

Board Packet, Table of Contents

Meeting: December 29, 2020 at 2:30pm

<u>Procurement Codes Comparison Table</u>	Page 2
<u>Legal Memo regarding applicability of procurement codes</u> <i>Emily Nauman, Legislative Legal Services</i>	Page 3
<u>2010 Request for Proposal for Legal Consultant, includes Amendment #1</u> <i>Alaska Redistricting Board via Office of the Governor, September 29, 2010</i> <u>Proposal details specific to the Redistricting Board begin on page 22</u>	Page 6
<u>Successful RFP Response, October 10, 2010</u> <i>Patton Boggs LLP, Michael D. White, (attachments not available)</i>	Page 38
<u>Appendix A: Legislative Procurement Code</u>	Page 57
<u>Appendix B: Administrative Procurement Policies & Procedures</u> <i>Department of Administration</i>	Page 80

Procurement Code Features

State Procurement Statute is found at AS 36.60

Feature	Administrative Code	Legislative Code
No Bid Maximum	\$50,000	\$35,000
No Bid Max with documented justification	\$100,000	No fixed ceiling
No Bid Direct Procurement Exception for State Agencies (UAA/Dept. Labor)	No	Yes
No Bid Direct Hire of Legal Counsel Allowed	No	Yes
RFP Time on the Street	20 days	20 days
RFP total time to complete once published	60 days	45-60 days
Protest Allowed	Yes, bidders only within 10 days	Yes, "interested parties" within 10 days
– Protest freezes contract execution	No	No
– Protest Step 1	Procurement Officer documents findings may implement remedy	Procurement Officer documents findings may implement remedy
– Protest Step 2	Commissioner of Administration who may refer case to an Administrative Law Judge	Appeal to Legislative Council
– Right of Appeal	Superior Court	Superior Court
Inter-branch payment coding required	Yes	No

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-2450
LAA.Legal@akleg.gov
120 4th Street, Room 3


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

December 23, 2019

SUBJECT: Procurement Code: Redistricting Planning Committee
(Work Order No. 31-LS1361)

TO: Representative Bryce Edgmon
Attn: TJ Presley

FROM: Emily Nauman 
Deputy Director

You asked whether purchases by the Redistricting Planning Committee (hereafter "Committee") fall under the State Procurement Code (AS 36.30), generally applicable to the executive branch. The short answer is, while the Committee should abide by a procurement code when making purchases, it is not required to abide by the State Procurement Code.

A. Redistricting Planning Committee

The Committee is "created as an independent agency of the state."¹ Statutorily, the Committee is not housed in the executive, legislative, or judicial branches. Rather, it is independent of the existing three branches of government.² The Committee serves to prepare and make arrangements for the Redistricting Board, an independent entity created in the state constitution for adopting a redistricting plan.³

In order to make the necessary preparations for the Redistricting Board, the Committee is given the statutory authority to make certain procurements. The Committee may "arrange for office space for the board and its staff . . . including the leasing of appropriate facilities and office equipment";⁴ "compile or contract for the compilation of information necessary for the Redistricting Board to begin its work";⁵ "develop and issue a request for competitive sealed proposals to procure a computerized system that uses

¹ AS 15.10.300(a).

² Article VI, sec. 8, Constitution of the State of Alaska.

³ Article VI, sec. 10, Constitution of the State of Alaska.

⁴ AS 15.10.300(c).

⁵ AS 15.10.300(d).

census data and maps to prepare plans for state senate and house districts";⁶ and "award a contract for the acquisition of computer software and hardware and for the provision of computer services."⁷

B. State Procurement Code

AS 36.30 sets out the state procurement code. AS 36.30.850(b) states that the chapter "applies to every expenditure of state money by the state, acting through an agency, under a contract."⁸ For the purposes of AS 36.30.850(b), "agency" is defined as a "department, institution, board, commission, division, authority, public corporation, the Alaska Pioneers' Home, the Alaska Veterans' Home, or other *administrative unit of the executive branch of state government*."⁹ As discussed above, the Committee is not a part of the executive branch. Therefore, AS 36.30.850(b), and, more generally, AS 36.60, do not apply. In other words, the Committee is not required to comply with the state procurement code applicable to the executive branch.

C. Analysis

It is advisable that the Committee abide by competitive procurement rules. However, the statutes establishing the Committee are silent as to what procurement rules apply. Therefore, the Committee can likely choose which procurement rules to abide by.¹⁰ There are three options, the state procurement code (AS 36.30)), the Legislative Procurement Procedures,¹¹ or the Court System Procurement Guidelines.¹² Whatever set of procurement rules the Committee chooses, it should abide by them consistently for all of its procurements.

If I may be of further assistance, please advise.

ELN:kwg
19-362.kwg

⁶ AS 15.10.300(e).

⁷ *Id.*

⁸ The subsection then goes on to list many exceptions.

⁹ AS 36.30.990(1). Emphasis added. The definition goes on to list several exceptions; the list of exceptions does not include the Committee.

¹⁰ It may also be possible for the Committee to establish its own procurement rules. Given the time constraint on the Committee, this does not seem like a practical solution.

¹¹ Established under AS 36.30.020.

¹² Established under AS 36.30.030.

**RFP for Legal Consultant for the Alaska Redistricting Board
September 29, 2010**

STATE OF ALASKA



**Office of the Governor
Division of Administrative Services
For Redistricting Board
Attn: R. Shawn Henderson
240 Main Street, Suite 300
P.O. Box 110001
Juneau, Alaska 99811**

**Request For Proposals
RFP #2011-0001-9840
Date of Issue: September 29, 2010**

Legal Consultant

The State of Alaska, Redistricting Board, is soliciting proposals for a Legal consultant to provide formal and informal legal advice in connection with the Board's duties under Article VI of the Alaska Constitution

Offerors Are Not Required To Return This Form.

Important Notice: If you received this solicitation from the State of Alaska's "Online Public Notice" web site, you must register with the procurement officer listed in this document to receive subsequent amendments. Failure to contact the procurement officer may result in the rejection of your offer.

**R. Shawn Henderson
Procurement Officer
Office of the Governor**

**Senator John Torgerson
Project Director
Redistricting Board**

TABLE OF CONTENTS

1. SECTION ONE INTRODUCTION AND INSTRUCTIONS.....	4
1.01 RETURN MAILING ADDRESS, CONTACT PERSON, TELEPHONE, FAX NUMBERS, AND DEADLINE FOR RECEIPT OF PROPOSALS	4
1.02 CONTRACT TERM AND WORK SCHEDULE	4
1.03 PURPOSE OF THE RFP	5
1.04 BUDGET	5
1.05 LOCATION OF WORK	5
1.06 ASSISTANCE TO OFFERORS WITH A DISABILITY	5
1.07 REQUIRED REVIEW	5
1.08 QUESTIONS RECEIVED PRIOR TO OPENING OF PROPOSALS	6
1.09 AMENDMENTS	6
1.10 ALTERNATE PROPOSALS	6
1.11 RIGHT OF REJECTION	6
1.12 STATE NOT RESPONSIBLE FOR PREPARATION COSTS.....	6
1.13 DISCLOSURE OF PROPOSAL CONTENTS	6
1.14 SUBCONTRACTORS	7
1.15 JOINT VENTURES	7
1.16 OFFEROR'S CERTIFICATION.....	7
1.17 CONFLICT OF INTEREST	7
1.18 SOLICITATION ADVERTISING	7
1.19 NEWS RELEASES.....	7
1.20 ASSIGNMENT	7
1.21 DISPUTES	8
1.22 SEVERABILITY	8
1.23 FEDERAL REQUIREMENTS.....	8
2. SECTION TWO STANDARD PROPOSAL INFORMATION.....	9
2.01 AUTHORIZED SIGNATURE	9
2.02 SITE INSPECTION.....	9
2.03 AMENDMENTS TO PROPOSALS	9
2.04 SUPPLEMENTAL TERMS AND CONDITIONS	9
2.05 CLARIFICATION OF OFFERS.....	9
2.06 DISCUSSIONS WITH OFFERORS.....	9
2.07 PRIOR EXPERIENCE.....	10
2.08 EVALUATION OF PROPOSALS	10
2.09 VENDOR TAX ID.....	10
2.10 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES	10
2.11 APPLICATION OF PREFERENCES	11
2.12 5 PERCENT ALASKAN BIDDER PREFERENCE	11
2.13 FORMULA USED TO CONVERT COST TO POINTS.....	12
2.14 ALASKAN OFFEROR'S PREFERENCE	12
2.15 CONTRACT NEGOTIATION.....	12
2.16 FAILURE TO NEGOTIATE	12
2.17 NOTICE OF INTENT TO AWARD (NIA) — OFFEROR NOTIFICATION OF SELECTION	12
2.18 PROTEST	13

3.	SECTION THREE STANDARD CONTRACT INFORMATION.....	14
3.01	CONTRACT TYPE	14
3.02	CONTRACT APPROVAL.....	14
3.03	STANDARD CONTRACT PROVISIONS	14
3.04	PROPOSAL AS A PART OF THE CONTRACT	14
3.05	ADDITIONAL TERMS AND CONDITIONS.....	14
3.06	INSURANCE REQUIREMENTS	14
3.07	BID BOND - PERFORMANCE BOND - SURETY DEPOSIT	14
3.08	CONTRACT FUNDING	14
3.09	PROPOSED PAYMENT PROCEDURES	15
3.10	CONTRACT PAYMENT	15
3.11	CONTRACT PERSONNEL	15
3.12	INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES	15
3.13	TERMINATION FOR DEFAULT	15
3.14	CONTRACT CHANGES – ANTICIPATED CONTRACT AMENDMENTS	15
3.15	CONTRACT INVALIDATION.....	16
4.	SECTION FOUR SCOPE OF WORK.....	17
4.01	SCOPE OF WORK.....	17
5.	SECTION FIVE PROPOSAL FORMAT AND CONTENT	17
5.01	PROPOSAL FORMAT AND CONTENT	18
5.02	INTRODUCTION	18
5.03	UNDERSTANDING OF THE PROJECT	18
5.04	EXPERIENCE , ORGANIZATION, LEAD ATTORNEY AND KEY PERSONNEL	18
5.05	COST PROPOSAL	19
5.06	EVALUATION CRITERIA	19
6.	SECTION SIX EVALUATION CRITERIA AND CONTRACTOR SELECTION	20
6.01	UNDERTANDING OF PROJECT – 10%	20
6.02	EXPERIENCE, QUALIFICATIONS, LEAD ATTORNEY AND KEY PERSONNEL – 40%	20
6.03	CONTRACT COST – 40%	20
6.04	ALASKAN OFFEROR’S PREFERENCE – 10%	20
7.	SECTION SEVEN ATTACHMENTS.....	21
7.01	ATTACHMENTS	21-28

**SECTION ONE
INTRODUCTION AND INSTRUCTIONS**

1.01 Return Mailing Address, Contact Person, Telephone, Fax Numbers and Deadline for Receipt of Proposals

Offerors must submit six copies of their proposal, in writing, to the procurement officer in a sealed envelope. It must be addressed as set out below.

**Office of the Governor
Division of Administrative Services
For the Redistricting Board
Attention: R. Shawn Henderson
Request for Proposal #2011-0001-9840
Project name: Legal Consultant
240 Main Street, Suite 300
Juneau, Alaska 99811-0001**

**Phone: 907- 465-3899
Fax: 907-465-2211
TDD 907-465-3514**

shawn.henderson@alaska.gov

Proposals must be received no later than **10:00 AM, October 11, 2010**

An offeror's failure to submit its proposal prior to the deadline will cause the proposal to be disqualified. Late proposals or amendments will not be opened or accepted for evaluation.

The State of Alaska provides one Request for Proposal (RFP). Additional RFPs may be purchased for the cost of reproduction, \$.25 per page.

1.02 Contract Term and Work Schedule

The contract term and work schedule set out herein represent the State's best estimate of the schedule that will be followed. If a component of this schedule, such as the opening is delayed, the rest of the schedule will be shifted by the same number of days.

The length of the contract will be from the date of award, approximately November 1, 2010, until completion, approximately October 31, 2012.

The approximate contract schedule is as follows:

- Issue RFP: **October 29, 2010,**
- Proposals due date: **October 11, 2010,**
- Proposal Evaluation Committee complete evaluation by: **October 18, 2010**
- State issues Notice of Intent to Award a Contract: **October 19, 2010**
- State issues contract: **November 1, 2010.**

1.03 Purpose of the RFP

The Office of the Governor on behalf of the Redistricting Board, is soliciting proposals for a contractor to provide legal advice in connection with the Board's duties under Article VI of the Alaska Constitution. Legal services will be provided relating to the 2010 redistricting effort. The work shall consist primarily of advice to the Alaska Redistricting Board and its staff pertaining to Alaska and federal law which relates to the roles and responsibilities of the redistricting board in the formulation, consideration and adoption of a redistricting plan for the Alaska State Legislature which must be adopted not later than 90 days after redistricting census data is officially released by the United States Census Bureau. Services under the contract will include assisting the redistricting board and its staff in obtaining preclearance of the plan by the United States Department of Justice under the federal Voting Rights Act. Counsel will also be responsible for defending the plan developed by the Board in the trial and appellate courts of the state, and, if necessary, in the relevant federal courts. The plan must be precleared and legislative districts established in the plan must be in place no later than June 1, 2012.

1.04 Budget

The Redistricting Board estimates an initial budget of \$500,000 for this contract with additional funding available for Anticipated Contract Amendments.

1.05 Location of Work

The consulting services will be performed in Anchorage or at another location as determined by the Project Director.

By signature on their proposal, the offeror certifies that:

- (a) all services provided under this contract by the contractor and all subcontractors shall be performed in the United States; and
- (b) the offeror is not established and headquartered or incorporated and headquartered in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report.

The most recent United States Department of State's Trafficking in Persons Report can be found at the following website: <http://www.state.gov/g/tip/>

Failure to comply with (a) or (b) of this requirement will cause the state to reject the proposal as non-responsive, or cancel the contract.

1.06 Assistance to Offerors with a Disability

Offerors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the procurement officer no later than seven days prior to the deadline for receipt of proposals.

1.07 Required Review

Offerors should carefully review this solicitation for defects and questionable or objectionable material. Comments concerning defects and objectionable material must be made in writing and received by the procurement officer at least ten days before the proposal opening. This will allow issuance of any necessary amendments. It will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which award could not be made. Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the procurement officer, in writing, at least seven days before the time set for opening.

1.08 Questions Received Prior to Opening of Proposals

All questions should be in writing and directed to the issuing office, addressed to the procurement officer. The interested party should also confirm telephone conversations in writing.

Two types of questions generally arise. One may be answered by directing the questioner to a specific section of the RFP. These questions may be answered over the telephone. Other questions may be more complex and may require a written amendment to the RFP. The procurement officer will make that decision.

1.09 Amendments

If an amendment is issued, it will be provided to all who were mailed a copy of the RFP and to those who have registered with the procurement officer as having downloaded the RFP from the State of Alaska Online Public Notice web site.

1.10 Alternate Proposals

Offerors may only submit one proposal for evaluation. In accordance with 2 AAC 12.830 alternate proposals (proposals that offer something different than what is asked for) will be rejected.

1.11 Right of Rejection

Offerors must comply with all of the terms of the RFP, the State Procurement Code (AS 36.30), and all applicable local, state, and federal laws, codes, and regulations. The procurement officer may reject any proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the RFP.

Offerors may not qualify the proposal nor restrict the rights of the state. If an offeror does so, the procurement officer may determine the proposal to be a non-responsive counter-offer and the proposal may be rejected.

Minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the RFP;
- are trivial, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision;

may be waived by the procurement officer.

The state reserves the right to refrain from making an award if it determines that to be in its best interest.

A proposal from a debarred or suspended offeror shall be rejected.

1.12 State Not Responsible for Preparation Costs

The state will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

1.13 Disclosure of Proposal Contents

All proposals and other material submitted become the property of the State of Alaska and may be returned only at the state's option. AS 40.25.110 requires public records to be open to reasonable inspection. All proposal information, including detailed price and cost information, will be held in confidence during the evaluation process and prior to the time a Notice of Intent to Award is issued. Thereafter, proposals will become public information.

Trade secrets and other proprietary data contained in proposals may be held confidential if the offeror requests, in writing, that the procurement officer does so, and if the procurement officer agrees, in writing, to do so. Material considered confidential by the offeror must be clearly identified and the offeror must include a brief statement that sets out the reasons for confidentiality.

1.14 Subcontractors

Subcontractors may not be used to perform work under this contract.

1.15 Joint Ventures

Joint ventures are not acceptable.

1.16 Offeror's Certification

By signature on the proposal, offerors certify that they comply with the following:

- (a) the laws of the State of Alaska;
- (b) the applicable portion of the Federal Civil Rights Act of 1964;
- (c) the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government;
- (d) the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government;
- (e) all terms and conditions set out in this RFP;
- (f) a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury;
- (g) that the offers will remain open and valid for at least 90 days; and
- (h) that programs, services, and activities provided to the general public under the resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued thereunder by the federal government.

If any offeror fails to comply with [a] through [h] of this paragraph, the state reserves the right to disregard the proposal, terminate the contract, or consider the contractor in default.

1.17 Conflict of Interest

Each proposal shall include a statement indicating whether or not the firm or any individuals working on the contract has a possible conflict of interest (e.g., currently employed by the State of Alaska or formerly employed by the State of Alaska within the past two years) and, if so, the nature of that conflict. The Redistricting Board, reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the program to be developed by the offeror. The Redistricting Board determination regarding any questions of conflict of interest shall be final.

1.18 Solicitation Advertising

Public notice has been provided in accordance with 2 AAC 12.220.

1.19 News Releases

News releases related to this RFP will not be made without prior approval of the Project Director.

1.20 Assignment

Per 2 AAC 12.480, the contractor may not transfer or assign any portion of the contract without prior written approval from the procurement officer.

1.21 Disputes

Any dispute arising out of this agreement will be resolved under the laws of the State of Alaska. Any appeal of an administrative order or any original action to enforce any provision of this agreement or to obtain relief from or remedy in connection with this agreement may be brought only in the Superior Court for the State of Alaska.

1.22 Severability

If any provision of the contract or agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and, the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.

1.23 Federal Requirements

The offeror must identify all known federal requirements that apply to the proposal, the evaluation, or the contract.

SECTION TWO STANDARD PROPOSAL INFORMATION

2.01 Authorized Signature

All proposals must be signed by an individual authorized to bind the offeror to the provisions of the RFP. Proposals must remain open and valid for at least 90-days from the opening date.

2.02 Site Inspection

The state may conduct on-site visits to evaluate the offeror's capacity to perform the contract. An offeror must agree, at risk of being found non-responsive and having its proposal rejected, to provide the state reasonable access to relevant portions of its work sites. Individuals designated by the procurement officer at the state's expense will make site inspection.

2.03 Amendments to Proposals

Amendments to or withdrawals of proposals will only be allowed if acceptable requests are received prior to the deadline that is set for receipt of proposals. No amendments or withdrawals will be accepted after the deadline unless they are in response to the state's request in accordance with 2 AAC 12.290.

2.04 Supplemental Terms and Conditions

Proposals must comply with Section 1.11 Right of Rejection. However, if the state fails to identify or detect supplemental terms or conditions that conflict with those contained in this RFP or that diminish the state's rights under any contract resulting from the RFP, the term(s) or condition(s) will be considered null and void. After award of contract:

- a) if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- b) if the state's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

2.05 Clarification of Offers

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or the proposal evaluation committee are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Clarifications may not result in a material or substantive change to the proposal. The evaluation by the procurement officer or the proposal evaluation committee may be adjusted as a result of a clarification under this section.

2.06 Discussions with Offerors

The state may conduct discussions with offerors in accordance with AS 36.30.240 and 2 AAC 12.290. The purpose of these discussions will be to ensure full understanding of the requirements of the RFP and proposal. Discussions will be limited to specific sections of the RFP or proposal identified by the procurement officer. Discussions will only be held with offerors who have submitted a proposal deemed reasonably susceptible for award by the PEC. Discussions, if held, will be after initial evaluation of proposals by the PEC. If modifications are made as a result of these discussions they will be put in writing. Following discussions, the procurement officer may set a time for best and final proposal submissions from those offerors with whom discussions were held. Proposals may be reevaluated after receipt of best and final proposal submissions.

