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LEVEL II – ABOVE \$10,000 TO \$100,000

CONDUCTING A SMALL PROCUREMENT ABOVE \$10,000

2 AAC 12.400 describes three levels of competition for small procurements depending on the dollar amount, **including all renewals**. Note that each level of competition is inclusive of the upper limit shown. For instance, a \$10,000 procurement may be conducted using reasonable and adequate procedures while a procurement *exceeding* \$10,000 must be procured using the next higher level of competition.

Use the [Small Procurement Matrix](#) to assist in determining what competitive process to use for each dollar amount, what forms to use, and what procurement records must be kept. The Small Procurement Matrix is included at the end of the Level I Procurement Academy manual and is also located on the OPPM [Purchasing Documents](#) page.

VERBAL OR WRITTEN QUOTES/INFORMAL PROPOSALS: \$10,000 - \$50,000

For procurements costing more than \$10,000, but not more than \$50,000, at least **three** vendors must be contacted for either a quotation or an informal proposal. The initial contact and the vendors' responses may be made verbally or in writing.

AAM 81.220 requires that the minimum number of quotations or informal proposals must be sought from Alaskan vendors before out-of-state vendors are contacted unless the procurement officer determines in writing that this is not practical. Additionally, lists of vendors should be rotated to provide as many Alaskan vendors as possible the opportunity to compete for state business.

Per **AAM 81.230** an established catalog price (be sure to include any delivery costs) may be used as a verbal quote if the catalog is regularly maintained by the manufacturer or contractor, is published or otherwise available for inspection by customers, and 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 public.

Note that using catalog prices in lieu of verbal quotes does not eliminate the need to rotate vendors set forth under **AAM 81.220**.

For written quotes under this section, you must use the **Request for Quotation (RFQ)** form and for informal proposals you may use the **Informal Request for Proposal (IRFP)** template. Both documents are located on the OPPM [Purchasing Documents](#) page.

WRITTEN QUOTES/INFORMAL PROPOSALS: \$50,000 - \$100,000

For procurements costing more than \$50,000, but not more than \$100,000, at least **three** vendors must be contacted, in writing, for either a **written** quotation or a **written** informal proposal.

AAM 81.220 still applies to this level of competition, meaning that the minimum number of quotations or informal proposals must be sought from Alaskan vendors before out-of-state vendors are contacted. Also, unless the procurement officer determines in writing that this is not practical, lists of vendors should be rotated to allow as many Alaskan vendors as possible the opportunity to compete for state business.

Catalog prices may not be used in place of written quotes.

This level of competition also requires that a written **Notice of Award (NOA)** including protest rights is provided to all vendors that responded to the solicitation request.

For written quotes under this section you must use the [Request for Quotation \(RFQ\)](#) form and for informal proposals you may use the [Informal Request for Proposal \(IRFP\)](#) template. Both documents are located on the OPPM [Purchasing Documents](#) page.

PREFERENCES

The State of Alaska has nine different preferences that may be claimed by vendors. A guide to all of these preferences and examples of how to apply them may be found at: <http://doa.alaska.gov/oppm/forms.html>

A preference is applied as a percentage reduction of the bidder's or offeror's price **for evaluation purposes only** and if a vendor qualifies for more than one preference, the percentage of each preference will be added together and subtracted from the bid or proposal price **for evaluation purposes only**. A contract will be awarded for the full amount of the bid or proposal regardless of any preferences applied.

The most commonly claimed preference, as well as the preference that a vendor must qualify for before any other preferences may be claimed, is the Alaska Bidder Preference. This preference is worth 5%.

A vendor must meet the requirements of **AS 36.30.990(2)** to qualify for the Alaska Bidder Preference:

“Alaska bidder” means a person who

- (A) holds a current Alaska Business License;*
- (B) submits a bid for goods, services, or construction under the name as appearing on the person’s current Alaska Business License;*
- (C) has maintained a place of business within the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid;*
- (D) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.05 or AS 32.11 and all partners are residents of the state; and*
- (E) if a joint venture, it composed entirely of ventures that qualify under (1)-(4) of this subsection.*

Figure 1 Alaska Bidder Preference Requirements

Another common preference is the Alaska Offerors Preference, described in **2 AAC 12.260(e)**. This preference is applied only when using an informal proposal process and a numerical rating system and is worth 10% of the total points available for rating proposals. A vendor automatically qualifies for the Alaska Offerors Preference if they claim and meet the requirements of the Alaska Bidder Preference.

Other commonly applied preferences include the 3%/5%/7% Alaska Products Preferences which are applied *only* to the qualifying product excluding delivery and other costs, 5% Alaska Veterans Preference, and 15% Employment Program Preference.

No preferences may be applied if not claimed by the vendor, even if the procurement officer knows that the vendor qualifies. Seek guidance from your department’s procurement section if you need help interpreting or applying a preference.

SMALL PROCUREMENT PROTESTS

The protest processes set forth in the procurement code provide vendors the opportunity to point out potential problems in a particular procurement. The ability for vendors to protest is important in public procurement because it provides a transparent checks and balance system that encourages fair and open competition.

Small procurement protests are governed by **2 AAC 12.695** and the process contains three basic steps:

1. The vendor attempts to informally resolve the protest directly with the procurement officer.
2. The vendor files a written protest with the commissioner of the contracting agency.
3. The commissioner or designee issues a decision, conducts a hearing, or in consultation with the protesting vendor, pursues an alternate dispute resolution, such as arbitration, mediation, or negotiation.

