM 81.550](#).

All amendments to legal services contracts which were subject to Attorney General approval under [AS 36.30.015\(d\)](#), must be approved by the Attorney General.