If an offeror does not submit a best and final proposal or a notice of withdrawal, the offeror's immediate previous proposal is considered the offeror's best and final proposal.

Offerors with a disability needing accommodation should contact the procurement officer prior to the date set for discussions so that reasonable accommodation can be made. Any oral modification of a proposal must be reduced to writing by the offeror.

2.07 Minimum Prior Experience

Offerors must include evidence in their proposal that demonstrates they possess the following minimum prior experience in order for their proposal to be considered responsive.

- Offerors must have at least 5-years of experience in advising clients regarding Alaska Administrative Law and Administrative Procedures.
- Offerors must have experience in advising clients regarding state or municipal elections including compliance with the federal Voting Rights Act.
- Lead Counsel of Offerors must have at least 5-years experience as counsel representing clients in litigation in the Superior and Supreme courts of the State of Alaska.
- Lead counsel of offerors must possess a broad knowledge of the state's geographical regions, cultural diversity, and the peoples of Alaska

An offeror's failure to meet these minimum prior experience requirements will cause their proposal to be considered non-responsive and their proposal will be rejected.

2.08 Evaluation of Proposals

The Redistricting Board will evaluate proposals. The evaluation will be based solely on the evaluation factors set out in Section SIX of this RFP.

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

2.09 Vendor Tax ID

A valid Vendor Tax ID must be submitted to the issuing office with the proposal or within five days of the state's request.

2.10 Alaska Business License and Other Required Licenses

At the time the proposals are opened, all offerors must hold a valid Alaska business license and any necessary applicable professional licenses required by Alaska Statute. Proposals must be submitted under the name as appearing on the person's current Alaska business license in order to be considered responsive. Offerors should contact the Department of Commerce, Community and Economic Development, Division of Corporations, Business, and Professional Licensing, P. O. Box 110806, Juneau, Alaska 99811-0806, for information on these licenses. Offerors must submit evidence of a valid Alaska business license with the proposal. An offeror's failure to submit this evidence with the proposal will cause their proposal to be determined non-responsive. Acceptable evidence that the offeror possesses a valid Alaska business license may consist of any one of the following:

- (a) copy of an Alaska business license with the correct NAICS code;
- (b) certification on the proposal that the offeror has a valid Alaska business license and has included the license number in the proposal;
- (c) a canceled check for the Alaska business license fee;
- (d) a copy of the Alaska business license application with a receipt stamp from the state's occupational licensing office; or

(e) a sworn and notarized affidavit that the offeror has applied and paid for the Alaska business license.

You are not required to hold a valid Alaska business license at the time proposals are opened if you possess one of the following licenses and are offering services or supplies under that specific line of business:

- Fisheries business licenses issued by Alaska Department of Revenue or Alaska Department of Fish and Game.
- Liquor licenses issued by Alaska Department of Revenue for alcohol sales only.
- Insurance licenses issued by Alaska Department of Commerce, Community and Economic Development, Division of Insurance.
- Mining licenses issued by Alaska Department of Revenue.

2.11 Application of Preferences

Certain preferences apply to all contracts for professional services, regardless of their dollar value. The Alaskan Bidder and Offeror preferences are the two most common preferences involved in the RFP process. Additional preferences that may apply to this procurement are listed below. Guides that contain excerpts from the relevant statutes and codes, explain when the preferences apply and provide examples of how to calculate the preferences are available at the Department of Administration, Division of General Services' web site:

<http://doa.alaska.gov/dgs/policy.html>

Alaska Products Preference - AS 36.30.332

Recycled Products Preference - AS 36.30.337

Local Agriculture and Fisheries Products Preference - AS 36.15.050

Employment Program Preference - AS 36.30.170(c)

Alaskans with Disability Preference - AS 36.30.170 (e)

Employers of People with Disabilities Preference - AS 36.30.170 (f)

The Division of Vocational Rehabilitation in the Department of Labor and Workforce Development keeps a list of qualified employment programs; a list of individuals who qualify as persons with a disability; and a list of persons who qualify as employers with 50 percent or more of their employees being disabled. A person must be on this list at the time the bid is opened in order to qualify for a preference under this section.

As evidence of an individual's or a business' right to a certain preference, the Division of Vocational Rehabilitation will issue a certification letter. To take advantage of the Employment Program Preference, Alaskans with Disability Preference or Employers of People with Disabilities Preference described above, an individual or business must be on the appropriate Division of Vocational Rehabilitation list at the time the proposal is opened, and must provide the procurement officer a copy of their certification letter. Offerors must attach a copy of their certification letter to the proposal. The offeror's failure to provide the certification letter mentioned above with the proposal will cause the state to disallow the preference.

2.12 5 Percent Alaskan Bidder Preference 2 AAC 12.260 & AS 36.30.170

An Alaskan Bidder Preference of five percent will be applied prior to evaluation. The preference will be given to an offeror who:

- (a) holds a current Alaska business license;
- (b) submits a proposal for goods or services under the name on the Alaska business license;
- (c) has maintained a place of business within the state staffed by the offeror, or an employee of the offeror, for a period of six months immediately preceding the date of the proposal;
- (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, is composed entirely of entities that qualify under (a)-(d) of this subsection.

Alaskan Bidder Preference Affidavit

In order to receive the Alaskan Bidder Preference, proposals must include a statement certifying that the offeror is eligible to receive the Alaskan Bidder Preference.

2.13 Formula Used to Convert Cost to Points AS 36.30.250 & 2 AAC 12.260

The distribution of points based on cost will be determined as set out in 2 AAC 12.260 (c). The lowest cost proposal will receive the maximum number of points allocated to cost. The formula set out below will be used to evaluate the cost of each proposal.

$$\frac{[(\text{Price of Lowest Cost Proposal} \times \text{Maximum Points Available for Cost})]}{(\text{Cost of Each Higher Priced Proposal})}$$

2.14 Alaskan Offeror's Preference AS 36.30.250 & 2 AAC 12.260

2 AAC 12.260(e) provides Alaskan offerors a 10 percent overall evaluation point preference. Alaskan Bidders, as defined in AS 36.30.170(b), are eligible for the preference. This preference will be added to the overall evaluation score of each Alaskan offeror. Each Alaskan offeror will receive 10 percent of the total available points added to their evaluation score as a preference.

2.15 Contract Negotiation

2 AAC 12.315 CONTRACT NEGOTIATIONS After final evaluation, the procurement officer may negotiate with the offeror of the highest-ranked proposal. Negotiations, if held, shall be within the scope of the request for proposals and limited to those items which would not have an effect on the ranking of proposals. If the highest-ranked offeror fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the state may terminate negotiations and negotiate with the offeror of the next highest-ranked proposal. If contract negotiations are commenced, they may be held at the Redistricting Office in Alaska. The offeror will be responsible for their travel and per diem expenses if negotiations are held.

2.16 Failure to Negotiate

If the selected offeror

- fails to provide the information required to begin negotiations in a timely manner; or
- fails to negotiate in good faith; or
- indicates they cannot perform the contract within the budgeted funds available for the project; or
- if the offeror and the state, after a good faith effort, simply cannot come to terms,

the state may terminate negotiations with the offeror initially selected and commence negotiations with the next highest ranked offeror.

2.17 Notice of Intent to Award (NIA) — Offeror Notification of Selection

After the completion of contract negotiation the procurement officer will issue a written Notice of Intent to Award (NIA) and send copies to all offerors. The NIA will set out the names of all offerors and identify the proposal selected for award.

2.18 Protest

AS 36.30.560 provides that an interested party may protest the content of the RFP.

An interested party is defined in 2 AAC 12.990(a) (7) as "an actual or prospective bidder or offeror whose economic interest might be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract."

If an interested party wishes to protest the content of a solicitation, the protest must be received, in writing, by the procurement officer at least ten days prior to the deadline for receipt of proposals.

AS 36.30.560 also provides that an interested party may protest the award of a contract or the proposed award of a contract.

If an offeror wishes to protest the award of a contract or the proposed award of a contract, the protest must be received, in writing by the procurement officer within ten days after the date the Notice of Intent to Award the contract is issued.

A protester must have submitted a proposal in order to have sufficient standing to protest the proposed award of a contract. Protests must include the following information:

- a. the name, address, and telephone number of the protester;
 - b. the signature of the protester or the protester's representative;
 - c. identification of the contracting agency and the solicitation or contract at issue;
 - d. a detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- (b) the form of relief requested.

Protests filed by telex or telegram are not acceptable because they do not contain a signature. Fax copies containing a signature are acceptable.

The procurement officer will issue a written response to the protest. The response will set out the procurement officer's decision and contain the basis of the decision within the statutory time limit in AS 36.30.580. A copy of the decision will be furnished to the protester by certified mail, fax or another method that provides evidence of receipt.

All offerors will be notified of any protest. The review of protests, decisions of the procurement officer, appeals, and hearings, will be conducted in accordance with the State Procurement Code (AS 36.30), Article 8 "Legal and Contractual Remedies."

SECTION THREE STANDARD CONTRACT INFORMATION

3.01 Contract Type

This contract is a fixed hourly rate and flat rate contract. Proposals received that do not include the Offeror's Proposed Cost Price Sheet will be considered non-responsive. Additionally, the Redistricting Board agrees to reimburse the contractor on a monthly or periodic basis for authorized out-of-pocket expense incurred in performance of this contract.

3.02 Contract Approval

This RFP does not, by itself, obligate the Redistricting Board. The Board's obligation will commence when the contract is approved by the Redistricting Board. Upon written notice to the contractor, the Redistricting Board may set a different starting date for the contract. The Board will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the Board.

3.03 Standard Contract Provisions

The contractor will be required to sign and submit the attached Standard Agreement Form for Professional Services Contracts (form 02-093/Appendix A). The contractor must comply with the contract provisions set out in this attachment. No alteration of these provisions will be permitted without prior written approval from the Board.

Objections to any of the provisions in Appendix A must be set out in the offeror's proposal.

3.04 Proposal as a Part of the Contract

Part or all of this RFP and the successful proposal may be incorporated into the contract.

3.05 Additional Terms and Conditions

The state reserves the right to add terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

3.06 Insurance Requirements

The successful offeror must provide proof of workers' compensation insurance prior to contract approval.

The successful offeror must secure the insurance coverage required by the state. The coverage must be satisfactory to the Department of Administration Division of Risk Management. An offeror's failure to provide evidence of such insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

Offerors must review form APPENDIX B2, attached, for details on required coverage. No alteration of these requirements will be permitted without prior written approval from the Department of Administration, Division of Risk Management. Objections to any of the requirements in APPENDIX B2 must be set out in the offeror's proposal.

3.07 Bid Bond - Performance Bond - Surety Deposit

None required.

3.08 Contract Funding

Approval or continuation of a contract resulting from this RFP is contingent upon legislative appropriation.

3.09 Proposed Payment Procedures

The state will make payments based on a negotiated payment schedule. Each billing must consist of an invoice and progress report. No payment will be made until the progress report and invoice has been approved by the Project Director.

3.10 Contract Payment

No payment will be made until the contract is approved by the Redistricting Board. Under no conditions will the State be liable for the payment of any interest charges associated with the cost of the contract.

The State is not responsible for and will not pay local, state, or federal taxes. All costs associated with the contract must be stated in U.S. currency.

3.11 Contract Personnel

Any change of the names of the personnel identified in the proposal must be approved, in advance and in writing, by the Redistricting Board. Personnel changes that are not approved by the State may be grounds for the State to terminate the contract.

3.12 Inspection & Modification - Reimbursement for Unacceptable Deliverables

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the Project Director. The State may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. Should the Redistricting Board determine that corrections or modifications are necessary in order to accomplish its intent, the Redistricting Board may direct the contractor to make such changes. The contractor will not unreasonably withhold such changes.

Substantial failure of the contractor to perform the contract may cause the Board to terminate the contract. In this event, the Board may require the contractor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

3.13 Termination for Default

If the Redistricting Board determines that the contractor has refused to perform the work or has failed to perform the work with such diligence as to ensure its timely and accurate completion, the Board may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all of the remaining work.

This clause does not restrict the Board's termination rights under the contract provisions of Appendix A, attached.

3.14 Contract Changes - Anticipated Amendments

During the course of this contract, there will be anticipated contract amendments where the contractor may be required to perform additional services. The additional work will be within the general scope of the initial contract and must be completed at the rates established under the original contract. When additional services are required, the Redistricting Board will provide the contractor a written description of the required services and request the contractor to submit an estimated time schedule for accomplishing the additional services. Cost and pricing data must be provided in accordance with AS 36.30.400.

The contractor will not commence additional work until the procurement officer has secured any required approvals necessary for the amendment and issued a written contract amendment, approved by the Redistricting Board.

3.15 Contract Invalidation

If any provision of this contract is found to be invalid, such invalidation will not be construed to invalidate the entire contract.

SECTION FOUR SCOPE OF WORK

4.01 Scope of Work

The scope of work shall consist primarily of advice to the Alaska Redistricting Board and its staff pertaining to Alaska and federal law which relates to the roles and responsibilities of the redistricting board in the formulation, consideration and adoption of a redistricting plan for the Alaska State Legislature which must be adopted not later than 90 days after redistricting census data is officially released by the United States Census Bureau. Services include assisting the Redistricting Board and its staff in obtaining preclearance of the plan by the United States Department of Justice under the Federal Voting Rights Act. Counsel will also be responsible for defending the plan developed by the Board in the trial and appellate courts of the state, and, if necessary, in the relevant federal courts.

It is anticipated that any contract resulting from this solicitation will involve periodic involvement of counsel while the Board is developing a plan. The Board is required to develop an initial plan within 30 days after release of the redistricting census data which will likely be during the first quarter of calendar year 2011. The Board conducts hearings around the state on this plan and must adopt a final plan within 90 days after official release of the census data. These services include attendance by the lead attorney at Board meetings as determined by the Project Director, preparation of memos of advice for the Board and staff, and other legal duties as assigned by the Board or the Project Director. After the plan is adopted, the plan may be challenged in court. If a court challenge is filed, the case would proceed on an expedited basis in order to meet the June 1, 2012 filing deadline for candidates for legislative office. If there is litigation, it is expected that the lead attorney and others key personnel in the law firm will be required to represent the Redistricting Board and devote substantial time and resources to the legal defense of the plan.

SECTION FIVE PROPOSAL FORMAT AND CONTENT

5.01 Proposal Format and Content

The state discourages overly lengthy and costly proposals, however, in order for the state to evaluate proposals fairly and completely, offerors must follow the format set out in this RFP and provide all information requested.

5.02 Introduction

Proposals must include the complete name and address of offeror's firm and the name, mailing address, and telephone number of the person the state should contact regarding the proposal.

Proposals must confirm that the offeror will comply with all provisions in this RFP; and, if applicable, provide notice that the firm qualifies as an Alaskan bidder. Proposals must be signed by a company officer empowered to bind the company. An offeror's failure to include these items in the proposals may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

5.03 Understanding of Project

Offeror must provide comprehensive narrative statements that illustrate their understanding of the requirements of the project and the project schedule.

5.04 Experience, Organization, Lead Attorney and Key Personnel

A. Offerors must provide an organizational chart specific to the personnel assigned to accomplish the work called for in this RFP; illustrate the lines of authority; designate the individual responsible and accountable for the completion of the RFP.

B. Offerors must provide

(1) a narrative description of their firm's qualifications and prior experience including the Lead Attorney and Key Personnel's experience in advising public agencies in Alaska with regard to: (i) statutory duties; (ii) matters of federal and state constitutional law; (iii) legal aspects of the operation of public agencies and their interactions with the public; (iv) state or municipal elections including federal voting rights issues pertaining to redistricting; and (vi) trial experience; and experience with appeals before the Alaska Supreme Court.

(2) a description of the firm's qualifications and experience advising clients on elections in Alaska and other Alaska statutes and regulations.

(3) (as appropriate under the rules of professional conduct governing attorney/client confidences) a listing of any other current or past clients similar to the Redistricting Board, a brief description of services provided, and a contact name and phone number of any such clients who may be contacted.

(4) A discussion of the firm's ownership, headquarters, branch or affiliate offices and length of time in business.

(5) A discussion of the firm's structure, size and capabilities/quantities available in terms of personnel and equipment. Indicate if the award of this contract would require the acquisition of additional space, equipment, personnel or any other items. Be as specific as possible, i.e., how much additional space, specific equipment, the number and function of additional employees, etc.

(6) a description of any distinct and substantive qualifications for undertaking the proposed contract, such as the availability of specialized equipment, awards and recognition received for similar services or special approaches or concepts relevant to the required services.

Lead Attorney and Key Personnel

A. Offeror shall provide a personnel roster that identifies lead counsel and other key personnel who will actually work on the contract and provide the following information about each person listed:

- [a] title,
- [b] resume,
- [c] location(s) where work will be performed,
- [d] the hourly rate for each person assigned to the contract.

B. Lead Attorney: Offeror shall identify the responsibilities, percentage of time, and the individual who will be the lead attorney, working directly with the client, with overall responsibility for the assignments.

C. Key Project Personnel: Offeror shall identify the responsibilities of and the key individuals who will be assigned to the proposed contract. Offeror must clearly indicate locations and/or judicial districts or jurisdictions in which they practice.

5.05 Cost Proposal

Offeror's must provide the firm's hourly billing rates for the Lead Attorney, Key Personnel or Associates, Para-Legal, and any other individuals that may provide services under the contract. The hourly rates and daily rates to attend Redistricting Board meetings must be listed on the Offeror's Proposed Cost Sheet (Attachment 6), and submitted with the firm's proposal.

NOTE: Reimbursement for out-of-pocket expenses will be limited the items authorized by the Project Director and items set out in a contract resulting from this RFP.

5.06 Evaluation Criteria

All proposals will be reviewed to determine if they are responsive. They will then be evaluated using the criteria set out in Section Six.

An evaluation may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror.

A proposal shall be evaluated to determine whether the offeror responds to the provisions established in the request for proposals in order to eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, or disability.

SECTION SIX EVALUATION CRITERIA AND CONTRACTOR SELECTION

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS PROPOSAL IS 100

The Evaluation Committee will evaluate the proposals weighing each of the evaluation factors as follows:

6.01 Understanding of Project – 10%

- [a] How well does has the offeror demonstrated a thorough understanding of the purpose and scope of the project?
- [b] How well has the offeror identified pertinent issues and potential problems related to the required services?
- [c] How well has the offeror demonstrated their understanding of the Voting Rights Act of 1965?

6.02 Experience, Qualifications, Lead Attorney and Key Personnel – 40%

- [a] How extensive is the legal experience of the individual (s) assigned to the project including the Lead Attorney, Key Personnel, Para-legal, and other Associates, and do they have experience working on similar projects?
- [b] How extensive is the experience of the Lead Attorney, Key Personnel, Para-legal, and other Associates in practicing Administrative Procedures and Administrative Law in Alaska?
- [c] How extensive is the experience of the Lead Attorney, Key Personnel, Para-legal, and other Associates, in the practice of advising clients on elections in Alaska and other Alaska statutes and regulations?
- [d] Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals providing the required services?
- [e] How successful is the general history of the firm regarding timely and successful completion of similar projects?
- [f] Has the firm provided letters of reference for the Lead Attorney, Key Personnel, Para-legal, and other Associates assigned to the project from previous clients?
- [g] Does the Lead Attorney, Key Personnel, Para-legal, and other Associates assigned to the project have prior experience working on Redistricting Projects for the State of Alaska?

6.03 Contract Cost – 40%

Overall, a minimum of 40% of the total evaluation points will be assigned to cost. Cost will be scored by the per hour billing rates of the attorneys assigned by the firm in performance of the contract, the amount of the flat rate offered for meetings, and other costs of performance as established under the Offeror's Proposed Cost Sheet, attachment 6. The cost amount used for evaluation may be affected by the preference referenced under Section 2.13.

Converting Cost to Points Formula: The lowest cost proposal will receive the maximum number of points allocated to cost. The points for cost on the other proposals will be determined through the method set out in Section 2.13.

6.04 Alaskan Offeror's Preference – 10%

If an offeror qualifies for the Alaskan Bidder Preference, the offeror will receive an Alaskan Offeror's Preference. The preference will be 10 percent of the total available points. This amount will be added to the overall evaluation score of each Alaskan offeror.