GUIDE TO SMALL PROCUREMENT PROTESTS shows the step-by-step process and associated timelines for handling a small procurement protest.

HANDLING A PROTEST

Protests of any type of procurement can be frustrating to a procurement officer, but it is important to keep in mind that the protest process is there to protect both the state and vendor community. Many protests have brought mistakes in the procurement process to light that were initially missed and have resulted in improvements to the procurement process. Since we are dealing with public money, allowing vendors the opportunity to bring issues to the state’s attention is a critical part of ensuring we are procuring supplies and services in an efficient and effective manner.

When faced with a protest or the prospect of a protest:

Do	Do Not
Accept that a mistake may have been made.	Become defensive.
Remain calm and professional.	Spar or argue with the protestor.
Data collected by a university professor.	Data overheard and repeated by the procurement officer (hearsay).
Listen and let the vendor speak.	Try to “slam dunk” the protestor.
Look at the situation from the vendor’s point of view.	Blow off or ignore the protestor.

When responding to a protest, it is important to make sure that all of the protestor’s issues have been identified and addressed individually. The response should also cite any applicable rules, the procurement officer’s interpretation of the rules, and a conclusion accepting or denying the protest in whole or in part. A way to remember this is the IRAC mnemonic – Issue, Rule, Apply, Conclusion.

SAMPLE PROTEST RESPONSE LETTER contains a sample response using the IRAC method and a follow up letter that would come from the procurement officer's supervisor letting the protestor know that a higher level of staff has reviewed the response and agrees.

Below are some tips to help avoid protests:

- Eliminate redundancy in solicitation documents.
- Review specifications for unreasonable restrictions.
- Clearly identify evaluation and award criteria.
- Respond to all bidder questions in a timely and objective manner.
- Consistently apply policies and procedures.

Figure 2 Avoiding Protests

BASIC CONTRACT ADMINISTRATION

Contract administration is an important, yet often overlooked, part of the procurement process. Because we as procurement officers are dealing with the expenditure of public money, it is crucial that we take steps to ensure it is being spent effectively.

While it may seem that a procurement officer's duties end once a contract is awarded, that is not the case. Without active contract administration, there is no way to know of performance problems with either the state or the contractor until far too late and at likely more cost.

Contract administration includes:

- Assuring the state fulfills its part of the contract.
- Make certain the contractor's performance complies with the requirements of the contract.
- Identify and resolve problems before they reach a critical level.
- Identify when contract changes may be required.
- Keeping detailed, complete, and accurate documentation in the procurement file.
- Track milestone dates, deliverable dates, and contract renewals.

Performance issues must be addressed immediately in writing with a cure letter. A sample cure letter is included in **LEVEL I PROCUREMENT ACADEMY MANUAL**. The cure letter must identify the problem(s), citing relevant contract language, and any corrective action required. The letter must also list the consequences for failing to correct the problem(s) and set a deadline after which the contractor may be found to be in default if corrective actions are not taken.

Finding a contractor to be in default is a serious matter with severe consequences. You will want to work with your department's procurement section to ensure you have sufficient documented evidence to justify a finding of default.

RECORD RETENTION

As part of contract administration, a procurement officer needs to be familiar with the retention schedule for procurement files.

The Department of Education and Early Development, Division of Libraries, Archives, and Museums, Alaska State Archives Section publishes a retention schedule that shows how long certain files must be kept. This schedule can be found at: <https://archives.alaska.gov/rims/index.html>

The schedule for procurement records is Item No. 45.

In general, records relating to small procurements must be kept for the current fiscal year plus 3 years. Be sure to double-check the retention schedule before destroying any procurement files.

ETHICS

As mentioned previously, ethics plays a major role in public procurement. A grand jury stated, in a case involving corruption on a procurement matter, that:

Government officials must always aim for what is best for the public, not merely for what might be "okay." Every public official has a duty of loyal, faithful and honest service which is clearly inherent in the responsibilities of public office at all levels.

As public procurement professionals, it is important to keep this in mind and be cognizant and accountable for all actions taken as a procurement officer.

Below are some general prohibitions contained in the [Executive Branch Ethics Act](#) and the [Executive Branch Code of Ethics](#).

MISUSE OF OFFICIAL POSITION

Alaska's Code of Ethics states that you:

- May not use position for personal gain or give unwarranted benefit or treatment.
- May not take or withhold official action in which you have a personal or financial interest.
- May not unduly influence the award of a contract.
- May not accept money from anyone other than the state for performance of your official duties.

IMPROPER GIFTS

Public employees may not solicit or accept gifts that benefit them if it can be reasonably inferred that the gift is intended to influence their actions or judgment.

Alaska's Code of Ethics requires that gifts valued over \$150 must be reported to your ethics supervisor. **As a public procurement professional, it is strongly encouraged that you do not accept any gifts regardless of value.** Once the appearance of an impropriety is suggested, it calls into question all work done to that point and must be defended.

IMPROPER INFLUENCE

You may not take actions or withhold action on the award or administration of a state contract if you have any personal or financial interest. A "personal or financial interest" could include an interest that would benefit yourself, your spouse, or an immediate family member or friend.

If you are ever in a position where you are unsure if you are in a situation that could be a violation of the Code of Ethics, it is important that you seek guidance from your ethics supervisor before proceeding.

OUTSIDE EMPLOYMENT

The Code of Ethics and Ethics Act does not prohibit an executive branch employee from holding another job, however no public employee may work for a person or organization other than the employee's own department if that work is incompatible or in conflict with the discharge of their official duties.

If you have outside employment, it must be reported annually to your designated ethics supervisor.

EMPLOYMENT RESTRICTION

The Code of Ethics specifically prohibits a former public employee from working on any matter in which the former employee had personally and substantially participated while employed by the state until at least two years have passed.

This prohibition is designed to prevent a state employee from awarding or influencing the award of a contract to a vendor in exchange for future employment.

REQUEST FOR ALTERNATE PROCUREMENTS (RAPs)

GENERAL RAP INFORMATION

WHAT IS A REQUEST FOR ALTERNATE PROCUREMENT?

A Request for Alternate Procurement, or RAP, is a procurement method that is used when it is not in the state's best interests to conduct a traditional solicitation.

There are five types of RAPs described in the procurement code:

1. Single Source (**AS 36.30.300 / 2 AAC 12.410**)
2. Limited Competition (**AS 36.30.305 / 2 AAC 12.430**)
3. Exception to Unanticipated Amendment Limitation (**2 AAC 12.485**)
4. Emergency (**AS 36.30.310 / 2 AAC 12.440**)
5. Innovative (**AS 36.30.309 / 2 AAC 12.575**)

Each type of RAP has unique conditions for use, evidence requirements, and approval processes. In all cases, however, when preparing a RAP, the RAP must explain the situation, list the facts, and contain factual evidence relevant to the explanation.

APPROVAL REQUIREMENTS

AS 36.30.320 grants agencies the delegated authority to approve Single Source and Limited Competition RAPs that fall within the \$100,000 small procurement threshold. However, this authority cannot be delegated below the level of administrative services director.

Single Source and Limited Competition RAPs for amounts greater than \$100,000 and all other types of RAPs must be approved by the Chief Procurement Officer.

EVIDENCE

Single Source and Limited Competition RAPs require **written evidence** to support the request.

October 2020, per PIM #92, all Single Source RAPs that require CPO approval must have supporting documentation to show a good faith effort to conduct market research, find sources of competition and allow our industry partners to provide insights on their capabilities to meet contractual requirements.

As such, in addition to all existing documentation, all future RAPs must also include the following notices, dated within the last 60 days of the RAP being submitted to OPPM:

A Request for Information (RFI), which must be posted to the Alaska Online Public Notice (OPN) for a period no less than 10 calendar days. At the conclusion of the posting period:

1. If only one response to the RFI is received from the vendor already identified as the apparent single source vendor, or no responses received, the Procurement Officer may finalize the Single Source RAP, then include evidence of the posting and the response or lack of responses and submit the package for normal processing.
2. If multiple responses to the RFI are received from interested parties, the Procurement Officer shall conclude that potential competition exists, and competitive solicitation must occur.

If multiple responses to the RFI are received and the procurement officer still considers the Single Source method to be the correct approach, please contact OPPI to discuss.

The evidence must be verifiable and allow for independent examination and determination. When a RAP is presented to a department head or the Chief Procurement Officer for approval, the RAP document should be able to stand on its own.

The type of evidence required will vary based on the supply or service covered by the RAP. A good thing to keep in mind when collecting evidence is what a competing vendor would say to a judge about the evidence or the source of the evidence to discredit it. Would a competing vendor question your expert's qualifications? Would they question the integrity of your data? You should feel confident with your evidence before submitting a RAP.

Expert testimony is one of the most often used pieces of evidence in Single Source and Limited Competition RAPs. Black's Law Dictionary defines "expert testimony" as:

Opinion evidence of some person who possesses special skill or knowledge in some science, profession or business which is not common to the average man and which is possessed by the expert by reason of his special study or experience.

Expert testimony is acceptable when it can be determined that the expert is unbiased, and the testimony clearly demonstrates why the person is an expert.

A state employee may be subject to a criminal penalty if false statements are intentionally included in a RAP.

Below are some general examples of what constitutes evidence and what doesn't.

Acceptable Evidence	Not Evidence
Memo from an expert describing why they are an expert and providing testimony related to the RAP.	Memo containing argument or persuasion.
An affidavit of publication or copy of Online Public Notice showing that a notice was published.	Document stating, “several vendors were contacted.”
Data collected by a university professor.	Data overheard and repeated by the procurement officer (hearsay).
Letter from an authorized representative of a company stating that a product they manufacture is only available from them.	Letter from a state project manager stating that a product manufactured by a company is only available from that company.
A statement from a senior procurement specialist describing how long a formal procurement for a specific service will likely take.	A statement from a senior procurement specialist describing how scientific data from a different vendor will corrupt the existing data.

Table 1 Examples of Evidence

AMENDMENTS TO RAPS

Occasionally, a RAP is submitted by an agency but, before a contract is awarded, it is found that the time to award a contract granted by OPPM must be extended or the amount requested must be changed.

To amend a RAP after it has been approved by the chief procurement officer, submit a memo to the OPPM Contracting Officer who processed the original RAP recommendation identifying the RAP in question and explain the necessary changes.

The conditions that allowed approval of the original RAP must still exist in order for the change to be approved.

RAP TYPES

SINGLE SOURCE RAP – AS 36.30.300 / 2 AAC 12.410

Single Source RAPs are the most common type of RAPs processed by state agencies and are subject to the highest evidentiary requirements since they are the least competitive type of procurement. You may not award a single source contract if a reasonable alternative exists.