SECTION SEVEN ATTACHMENTS

7.01 Attachments

1. Proposal Evaluation Form
2. Standard Agreement Form
3. Appendix A
4. Appendix B2
5. Notice of Intent to Award
6. Offeror's Proposed Cost Sheet

PROPOSAL EVALUATION FORM

All proposals will be reviewed for responsiveness and then evaluated using the criteria set out herein.

Person or Firm Name _____

Name of Proposal Evaluation (PEC) Member _____

Date of Review _____

RFP Number _____

DOES THE OFFEROR POSSESS THE MINIMUM PRIOR EXPERIENCE? Yes No

**EVALUATION CRITERIA AND SCORING
THE TOTAL NUMBER OF POINTS USED TO SCORE THIS PROPOSAL IS 100**

Proposals will be evaluated against the questions set out below.

7.01 Understanding of Project – 10%

[b] How well does has the offeror demonstrated a thorough understanding of the purpose and scope of the project?

EVALUATOR'S NOTES _____

[b] How well has the offeror identified pertinent issues and potential problems related to the required services?

EVALUATOR'S NOTES _____

[c] How well has the offeror demonstrated their understanding of the Voting Rights Act of 1965?

EVALUATOR'S NOTES _____

EVALUATOR'S POINT TOTAL FOR 7.01 _____

7.02 Experience and Qualifications – 40%

[a] How extensive is the legal experience of the individual (s) assigned to the project including the Lead Attorney, Key Personnel, Para-legal, and other Associates, and do they have experience working on similar projects?

EVALUATOR'S NOTES _____

[b] How extensive is the experience of the Lead Attorney, Key Personnel, Para-legal, and other Associates in practicing Administrative Procedures and Administrative Law in Alaska?

EVALUATOR'S NOTES _____

[c] How extensive is the experience of the Lead Attorney, Key Personnel, Para-legal and other Associates, in the practice of advising clients on elections in Alaska, and other Alaska statutes and regulations?

[d] Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals providing the required services?

EVALUATOR'S NOTES _____

[e] How successful is the general history of the firm regarding timely and successful completion of similar projects?

EVALUATOR'S NOTES _____

[f] Has the firm provided letters of reference for the Lead Attorney, Key Personnel, Para-legal, and other Associates, assigned to the Project from previous clients?

EVALUATOR'S NOTES _____

[g] Does the Lead Attorney, Key Personnel, Para-legal and Associates, assigned to the project have prior experience working on Redistricting Projects for the State of Alaska?

EVALUATOR'S NOTES _____

EVALUATOR'S POINT TOTAL FOR 7.02 _____

7.03 Contract Cost – 40%

Converting Cost to Points Formula: The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined through the method set out in Section 2.13.

EVALUATOR'S POINT TOTAL FOR 7.03 _____

7.04 Alaska Preference – 10%

If an offeror qualifies for the Alaskan Bidder Preference, the offeror will receive an Alaskan Offeror's Preference. The preference will be 10 percent of the total available points. This amount will be added to the overall evaluation score of each Alaskan offeror.

EVALUATOR'S POINT TOTAL FOR 7.04 (either 0 or 10) _____

EVALUATOR'S COMBINED POINT TOTAL FOR ALL SECTIONS _____

STANDARD AGREEMENT FORM

1. Agency Contract Number	2. ASPS Number	3. Financial Coding	4. Agency Assigned Encumbrance Number
5. Vendor Number	6. Project/Case Number	7. Alaska Business License Number	
This contract is between the State of Alaska,			
8. Department of	Division	hereafter the State, and	
9. Contractor	hereafter the Contractor		
Mailing Address	Street or P.O. Box	City	State ZIP+4
<p>10. ARTICLE 1. Appendices: Appendices referred to in this contract and attached to it are considered part of it.</p> <p>ARTICLE 2. Performance of Service:</p> <p>2.1 Appendix A (General Provisions), Articles 1 through 14, governs the performance of services under this contract.</p> <p>2.2 Appendix B sets forth the liability and insurance provisions of this contract.</p> <p>2.3 Appendix C sets forth the services to be performed by the contractor.</p> <p>ARTICLE 3. Period of Performance: The period of performance for this contract begins _____, and ends _____.</p> <p>ARTICLE 4. Considerations:</p> <p>4.1 In full consideration of the contractor's performance under this contract, the State shall pay the contractor a sum not to exceed \$_____ in accordance with the provisions of Appendix D.</p> <p>4.2 When billing the State, the contractor shall refer to the Authority Number or the Agency Contract Number and send the billing to:</p>			
11. Department of	Attention: Division of		
Mailing Address	Attention:		
12. CONTRACTOR		CERTIFICATION: I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alterations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.	
Name of Firm			
Signature of Authorized Representative			
Typed or Printed Name of Authorized Representative			
Title			
13. CONTRACTING AGENCY		Signature of Head of Contracting Agency or Designee	Date
Department/Division	Date		
Signature of Project Director		Typed or Printed Name	
Typed or Printed Name of Project Director		Title	
Title			

NOTICE: This contract has no effect until signed by the head of contracting agency or designee.

Attachment 3

APPENDIX A GENERAL PROVISIONS

Article 1. Definitions.

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in a signing this contract.

Article 2. Inspection and Reports.

- 2.1 The department may inspect, in the manner and at reasonable times it considers appropriate, all the contractor's facilities and activities under this contract.
- 2.2 The contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

Article 3. Disputes.

- 3.1 Any dispute concerning a question of fact arising under this contract which is not disposed of by mutual agreement shall be decided in accordance with AS 36.30.620-632.

Article 4. Equal Employment Opportunity.

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.
- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- 4.7 Failure to perform under this article constitutes a material breach of the contract.

Article 5. Termination.

The Project Director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. The State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

Article 6. No Assignment or Delegation.

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

Article 7. No Additional Work or Material.

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

Article 8. Independent Contractor.

The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

Article 9. Payment of Taxes.

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by any Subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

Article 10. Ownership of Documents.

All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

Article 11. Governing Law.

This contract is governed by the laws of the State of Alaska. All actions concerning this contract shall be brought in the Superior Court of the State of Alaska.

Article 12. Conflicting Provisions.

Unless specifically amended and approved by the Department of Law the General Provisions of this contract supersede any provisions in other appendices.

Article 13. Officials Not to Benefit.

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

Article 14. Covenant Against Contingent Fees.

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except employees or agencies maintained by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage or contingent fee.

**APPENDIX B2
INDEMNITY AND INSURANCE**

Article 1. Indemnification

The Contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the Contractor under this agreement. The Contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "Contracting agency", as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Contracting agency's selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor's work.

Article 2. Insurance

Without limiting Contractor's indemnification, it is agreed that Contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the Contracting Officer prior to beginning work and must provide for a 30-day prior notice of cancellation, nonrenewal or material change of conditions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the Contractor's services. All insurance policies shall comply with, and be issued by insurers licensed to transact the business of insurance under AS 21.

2.1 Workers' Compensation Insurance: The Contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.

2.2 Commercial General Liability Insurance: covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

2.3 Commercial Automobile Liability Insurance: covering all vehicles used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

2.4 Professional Liability Insurance: covering all errors, omissions or negligent acts in the performance of professional services under this agreement. Limits required per the following schedule:

Contract Amount	Minimum Required Limits
Under \$100,000	\$300,000 per Occurrence/Annual Aggregate
\$100,000-\$499,999	\$500,000 per Occurrence/Annual Aggregate
\$500,000-\$999,999	\$1,000,000 per Occurrence/Annual Aggregate
\$1,000,000 or over	Refer to Risk Management

NOTICE OF INTENT TO AWARD CONTRACT



**Office of the Governor
 Division of Administrative Services
 Redistricting Board
 240 Main Street, Suite 300
 P.O. Box 110001
 Juneau, Alaska 99811-0001**

THIS IS NOT AN ORDER

DATE ISSUED: _____

RFP NO.: 2011-0001-9840

RFP ISSUE DATE: _____

RFP SUBJECT: Consulting and Legal Services for the Redistricting Board

PROCUREMENT OFFICER: R. Shawn Henderson **SIGNATURE:** _____

This is notice of the state's intent to award a contract. The figures shown here are a tabulation of the offers received with the apparent low bidder(s) indicated. A bidder who wishes to protest this Notice of Intent must file the protest within ten calendar days following the date this notice is issued. If the tenth day falls on a weekend or holiday, the last day of the protest period is the first working day following the tenth day. **Bidders, identified here as the apparent low responsive bidders, are instructed not to proceed until a Purchase Order, Contract Award, or other form of notice is given by the Contracting Officer.** A company or person who proceeds prior to receiving a Purchase Order, Contract Award, or other form of notice of Award does so without a contract and at their own risk. AS 36.30.365.

ITEM NO.	PRICE	AWARD	COMMENTS	RESPONSIVE YES / NO / ?	BIDDER
RFP					
RFP					
RFP					
RFP					

- LEGEND: @ -- AWARD TO BIDDER
 Y -- RESPONSIVE BID
 N -- NON-RESPONSIVE BID
 ? -- BID NOT EVALUATED BECAUSE THERE WAS A LOWER RESPONSIVE BID

SUMMARY

NOTES:

Attachment 6

OFFEROR'S PROPOSED COST SHEET

Redistricting Board
Legal Consulting Services
RFP #2011-0001-9840

TOTAL POINT POSSIBLE – 40%

Name of Offeror: _____ Authorized Signature: _____

-
1. Costs and Fees: Offeror's must provide the firm's hourly billing rates for the Lead Attorney, Key Personnel or other Associates Average rate, and Para-Legal rate for the individuals providing services under the contract. A flat daily fee must be listed to attend Redistricting Board meetings and public hearings at locations around the state as authorized by the Project Director.
 2. This form must be completed by the offeror for their proposal to be considered responsive.

1. Lead Attorney Rate:

Hourly Rate _____
Hourly Rate while attending depositions _____
Hourly Rate while presenting oral argument in appellate proceedings _____
Daily Rate while attending Board Meetings _____
Daily Rate for a day in trial _____

2. Key Personnel or other Associates Average Rate:

Hourly Rate: _____
Hourly Rate while attending depositions _____
Hourly Rate while presenting oral argument in appellate proceedings _____
Daily Rate while attending Board Meetings _____
Daily Rate for a day in trial _____

3. Para-Legal Assistance to assist Lead Attorney & Key Personnel

Hourly Rate: _____

SUBTOTAL \$ _____

Less 5% AK bidders preference: \$ _____
If firm qualifies as an Alaska Bidder under AS 36.30.170(b)

TOTAL COST FOR EVALUATION PURPOSES: \$ _____

STATE OF ALASKA



Office of the Governor
Division of Administrative Services
R. Shawn Henderson
240 Main Street, Suite 300
P.O. Box 110001
Juneau, Alaska 99811

REQUEST FOR PROPOSALS #2011-0001-9840 AMENDMENT NUMBER ONE (1)

Date Amendment Issued: October 4, 2010

Signature *R. Shawn Henderson*

RFP TITLE: Legal Consultant to provide formal and informal legal advice in connection with the Redistricting Board's duties under Article VI of the Alaska Constitution.

RFP DUE DATE AND TIME: October 11, 2010, 10:00 AM, Alaska Time.

This amendment is being issued to:

1. **ADD A NEW SECTION 2.19 TITLED: 5 Percent Alaska Veteran Preference AS 36.30.175. Section 2.19 Shall read as follows:**

An Alaska Veteran Preference of five percent will be applied prior to evaluation. The preference will be given to an offeror who qualifies under AS 36.30.170 (b) as an Alaska bidder and is a:

- (a) sole proprietorship owned by an Alaska veteran;
- (b) partnership under AS 32.06 or AS 32.11 if a majority of the partners are Alaska veterans;
- (c) limited liability company organized under AS 10.50 if a majority of the members are Alaska veterans; or
- (d) corporation that is wholly owned by individuals and a majority of the individuals are Alaska veterans.

Alaska Veteran Preference Affidavit

In order to receive the Alaska Veteran Preference, proposals must include a statement certifying that the offeror is eligible to receive the Alaska Veteran Preference.

2. **DELETE: RFP Attachment 3, APPENDIX A General Provision. REPLACE with the new Attachment #3A, APPENDIX A General Provisions, attached.**

All other original RFP terms and conditions remain the same.

Article 1. Definitions.

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

Article 2. Inspections and Reports.

- 2.1 The department may inspect, in the manner and at reasonable times it considers appropriate, all the contractor's facilities and activities under this contract.
- 2.2 The contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

Article 3. Disputes.

- 3.1 Any dispute concerning a question of fact arising under this contract which is not disposed of by mutual agreement shall be decided in accordance with AS 36.30.620-632.

Article 4. Equal Employment Opportunity.

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in an contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.
- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- 4.7 Failure to perform under this article constitutes a material breach of contract.

Article 5. Termination.

The Project Director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. The State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

Article 6. No Assignment or Delegation.

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

Article 7. No Additional Work or Material.

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

Article 8. Independent Contractor.

The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

Article 9. Payment of Taxes.

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by any Subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

Article 10. Ownership of Documents.

All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

Article 11. Governing Law.

This contract is governed by the laws of the State of Alaska. All actions concerning this contract shall be brought in the Superior Court of the State of Alaska.

Article 12. Conflicting Provisions.

Unless specifically amended and approved by the Department of Law the General Provisions of this contract supersede any provisions in other appendices. The contractor specifically acknowledges and agrees that provisions in any form contracts it appends hereto that purport to (1) waive the State of Alaska's sovereign immunity, (2) impose indemnification obligations on the State of Alaska that are not conditioned on legislative appropriation, or (3) seek to limit liability of the contractor for acts of contractor negligence, are expressly superseded by this contract and are void.

Article 13. Officials Not to Benefit.

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

Article 14. Covenant Against Contingent Fees.

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except employees or agencies maintained by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage or contingent fee.

Successful RFP Response from Patton Boggs – October 2010



601 West Fifth Avenue
Suite 700
Anchorage, Alaska 99501
907-263-6300

Facsimile 907-263-6345
www.pattonboggs.com

October 8, 2010

Michael D. White
(907) 263-6380
mwhite@pattonboggs.com

Office of the Governor
Division of Administrative Services
For the Redistricting Board
Attn: R. Shawn Henderson
Request for Proposal #2011-0001-9840
Project Name: Legal Consultant
240 Main Street, Suite 300
Juneau, AK 99811-0001

Re: Patton Boggs LLP's Response for Proposal

Dear Mr. Henderson:

Enclosed are six Response for Proposal on behalf of Patton Boggs LLP. Please contact me if you have any questions. Thank you for your consideration.

Sincerely,

PATTON BOGGS LLP



Michael D. White

MDW/art
Enclosure



PATTON BOGGS LLP
ATTORNEYS AT LAW

**Response for Proposal to
Office of the Governor
Division of Administrative Services
For Redistricting Board**

Michael D. White
Partner

10-8-10

Date

By signature of this proposal, Michael D. White confirms that Patton Boggs will comply with all provisions in this RFP.

Submitted by:

Michael D. White
Patton Boggs LLP
601 West Fifth Avenue, Suite 700
Anchorage, Alaska 99501
+1 (907) 263-6380
mwhite@pattonboggs.com



TABLE OF CONTENTS

	<u>No.</u>
5.02 Introduction	2
5.03 Understanding of Project.....	3
5.04 Experience, Organization, Lead Attorney and Key Personnel.....	7
5.05 Cost Proposal.....	16

ATTACHMENTS

Cost Proposal.....	A
Patton Boggs LLP Alaska Business License.....	B
2000 Proposed Revised Redistricting Plan	C
Letter of Reference by SMG of Alaska, Inc.	D
Letter of Reference by Kevin Jardell	D
Letter of Reference by Randolph Ruedrich	D
Biography of Michael D. White	E
Biography of Douglas J. Serdahely	E
Biography of Benjamin L. Ginsberg.....	E
Biography of Nicole A. Corr.....	E



5.02 Introduction:

Proposals must include the complete name and address of offeror's firm and the name, mailing address, and telephone number of the person the state should contact regarding the proposal.

Proposals must confirm that the offeror will comply with all provisions in this RFP; and, if applicable, provide notice that the firm qualifies as an Alaskan bidder. Proposals must be signed by a company officer empowered to bind the company. An offeror's failure to include these items in the proposals may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

Contact Information for Patton Boggs:

Patton Boggs LLP
601 West Fifth Avenue, Suite 700
Anchorage, Alaska 99501

Contact Person:

Michael D. White
Partner
Office Number: +1 (907) 263-6380
Fax Number: +1 (907) 263-6345
Cell Number: +1 (907) 360-1201
mwhite@pattonboggs.com

Patton Boggs will comply with all of the terms of the RFP, the State Procurement Code (AS 36.30), and all applicable local, state, and federal laws, codes, and regulations.

Patton Boggs certifies that:

- a. All services provided under this contract by the contractor and all subcontractors shall be performed in the United States; and
- b. Patton Boggs is not established and headquartered or incorporated and headquartered in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report.

Patton Boggs further certifies that we will comply with the following:

- the laws of the State of Alaska;
- the applicable portion of the Federal Civil Rights Act of 1964;
- the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government;
- the Americans With Disabilities Act of 1990 and the regulations issued thereunder by the federal government;



- all terms and conditions set out in this RFP;
- a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury;
- that the offers will remain open and valid for at least 90 days; and
- that programs, services, and activities provided to the general public under the resulting contract conform with the Americans With Disabilities Act of 1990, and the regulations issued thereunder by the federal government

The Patton Boggs team working on this contract does not have any conflict of interest (e.g., currently employed by the State of Alaska or formerly employed by the State of Alaska within the past two years).

Patton Boggs LLP qualifies as an Alaska bidder as defined by AS 36.30.170(b), and is therefore eligible for the 5 Percent Alaska Bidder Preference. Patton Boggs LLP holds a current Alaska business license (Attachment B), is submitting a bid for services under the same name as it appears on its current Alaska business license, has maintained a place of business within Alaska since March 1, 1999, and is qualified to do business under the laws of the state of Alaska.

5.03 Understanding of Project

Offeror must provide comprehensive narrative statements that illustrate their understanding of the requirements of the project and the project schedule.

Patton Boggs understands the scope of work required by the Office of the Governor Division of Administrative Services for the Alaska Redistricting Board (the "Board"). Upon award of contract, Patton Boggs is ready to assist the Redistricting Board and its staff on all matters pertaining to this project in the following areas:

- Board Management and Administrative Issues: Among the first issues facing the Board will be Board management and administrative matters. The Board is an independent constitutional agency created by Article 6 § of the Alaska Constitution. As an agency independent from the normal State apparatus, which only exists and conducts business for a two-year period every decade, the Board is without the benefit of a mature set of procurement and personnel regulations and guidelines. The Board will therefore have many questions and require legal guidance in those areas. Likewise, the Board will from the outset be faced with Open Meeting Act questions that will require legal advice. Patton Boggs has experience with procurement and personnel matters as well as Open Meeting Act issues and is prepared to advise the Board on those issues.
- Drafting the Plan: The Constitutional mandate of the Board is to draft and adopt a proposed redistricting plan consisting of forty (40) house districts and (20) senate districts which must be contiguous, compact and as nearly as practicable a relatively integrated socio-economic area. The compact and socio-economic integration standards are subject to the Voting Rights Act of 1965. This means that the Board is free to loosen those standards to create a district if the district's configuration is compelled by the necessity to comply with the VRA. This requires an express finding by the Board.



The law also requires that the population in each house and senate district be “as nearly as practicable” equal in order to effectuate the principal of “one-person – one vote.” Historically, over all population deviations of +/- 10% (i.e., the difference in population between the most populated district and the lowest populated district) were considered presumptively constitutional under the Federal Threshold standard. In the last redistricting cycle, the Alaska Supreme Court made clear that the amendments to Article IV, § 6 requiring populations “as near as practicable” will in many instances be stricter than the historical 10% federal threshold. The Court reasoned that new technology makes it “practicable” to achieve deviations substantially lower than the 10% federal threshold standard, especially in urban areas. While the Court’s opinion dealt only specifically with Anchorage district deviations, its rationale applies with equal force to all urban areas capable of supporting two or more election districts. Accordingly, the law in Alaska now requires equality of population across urban districts as close to the ideal as is practicable unless higher deviations (not to exceed 10%) are required by the VRA (“VRA”).

Compliance with Alaska’s new exacting standards in light of the population growth and redistribution that has taken place in the past ten years will be a difficult and time consuming effort causing additional pressure on the already short time frame with which the Board must comply. The Board is required by law to adopt one or more proposed plans within 30 days of the official decennial census reporting. While there is a little wiggle room for the Board in that it has some discretion as to when it actually “accepts” the official reporting, the time frame is still short. The Board must hold public hearings on the proposed plans, invite submission of plans, review those plans and hear presentations by those presenting the plans. All of the Board’s business must be conducted in public to satisfy due process and comply with Alaska’s Open Meeting Act. In the end, the Board must have adopted a final redistricting plan and issued a proclamation no more than ninety (90) days after the official census reporting.

Under any standard the Board’s duties are arduous and the time line short. This means the Board needs counsel not only familiar with election and redistricting law, but with practical real world experience in redistricting. Patton Boggs has that experience¹ which combined with its legal expertise and resources will allow it to provide timely and effective legal counsel to the Board.

Having this expertise is particularly important this redistricting cycle. Preliminary population data shows that the trend of rural migration from Bush Alaska to Urban areas has accelerated in the last ten years. The rural/urban population issue will be one of the difficult issues faced by the Board. Some districts in Alaska are already geographically humongous (larger than many states). How and where to combine bush population with urban population while still complying with the constitutional standards and avoiding any regression under the VRA will be a difficult and time

¹ Patton Boggs and its lead counsel Michael D. White has actual experience in preparing redistricting plans that comply with Alaska law and the VRA. In the last redistricting cycle, Patton Boggs submitted a proposed plan after the Board’s plan was found unconstitutional that was in large part eventually adopted by the Board. The 2002 plan prepared by Patton Boggs and submitted to the Board is attached here as Attachment C.



consuming task. Patton Boggs experience and expertise provides the Board with legal counsel ready to hit the ground running to assist the Board in its duties. Patton Boggs will attend all necessary Board meetings, provide all appropriate legal counsel and guidance and any assistance needed or requested by the Board. The goal of Patton Boggs is to assist the Board in drafting the first redistricting plan to withstand constitutional challenge.

- Voting Rights Act Preclearance: Alaska is one of a handful of states and political subdivisions that must clear any changes to its election practices and procedures through the federal government before it may implement any new voting procedures. This includes any redistricting plan. Accordingly, the Board needs counsel who is familiar with and understands the VRA requirements. Patton Boggs has the expertise and experience to properly assist the Board in this task.

Section 5 of the VRA, which requires this preclearance, was enacted in 1965 as a temporary legislation, set to expire five years later. Congress has extended its applicability a number of times over the years. Section 5 is now set to expire in 2031.

The covered jurisdictions were chosen according to a formula. The first element of the formula was a state or political subdivision that maintained a 'test or device' that restricted the opportunity to register and vote as of November 1, 1964. The second element was if the Director of the Census determined less than 50 percent of the persons of voting age were registered to vote as of November 1, 1964, or less than 50 percent of the persons of voting age voted in the November 1964 presidential election. Alaska qualified as a VRA state because its Constitution used to contain a provision (repealed in 1970) requiring all voters to read or speak the English language and it met the second element as well. Alaska has required preclearance ever since.

Under Section 5, any change with respect to voting in a covered jurisdiction cannot legally be enforced unless and until the jurisdiction first obtains the requisite determination by the United States District Court for the District of Columbia, or submits its changes to the Attorney General. The jurisdiction may file a declaratory judgment action in the United States District Court for the District of Columbia, where a three-judge panel is convened. Otherwise, the covered jurisdiction may submit its voting change to the Civil Rights Division of the Department of Justice, to which the Attorney General of the United States has delegated the authority to administer the Section 5 review process. In either setting, the covered jurisdiction must prove the voting change does not deny or abridge the right to vote on account of race, color, or membership in a language minority group. If the jurisdiction is unable to prove the absence of such discrimination, the changes are rejected and remain legally unenforceable.

Thus, the VRA requires that a redistricting plan be drawn to ensure no avoidable "retrogression" on the number of "effective" minority districts occurs. The concept of what constitutes an "effective minority district" is complex, in general, however, an "effective minority district" means a legislative district that has enough minority voters to allow the minority's preferred candidate to be elected. Historically, in Alaska, the only minority with sufficient population to require scrutiny under the VRA is Alaska Natives. The 2000 redistricting plan contained 8 "effective Native" house and senate districts (districts with more than 35% Alaska Native population.)



One of the biggest challenges the Board will face is how to avoid retrogression in its plan while still remaining within required population deviations. Historically, effective Native districts have had to have negative deviations of 5% to 6% due to Alaska's populations distribution and geography. Preliminary population data shows that Alaska's native population has increasingly migrated out of previously effective Native Districts into Urban areas. This population shift may make it difficult to maintain 8 effective Native Districts especially since the Supreme Court has made clear that while retrogression under the VRA may be avoided by increasing or decreasing populations within any district where such deviations are required by the VRA, such deviations may not exceed 10% because the federal Equal Protection Clause trumps the VRA.

It is entirely possible that the Board will be faced with a situation where there is no way to avoid "retrogression" while still comply with the State Constitutional standards. The Board will thus be faced with convincing the Department of Justice that the retrogression is unavoidable. Patton Boggs offers the Board the experience and expertise necessary to accomplish that task. In addition to lead counsel experience, Patton Boggs has a D.C. office with lawyers who have regular contact with DOJ lawyers and one of the leading VRA experts in the country, Ben Ginsberg. Mr. Ginsberg is available for consultation and assistance when and if necessary.

- Litigation: Lawsuits have been filed challenging every redistricting plan ever adopted since Alaska became a State. There is no reason to believe this cycle will be any different.² In other words, litigation is a practical reality of the redistricting process and therefore the Board needs counsel with redistricting litigation experience. Patton Boggs brings that experience to the table.

In the 2000 Redistricting cycle, Patton Boggs represented the leadership of the Republican Party in a successful challenge to the constitutionality of the proposed Redistricting Plan. Michael D. White, the proposed lead counsel for this RFP, was lead trial counsel in that case (and de jure lead counsel for all the challengers) and thus is intimately familiar with the procedures and requirements of the expedited litigation that is mandated by law.

By law, any challenges to the Board's adopted plan must be brought within 30 days of the Board's adoption of the final redistricting plan and proclamation. By Court Rule, adopted during the middle of the last redistricting process, redistricting litigation is expedited and has priority over all other cases. Court rules allow consolidation across judicial district lines and as a practical reality it can be expected that there will be one consolidated redistricting case.³

² There has been one important change in the law that could affect challenges. After the last redistricting cycle, the "public litigant" rule that allowed recovery of full attorney's fees for litigants (and disallowed fees against a public litigant who lost) who successfully brought legal suits that were designed to protect the rights of the public, was rescinded by the Alaska Legislature. That means that any redistricting litigation would now likely fall under Rule 82. This could mean that partial attorney's fees could be recoverable against unsuccessful challengers of a plan.

³ In the last redistricting cycle there were nine separate challenges filed in four different venues, Anchorage (five cases), Fairbanks (2 cases), Ketchikan and Valdez. All nine cases were consolidated before one judge in Anchorage.



Redistricting litigation is truly on a “rocket docket.” Within 10 days of filing, a mandatory scheduling conference is required at which a scheduling order must be entered. The trial court is required to make a decision no later than 120 days prior to the statutory filing deadline for the first statewide election in which the challenged plan is scheduled to take effect. This short time frame means expedited discovery will be mandated and all of the Board Members, as well as the Executive Director (and perhaps even Board staff) can expect to be deposed. During this cycle it can be expected that discovery and motion practice will take place from August through December of 2011 with a trial likely to take place in January of 2012. Trial is to the Court, without a jury. A decision from the Judge can be expected within a short period of time and must be done before the statutory deadline as discussed above.

The Superior Court's decision is historically followed by an expedited appeal to the Alaska Supreme Court with briefing required on a tight, very short time frame. Oral argument would likely be held in late February or early March 2012 with a decision following shortly thereafter. The Supreme Court reviews the redistricting plan de novo based on the record developed in the superior court. In the past, the Supreme Court has issued an order setting forth its findings with a formal opinion explaining its reasoning issued at a later date. A decision from the Supreme Court usually is issued very quickly, normally 10 days or two weeks after oral argument.

If the plan is found invalid, the Board must reconvene and make corrections to the plan. This part of the process can often turn into a negotiation with the challengers to find an acceptable plan. Theoretically, additional litigation could follow the adoption of a revised plan, but that has not happened in the past.

With its prior experience, Patton Boggs understands the ins and outs of redistricting litigation and how time consuming, work intensive that process is. Michael D. White, lead counsel, has nearly 25 years of complex civil litigation experience and knows how to put together and lead a trial team to efficiently provide quality representation. With the understanding that litigation is inevitable, Mr. White will be able to advise the Board throughout the process to maximize the Board's ability to draft and adopt a constitutionally defensible redistricting plan.

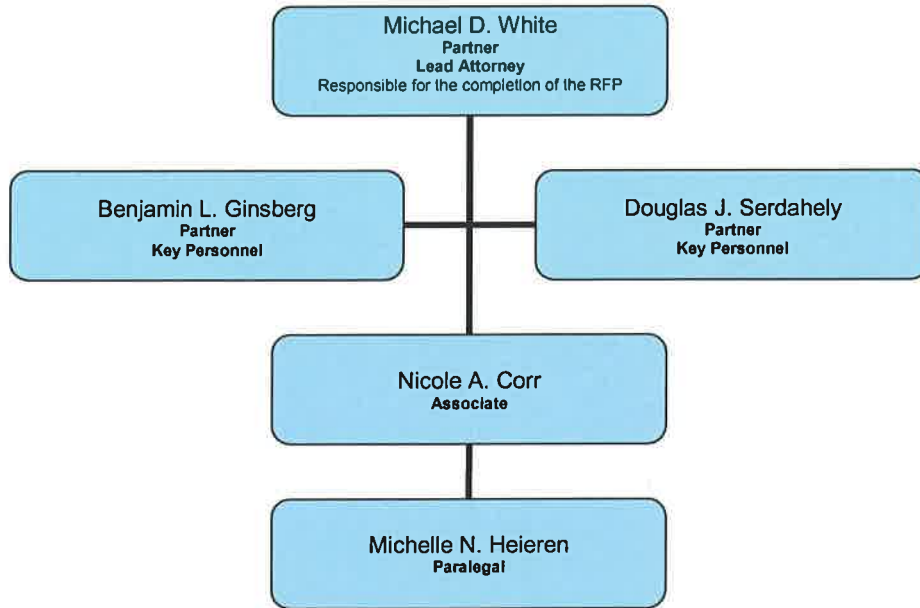
5.04 Experience, Organization, Lead Attorney and Key Personnel

A. Offerors must provide an organizational chart specific to the personnel assigned to accomplish the work called for in this RFP; illustrate the lines of authority; designate the individual responsible and accountable for the completion of the RFP.

Below is an organizational chart of the core team that we have assembled to service the needs of the Redistricting Board. In addition to the core team listed below, Patton Boggs can also leverage, if necessary, the experience and expertise of Benjamin L. Ginsberg and Douglas J. Serdahely. Mr. Ginsberg is a Partner who possesses extensive knowledge and experience in the redistricting process for numerous states, and leads the firm's Political and Election Law Practice Section in Washington D.C. Mr. Ginsberg is one of the leading experts on the VRA in the country and will be available for consultations and advice



where necessary. Likewise, Mr. Serdahely, former Presiding Judge for the Third Judicial District will be available for consultation and advice where needed. Mr. Serdahely has nearly 40 years of legal and litigation experience and has regularly advised clients on constitutional and regulatory issues as well as representing clients in both state and federal trial and appellate courts in complex civil litigation. Mr. Serdahely assisted Mr. White in the last redistricting litigation.



B. Offerors must provide

(1) a narrative description of their firm's qualifications and prior experience including the Lead Attorney and Key Personnel's experience in advising public agencies in Alaska with regard to: (i) statutory duties; (ii) matters of federal and state constitutional law; (iii) legal aspects of the operation of public agencies and their interactions with the public; (iv) state or municipal elections including federal voting rights issues pertaining to redistricting; and (vi) trial experience; and experience with appeals before the Alaska Supreme Court.

Patton Boggs brings significant experience in advising governmental agencies on a wide variety of issues, including statutory duties and matters of federal and state constitutional law.

Over the course of his career, lead attorney Michael D. White has advised entities such as the North Slope Borough on a wide variety of topics and represented it in a number of litigations and appeals in both state and federal court. Mr. White's experience in that regard is set forth in more detail below.

Patton Boggs also has extensive experience representing and advising governmental entities/agencies on redistricting and election laws. For example, Mr. Ginsberg represented half a dozen states in the 2000 redistricting cycle as well as providing advice to the Speaker of the Texas House of Representatives on redistricting.



(2) a description of the firm's qualifications and experience advising clients on elections in Alaska and other Alaska statutes and regulations.

Patton Boggs believes there is not another law firm, inside or outside Alaska that can offer the Board the same breadth of expertise and wealth of experience in Alaska election law and redistricting. As previously mentioned, in the 2000 redistricting cycle, Patton Boggs represented the Republican Party leadership in a successful challenge to the constitutionality of the proposed Redistricting Plan. Michael D. White, the proposed lead counsel in this RFP, was lead trial counsel in that litigation including the appeal to the Alaska Supreme Court. As part of that representation, Mr. White and his team also assisted their clients in drafting a proposed revised redistricting plan to replace the Board's original plan tossed out by the Alaska Supreme Court. [See Attachment C] That plan was in large part incorporated into the final plan adopted by the Board. Since the last redistricting cycle, Mr. White has stayed up to date on the latest federal case law related to redistricting and the VRA, including attending the Chicago NCSL Redistricting seminar in October of 2009. Patton Boggs' and Mr. White's experience and expertise is further highlighted by the attached letter of reference from Kevin Jardell, former Legislative Director to Governor Frank Murkowski, who worked with Patton Boggs and Mr. White during the 2000 redistricting litigation. [See Attachment D]

Patton Boggs also has extensive experience advising clients on a wide variety of Alaska statutes and regulations. Mr. White routinely advises clients on the meaning and applicability of Alaska statutes, regulations and administrative code provisions and both state and local statutes and regulations. As shown by the attached letter of recommendation [see Attachment E] from Joe Wooden, Regional General Manager for SMG of Alaska, Inc., Mr. White has advised SMG, a public facility management company, for nearly a decade on a wide variety of topics including procurement laws and government contracting regulations, to administrative law and municipal code compliance. Mr. White's has also represented SMG in a number of litigation matters including several constitutional challenges involving the First Amendment. Mr. White also routinely advises clients in the following substantive areas involving state statutes and regulations:

- Wage and Hour laws and regulations;
- Human Rights laws;
- Public Records laws;
- Zoning regulations;
- Liquor license statutes and regulations;
- Government contracting statutes and regulations;
- Procurement laws and bid protest regulations.

Mr. Serdahely routinely advises clients in the following areas:

- Oil and Gas laws and regulations;
- Anti-Trust Laws;
- Maritime Commerce;
- Environmental statutes and regulations;
- Alaska Pension laws and regulations.



Other attorneys at Patton Boggs advise clients in other substantive areas of Alaska statutory laws and regulations and can be called upon for assistance if necessary. In short, Patton Boggs is a full service law firm with a broad range of expertise on Alaska law that can provide full and complete legal services to the Board.

(3) (as appropriate under the rules of professional conduct governing attorney/client confidences) a listing of any other current or past clients similar to the Redistricting Board, a brief description of services provided, and a contact name and phone number of any such clients who may be contacted.

Patton Boggs has advised many clients on redistricting matters. A selection of related representative matters that involve redistricting includes:

- Representation of the yet to be formed New Jersey redistricting committee for the Republican Party.
- Representation of the Republican Party for the State of Florida for redistricting.
- Advice to the Speaker of the Texas House of Representatives on redistricting.
- Representation of half a dozen states in redistricting in 2000.
- General Counsel for the 1990 Republican National Committee nationwide redistricting.
- Representation of the Alaskan Republican Party leadership in the 2000 redistricting litigation in Alaska.

Our former client, Assemblyman Jay Weber of the 26th District of New Jersey, Chair of the State Republican Party, can reaffirm our experience and expertise in redistricting projects. Assemblyman Weber can be reached at (973) 884-6190.

Our client Randy Ruedrich, Chair of the Alaska Republican Party, can reaffirm our experience and expertise in redistricting in Alaska. Mr. Ruedrich has provided a letter of reference. [See attachment D]. Mr. Ruedrich can be reached at (907) 227-3031.

Former Consultant to Patton Boggs, Kevin Jardell can also reaffirm our experience and expertise in redistricting in Alaska. Mr. Jardell has provided a letter of reference. [See attachment D] Mr. Jardell can be reached at (907) 321-4540.

(4) A discussion of the firm's ownership, headquarters, branch or affiliate offices and length of time in business.

Patton Boggs is a limited liability partnership. Our headquarters is located at 2550 M Street, NW, Washington, D.C. 20037. We have been providing legal services for nearly 50 years.

Along with our Anchorage offices at 601 West Fifth Avenue, Suite 700, Anchorage, AK 99501 and Washington, D.C. headquarters; we also have regional offices in:



Office Location	Address
Northern Virginia	8484 Westpark Drive, Ninth Floor, McLean, VA 22102
New Jersey	The Legal Center, One Riverfront Plaza, Suite 600, Newark, NJ 07102
New York	1185 Avenue of the Americas, 30 th Floor, New York, NY 10036
Dallas	2000 McKinney Ave, Suite 1700, Dallas, TX 75201
Denver	18001 California Street, Suite 4900, Denver, CO 80202
Doha	The Commercial Bank Plaza, 16 th Floor, Dafna Area, P.O. Box 22632, Doha, Qatar
Abu Dhabi	Marina Office Park Villa A 23, P.O. Box 31808, Abu Dhabi, United Arab Emirates

(5) A discussion of the firm's structure, size and capabilities/quantities available in terms of personnel and equipment. Indicate if the award of this contract would require the acquisition of additional space, equipment, personnel or any other items. Be as specific as possible, i.e., how much additional space, specific equipment, the number and function of additional employees, etc.

Patton Boggs is a full service law firm that serves at the intersection of business and government. Firm wide, Patton Boggs has 531 lawyers and 70 paralegals. In Anchorage, there are 12 lawyers and five paralegals. Patton Boggs has an abundance of resources available to complete this project, including the latest computer technology, litigation presentation software and all the equipment necessary to provide full service to the Board. Patton Boggs' Anchorage office is located less than a block away from the Board's office in Anchorage (we are located in the Key Bank Building) and thus can be available in person within minutes if necessary. Patton Boggs also has conference rooms and office space available to the Board if needed. Patton Boggs will not require any additional space, equipment, personnel or any other items to complete the RFP.

(6) a description of any distinct and substantive qualifications for undertaking the proposed contract, such as the availability of specialized equipment, awards

As mentioned above, Patton Boggs is a unique law firm that can provide services that separates us from other firms. We have deep political relationships in Alaska and Washington, D.C. Our core team in Alaska can offer the local expertise to the Redistricting Board on formulating and adopting a new plan and also leverage our Washington, D.C. contacts at the Department of Justice to assist in obtaining a preclearance of the plan. Patton Boggs also has a strong and recognized litigation team with previous experience in redistricting litigation that is prepared to assist the Board, if necessary, with any trials in the state, appellate, and federal courts.

Along with our legal advice on redistricting, Patton Boggs also has extensive knowledge in election law. On January 20, 2010, Patton Boggs was ranked #1 in lobbying revenue (as reported in 2009) in *The Hill's* annual list of top firms. We assist clients in complying with federal and state election laws. As regulation of politics has grown, so has the need for participants in the process to keep track of the myriad, and often contradictory, rules that govern the political process on the federal and state level. We understand the



political implications that may arise with the new redistricting plan and can offer our services and advice to overcome any hurdles that the Board might encounter.

Lead Attorney and Key Personnel

A. Offeror shall provide a personnel roster that identifies lead counsel and other key personnel who will actually work on the contract and provide the following information about each person listed:

B. Lead Attorney: Offeror shall identify the responsibilities, percentage of time, and the individual who will be the lead attorney, working directly with the client, with overall responsibility for the assignments.