A Single Source RAP must meet two tests:

1. It is not practical to award a contract competitively.
2. Award of a single source contract is in the state's best interests.

When addressing that award of a single source contract is in the "state's best interests," **2 AAC 12.415** requires that this determination is reasonable, not arbitrary, capricious or prompted by corruption. Further, you must cite the **specific and significant interests** to support the use of a single source procurement.

2 AAC 12.410(d) sets forth examples of circumstances in which a single source procurement may be appropriate, including:

- If the compatibility of equipment, accessories, or replacement parts is the main consideration.
- If there exists a sole source of expertise required to perform a specific professional service.
- If the procurement is for the services of legal counsel for the purpose of advising or representing the state in specific civil or criminal proceedings or on a specific matter before a federal or state regulatory agency, board, or commission.

LIMITED COMPETITION RAP – AS 36.30.305 / 2 AAC 12.430

A Limited Competition RAP is a request to restrict competition to a specific vendor pool. Once approved, the agency may solicit offers or conduct negotiations equally with each vendor to identify the most advantageous vendor and make award.

Like Single Source RAPs, a Limited Competition RAP must meet two tests:

1. Why solicitation should be limited.
2. Why a traditional competitive process is impractical or contrary to the public interest.

EXCEPTION TO UNANTICIPATED AMENDMENT LIMITATION – 2 AAC 12.485

The Exception to Unanticipated Amendment Limitation (EUAL) RAP is needed when an unanticipated amendment exceeds the lesser of 20% of the current contract term or \$100,000.

When calculating 20% of the current contract term, the “current contract term” is only the current amount of the contract, not counting any past or future terms. For example, if you have awarded a 1- year contract for \$50,000 and there are four 1-year optional renewals each worth \$50,000 and you are in the final year of the contract, the current contract term is \$50,000. 20% of this amount is \$10,000, so any unanticipated amendments exceeding this amount would require an EUAL RAP.

This type of RAP is not applicable to small procurement contracts **unless** an amendment would increase the contract beyond \$100,000. Otherwise, a procurement officer may amend a small procurement contract within the small procurement threshold provided the amendment is within the scope of the original contract.

An EUAL RAP **must** address the following topics. Addressing each topic under clearly identified headings will help OPPM to process the RAP faster:

- **Legitimacy:** What caused the need for the unanticipated amendment?
- **Scope:** Is the unanticipated work within the scope of the original contract?
- **Contract Clause:** Does the original contract contain a clause authorizing modifications?
- **Extent:** Does the unanticipated work appear to constitute a new undertaking?

EMERGENCY – AS 36.30.310 / 2 AAC 12.440

There are two methods of procuring supplies and/or services related to an emergency, depending on the situation.

AAM 81.510 provides a “72 hour” rule that basically says if there is an imminent threat to public health, welfare, or safety that requires action in less than 72 hours, agencies are delegated the authority to make emergency determinations.

In this situation, an agency would document the emergency in a memo to the procurement file describing the emergency, why procurement action is required in less than 72 hours and identifying each purchase. The agency would then procure using reasonable means. Within 5 days after the procurement, a procurement report must be submitted to OPPM to document the purchases.

When an agency has more than 72 hours to take action, an Emergency RAP form must be completed, explaining why emergency conditions exist and why the normal procurement process is impractical or contrary to the public interest. The RAP must identify the items or services to be purchased and level of competition to be used.

The agency must then submit the RAP to OPPM for approval by the chief procurement officer.

In all cases, emergency purchases are limited to the supplies and services directly related to the emergency.

INNOVATIVE – AS 30.30.308 / 2 AAC 12.575

The Innovative RAP process is used to create a procurement procedure that would not otherwise be allowed within the state's procurement code. It requires two levels of approval, by OPPM and the Department of Law, and is the least used RAP.

An Innovative RAP must address how the procurement procedure will achieve the best value or why it is advantageous to the state due to new or unique state needs or new technologies. It must be accompanied by a detailed procurement plan.

PROCUREMENT VIOLATIONS

WHAT IS A PROCUREMENT VIOLATION?

A procurement violation is a violation of any part of the procurement code – **AS 36.30, 2 AAC 12, AAM Sections 81 or 82**, or the written delegation of purchasing authority issued by the Department of Administration.

A violation of an agency's internal procurement policy does not constitute a procurement violation that would require a violation report to be submitted to OPPM.

Examples of procurement violations include:

- Purchasing a \$75,000 item using reasonable & adequate procedures instead of obtaining three written quotes as required by **2 AAC 12.400**.
- Procuring leased office space in violation of an agency's written delegation of purchasing authority.
- Artificially fragmenting an order to avoid more stringent procurement procedures in violation of **AS 36.30.320(d)**.

INVESTIGATING A PROCUREMENT VIOLATION

The investigation process for procurement violations is set out in **AAM 82.300**.

The department's procurement section investigates the procurement violation and prepares a report for submission to the chief procurement officer.

The report prepared by the department must include the following information:

- **Description of the violation:** What type of violation (exceeded authority, lack of competition, etc.), what was purchased, how it was discovered, if it happened once or was repetitive, chronological list of events leading to the violation, and what led to the breakdown in the process.
- **Status of the invoice:** Is the invoice paid or unpaid pending the results of the investigation?
- **Interviews with principles:** Determine the level of procurement knowledge among those involved, their reasoning, and whether they had access to sufficient guidance.
- **Impact to agency:** Did the violation cause excessive costs? Was there a savings achieved? Did it cause public embarrassment or a perception of impropriety?
- **Closing statement:** Describe any actions already taken (training, review process, workload shift, etc.) and whether the violation was inadvertent, process related, planned, or intentional.
- **Department recommendation:** Describe any corrective actions, disciplinary actions, or civil or criminal actions, that are recommended.

The report should also include any supporting documentation as attachments.

Upon receipt of the violation report, OPPM will conduct any further investigation as appropriate and make a final recommendation to the chief procurement officer, who will approve or disapprove the recommended actions.

CIVIL AND CRIMINAL PENALTIES

AS 36.30.930 sets out civil and criminal penalties for knowingly violating the procurement code. This law reads as follows:

- (1) a person who contracts for or purchases supplies, equipment for the state fleet, services, professional services, or construction in a manner the person knows to be contrary to the requirements of this chapter or the regulations adopted under this chapter is liable for all costs and damages to the state arising out of the violation;*
- (2) a person who intentionally or knowingly contracts for or purchases supplies, equipment for the state fleet, services, professional services, or construction under a scheme or artifice to avoid the requirements of this chapter is guilty of a class C felony.*

GUIDE TO SMALL PROCUREMENT PROTESTS

FIRST STEP

An interested party (vendor) is required to contact the state agency's procurement officer and attempt to informally resolve a concern or dispute.

An interested party is an actual or prospective vendor whose economic interest may be affected substantially and directly by the issuance of a solicitation, award of the procurement, or failure to award the procurement. Whether or not there is an economic interest will depend on the circumstances.

SECOND STEP

If the attempt to informally resolve a problem is unsuccessful – the vendor may then file a written protest with the commissioner of the department performing the procurement. Must also provide copy of the protest to the procurement officer.

1. If protesting a solicitation, the protest must be filed before the date and time set for receipt of the quotes or proposals.
2. If protesting an award less than \$50,000, the protest must be filed within 10 days of the solicitation or award, whichever is later.
3. If protesting an award from \$50,000 to \$100,000, the protest must be filed within 10 days from the date the notice of award is issued.

Protest must contain:

- Name, address, and telephone number of protester;
- Signature of protestor or the protestor's representative;
- Identify the state agency performing the solicitation;
- Identify the solicitation or award at issue;
- Detailed statement of the legal and factual grounds of the protest;
- Form of relief requested (what you want the agency to do).

THIRD STEP

When a protest is received, the procurement officer will immediately give notice of the protest to the contractor or, if no award has been made, to all firms or persons that were solicited for the small procurement. The appropriate commissioner or commissioner's designee may use one of the following options to resolve the protest:

- Issue a decision that sustains the protest, in whole or in part, and provides an appropriate remedy.
- Issue a decision denying the protest.
- With the concurrence of the protestor, assign the protest to the procurement officer or other responsible state official for a final administrative resolution under alternate dispute resolution.
- Conduct a hearing consistent with the procedures contained in AS 36.30.670(b).

There are no provisions for administrative appeal under the small procurement protest process. If an interested party is not satisfied with the final decision or resolution, the only option is to take the matter to court.

For specific detailed process refer to AS 36.30.550 and 2 AAC 12.695

NOTE: Use this follow-up letter for FORMAL PROCUREMENT protests only.

Dear Mr. Doe:

This is to advise you that I have reviewed the response to your protest issued by T. Boon Procurer and that I agree with the decision.

If you wish, you may appeal the decision. Your appeal must be received by the commissioner of the Department of Administration within ten days of the date you receive the procurement officer's decision. The appeal period begins with the first calendar day following your receipt of the procurement officer's decision and ends at the close of business on the tenth calendar day, unless the tenth day falls on a weekend or State holiday. If the tenth day falls on a weekend or holiday, the appeal period ends the first working day following weekend or holiday.

If you file an appeal you must send a copy of the appeal to the procurement officer. In accordance with AS 36.30.590, the appeal must be signed by you or your representative and include the following:

- your name, address and telephone number;
- identification of the bid or contract you are appealing;
- a detailed statement of the legal and factual grounds of your protest and appeal;
- copies of **all** relevant documents;
- the form of relief you want;
- a copy of the procurement officer's decision; and
- identification of the factual and/or legal errors, in the procurement officer's decision, that form the basis of your appeal.

The appeal must be written. Telephone notice of your intent to appeal will not be accepted. FAX copies are acceptable, but because there is no signature, telegrams are not. When your appeal is received you will be sent a copy of the protest report developed by the procurement officer and submitted to the commissioner. You will then have seven days from the date that you received the report to submit additional comments. Your comments should be sent to the commissioner.

After considering the information submitted the commissioner will decide:

- if your appeal will be upheld and the procurement officer's decision overturned; or
- if your appeal will be denied; or
- if a hearing will be conducted.

If you have questions about the appeal procedure you should contact the Office of Administrative Hearings:

- Anchorage 907 269-8170
- Juneau 907 465-1886

Sincerely,

J. Smith Procurer
Contracting Manager

CLASS EXERCISES

WHAT'S YOUR PREFERENCE?

Practical Application #1

The Department of Education and Early Development issued a solicitation for the fabrication and installation of custom-built cabinetry at Mt. Edgecumbe High School.

The bid breakdown, and preference(s) that each vendor is claiming are as follows:

INSTRUCTIONS: Please apply all applicable preferences for each vendor and determine the low bidder.