C. Key Project Personnel: Offeror shall identify the responsibilities of and the key individuals who will be assigned to the proposed contract. Offeror must clearly indicate locations and/or judicial districts or jurisdictions in which they practice.

**Mr. Michael D. White:
Partner - Lead Counsel**

Michael D. White has nearly twenty-five years of experience in complex civil litigation, employment, labor, administrative, and election law. He litigates claims involving discrimination, harassment, wrongful discharge, violation of non-competition, trade secret and confidentiality agreements, wage and hour issues, licensing disputes, constitutional law, and employment-related tort claims, including civil RICO, wrongful death, products liability, and other complex legal disputes before courts and administrative agencies throughout the United States.

In addition, Mr. White provides strategic advice and preventative counseling to clients ranging from Alaska Native Corporations to multi-national corporations. Mr. White lectures extensively on employment and wage and hour law, litigation strategy, evidence, and other issues.

Before joining Patton Boggs, Mr. White was a shareholder with the Anchorage firm of Hartig, Rhodes for 13 years. While there, Mr. White was lead trial counsel in civil RICO cases arising out of the biggest political scandal in Alaska history, resulting in judgments in excess of \$100 million dollars for his clients. He also successfully prosecuted and defended a number of class actions in both state and federal court. Before entering private practice, Mr. White clerked for the Hon. Edmund Burke (Ret.) of the Alaska Supreme Court.

Mr. White serves as an Alaska State Bar Examiner. He is also a member of the Board of Directors and two-time former president the Anchorage Bar Association. Mr. White served on the Anchorage Transportation Commission for 10 years, the last four as its chair and for twenty years as a Board Member of National High School Mock Trial Championship Inc. where he has held at various times the office of President and Treasurer. Mr. White is also the founder of the Alaska State High School Mock Trial Competition. Mr.



White lives in Anchorage with his wife, Palmer, Superior Court Judge Vanessa H. White, who is Deputy Presiding Judge for the Third Judicial District. Mr. White's biography is included in Attachment E.

Representative Matters:

- *In re 2001 Redistricting Cases*, 47 P. 3d 1089 (Alaska 2002)
- *In re Rogstad*, 126 F.3d 1224 (9th Cir. 1997)
- *Chivers v. North Slope Borough*, 33 F. 3d 58 (9th Cir.1994)
- *N.L.R.B. v. Twin Cities Electric et. al*, 914 F.2d 1263 (9th Cir. 1990)

Responsibilities: As lead attorney Mr. White shall work directly with client on all Board matters and be the Boards main point of contact. Mr. White will lead Patton Boggs' team and is the person with overall responsibility for the contract and all assignments there under. Mr. White will devote all the time necessary to ensure proper completion of the project. He will attend Board meetings, public hearings and any other events as requested by the Board. Mr. White will be lead trial counsel for any litigation. It is expected that at least 45-50% of the time spent on this matter will be by Mr. White. Mr. White understands that there may be significant periods of time when 100% of his time is devoted to Board work and he will schedule his work load accordingly.

Location(s) where work will be performed: Alaska

Hourly rate for each person assigned to the contract: \$410.00 (This is Mr. White's normal hourly rate, the rate offered by Patton Boggs for this RFP is set forth in its "Proposed Cost Sheet" Attachment A to this proposal)

**Ms. Nicole A. Corr
Associate**

Nicole Corr advises clients on a broad range of issues as assigned by the Partners of Patton Boggs including administrative law, employment regulations, marine transportation and civil litigation. Ms. Corr also advises Alaska Native Corporations on the Small Business Administration's 8(a) Program and government contracts. Ms. Corr also regularly assists Mr. White in his litigation practice.

During law school, Ms. Corr served as a judicial extern for the Honorable Frank L. Kurtz, Chief Bankruptcy Judge of the United States Bankruptcy Court for the Eastern District of Washington and received the L. Warden Hanel Bankruptcy Scholarship. She was an associate editor of the *Gonzaga Journal of International Law* and a member of the Gonzaga National Moot Court team. Ms. Corr worked as a summer intern for Lee Smart in Seattle, Washington, an insurance defense firm, and for Baxter Bruce and Sullivan in Juneau. Prior to joining Patton Boggs, Ms. Corr served as the law clerk for Alaska Superior Court Judges Charles Huguelet and Anna M. Moran of the Kenai Superior Court. In preparation for this RFP, Ms. Corr under Mr. White's guidance has engaged in extensive research and study of Federal and Alaska redistricting and election laws as well as the requirements of the voting rights act. Ms. Corr's resume can be found in Attachment E.



Responsibilities: As a key member of the Patton Boggs redistricting team, during the life of the contract, Ms. Corr's first priority will be to Board work. Her work load will be scheduled by Patton Boggs to allow for priority service to the Board. Her primary responsibilities will be legal research and writing and assisting Mr. White as needed. Ms. Corr will also act as Mr. White's associate trial counsel in any litigation. It is expected that at least 25% of the time spent on this matter will be by Ms. Corr.

Location(s) where work will be performed: Alaska

Hourly rate for each person assigned to the contract: \$225.00 (This would be Ms. Corr's normal hourly rate during the first year of the Contract proposal. The rate offered by Patton Boggs for this RFP is set forth in its "Proposed Cost Sheet" as Attachment A to this proposal.)

**Ms. Michelle N. Heieren
Paralegal**

Michelle Heieren has served in the Litigation Department at Patton Boggs since February of 2010, assisting attorneys in the area of civil litigation and corporate law. These areas include employment law, Alaska Native Corporation Law, and 8(a) Government Contracting. She has seven years experience working as a paralegal. Prior to working for Patton Boggs she served as a paralegal in a prominent insurance defense firm. She obtained her Associate of Arts in Paralegal Studies from the University of Alaska Anchorage, as well as a Bachelor of Arts in Justice with a minor in the Spanish language.

Responsibilities: As a key member of the Patton Boggs redistricting team, during the life of the contract, Ms. Heieren's first priority will be to Board work. Her work load will be scheduled by Patton Boggs to allow for priority service to the Board. Her primary responsibilities will be providing paralegal support, IT support and document control as assigned and overseen by Mr. White. Ms. Heieren will also be Mr. White's litigation paralegal providing litigation and trial support skills. Mr. Heieren will also oversee and direct any project or document control clerks necessary to support the litigation efforts. It is expected that at least 25% of the time spent on this matter will be by Ms. Heieren.

Location(s) where work will be performed: Alaska

Hourly rate for each person assigned to the contract: \$160.00 (This is Ms. Heieren's normal hourly rate, the rate offered by Patton Boggs for this RFP is set forth in its "Proposed Cost Sheet" Attachment A to this proposal)



Mr. Douglas J. Serdahely:
Partner – Key Personnel

Mr. Serdahely has nearly forty years of experience in complex civil litigation and advising clients on all aspects of Alaska statutory laws and regulations. As a former Superior Court Judge, Mr. Serdahely has keen insight into the workings of the Alaska Court system at both the trial and appellate court level. His Biography is included in Exhibit E.

Responsibilities: Mr. Serdahely will be used as a senior level strategist if necessary on issues that may affect the Board during the redistricting process. Mr. Serdahely will also be available to provide input into trial strategy and to act as a sounding board for lead counsel Michael D. White. It is expected that at least no more than 2-3% of the time spent on this matter will be by Mr. Serdahely.

Location(s) where work will be performed: Alaska

Hourly rate for each person assigned to the contract: \$440.00 (This is Mr. Serdahely normal hourly rate, the rate offered by Patton Boggs for this RFP is set forth in its "Proposed Cost Sheet" Attachment A to this proposal. For purposes of the Cost Proposal, Mr. Serdahely's rate shall be the same as the rate for "Lead Counsel".)

Mr. Benjamin L. Ginsberg:
Partner – Key Personnel

Benjamin L. Ginsberg is the head of Patton Boggs' Political and Election Law Practice Section in its D.C. office. Mr. Ginsberg possesses extensive knowledge and experience in the redistricting process and federal election law and is one of the leading experts on the VRA in the country. Mr. Ginsberg will be available for consultations and advice where necessary throughout the process. His Biography is included in Exhibit E.

Responsibilities: Mr. Ginsberg will be available, if necessary to provide counsel and advise on federal election law issues including the Voting Rights Act of 1965. Mr. Ginsberg's relationships with personnel at the U.S. Department of Justice can also be leveraged if needed. Mr. Ginsberg will also be available to provide input into trial strategy if required. It is expected that approximately 0-2% of the time spent on this matter will be by Mr. Ginsberg.

Location(s) where work will be performed: Washington D.C.

Hourly rate for each person assigned to the contract: \$890.00 (This is Mr. Ginsberg normal hourly rate. For purposes of this RFP, Mr. Ginsberg hourly rate for work Board work will be \$500).



5.05 Cost Proposal

Offeror's must provide the firm's hourly billing rates for the Lead Attorney, Key Personnel or Associates, Para-Legal, and any other individuals that may provide services under the contract. The hourly rates and daily rates to attend Redistricting Board meetings must be listed on the Offeror's Proposed Cost Sheet (Attachment 6), and submitted with the firm's proposal.

NOTE: Reimbursement for out-of-pocket expenses will be limited the items authorized by the Project Director and items set out in a contract resulting from this RFP.

Patton Boggs "Offeror's Proposed Cost Sheet" is attached hereto as Attachment A.

Appendix A: Legislative Procurement Code

ALASKA LEGISLATIVE PROCUREMENT PROCEDURES
(revised 11/21/13)

* Section 1. The Administrative Services Policy and Procedures Manual is amended by adding new sections to read:

Sec. 010. PURPOSE.

The purpose of these procurement procedures is to adopt competitive procurement principles applicable to the Legislature that ensure the fair and equitable treatment of all persons who deal with the procurement system of the Legislature.

Sec. 020. APPLICATION.

(a) These procedures apply to all contracts entered into after December 31, 1987, for services, professional services, supplies, or construction to be provided to a legislative agency or legislative committee except:

- (1) employment contracts;
- (2) contracts that do not exceed \$35,000 each year;
- (3) contracts for utilities; in this paragraph, "utilities" includes water, heat, sewer, telephone services and garbage;
- (4) contracts with a state agency, including a department, the University of Alaska, and a public corporation;
- (5) contracts to purchase memberships in professional and legislative organizations;
- (6) contracts to handle an emergency situation, including a situation that arises because of fire, flood, equipment failure, or other compelling reason; to qualify for this exemption, the procurement officer shall make a written determination that there is an emergency, and the determination must recite the facts on which the determination is based;
- (7) contracts for the purchase of maintenance services for equipment, software, or both;
- (8) contracts for hospitality or government protocol; and
- (9) contracts for artifacts or art.

(b) Only section 150(b) of these procedures applies to contracts with a municipality in the state.

Sec. 030. NOTICE OF SOLICITATIONS.

(a) A solicitation to procure services, professional services, supplies, or construction under a contract must be extended to a sufficient number of firms or persons to insure that public interest in competition is adequately served. Bids or proposals from at least six firms or persons listed on

the appropriate contractor list maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be solicited for contracts equal to or greater than \$100,000. Bids or proposals from at least three firms or persons listed on the appropriate contractor list maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be solicited for contracts of less than \$100,000. Lists of contractors maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be used in soliciting bids or proposals under this section.

(b) Advertising in a medium that will reasonably bring the invitation or proposal to the attention of persons able to provide the required services, professional services, supplies, or construction may be substituted for direct solicitation or used jointly with direct solicitation of bids or proposals.

(c) The procurement officer shall give notice of the solicitation at least 21 days before the date for the opening of bids or proposals unless the officer makes a determination in writing that a shorter notice period is necessary for a particular solicitation.

(d) If an insufficient number of firms or persons have the expertise required to enable an agency to solicit the number of bids or proposals required under (a) of this section, the agency shall solicit bids or proposals

- (1) from each person or firm listed on the appropriate contractor list that appears to possess the required expertise;
- (2) from any person or firm with the required expertise of which the contracting agency or committee may be aware.

(e) A legislator or the procurement officer for a legislative committee may request the Legislative Affairs Agency to carry out the solicitation responsibilities under this section.

Sec. 033. LIMITED COMPETITION PROCUREMENTS.

(a) A procurement may be made without using competitive sealed bidding or competitive sealed proposals if the procurement is

- (1) for supplies and does not exceed \$100,000; this paragraph includes a space lease that does not exceed
 - (A) \$100,000, even if the lease exceeds 7,000 square feet; or
 - (B) 7,000 square feet, even if the lease exceeds \$100,000;
- (2) for services and does not exceed \$100,000; or
- (3) for construction and does not exceed \$200,000.

(b) A procurement made under this section shall be made by contacting at least three firms or persons for written bids or proposals and is not subject to the solicitation requirements of sec. 030 or the preference requirements of secs. 142 or 145.

Sec. 035. PRACTICAL COMPETITION PROCUREMENT.

A construction contract that does not exceed \$100,000, or a contract for supplies, services, or professional services may be awarded without using competitive sealed bidding or competitive sealed proposals, if the procurement officer determines in writing that a situation exists that makes competitive sealed bidding or competitive sealed proposals impractical or contrary to the public interest. Procurements made under this section shall be made with competition that is practical under the circumstances and without complying with the solicitation requirements of sec. 030 or the preference requirements of secs. 142 or 145.

Sec. 040. EXEMPTIONS.

(a) A contract is exempt from the solicitation requirements of sec. 030 and from sec. 145, if

- (1) the procurement officer determines in writing that
 - (A) it is not practicable to award a contract by competitive sealed bidding, competitive sealed proposals, or other competitive method; and
 - (B) award of the contract under this paragraph is in the agency's or committee's best interest;
- (2) the contract is with a contractor that the Department of Administration has selected by competitive bidding to provide to state agencies the service, product, leased space, or construction that is the subject of the contract; or
- (3) the contract is for legal services.

(b) An exemption in (a)(1) of this section applies only if it is approved by the procurement officer, and in the case of a contract for a legislative committee, by a majority of the committee members. A written justification that details the reasons for the exemption in (a)(1) of this section shall be attached to the contract and filed under sec. 200 of these procedures as a public record. A contract proposed for award under the exemption in (a)(1) of this section is not valid unless the required approval is received.

(c) Sections 142, 147, and 210 of these procedures do not apply to a contract that is exempt under (a)(2) of this section.

(d) A lease that was procured competitively may be materially modified by amendment, and the material modification of the lease does not require procurement of a new lease, if

- (1) the reasons for the modification are legitimate;
- (2) the reasons for the modification were unforeseen when the lease was entered into;

- (3) it is not practicable to competitively procure a new lease;
- (4) the modification is in the best interests of the agency or the committee;
- (5) the procurement officer makes a written determination that the items in paragraphs (1) - (4) exist, the determination details the reasons for concluding why the items exist, and the determination is attached to the amended lease; and
- (6) the use of this subsection is approved by the procurement officer and, in the case of an amendment for the lease of a legislative committee, by a majority of the committee members.

Sec. 045. SMALL PROCUREMENTS.

(a) Professional services contracts that do not exceed \$100,000 may be made as small procurements under this section. Procurements made under this section are not subject to sec. 145 or to the solicitation requirements set forth in sec. 030 of these procedures. Small procurements are subject to the provisions of sec. 147 of these procedures. A small procurement that is made by a solicitation of bids is subject to the Alaska bidder preference set out in sec. 145(c) of these procedures.

(b) A contract awarded as a small procurement under this section may be amended so that the contract amount exceeds the amounts set out in (a) of this section, without complying with the solicitation requirements set forth in sec. 030 of these procedures. However, a contract may not be artificially divided to avoid the solicitation requirements set forth in sec. 030 of these procedures.

Sec. 050. ONLY ONE BID OR PROPOSAL RECEIVED.

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

- (1) new bids or offers may be solicited;
- (2) the proposed procurement may be cancelled; or
- (3) if the procurement officer determines in writing that the need for the supply or service continues, but that the price of the one bid is not fair and reasonable and there is not time for resolicitation or resolicitation would likely be futile, the procurement may then be conducted under sec. 040 of these procedures.

(b) If only one proposal is received in response to a request for proposals, the procurement officer may, as the officer deems appropriate, make an award, cancel the procurement, or if time permits, resolicit for the purpose of obtaining competitive sealed proposals.

Sec. 070. BID AND PERFORMANCE BONDS FOR SUPPLY CONTRACTS OR SERVICE CONTRACTS.

In addition to any other bond required by law, bid and performance bonds or other security may be required for supply contracts or service contracts as the procurement officer deems advisable to protect the interest of the agency. These requirements shall be set forth in the solicitation. Bid or performance bonds may not be used as a substitute for a determination of bidder or offeror responsibility.

Sec. 080. CONDITIONING BIDS OR PROPOSALS UPON OTHER AWARDS NOT ACCEPTABLE.

A bid or proposal that is conditioned upon receiving award of both the particular contract being solicited and another legislative contract is nonresponsive and not acceptable.

Sec. 090. DETERMINATION OF TERMS AND CONDITIONS.

The procurement officer is authorized to determine the provisions, terms and conditions of solicitations and contracts, provided the provisions, terms and conditions are not contrary to statutory or other requirements governing the procurement.

Sec. 095. HUMAN TRAFFICKING.

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

(b) The procurement officer may set restrictions on procurement from a person that conducts business in but does not have headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C).

Sec. 100. UNSOLICITED OFFERS.

(a) An unsolicited offer is an offer other than one submitted in response to a solicitation.

(b) The procurement officer shall consider an unsolicited offer as provided in this section. To be considered for evaluation an unsolicited offer:

- (1) must be in writing;
- (2) must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the agency;
- (3) must be unique or innovative;
- (4) must demonstrate that the proprietary character of the offering warrants consideration of the use of a noncompetitive procurement; and
- (5) may be subject to testing under terms and conditions specified by the agency.

(c) The unsolicited offer must be evaluated to determine its use to the agency and whether it would be to the agency's advantage to enter into a contract based on the offer.

(d) A written request for confidentiality of technical data and trade secrets contained in an unsolicited offer that is made in writing shall be honored. If an award is made, confidentiality of data shall be agreed upon by the parties and governed by the provisions of the contract. Confidential data not contained in the contract are not open to public inspection under sec. 200 of these procedures. If agreement cannot be reached on confidentiality, the agency may reject the unsolicited offer.

Sec. 110. POLICY FOR CANCELLATION OF SOLICITATIONS.

Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only. The solicitation must give the status of funding for the procurement. Preparing and distributing a solicitation requires the expenditure of state time and funds. Businesses also incur expense in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation may be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the agency's best interest.

Sec. 120. CANCELLATION OF SOLICITATION: REJECTION OF ALL BIDS OR PROPOSALS.

(a) A solicitation issued by an agency must state that the solicitation may be cancelled as provided in this section.

(b) Before opening, a solicitation may be cancelled in whole or in part when the procurement officer determines in writing that cancellation is in the agency's best interest. Reasons for cancellation include:

- (1) the agency no longer requires the supplies, services, or construction;
- (2) the agency no longer can reasonably expect to fund the procurement; or
- (3) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(c) When a solicitation is cancelled before opening, notice of cancellation shall be sent to all businesses solicited. The notice of cancellation must:

- (1) identify the solicitation;
- (2) briefly explain the reason for cancellation; and
- (3) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar supplies, services, professional services, or construction.

(d) After opening but before award, all bids or proposals may be rejected in whole or in part when the procurement officer determines in writing that rejection is in the agency's best interest. Reasons for rejection include:

- (1) the supplies, services, professional services, or construction being procured are no longer required;
- (2) ambiguous or otherwise inadequate specifications were part of the solicitation;
- (3) the solicitation did not provide for consideration of all factors of significance to the agency;
- (4) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (5) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
- (6) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(e) A notice of rejection that includes the information required under (c) of this section shall be sent to all businesses that submitted bids or proposals.

(f) In this section, "opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

(g) The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

Sec. 125. BID OR PROPOSAL PREPARATION COSTS.

If for any reason a contract is not awarded after a solicitation, an agency of the legislature may not be held liable for bid or proposal preparation costs.

Sec. 130. REJECTION OF INDIVIDUAL BIDS OR PROPOSALS.

(a) A solicitation issued by an agency shall provide that a bid or proposal may be rejected in whole or in part when in the best interest of the agency as provided in this section.