NOTE: For the purpose of this exercise, assume that each vendor meets the minimum qualifying criteria for each preference that they are claiming.

MENDENHALL MILLWORKS

Claiming – Alaska Bidder (5%) preference / Class III (7%) product preference

Cabinet design and fabrication	\$40,000.00
Delivery and installation costs	<u>\$5,000.00</u>
Total Bid Price	\$45,000.00

EMPLOYMENT PROGRAMS CABINETRY, INC.

Claiming – Alaska Bidder (5%), Employment Program (15%), and Local Agricultural (7%) preferences

Cabinet design and fabrication	\$49,000.00
Delivery and installation costs	<u>\$1,000.00</u>
Total Bid Price	\$50,000.00

TUNDRA CABINETRY

Claiming – Alaska Bidder (5%) preference

Cabinet design and fabrication	\$39,500.00
Delivery and installation costs	<u>\$500.00</u>
Total bid price	\$40,000.00

WHAT'S YOUR PREFERENCE?

Practical Application #1

The bid breakdown, and preference(s) that each vendor is claiming are as follows:

MENDENHALL MILLWORKS

Claiming – Alaska Bidder (5%) preference & Class III product preference

Cabinet Design & Fabrication	\$40,000.00
Delivery & Installation Costs	<u>\$5,000.00</u>
Total Bid Price	\$45,000.00

Preference Valuation

Alaska Bidder Preference	$(\$45,000 \times 5\% = \$2,250)$	5%
Class III Product Preference	$(\$40,000 \times 7\% = \$2,800)$	7% (product only)

Preference Application

Total Bid Price	\$45,000.00
Total Preference Value	- \$2,250.00
Total Product Preferences	- <u>\$2,800.00</u>
Revised Bid Price for Evaluation Purposes	\$39,950.00

EMPLOYMENT PROGRAMS CABINETRY, INC. – Awarded Contract

Claiming – Alaska Bidder (5%), Employment Program (15%), & Local Agricultural (7%) preferences

Cabinet Design & Fabrication	\$49,000.00
Delivery & Installation Costs	<u>\$1,000.00</u>
Total Bid Price	\$50,000.00

Preference Valuation

Alaska Bidder Preference		5%
Employment Program Preference		15%
Local Agricultural & Fisheries Product		<u>7%</u>
Value of Preferences	$(\$50,000 \times 27\% = \$13,500)$	27%

Preference Application

Total Bid Price	\$50,000.00
Total Preference Value	- <u>\$13,500.00</u>
Revised Bid Price for Evaluation Purposes	\$36,500.00

TUNDRA CABINETRY

Claiming Alaska Bidder Preference

Cabinet Design & Fabrication	\$39,500.00
Delivery & Installation Costs	<u>\$500.00</u>
Total Bid Price	\$40,000.00

Preference Valuation

Alaska Bidder Preference	$(\$40,000 \times 5\% = \$2,000)$	5%
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Preference Application

Total Bid Price	\$40,000.00
Total Preference Value	<u>\$2,000.00</u>
Revised Bid Price for Evaluation Purposes	\$38,000.00

WHAT'S YOUR PREFERENCE?

Practical Application #2

The Department of Natural Resources issued a solicitation for the printing of brochures to educate the residents of Alaska on their department's process for reforesting a section of land. They received three bids for this service.

The bid breakdown, and preference(s) that each vendor is claiming are as follows:

INSTRUCTION: Please apply all applicable preferences for each vendor and determine the low bidder.

NOTE: For the purpose of this exercise, assume that each vendor meets the minimum qualifying criteria for each preference that they are claiming.

ABC PRINTING

Claiming – Alaska Bidder (5%) and Veteran (5% / \$5,000 max) preferences / Class III (7%) product preference

Printing cost	\$1,200.00
Delivery cost	<u>\$100.00</u>
Total Bid Price	\$1,300.00

REACH, INC.

Claiming – Alaska Bidder (5%) and Employment Program (15%) preferences

Printing cost	\$1,300.00
Delivery cost	<u>No Charge</u>
Total Bid Price	\$1,300.00

LOWER 48 PRINTING AND BINDING

Claiming no preferences

Printing cost	\$1,000.00
Delivery cost	<u>\$150.00</u>
Total bid price	\$1,150.00

WHAT'S YOUR PREFERENCE?

Practical Application #2

The Department of Natural Resources issued a solicitation for the printing of brochures to educate the residents of Alaska on their department's process for reforesting a section of land. They received three bids for this service.

The bid breakdown, and preference(s) that each vendor is claiming are as follows:

ABC PRINTING

Claiming – Alaska Bidder and Veteran preferences & Class III product preference

Printing Cost (including graphic layout, paper, ink, & labor)	\$1,200.00
Delivery Cost	<u>\$100.00</u>
Total Bid Price	\$1,300.00

Preference Valuation

Alaska Bidder Preference	5%
Alaska Veteran Preference	<u>5%</u>
Value of Preferences	10%

Class III Product Preference	<i>(\$1,200 x 7% = \$84)</i>	7% (product only)
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Preference Application

Total Bid Price	\$1,300.00
Total Preference Value	- \$130.00
Total Product Preference	- <u>\$84.00</u>
Revised Bid Price For Evaluation Purposes	\$1,086.00

REACH, INC. – Awarded Contract

Claiming – Alaska Bidder & Employment Program preferences

Printing Cost (includes graphic layout, ink, & labor)	\$1,300.00
Delivery Cost	<u>No Charge</u>
Total Bid Price	\$1,300.00

Preference Valuation

Alaska Bidder Preference	5%
Employment Program Preference	<u>15%</u>
Value of Preferences	20%

Preference Application

Total Bid Price	\$1,300.00
Total Preference Value	- <u>\$260.00</u>
Revised Bid Price For Evaluation Purposes	\$1,040.00

LOWER 48 PRINTING AND BINDING

Claiming no preferences

Printing Cost (including graphic layout, paper, ink, & labor)	\$1,000.00
Delivery Cost	<u>\$150.00</u>
Total Bid Price	\$1,150.00

Total Bid Price For Evaluation Purposes	\$1,150.00
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SMALL PROCUREMENT CASE STUDY

The Department of Fish & Game (DFG) has a need for three widgets. DFG has determined Echo Widgets is the only brand that will meet the agency's needs and placed phone calls to the four vendors. There is a 30-day delivery requirement.

The quotes received include:

The Great Alaska Widget Co. Fairbanks, Alaska	\$19,000
Industrial Widgets, Inc. Seattle, Washington	\$21,900
Widgets-R-Us Anchorage, Alaska	\$23,000
Bridget's Widgets Anchorage, Alaska	\$22,000

Note:

- The Great Alaska Widget Co. offered delivery within 34 days. The DFG Project Manager has agreed to accept the new terms.
- Bridget's Widgets has been in business in Alaska for two months.

Questions:

1. Do any preferences apply to this solicitation?
2. Are any written determinations required? If so, which one(s) and when?
3. Who would be awarded a contract?

RAP QUESTIONS

1. Can a state employee provide “expert” testimony to justify an alternate procurement?
2. If a formal contract (above \$100,000) is placed on a month-to-month extension, is an unanticipated amendment exception RAP required?
3. *True or False:* A requestor must identify the vendors they will contact if an emergency RAP is approved, but they do not need to explain why that level of competition is practicable under the circumstances.
4. A one-year contract, with four one-year renewal options has a total value of \$250,000 (\$50,000 per contract term). During the last term, can you increase the contract by \$50,000 within your own authority?
5. Can a procurement officer provide expert testimony regarding the reasons why there is insufficient time to conduct a formal procurement?
6. A procurement officer has sufficient factual evidence that justifies a single source, but the agency places a \$45,000 order before the RAP is prepared. Is it acceptable to obtain approval of the RAP after an order is placed, but before the item is actually delivered?
7. An agency awards an \$80,000 contract to a vendor who is the only source for a particular service. They want to amend the contract by \$50,000 due to an unanticipated increase in the amount of services required. Can they amend the contract within their authority?
8. An agency submits a RAP for approval. The only evidence furnished is a previous RAP that was approved for the same service. Can a previously approved RAP be used as factual evidence?
9. An agency requests approval of a single source contract for professional services. They believe a particular consultant possesses unique experience and there are no other reasonable sources. Will the consultant’s resume serve as sufficient factual evidence to document a single source?
10. Is the following statement from a department program manager sufficient to justify approval of an emergency RAP:

Time is of the essence. The database that houses our central file of clients will crash in 10 days unless we contract with a firm to upgrade the system. If we lose the information, it cannot be recreated, and our program will suffer irreparable harm. We use information to provide critical services to our clients. Detailed information has been collected from all our clients during office visits, there are no hard copies or backups. It would be impossible to recreate the data.”

RAP ANSWERS

1. Yes. However, expert testimony from a state employee is not always sufficient to serve as the only factual evidence. In some cases, their statements could be considered as biased. You should attempt to collect additional factual evidence.
2. Yes, if the value of the extension will exceed the lesser of 20% of the current term or \$100,000. Ref. 2 AAC 12.485(d)
3. False. The agency must identify the level of competition they intend to use *and* the reason(s) for determining that level of competition. In addition, the agency must explain why emergency conditions exist 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. Ref. AAM 81.510
4. No, since the value of the amendment would exceed 20% of the amount of the current term (\$50,000). In this situation, an unanticipated amendment exception (UAE) RAP is required because the increase exceeds \$10,000 ($\$50,000 \times 20\% = \$10,000$). Ref 2 AAC 12.485(d)
5. Usually not. Factual evidence that documents the specific reasons *why* there is insufficient time for a normal procurement will usually be provided by someone other than the procurement officer in the form of written material or testimony. However, a procurement officer may provide testimony regarding their area of expertise - procurement. In many RAP situations, the procurement officer will provide a timeline that shows how long it would take their department to conduct a formal procurement.
6. No. RAPs cannot be approved retroactively. In this instance a purchasing violation occurred when the order was placed and must be investigated and reported in accordance with AAM 82.320.
7. No. In this case a UAE RAP is required since the \$100,000 small procurement threshold will be breached. Only the Chief Procurement Officer can approve UAE RAPs.
8. Yes, but additional factual evidence is almost always required. The reliability of evidence tends to weaken with age due to changes in the marketplace. New or updated evidence is required to confirm that the circumstances in place when the original RAP was approved still exist.
9. No. Additional factual evidence is required to document why it is impractical to solicit competition and why the award of a single source contract is in the state's best interest. This type of RAP based on a firm or person's "unique" qualifications and experience is probably the most difficult to prove. In almost all instances, a substantial amount of independent third-party evidence/expert testimony is required.
10. Probably not. The program manager is qualified to describe the database itself, explain how it was created and why it's important to preserve the system. However, statements related to the database crashing in 10 days should likely come from a technical person who is trained and has experience in the area of database management.