(b) Reasons for rejecting a bid submitted in competitive sealed bidding or in the second phase of multi-step sealed bidding include:

- (1) the business that submitted the bid is nonresponsible as determined under sec. 210 of these procedures;

- (2) the bid is not responsive, that is, it does not conform in all material respects to the invitation for bids;
- (3) the supply, service, professional service, or construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the invitation for bids.

(c) In this section, "proposal" means an offer submitted in response to a solicitation other than a bid. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and the stated requirement in the solicitation may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or part of a proposal. Reasons for rejecting proposals include:

- (1) the business that submitted the proposal is nonresponsive as determined under sec. 210 of these procedures;
- (2) the proposal ultimately fails to meet the announced requirements of the agency in a material respect; or
- (3) the proposed price is clearly unreasonable.

(d) Upon request, unsuccessful bidders or offerors shall be advised of the reasons for the rejection.

Sec. 140. ALL-OR-NONE BIDS OR PROPOSALS.

Unless a solicitation permits a bid or proposal to limit acceptance to the entire bid or proposal offering, a bid or proposal so limited is nonresponsive. If the solicitation permits such a limitation, the agency may not reject part of the bid or proposal and award on the remainder.

Sec. 142. ALASKA PRODUCT PREFERENCE.

In a contract involving the purchase of supplies, including a construction contract, only products manufactured, produced, or harvested in the state may be purchased if the supplies are competitively priced, available, and of like quality compared with products manufactured, produced, or harvested outside the state.

Sec. 145. CONTRACT AWARD.

(a) Except as provided in (c) of this section, the procurement officer shall award a contract based on a solicitation of bids with reasonable promptness to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the solicitation.

(b) In this section, "Alaska bidder" means a person who

- (1) holds a current Alaska business license;

- (2) submits a bid or proposal for goods, services, or construction under the name as appearing on the person's current Alaska business license;
- (3) has maintained a place of business within the state staffed by the person or an employee of the person for a period of six months immediately preceding the date of the bid or proposal;
- (4) 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 32.06 or AS 32.11 and all partners are residents of the state; and
- (5) if a joint venture, is composed entirely of ventures that qualify under (1) - (4) of this subsection.

(c) Except as provided in (e) of this section, the procurement officer shall award a contract based on a solicitation of bids to the lowest responsible and responsive Alaska bidder if the bid is not more than five percent higher than the lowest nonresident bidder's.

(d) The procurement officer shall award a contract based on a solicitation of proposals with reasonable promptness to the responsible and responsive offeror whose proposal is determined in writing by the procurement officer to be the most advantageous to the state after taking into consideration price and the evaluation factors set out in the request for proposals. Other factors and criteria may not be used in the evaluation. When determining whether a proposal is advantageous to the state, the procurement officer shall consider whether the offeror qualifies as an Alaska bidder under (b) of this section.

(e) Notwithstanding sec. 142, if the procurement is done by competitive sealed bidding, the procurement officer shall award the contract to the lowest responsible and responsive bidder after application of an Alaska bidder preference of five percent, an Alaska products preference under AS 36.30.322 - 36.30.338, and a recycled products preference under AS 36.30.337, an Alaska veterans' preference under AS 36.30.321(f), and preferences under AS 36.20.321(b), (d), (g), (i), and (k) relating to persons with disabilities, including employment programs. In this subsection, "employment program" has the meaning given in AS 36.30.990.

Sec. 147. DETERMINATION TO AWARD A CONTRACT TO A NONRESIDENT.

If the procurement officer awards a contract to a person who does not reside or maintain a place of business in the state and if the supplies, services, professional services, or construction that is the subject of the contract could have been obtained from sources in the state, the procurement officer shall issue a written statement explaining the basis of the award. The statement required under this section shall be kept in the contract file.

Sec. 150. PREPARATION AND AWARD OF CONTRACTS.

(a) A contract must be self-contained and written with care and thoroughness.

(b) Contracts and amendments to contracts must be authorized as follows:

- (1) contracts involving House operating funds must be authorized by the Speaker of the House and a majority of the members of the Legislative Council in a meeting, except that contracts for legal services need be authorized by the Speaker only;
- (2) contracts involving Senate operating funds must be authorized by the President of the Senate and a majority of the members of the Legislative Council in a meeting, except that contracts for legal services need be authorized by the President only;
- (3) contracts of a legislative committee must be authorized by a majority of the members of the committee in a meeting;
- (4) contracts of the Legislative Affairs Agency must be authorized by a majority of the members of the Legislative Council in a meeting of the Legislative Council;
- (5) contracts of the Legislative Finance Division and the Legislative Audit Division must be authorized by a majority of the members of the Legislative Budget and Audit Committee in a meeting of the committee;
- (6) contracts of a research agency established by the legislature must be authorized by a majority of the members of the Legislative Council in a meeting.

(c) A contract must be executed by the provider of the service, professional service, supply, or construction, and the procurement officer and shall be approved as to form by legislative legal counsel.

(d) A contract must contain:

- (1) the amount of the contract stated on its first page;
- (2) the date for the work to begin or the supplies to be delivered;
- (3) the date by which the work must be completed;
- (4) a description of the services to be performed or the supplies to be procured under the contract; and
- (5) a statement of the status of the funding for the contract.

(e) Subsections (a), (c), and (d) of this section do not apply when a State of Alaska delivery order form is used.

(f) Notwithstanding (b) of this section, the procurement officer for a construction contract may, without obtaining committee authorization otherwise required by (b) of this section, authorize an

increase in the amount to be paid a contractor under the construction contract if the increase results from a change to the construction contract that is within the general scope of the original construction contract. The cumulative amount of all increases that may be authorized for one construction contract by a procurement officer under this subsection may not exceed \$25,000, or 10 percent of the original amount of the construction contract, whichever is more. In this subsection, "construction contract" means a contract in which the work includes construction services, even if supplies or other services are also provided under the contract.

The procurement officer will notify members of the appropriate committee of any authorized change orders.

Sec. 160. NOVATION OR CHANGE OF NAME.

(a) A legislative contract for the lease of legislative space that does not include a subordination agreement, may be assigned with the consent of the procurement officer. Any other legislative contract is not transferable, or otherwise assignable, without the consent of the procurement officer, and in the case of a contract for a committee, a majority of the members of that committee. However, a contractor may assign money receivable under a contract after due notice to the procurement officer.

(b) When it is in the best interest of the agency, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee must agree that:

- (1) the transferee assume all of the transferor's obligations;
- (2) the transferor waives all rights under the contract as against the agency; and
- (3) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

(c) When a contractor requests to change the name in which it holds a contract with an agency, the procurement officer responsible for the contract shall, upon receipt of a document indicating a change of name, enter into an agreement with the requesting contractor to effect the change of name. The agreement changing the name must specifically indicate that no other terms and conditions of the contract are thereby changed.

Sec. 170. CONTRACTING FOR INSTALLMENT PURCHASE PAYMENTS, INCLUDING INTEREST.

Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints and must be justified in writing by the procurement officer. The justification shall be attached to the contract and filed under sec. 200 of these procedures. An installment payment agreement may not be used unless a provision for installment payments is included in the solicitation document.

Sec. 180. STANDARD OVERHEAD RATE.

(a) If the University of Alaska or any other state agency has established an applicable standard overhead rate, the standard overhead rate shall be included in a proposal for a contract submitted by the University of Alaska or the state agency.

(b) In this section, "standard overhead rate" means a charge established by the University of Alaska or a state agency that is designed to compensate the University of Alaska or the state agency for administration and support services incidentally provided with the services.

Sec. 195. DISCLOSURE OF PROPOSALS.

Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the selection process. A register of proposals containing the name and address of each offeror shall be prepared. The register and the proposals are open for public inspection after the notice of intent to award a contract is issued. To the extent that the offeror designates and the procurement officer concurs, trade secrets and other proprietary data contained in the proposal documents are confidential.

Sec. 200. PROCUREMENT FILES.

(a) A copy of each solicitation or unsolicited offer that does not result in a contract together with relevant documents shall be filed, as is appropriate, with the Legislative Affairs Agency, the legislative finance division, or the legislative audit division. The invitation to bid or request for proposals and each bid or proposal submitted shall be filed with the filed contract copy unless the contract is one in which an invitation to bid or a request for proposals is not required. Except as otherwise provided in secs. 100 and 195 of these procedures, procurement files are open for public inspection.

(b) A contract for services provided to the legislative audit division in the preparation of an audit report or a performance review report does not have to be filed under (a) of this section until the report is released under AS 24.20.311.

Sec. 210. RESPONSIBILITY OF PROSPECTIVE CONTRACTORS.

Before awarding a contract, the procurement officer must be satisfied that the prospective contractor is responsible. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination must be made part of the procurement file.

Sec. 220. STANDARDS OF RESPONSIBILITY.

(a) Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:

- (1) the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;

- (2) a satisfactory record of performance;
- (3) a satisfactory record of integrity;
- (4) qualified legally to contract with the agency; and
- (5) supplied all necessary information in connection with the inquiry concerning responsibility.

(b) The prospective contractor shall supply information requested by the procurement officer concerning the responsibility of the contractor. If the contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if the failure is unreasonable.

(c) The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

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

Sec. 230. FILING OF A PROTEST.

An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction by an agency. The protest shall be filed with the procurement officer in writing and include the following information:

- (1) the name, address, and telephone number of the protester;
- (2) the signature of the protester or the protester's representative;
- (3) identification of the contracting agency and the solicitation or contract at issue;
- (4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
- (5) the form of relief requested.

Sec. 240. TIME FOR FILING A PROTEST.

(a) A protest based upon alleged improprieties in a solicitation involving competitive sealed bidding that are apparent before the bid opening shall be filed before the bid opening. A protest

based on alleged improprieties in a solicitation involving competitive sealed proposals that are apparent

- (1) before the due date for receipt of initial proposals shall be filed before that due date;
 - (2) after the due date for receipt of initial proposals shall be filed before the next due date for receipt of adjusted proposals that occurs after the improprieties are apparent.
- (b) In situations not covered under (a) of this section, protests shall be filed within 10 days after a notice of intent to award the contract is issued by the procurement officer.
- (c) If the protester shows good cause, the procurement officer of the contracting agency may consider a filed protest that is not timely.

Sec. 250. NOTICE OF A PROTEST.

The procurement officer shall immediately give notice of a protest filed under sec. 240 of these procedures to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

Sec. 260. STAY OF AWARD.

If a protest is filed the award may be made unless the procurement officer of the contracting agency determines in writing that a:

- (1) reasonable probability exists that the protest will be sustained; or
- (2) stay of the award is not contrary to the best interests of the state.

Sec. 270. DECISION BY THE PROCUREMENT OFFICER.

(a) The procurement officer of the contracting agency shall issue a written decision containing the basis of the decision within 14 days after a protest has been filed. A copy of the decision shall be furnished to the protester by certified mail or other method that provides evidence of receipt.

(b) The time for a decision may be extended up to 26 days for good cause by the Legislative Council. If an extension is granted, the procurement officer shall notify the protester in writing of the date the decision is due.

(c) If a decision is not made by the date it is due, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

Sec. 280. PROTEST REMEDIES.

(a) If the procurement officer sustains a protest in whole or in part, the procurement officer shall implement an appropriate remedy.

(b) In determining an appropriate remedy, the procurement officer shall consider the circumstances surrounding the solicitation or procurement including the seriousness of the

procurement deficiencies, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to the agency and other impacts on the agency of a proposed remedy, and the urgency of the procurement to the welfare of the state.

(c) Notwithstanding (a) and (b) of this section, if a protest is sustained in whole or part, the protestor's damages are limited to reasonable bid or proposal preparation costs.

Sec. 290. APPEAL ON A PROTEST.

(a) An appeal from a decision of a procurement officer on a protest may be filed by the protester with the Legislative Council. An appeal shall be filed within seven days after the decision is received by the protester. The protester shall file a copy of the appeal with the procurement officer.

(b) An appeal must contain the information required under sec. 230 of these procedures. In addition, the appeal must include

- (1) a copy of the decision being appealed; and
- (2) identification of the factual or legal errors in the decision that form the basis for the appeal.

Sec. 300. NOTICE OF A PROTEST APPEAL.

(a) The procurement officer shall immediately give notice of an appeal filed under sec. 290 of these procedures to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

(b) The Legislative Council shall, on request, furnish a copy of the appeal to a person notified under (a) of this section, except that confidential material shall be deleted from the copy.

Sec. 310. STAY OF AWARD DURING PROTEST APPEAL.

If a protest appeal is filed before a contract is awarded and the award was stayed under sec. 260 of these procedures, the filing of the appeal automatically continues the stay until the Legislative Council makes a written determination that the award of the contract without further delay is necessary to protect substantial interests of the state.

Sec. 320. PROTEST REPORT.

(a) The procurement officer of the contracting agency shall file a complete report on the protest and decision with the Legislative Council within 10 days after a protest appeal is filed. The procurement officer shall furnish a copy of the report to the protester and to interested parties that have requested a copy of the appeal under sec. 300(b) of these procedures.

(b) The procurement officer may request the Legislative Council chair for an extension of time to prepare the protest report. The request must be in writing listing the reasons for the request. The Legislative Council chair shall respond to the request in writing. If an extension is granted, the Legislative Council chair shall list the reasons for granting the extension and indicate the date

the protest report is due. The Legislative Council chair shall notify the protester in writing that the time for submission of the report has been extended and the date the report is due.

(c) The protester may file comments on the protest report with the Legislative Council within 10 days after the report is received. The protester shall provide copies of the comments to the procurement officer and to interested parties that have requested a copy of the appeal under sec. 300(b) of these procedures.

(d) The protester may request the Legislative Council chair for an extension of time to prepare the comments on the protest report. The request must be in writing listing the reasons for the request. The Legislative Council chair shall respond to the request in writing. If an extension is granted, the Legislative Council chair shall list the reasons for granting the extension and indicate the date the comments are due. The Legislative Council chair shall notify the procurement officer in writing that the time for submission of the comments has been extended and the date the comments are due.

Sec. 330. DECISION WITHOUT HEARING.

(a) The Legislative Council shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely under sec. 290 of these procedures.

(b) The Legislative Council may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.

(c) Within 30 days after the period for filing comments under sec. 320(c) or (d) has expired the Legislative Council may adopt the decision of the procurement officer as the final decision without a hearing.

Sec. 340. HEARING ON PROTEST APPEAL.

A hearing on a protest appeal shall be conducted in accordance with sec. 450 of these procedures.

Sec. 350. CONTRACT CONTROVERSIES.

(a) A contractor shall file a claim concerning a contract awarded under this chapter with the procurement officer. The contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of the contractor's knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the state is liable.

(b) If a controversy asserted by a contractor concerning a contract awarded under these procedures cannot be resolved by agreement, the procurement officer shall, after receiving a written request by the contractor for a decision, issue a written decision. The decision shall be made no more than 90 days after receipt by the procurement officer of all necessary information from the contractor. Failure of the contractor to furnish necessary information to the procurement officer constitutes a waiver of the claim. Before issuing the decision the procurement officer shall review the facts relating to the controversy and obtain necessary assistance from legal, fiscal, and other advisors.

(c) The time for issuing a decision under (b) of this section may be extended for good cause by the Legislative Council chair if the controversy concerns an amount in excess of \$50,000. The procurement officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and of the date by which a decision shall be issued.

(d) The procurement officer shall furnish a copy of the decision to the contractor by certified mail or other method that provides evidence of receipt. The decision shall include a:

- (1) description of the controversy;
- (2) reference to the pertinent contract provisions;
- (3) statement of the agreed upon and disputed facts;
- (4) statement of reasons supporting the decision; and
- (5) statement substantially as follows:

"This is the final decision of the procurement officer. This decision may be appealed to the Legislative Council. If you appeal, you must file a written notice of appeal with the Legislative Council within 14 days after you receive this decision."

(e) If a decision is not made by the date it is due, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor.

(f) If a controversy asserted by the Legislature concerning a contract awarded under this chapter cannot be resolved by agreement the matter shall be immediately referred to the Legislative Council.

Sec. 360. APPEAL ON A CONTRACT CONTROVERSY.

(a) An appeal from a decision of the procurement officer on a contract controversy may be filed by the contractor with the Legislative Council. The appeal shall be filed within 14 days after the decision is received by the contractor. The contractor shall file a copy of the appeal with the procurement officer.

(b) An appeal shall contain a copy of the decision being appealed and identification of the factual or legal errors in the decision that form the basis for the appeal.

Sec. 370. HEARING ON A CONTRACT CONTROVERSY.

(a) Except as provided in (b) of this section, a hearing shall be conducted according to sec. 450 of these procedures on a contract controversy appealed to the Legislative Council or referred to the Legislative Council under sec. 350(f) of these procedures.

(b) Within 30 days after receipt of an appeal on a contract controversy the Legislative Council may adopt the decision of the procurement officer as the final decision without a hearing.

Sec. 380. AUTHORITY TO DEBAR OR SUSPEND.

(a) After consultation with the using agency and the attorney general and after a hearing conducted according to sec. 450 of these procedures the Legislative Council may debar a person for cause from consideration for award of contracts. Notice of a debarment hearing shall be provided in writing at least seven days before the hearing. The debarment may not be for a period of more than three years.

(b) The Legislative Council, after consultation with the using agency and the attorney general, may suspend a person from consideration for award of contracts if there is probable cause for debarment and compelling reasons require suspension to protect state interests. The suspension may not be for a period exceeding three months.

Sec. 390. CAUSES FOR DEBARMENT OR SUSPENSION.

The causes for debarment or suspension include the following:

- (1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a state contractor;
- (3) conviction or civil judgment finding a violation under state or federal antitrust statutes;
- (4) violation of contract provisions of a character that is regarded by the Legislative Council to be so serious as to justify debarment action, such as
 - (A) knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (B) failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment;
- (5) for violation of the ethical standards set out in law or regulation; and
- (6) any violation of these procedures or other cause determined to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity.

Sec. 400. WRITTEN DETERMINATIONS.

(a) The Legislative Council shall issue a written decision to debar or suspend. The decision must:

- (1) state the reasons for the action taken; and
- (2) inform the debarred person of rights to judicial appeal or inform the suspended person of rights to administrative and judicial appeal.

(b) A copy of the decision under (a) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other intervening party.

Sec. 410. HEARING ON A SUSPENSION.

(a) A person suspended under sec. 380 of these procedures is entitled to a hearing conducted according to sec. 450 of these procedures if the person files a written request for a hearing with the Legislative Council within seven days after receipt of the notice of suspension under sec. 400 of these procedures.

(b) If a suspended person requests a hearing the Legislative Council shall schedule a prompt hearing unless the attorney general determines that a hearing at the proposed time is likely to jeopardize an investigation. A hearing may not be delayed longer than six months after notice of the suspension is provided under sec. 400 of these procedures.

Sec. 420. LIST OF PERSONS DEBARRED OR SUSPENDED.

The chairman of the Legislative Council shall maintain a list of all persons debarred or suspended from consideration for award of contracts.

Sec. 430. REINSTATEMENT.

(a) The Legislative Council may at any time after a final decision to debar a person from consideration for award of contracts reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

(b) A debarred person may request reinstatement by submitting a petition to the Legislative Council supported by evidence showing that the cause for debarment no longer exists or has been substantially mitigated.

(c) The Legislative Council may require a hearing on a reinstatement petition. A decision on reinstatement shall be made in writing within seven days after a reinstatement petition is submitted. The decision shall specify the factors on which it is based.

Sec. 440. LIMITED PARTICIPATION.

The Legislative Council may permit a debarred person to participate in a contract on a limited basis during the debarment period if the Legislative Council determines in writing that the participation is advantageous to the state. The determination shall specify the factors on which it is based and the limits imposed on the debarred person.

Sec. 450. HEARING PROCEDURES.

(a) The chairman of the Legislative Council shall act as a hearing officer or appoint a hearing officer for a hearing conducted under these procedures. The hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing. The hearing shall be conducted in an informal manner.