SMALL PROCUREMENT QUESTIONS

1. If an agency is aware of only two vendors that can provide a \$20,000 item, can they solicit quotes from *only* those two vendors?
2. Does a consultant based in Las Vegas need an Alaska Business License if they present a two-day training course in Anchorage?
3. Is it okay to contact only one vendor to purchase an item valued at \$10,000?
4. Can a \$12,000 contract be amended by \$6,000? Can a \$12,000 contract be amended by \$30,000?
5. If your brother-in-law works as a salesperson for a plumbing supply company and you need to purchase plumbing supplies, what should you do?
6. What two tests must be addressed with factual evidence when completing a single source RAP?
7. You discover that a computer was purchased in violation of your agency's Policy & Procedures governing IT purchases. What do you do?
8. Can you purchase an item that is on a mandatory contract award from another source if the item is substantially less expensive?
9. In response to a written RFQ, a vendor offers a 10% discount if payment is made within 15 days. Can the discount be considered during the evaluation of price in determining the low bidder?
10. Is a Notice of Award required for a \$50,000 procurement? A \$75,000 procurement?

SMALL PROCUREMENT ANSWERS

1. No, unless a limited competition or emergency alternate procurement is approved.
2. Yes, a business license is required since the service is physically performed in Alaska.
3. It depends. This level of competition requires “reasonable and adequate procedures” to ensure fairness to potential bidders or offerors and competition commensurate with the circumstances of the procurement, considering price, mission requirements, and available competition; “reasonable and adequate procedures” can include contacting only one potential bidder or offeror in appropriate circumstances.
4. As long as the amendment is within the “scope” of the original contract, then yes.

However, a \$30,000 amendment would most likely be considered outside the scope of the original contract. Remember, when assessing the scope of the original contract, the dollar value must also be considered. More than doubling a contract is usually considered outside of the scope.
5. Advise your supervisor of a potential conflict of interest. The procurement should probably be reassigned to another person to avoid even the appearance of a conflict of interest.
6. 1. That it is not practical to award a contract competitively and 2. that award of a single source contract is in the state’s best interests.
7. You would likely investigate why the error occurred and how to prevent it, however because it is a violation of internal policy, not of the procurement code or delegation of authority, it is not a procurement violation that would require a written report to be submitted to OPPM.
8. No. We must always purchase from mandatory contract awards unless the contract specifies a waiver process. However, if the prices associated with a mandatory contract seem excessive or if the contract cause your agency a hardship or does not meet your needs, contact OPPM.
9. No. The standard terms and conditions attached to the RFQ documents state that *“Discounts for prompt payment will not be considered in evaluating the price you quote. However, the state shall be entitled to take advantage of any payment discount(s) offered by the vendor provided payment is made within the discount period.”*
10. The Notice of Award is only required for procurements that are *more* than \$50,000.

PROCUREMENT ACADEMY COURSE COMPLETION SHEET – LEVEL II

Course Location

Course Date

I request credit for this course towards completing the Level II Alaska Procurement Officer Certificate. I certify:

- I attended the entire course.
- I understand the course topic information presented in this course as follows:
 1. Define basic purchasing principals and legal requirements needed to conduct small procurements. Course topics include:
 - Contracting for small procurements in accordance with AS 36.30, 2AAC 12, AAM Chapters 81 and 82, and agency policies and procedures
 - Applying statutes and regulations regarding source selection and exemptions
 - Identifying and applying preferences
 - Avoiding artificial fragmentation
 - Applying statutes and regulations regarding informal proposals and quotations using standard State procurement forms
 - Including requirements/specifications for small procurements
 - Ensuring legal competition at the appropriate level
 - Evaluating quotes and proposals and awarding contracts
 - Recording, documenting and managing contract administration with regard to small procurements
 - Adhering to statutes and regulations regarding alternate procurements, protests, appeals, and violations
 - Adhering to Alaska Statute Title 39.52, Code of Ethics in performing all procurements
 - Define the need and procedures for handling small procurement protests
 2. Define the need and procedures for procurements situations requiring an alternate procurement
 3. Define the need and procedure for handling purchasing violations
 4. Recognize the concepts and identify the regulations required to legally conduct procurements up to \$100,000
 5. Demonstrate legal, ethical, and competent performance on the job when conducting small procurements, alternate procurements, adhering to the critical path of handling protests, avoiding purchasing violations, and adhering to the administrative manual policy and procedures when investigating purchasing violation incidents.
- I recognize the importance of the concepts presented.
- I understand I am now accountable for competent, effective, legal, and ethical interpretation and application of this information.

We want your feedback! Please help us improve by answering the following questions:

	<i>Poor</i>			<i>Great</i>
1. What was your overall satisfaction with this course?	1	2	3	4
2. Was the course content clear and easy to understand?	1	2	3	4
3. Was the course length and pace appropriate for the topic?	1	2	3	4

Additional comments?

SIGNATURE	PRINTED NAME	DATE

Please note that if you feel unable to demonstrate competent performance on the job in this subject matter area, do not sign this Course Completion Sheet. You may register for this course again in order to learn the course material and become competent to apply the information. There is no charge to your agency to re-take this course within the next year.

Please sign and Email to lois.lemus@alaska.gov.

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