(b) The hearing officer may:

- (1) hold prehearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- (2) require parties to state their positions concerning the various issues in the proceeding;
- (3) require parties to produce for examination those relevant witnesses and documents under their control;
- (4) rule on motions and other procedural matters;
- (5) regulate the course of the hearing and conduct of the participants;
- (6) establish time limits for submission of motions or memoranda;
- (7) impose appropriate sanctions against a person who fails to obey an order of the hearing officer, including
 - (A) prohibiting the person from asserting or opposing designated claims or defenses or introducing designated matters into evidence;
 - (B) excluding all testimony of an unresponsive or evasive witness; and
 - (C) excluding a person from further participation in the hearing;
- (8) take official notice of a material fact not appearing in evidence, if the fact is among the traditional matters subject to judicial notice;
- (9) administer oaths or affirmations.

(c) A transcribed record of the hearing shall be made available at cost to a party that requests it.

Sec. 460. RECOMMENDATION BY THE HEARING OFFICER.

(a) The hearing officer shall recommend a decision to the Legislative Council based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.

(b) The Legislative Council may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or take other appropriate action.

Sec. 470. FINAL DECISION BY LEGISLATIVE COUNCIL.

A final decision by the Legislative Council after a hearing under these procedures shall be sent within 20 days after the hearing to all parties by personal service or certified mail.

Sec. 480. APPEAL.

The decision of the Legislative Council under sec. 470 may be appealed to the Superior Court in accordance with the procedures established in AS 44.62.560 - 44.62.570 for appeals from decisions of executive branch agencies. A claimant may also bring an action under AS 09.50.250 - 09.50.300 at any time after one year has elapsed since the presentation of the claim under sec. 360, if no decision has been made by the Legislative Council.

Sec. 900. DEFINITIONS.

In these procedures, unless the context in which a term is used clearly requires a different meaning,

- (1) "agency" means any subdivision of the legislative branch that conducts procurements, including legislative committees;
- (2) "days" means calendar days and includes weekends and holidays; if a due date falls on a weekend or a legal holiday then the due date is the next working day;
- (3) "interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract; whether an actual or prospective bidder or offeror has an economic interest depends on the circumstances;
- (4) "procurement officer" means:
 - (A) the chairman of the Finance Committee with respect to contracts of that committee and the chairman of the Rules Committee with respect to contracts of that committee;
 - (B) the chairman of a legislative committee, other than the Finance Committees and the Rules Committees, with respect to a contract of that committee;
 - (C) the Speaker of the House with respect to House leadership contracts;
 - (D) the President of the Senate with respect to Senate leadership contracts;

- (E) the chairman of the Legislative Council with respect to contracts of the Legislative Affairs Agency and contracts of a research agency established by the legislature;
 - (F) the chairman of the Legislative Budget and Audit Committee with respect to contracts of the Legislative Finance Division and the Legislative Audit Division;
- (5) "professional services" means professional, technical, or consultant's services that are predominantly intellectual in character and that
- (A) include analysis, evaluation, prediction, planning, or recommendation; and
 - (B) result in the production of a report or the completion of a task;
- (6) "solicitation" means an invitation for bids, a request for proposals, or any other document issued by the legislature for the purpose of soliciting bids or proposals to perform a contract.
- (7) "supplies" has the meaning given in AS 36.30.990.

* Sec. 2. The following sections of the Administrative Services Policy and Procedures Manual are repealed:

- (1) the section headed "Contracts" on page 1.13;
- (2) the section headed "Purchasing" on page 3.1.

* Sec. 3. These procedures take effect January 1, 1988.

Appendix B: Guide to the Administrative Procurement Code

Procurement Policies and Procedures Manual

**Department of Administration
Division of Administrative Services**

Available on the Internet at:

<http://doa.alaska.gov/das/Procurement/doc/pandp.pdf>

GENERAL POLICY

The State Procurement Code (AS 36.30) establishes the statutory authority for the procurement and control of goods and services. The regulations adopted from the procurement code are found in the Alaska Administrative Code, Title 2, Chapter 12. The Alaska Administrative Manual also contains procurement procedures and requirements. Anyone involved in procurement activities (soliciting quotations, preparing specifications, evaluating bids or proposals, etc.) must be familiar with the law, regulation, administrative manual, and these departmental policies and procedures.

All procurement activities of this department will be conducted in a manner that promotes the purposes and policies of the State Procurement Code, which includes providing increased public confidence; fair and equitable treatment of all persons; maximum purchasing value of State funds; effective broad-based competition within the free enterprise system; and safeguards for the maintenance of a procurement system of quality and integrity.

Contact the department's procurement specialist if you have any questions on procurement requirements.



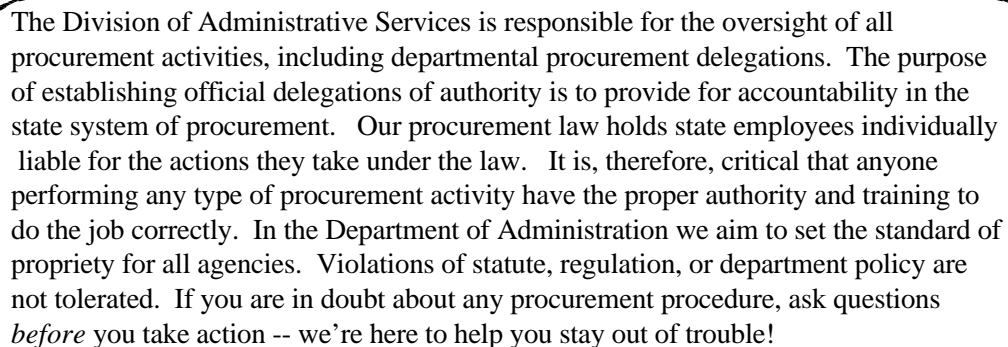
PURCHASING AUTHORITIES AND THEIR RESPONSIBILITIES

Anyone who obligates Department of Administration funds must be delegated the authority to do so. The Director of the Division of Administrative Services (DAS) delegates the authority to contract for and manage services, professional services, and supplies. The Commissioner of the Department of Transportation and Public Facilities (DOT&PF) delegates the authority to contract for construction and equipment or services for the state equipment fleet.

You may sub-delegate your purchasing authority to another individual, if your delegation authorizes you to do so. If you delegate purchasing authority or assign purchasing activities, ensure that the individual is capable and knowledgeable in the requirements governing state procurements. All delegations must be in writing and on file with DAS.

Intentional violation of the procurement regulations is just cause for revoking a purchasing authority and may result in civil or criminal penalties.

Those divisions granted “specific authority” for procurements are exempt from these policies and procedures only to the extent as stated in your specific authority.



The Division of Administrative Services is responsible for the oversight of all procurement activities, including departmental procurement delegations. The purpose of establishing official delegations of authority is to provide for accountability in the state system of procurement. Our procurement law holds state employees individually liable for the actions they take under the law. It is, therefore, critical that anyone performing any type of procurement activity have the proper authority and training to do the job correctly. In the Department of Administration we aim to set the standard of propriety for all agencies. Violations of statute, regulation, or department policy are not tolerated. If you are in doubt about any procurement procedure, ask questions *before* you take action -- we're here to help you stay out of trouble!

AS 36.30.005-.030; 2 AAC 12.740; AAM 81.005

Dan Spencer
Director of the Division
of Administrative Services



FISCAL RESPONSIBILITIES

Before requesting a purchase, soliciting quotations, awarding a bid, or signing any agreements or contracts for supplies or services, first determine that sufficient and appropriate funds are available for the purchase. To determine sufficient funding, consider the total value of the proposed procurement (be sure to include any options to renew) and the fiscal year appropriation(s) that will be charged for the obligation. See AAM 25.160, Fiscal Year Obligations.

All accounts payable documents (i.e., purchasing, contracting or approval on invoices) must be signed by a delegated purchasing or approving officer. All professional service contracts or agreements will be encumbered in AKSAS regardless of dollar value. All purchases for other services of \$5,000 or more will be issued on a Delivery Order (DO) form or written agreement and will be encumbered in AKSAS. All purchases for goods of \$5,000 or more will be issued on a DO form and encumbered in AKSAS.

AAM 30.010



Advance payments cannot be made before the receipt of goods or services except in the following cases:

- Rental payments may be made after the first day in which service commences if the lease requires advance payments.
- Subscriptions to periodicals, the purchase of documents or postage.
- Securities, investments, and real property before the assets are received.
- Grants to individuals or political subdivisions when the law so provides.

AAM 35.175

Fiscal has two main responsibilities when it comes to purchasing. One is to make sure there is sufficient funding available to pay for the purchase. Paying for a purchase should not cause you problems down the road with other obligations. The other is make sure the rules are followed so that no one gets into trouble. Let us help!

Dave Blaisdell
Finance Officer
Division of Administrative Services

REQUIRED APPROVALS

You are required to coordinate and obtain approval from the following agencies before proceeding with a procurement:

<u>Agency</u>	<u>Subject</u>	<u>Telephone #</u>
Law	Legal Service Procurements/ Changes to Standard Agreement Boiler Plates/Innovative Procurements	465-3600/3672
Administration/ Risk Management	Insurance Questions/ Changes to Appendix B	465-2180
Revenue/Treasury	Banking Services	465-2360

AAM 81.070

Documents will be approved within the department, as follows:

<u>Document Type</u>	<u>Dollar Value*</u>	<u>Written Authorizations</u>
ASPS	\$10,000.00 +	Deputy Commissioner
PSCs/Agreements	\$0 - \$9,999.99 \$10,000.00 +	Division Director Deputy Commissioner
PSC RAPs	\$5,000.00 +	Deputy Commissioner (up to \$50K)/ GS (over \$50K)
Other Svcs/ Goods RAPs	\$5,000.00 - \$50,000.00 \$50,000.00 +	Deputy Commissioner Deputy Commissioner/GS

* Dollar value stated is the total of all procurements for a specific project.

All documents approved by the Commissioner's Office must first be initialed by the division director. **DAS will review and obtain all signatures from the Commissioner's Office.**

EMPLOYER/EMPLOYEE RELATIONSHIPS

The State cannot normally enter into a contract with a State employee or contract for work that would normally be performed by a State employee. Before proceeding with a procurement, determine if the work should be performed by a State employee or a contractor. Hire a person through the personnel system if any of the following conditions exist:

- The person is subject to your control as to what, when, where, and how the work shall be done. It is not necessary that you actually direct or control the manner in which services are performed; it is sufficient that you have the right to do so.
- You have the right to discharge the person for reasons other than failure to deliver the product.
- You furnish the tools, equipment, and a place to work for the individual performing the services.

An independent contractor(s) could be hired if:

- They are subject to your control or direction but 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.
- They are in business and provide a service to the public from which they may derive a profit or suffer a loss.

Contact DAS, Human Resources Section, if you have any questions about hiring versus contracting for a particular service.

AAM 82.010





PROCUREMENT CODE EXEMPTIONS

Governmental Agencies You may provide to or procure services or goods from an external procurement or public procurement unit without preparing specifications or issuing competitive sealed proposals or soliciting bids as follows:

- Enter into a cooperative purchasing agreement for the purchase of supplies or services (must be approved by DGS in accordance with AAM 81.060);
- Enter into agreements for the common use or lease of warehouse facilities, capital equipment, or other facilities;
- Make available informational, technical, or other services;
- Provide personnel upon written request; or
- Sell to, acquire from, or use any supplies belonging to another public or external procurement unit.

A request made to or received from another State agency must comply with the Reimbursable Services Agreement procedures established by the Office of Management and Budget (OMB). Please refer to the statutes cited below for complete details and requirements on providing to or procuring services or goods from a public procurement unit, contract controversies, etc.

AS 36.30.700-.790; 2 AAC 12.700

Certified Employment Programs Within the limits of your delegated purchasing authority, you may procure goods produced or services performed by a certified employment program or accredited youth education and employment program without soliciting quotes from the private sector. Prepare a written determination which states that the goods or services meet your requirements and the price represents a reasonable cost for the goods or services. The determination can be recorded on either a DO, negotiated abstract, or memorandum form. The determination must be attached to all financial transactions and/or purchasing documents processed for the procurement. An accredited youth education and employment program is a program that allows participants to earn academic credits that are recognized by a school district in this state.

If your requirements cannot be met by a certified employment program, or the price is not reasonable, the procurement may be made competitively from the private sector.

Lists of certified employment programs are available from GS or the Department of Labor and Workforce Development, Division of Vocational Rehabilitation.

To qualify for the employment program, a bidder with a disability, or a bidder employing people with disabilities preferences, the bidder must add value if performing a service by actual performance, controlling, managing, or supervising the service to be provided to the State. If bidding on supplies, the bidder must have a documented history of selling the supplies of the general nature solicited by the State to other State agencies, governments, or the general public. If a prospective bidder cannot meet the requirement, they can bid, but would not receive the award evaluation preference.

AS 36.30.100; 2 AAC 12.050; AAM 81.055

Correctional Industries Correctional Industries products listed in the Contract Award (CA) Manual are mandatory use and may be purchased as specified in the CA without obtaining approval. If, for some reason, an item on CA does not meet your needs, you must prepare a memo requesting exemption from the requirements and submit it to ACI for approval.

For items not in the CA Manual, you must determine if the products/service meets marketability standards, meets agency needs, and is available at a reasonable cost. The following is a breakdown of whose responsibility it is to make the determination.

One time purchase of \$1,000 or less, the Commissioner of Corrections has predetermined that ACI's prices are reasonable and their products meet marketability standards of quality. The agency need is satisfied when you place your order.

One time purchases between \$1,001-\$25,000, the procurement officer is delegated the authority to make the determination required above. GS has guidelines available to assist the procurement officer in making the determination.

One time purchases over \$25,000, GS will process individual purchases from ACI .

Prepare a DO and contact the Correctional Industries Sales Office either in writing or by telephone. Include the catalog number, size, color, etc., in your order. For more information, contact the department's procurement specialist at telephone number 465-5656 or Correctional Industries in Anchorage at 269-7326 or in Juneau at 465-3317.

AS 36.30.100; 2 AAC 12.030; AAM 81.050

Grants Only those grants for which the State furnishes the property, whether real or personal, designated by law, including an appropriation Act, are exempt from the procurement code.

AS 36.30.850(b)

Federal Funds/Federal Assistance If the proposed procurement involves the expenditure of federal funds or federal assistance, and there is a conflict between the procurement code or purchasing regulations, the federal statute, regulation, policy or requirement shall prevail.

AS 36.30.890; 2 AAC 12.730

Other Items Competitive solicitations are not required, however, you are encouraged to seek reasonable competition for the items listed below. A complete list can be found in AS 36.30.850(b) and AAM Addendum 1.

¹ approval plans	advertising
² audio-visual materials	guest speakers or performers for an educational or cultural activity
³ employee moving expenses	medical doctors or dentists
⁴ network information services access	book binding services
⁵ professional witnesses	periodicals
conference attendance fees	books
newspapers	

¹Book selection services in which current book titles meeting your customized specifications are provided, subject to your right to return those books not meeting your approval.

²Nonbook pre-recorded materials, including records, tapes, slides, transparencies, films, filmstrips, cassettes, videos, compact discs, laser discs, and items requiring the use of equipment to render them usable.

³If the employee has the contractual relationship with the moving company.

⁴A group of resources from which cataloging information, holding records, interlibrary loans, acquisitions information, and other reference resources can be obtained.

⁵Professional witnesses that provide testimony relating to an existing or probable lawsuit in which the State is or may become a party.

Exemptions-don't stretch them too far!



PROCUREMENT CODE RESTRICTIONS

You may not *directly* procure the following items:

- telephone lines or circuits, radios, or any of the following equipment: electronic navigation, paging, public address, video transmission, teleconferencing, video conferencing, image transmission, telecommunications equipment, modems, bridges, routers, multiplex equipment, terminal control units, key systems, telephone switches, desk-top telephone instruments, voice mail, automated attendant, automated call sequencers or other similar equipment;
- construction, State equipment fleet vehicles, mobile homes, portable shelter units, or prefabricated and/or sectional office, housing or shelter units;
- leased office space; or
- construction involving leased space.

Submit requirements for telecommunications items to ITG on a completed Purchase Requisition (PR) form. ITG will procure the telephones, etc., DOT&PF will procure the construction/vehicles, and General Services will procure items having to do with leases.

For non-office leased space, estimated to cost no more than \$25,000 for the life of the contract, you may procure directly.

You may contract directly, but only as restricted and within your delegated purchasing authority for the goods or services listed below. Keep in mind that you must still seek the appropriate competition for the requested goods or services.

- The renovation, remodeling, repairing, or modification of leased space obtained through GS. The proposed work must be approved in advance, and in writing, by the lessor and must comply with the Alaska State Space Standards. Also, the work must not conflict with the covenants of the lease. A copy of the lessor's written approval must be received by GS before work begins.
- The renovation, remodeling, repairing, or modification of State-owned property. Explain in detail your requirements on a memorandum form to the DOT&PF. DOT&PF will evaluate your request and will either contract directly for the work, delegate you the authority to contract for the work, or disapprove the request.
- All publications shall be produced at commercial facilities or by a Certified Employment Program located in state unless:

- ~ Office copier is used to produce the publication.
- ~ Commercial in-state facilities are not capable of producing the publication.

Definition of publication: A written document, including books, brochures, flyers, manuals, newsletters, pamphlets, programs, reports and similar documents. It does not include posters, standard forms, maps, hunting-fishing-driver's licenses, fish tags, letterhead stationary or letterhead envelopes.

Solicitation requirements: For publications estimated to cost less than \$50,000, obtain solicitations from in-state vendors in accordance with small procurement requirements. Award will be made to the facility that can produce the publication in the required time frame and the lowest cost.

While basic printing standards exist, it is recognized that some publications will not meet the standards.

Waiver of Basic Printing Standards If the Basic Printing Standards cannot meet your needs, you may request a waiver of the standards. For *internal* publications, the Request for Waiver of Printing Standards form must be approved in advance by the director of GS. You are delegated the authority to waive the Basic Printing Standards for *external* publications. Publications for which the printing standards have been waived may be produced at a commercial print shop. If the costs exceed \$1,500 in general funds per printing job, a cost block which identifies the cost per copy to produce the publication must be displayed on the publication in a conspicuous location. See the Administrative Manual, Section 83.030 for examples of the cost block.

Business Card Standards: Embossed gold printing is reserved for the Governor's Office and embossed silver printing is reserved for the Lieutenant Governor's Office. Format: 3 1/2" X 2", with 9/16 diameter Alaska State Seal in the upper left corner; recycled symbol in the lower left or right corner, printed in black or blue ink, one color only, including the State Seal. The cards must be printed on 80-pound recycled stock, minimum 50 percent recycled content.

- Nonessential items are not authorized expenditures of State funds *unless* approved in advance. Such items include:
 - ⇒ printing of a personal nature such as personal letter stationery, Christmas cards, name plates, personal photographs, etc.;
 - ⇒ foodstuffs and utensils such as coffee, doughnuts, cakes, coffee makers, cups, silverware, etc.;
 - ⇒ dues for personal membership in professional and technical associations or organizations;
 - ⇒ nonfunctional or nonessential office fixtures, equipment or other items such as ash trays, radios, personalized items, wall pictures, pen and pencil desk sets, etc., and
 - ⇒ any item similar in nature or content to the above listed items that cannot be justified as essential in the administration or conduct of a State office or program.



A complete explanation of unauthorized expenditures is found in the Administrative Manual, AAM 35.150. If you feel it is necessary to purchase something of this nature, prepare your request in memorandum form, address it to the Commissioner, and explain why the procurement is necessary or an integral part of your function. Include a signature line and approved/disapproved blocks.

⇒ Rugs, draperies, plants, planters, etc.



If the procurement is necessary or an integral part of your function, prepare a memorandum that explains why and address it to either DOT&PF for State-owned buildings or GS for leased office space. Include a signature line and approved/disapproved blocks.

Once authorized, attach a copy of the approved memorandum to all accounts payable financial transactions.

AAM 35.150

Restriction on Employment After Leaving State Service For two years after leaving State service, a former public employee may not work on any matter in which the former employee had personally and substantially participated while employed by the former administrative unit. This prohibition applies to cases, proceedings, applications, and contracts.

AS 39.52.180

Believe
in
ETHICS

EMERGENCY PROCUREMENTS

An emergency exists when a timely decision must be made to prevent loss of life, damage to property or facilities, or to mitigate an imminent threat to public health, welfare, or safety.

Advance review by the Chief Procurement Officer (CPO) is required. The CPO makes the determination on the basis of the emergency and the selection of the contractor before the procurement takes place. If there is not time for the CPO to receive the information and make the determination, the procurement officer has the authority to make the determination (there is not sufficient time to obtain a written determination from the CPO if action must be taken in less than 72 hours). Seek competition that is practical under the circumstances. The procurement(s) is limited to the supplies, services, or construction necessary to meet the emergency only. Prepare a written determination, stating the factual basis of the emergency. You must submit a copy of the procurement and a procurement report to GS. Attach a copy of the determination to all accounts payable financial transactions.

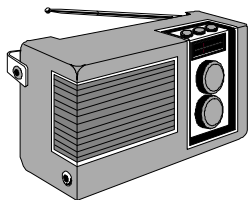
AS 36.30.310; 2 AAC 12.440-.460; AAM 81.510

Not an emergency situation:



Possible emergency situations:

This just in--the
Pioneers' Home's heating
system has stopped
functioning!



FLOOD

CONTRACT AWARDS

GS solicits bids and awards contracts for all agencies to use. You must purchase items on CA if the CA stipulates its mandatory use. All purchases from a CA must comply to the terms and conditions of the award. Only purchase those items detailed on a CA referencing that CA. If purchasing off of a CA, you are not required to use a delivery order unless the order is over \$500 or if the vendor requires it. Also, you **can** order CA items and non-CA items on the same delivery order.

For example:

If there is a CA with printing Company X and the CA applies to the printing of business cards, you may not purchase forms referencing that CA.

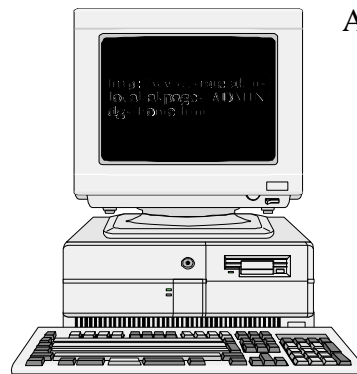
If more than one vendor or item is listed on the CA, as in the case of microcomputers, choose according to utility and economy.

Although it is occasionally possible to secure a lower price on some CA items, the purchase must still be made from the mandatory use CA. If the CA is not mandatory, you may purchase from somewhere else, however, you must solicit quotes as required by the dollar amount. If you have any problems with the products or services offered, terms or conditions, awarded vendors, etc., of a CA, contact the purchasing agent for that CA in GS. Only GS can approve the purchase of a mandatory use CA item from another source.

If you have a continuing need for goods and/or other services that are not on CA, prepare a PR requesting the establishment of a CA. Clearly state your need, terms, and conditions including any renewal options. DAS will request the establishment of CAs on behalf of the department when similar items are required on a continuous basis involving more than one division. If a CA is established for your division with renewal options, exercise that option (by preparing a PR) before its expiration date. Once a contract has expired, it is no longer valid and cannot be used.

The contract award manual is available at this Internet address:

<http://146.63.78.39/public/cam/cam.php3>



AAM 81.040

PROFESSIONAL SERVICES DEFINED

Only those services that qualify as a professional service may be procured under the statutory exclusion for professional services. A professional service is defined as a service that requires specialized knowledge and training (often through long and intensive academic preparation) or in-depth experience in a particular field or discipline. Professional services are professional, technical, or consultant services predominantly intellectual in character. They include analyzing, evaluating, predicting, planning, or recommending and usually result in producing of a report or completing a task. A contract which is procured as a professional service, but which in fact is not a professional service, is subject to being voided.

For example:

The use of a designer to do layout work for a magazine is considered a professional service. The printing of the magazine is not considered a professional service.

A carpenter who provides consulting services for a remodeling project is a professional service. The carpenter who does the remodeling is not considered a professional service.

AAM 82.430



Professional Services



Not Professional Services



COMBINED PROFESSIONAL SERVICES AND GOODS AND/OR OTHER SERVICES

When a proposed procurement consists of both professional and goods and/or other services, determine if it is reasonable to separate the professional services from the goods and/or other services. If so, proceed with separate procurements as appropriate. If it is not feasible to separate the procurement, then decide if the procurement will be made as a professional service or not. A general rule of thumb which should be applied is:

If seventy-five percent (75%) or more of the cost of the procurement consists of professional services, then procure it as a professional service. If less is a professional service, the procurement should be made by competitive sealed bids. If competitive sealed bidding is impracticable under the circumstances, request an exemption.

AAM 81.430



PREFERENCES

Alaskan Bidder Preference An Alaskan bidder is given a five percent (5%) preference on their quoted price. An Alaskan bidder is a person who:

- holds a current Alaska business license;
- submits a bid for goods, services, or construction under the name that appears on the person's current Alaska business license;
- has maintained a place of business for the six (6) month period immediately preceding the date of the bid;
- 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 or is a partnership, and all partners are residents of the state; and
- is a member of a joint venture composed entirely of ventures that qualify as an Alaskan bidder as defined above.

Use this preference only if non-Alaskan bidders submitted a quote/bid. If the five percent (5%) Alaskan bidder preference was applied to the lowest responsive and responsible bidder, obtain evidence that the bidder qualifies for the preference before determining the successful bidder or offeror. Acceptable evidence can be any one of the following:

- A copy of their Alaska business license.
- Certification on the quotation, bid, or proposal that the bidder or offeror has a valid Alaska business license. The bidder or offeror must write their license number in the space provided on the quotation, bid, or proposal.
- A copy of the canceled check that demonstrates payment for the Alaska business license fee.
- A copy of the Alaska business license application with a receipt stamp from the Department of Commerce and Economic Development, Business License Section.
- A sworn, notarized affidavit from the bidder or offeror that they have applied and paid for the Alaska business license.
- Other forms of evidence acceptable to the Department of Law.

Attach the evidence to all resulting purchasing or contracting documents.

AS 36.30.170; AAM 81.130

Alaskan Product Preference The percentage of preference applied to Alaskan grown or manufactured products vary in their assigned values. A list of the products, their values, and vendors is available from DAS. If the successful bidder or offeror fails to use the designated Alaskan product, the payment can be adjusted per AS 36.30.330.

Recycled Products Preference Apply five percent (5%) recycled products preference to a quotation or bid that indicates that the products being purchased are recycled products. Other than CA paper, at least fifteen percent (15%) of the paper you purchase annually must contain fifty percent (50%) recycled paper. If the recycled paper is not available or the recycled paper is more expensive than the nonrecycled paper, prepare a written justification in memorandum form. Address it to the Commissioner and provide a signature line and approved/disapproved blocks.

AS 36.30.339

Alaskan Offeror An Alaskan Offeror is a firm or person who qualifies as an Alaskan Bidder. A ten percent (10%) points preference is applied to the overall evaluation scale on a professional service's RFP. See RFP Evaluation Criteria.

Ten Percent Alaskans With Disabilities Preference If a vendor:

- ◆ qualifies for the Alaskan Bidder Preference;
- ◆ is a sole proprietorship owned by a person with a disability; and
- ◆ offers a response to a solicitation that is not more than ten percent (10%) higher than the lowest proposal,

the procurement officer will award the maximum number of points allocated for cost to that proposer.

SPECIFICATIONS

One of the first steps in a procurement is establishing specifications. Seek Alaskan grown or manufactured products, services provided by Alaskan bidders (minimum of solicitations must be from Alaskan vendors), and recycled products whenever possible.

If your specifications are restrictive and limits the required competition, revise your specifications.

Specifications for Goods It is State policy to procure standard commercial products, if practicable. In developing specifications:

- avoid unique requirements;
- emphasize functional or performance criteria;
- limit design or other detailed physical descriptions to those necessary to meet your needs;
- encourage the use of items grown or manufactured in Alaska or recycled products;
- state that a bidder who designates the use of Alaskan products will have a preference applied to their bid;
- construct proposed procurements in a manner that maximizes the opportunity for Alaskan vendors to issue quotes;
- list enough essential characteristics to ensure that any product which meets all of them as a minimum would be sufficient to meet your need.

Include in the specifications:

- a delivery date,
- duration of the procurement,
- possible renewal options,
- deadline for submitting quotes,
- a description of the items.

This information is very important, as the vendor will use it to select the product they offer and you will use it to determine if the product meets the minimum specifications.

If a product meets all the essential characteristics of the specifications, it must be considered responsive and acceptable to the solicitation. A product which exceeds the essential characteristics cannot be considered any more favorably than a product which only meets the minimum essential characteristics. If the product does not meet all the characteristics set out in the specification, consider it non-responsive to the solicitation and reject it as unacceptable. If the proposed procurement involves manufacturing an item, provide plans, drawings, materials lists, and a description of the manufacturing process. A product will then be built following your instructions. Describe your requirements without limiting the procurement.

Brand name specifications are used if it is impractical to use performance or functional specifications. When using a brand name specification on procurements within your delegated purchasing authority, obtain the required number of quotations. Before a brand name specification can be used which would limit a procurement to a specific manufacturer or model number, prepare an explanation of why *only* the proposed brand will meet your minimum needs. Record it in the comments section of the negotiated abstract form or the body of the PR form.

AS 36.30.060; 2 AAC 12.790; AAM 81.150

Specifications for Professional Services No matter how limited the service you require, prepare your specifications before contacting potential contractors. Describe clearly and completely the specific services you require and levels of acceptable performance. If you do not specify a required service, do not expect to receive it.

Specifications should include:

- a definition of the problem,
- the expertise or knowledge required,
- the proposed solution (if known),
- an estimated work schedule,
- an estimate of cost, and
- renewal options and “subject to funding” clauses.

Develop your RFP and the scope of services (Appendix C) of the contract from these specifications. If you wish to procure services beyond those addressed in the specifications, treat the acquisition as a new procurement.



AS 36.30.060; 2 AAC 12.070-.110 & 790;
AAM 81.410

Develop your specifications into a detailed listing; be sure to include functional specs.

DETERMINING THE DOLLAR VALUE OF A PROCUREMENT

In determining the dollar category applicable to your procurement(s), consider the total price, similarity of products, and predictability of the procurement. Consolidate procurements to the extent possible, separating proposed procurements only to accommodate Alaskan bidders, products, and/or recycled products. Artificial division or fragmentation of a procurement in order to circumvent the competitive competition requirements is strictly prohibited and will be considered a purchasing violation.

Examples

- 1:** If you wish to procure maintenance services that would cost \$200 per month and would last three years, select the process applicable to a \$7,200 procurement ($\200×36 months).
- 2:** If you need two-part, three-part, and four-part forms for a project(s), consolidate all forms into one procurement. If your need for these forms is ongoing, consider the establishment of a CA.

AAM 81.020

Remember to include all phases of a project when determining the total value of a procurement.



COMPETITION REQUIREMENTS

A solicitation may be amended, within the guidelines for amendments, as long as all responding bidders to your solicitation are notified of the change. When the procurement officer determines in writing with particularity that the use of competitive sealed proposals is more advantageous to the state than competitive sealed bidding, a contract may be entered into by competitive sealed proposals.

Procurement Card Purchases You may use the procurement card for a one-time purchase limit of \$2,500 after receiving only one quote.

Adequate and Reasonable Competition Provide adequate and reasonable competition for purchases estimated to cost less than \$5,000. The higher the price or the more contractors who can meet your needs, the more competition you should seek.

AS 36.30.320; 2 AAC 12.400; AAM 81.020; AAM 81.210 & 220

Written or Oral Quotations Procurements of goods and other services estimated to cost between \$5,000 and \$25,000, and professional services between \$5,000 and \$25,000, require oral or written quotes from at least three Alaskan vendors. Oral quotes for professional services must be followed up with written quotes. When soliciting, include the specifications, award criteria, and the date and time responses are due.

Exceptions include: Passenger transportation estimated to cost no more than \$15,000. Use competition that is adequate and reasonable for these procurements as well as hearing officer and attorney contracts estimated to cost no more than \$25,000.

Make the award in accordance with the specifications and award criteria to the responsive and responsible vendor who submitted the lowest quote or informal proposal that is the most advantageous to the State.

Record on the negotiated abstract form and keep for the record:

- the name of the person who made the solicitation and the date;
- specifications/award criteria;
- who was contacted, summary of responses, and copies of all quotes or informal proposals received; and
- justification for award.

AS 36.30.320; 2 AAC 12.400; AAM 81.210 & 82.220

Written Quotations When a proposed procurement is estimated to cost between \$25,000 and \$50,000 for goods or other services, solicit written quotes from at least three Alaskan vendors on the RFQ form. This requirement does not prevent you from contacting more than three vendors; we encourage you to seek more competition. Attach either addendum 1 for purchases of supplies and/or services other than "high tech" supplies or addendums 1 and 2 for purchases of "high tech" supplies. Advise the prospective vendors of the date the RFQ must be returned by.

Summarize on the negotiated abstract form the firms or persons contacted and the responses to the RFQ. Submit the negotiated abstract form, purchasing documents, and the original quotations to DAS for inclusion into the departmental procurement files. Faxed quotes are acceptable.

Make the award in accordance with the specifications and award criteria to the responsive and responsible vendor who submitted the lowest quote or informal proposal that is the most advantageous to the State.

Award Notification For procurements over \$25,000, provide written notice of the award, including the name of successful offeror, to each firm or person providing a quotation or informal proposal, and describe protest rights under 2 AAC 12.695 and the time limitations within which a protest must be received by the purchasing agency.

Professional Services Contracts \$25,000 - \$50,000 When a proposed procurement of professional services is estimated to cost between \$25,000 and \$50,000, solicit written proposals from at least three Alaskan vendors. Use an RFP format that details the specifications, prior experience requirements, and evaluation criteria. Contact the DAS procurement specialist prior to preparing the RFP to determine if an informal RFP is appropriate or if the formal RFP boilerplate should be used. RFP Review Committee action may be required for an informal RFP. AS 36.30.320; 2 AAC 12.400; AAM 81.240

DAS Procurements Procurements of goods or other services estimated to cost \$50,000 or more, not on CA, are obtained through DAS. Submit your requests for these purchases by completing a PR form and forwarding it to DAS for processing. When using brand name specifications, provide the brand name and model number of at least two products that will meet your minimum needs. If you desire to procure the item yourself, state your request for a "one-time delegation of authority" on the PR. According to the specifications on the PR, DAS will either issue a PO, establish a CA or lease, or approve your request for a one-time delegation of authority. Request any changes (including optional renewals) to the terms or conditions of an existing PO or CA on a PR.

If the procurement has been delegated back to you, proceed in accordance with the Competitive Sealed Bidding section of the Procurement Code (A.S.36.30.100.-.190). If, during the competitive sealed bidding process, it is determined that a bidder qualifies as an Alaskan bidder, is offering services through an employment program, and is the lowest responsible and responsive bidder with a bid that is not more than ten percent (10%) higher than the lowest bid of a nonresident, award the contract to that bidder.

If Alaskan grown timber, agricultural, or seafood products from Alaskan vendors are not acceptable, provide a written determination, with the PR, stating the specific reasons why they are not acceptable.

All procurements over \$50,000, require the submission of a procurement report to GS within 5 days of the award.

The basic flow of an Invitation to Bid process is:

- ◆ Develop the specifications into the ITB Boiler Plate.
- ◆ Order a contractor's list from GS.
- ◆ Send the ITB to the potential bidders.
- ◆ Issue any amendments that are necessary (i.e., if questions are received during the time period allowed).
- ◆ Receive and keep sealed the bids until the date and time stated in the ITB.
- ◆ Publicly open the bids on the date and specified time.
- ◆ Read the bids aloud and log the respondents and their bid total.
- ◆ Return to work station and determine if the bids are responsive and the bidders are responsible.
- ◆ Issue the Intent to Award.
- ◆ Wait the 10-day protest period.
- ◆ After the 10-day protest period, if there are no protests, issue the CA.
- ◆ Administer the contract.
- ◆ Issue renewals as allowed in the ITB.
- ◆ Close out the CA at the end of the life of the contract.

RFPs Issue a formal RFP when you need proposals on how to approach a problem, how to achieve the most cost-effective results, what services are required to solve the problem, and for all professional services of \$50,000 or more.

The use of an RFP instead of a bid for other services and goods may be used when the procurement officer determines in writing that use of an RFP is more advantageous to the State. For construction, the written determination is made by the Commissioner of DOT&PF.

SOLICITATION SOURCES

You must solicit the minimum number of solicitations from **Alaskan vendors**, unless:

- ◆ small procurements (under \$50,000)- the procurement officer may make a written determination that soliciting quotes from Alaskan vendors is not practicable;
- ◆ large procurements (over \$50,000)- the procurement officer may request a determination from the CPO that soliciting Alaskan vendors is not practicable.



Oral Solicitations You may telephone vendors and describe the service to be performed or items to be procured. Prepare an outline of the requirements *before* calling to ensure that all prospective contractors receive the same information. Oral proposals received on professional service procurements must be followed up with written proposals. A record containing the

following information must be prepared on all oral solicitations:

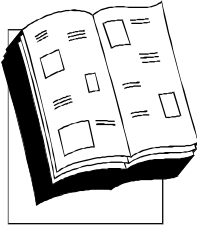
- who made the solicitation,
- the specifications or items solicited,
- the date the solicitation took place,
- the names of firms or persons contacted (if a firm, the name of the person in the firm contacted),
- the response of each firm or person, and
- justification for the award.



Written Solicitations You may issue an informal letter describing the items or specifications or issue statements of interest and qualifications or requests for proposals. For written proposals, a list of firms or persons contacted, a copy of the solicitations used, a summary of the responses, copies of all proposals or quotations received and a justification for the award must be

attached to the purchasing or contracting documents submitted to DAS.

Contractor's List You may use the appropriate contractor's list available from GS to contact vendors who perform the services you require or carry the goods you need. It is not necessary to contact all vendors on the list, however, if used, rotate it to give all contractors a fair opportunity to compete. If a solicitation is returned by the U.S. Postal Service as undeliverable, forward the returned solicitation to GS.



Catalog Prices You may use established catalog prices or published discounts from established catalog prices. You are required to rotate vendors when making procurements from established catalogs. When using catalogs, calculate the cost of delivery and include that amount in the total when determining the low offer.

2 AAC 12.400; AAM 81.220 &

230

EVALUATING QUOTATIONS/MAKING THE AWARD

In evaluating quotations, bids, or proposals, it is your responsibility to fairly award to the lowest, responsive/responsible vendor.

Rejection of Quotation/Bid/Proposal Reject an individual bid if it fails to meet the minimum specifications. Reject multiple, alternate, or conditioned bids, unless specifically authorized in the specifications.

Cancellation of a Solicitation Cancel a solicitation if you no longer require the supplies or services, cannot reasonably expect to pay for the procurement, if the specifications were ambiguous or inadequate, or if the solicitation omitted factors of significance.

A procurement may be awarded to two or more bidders of similar products if the award is necessary for adequate delivery, service, or product compatibility. Make the awards in accordance with the procurement process. Do not make multiple awards if a single award meets your needs without sacrificing economy or service.

A “no-quote” response from a vendor who typically provides the goods or services is considered a viable quote.

For example:

The item is not in stock and will not be available for two weeks and your requirement for the item is this week.

If the vendor does not normally perform the service or carry the item you wish to obtain, the “no-quote” response does not qualify as a viable quote.

Quotations received from the same vendor but in different locations do not qualify as separate quotes.

For example:

Three quotations from the Anchorage, Juneau, and Fairbanks office supply store Q does not qualify as the three required quotes.

After determining which vendors meet the criteria set out in the specifications, make the award to the lowest responsive and responsible bidder, taking into account applicable Alaskan Bidder, Alaskan Product, Employment Program, People with Disabilities, and/or Recycled Products preferences. Your obligation to the vendor is for the amount of their quote before the preferences were applied. If the award is made to an Alaskan Bidder after the preference was applied to their bid, obtain proof that they qualify as an Alaskan Bidder. See "Preferences" section.

If, after applying the allowable preferences, a low-tie bid exists, make the award through a random drawing. Do not divide the procurement among identical bidders.



To avoid misinterpretation on the part of any party (vendors) don't be afraid to take a vendor's question under advisement before responding.

WHEN IN DOUBT--THINK IT OUT--Print it and send it to every vendor in possession of your procurement document (ITB/RFP/RFQ)

REQUESTS FOR PROPOSALS

A formal RFP must be issued for all professional services of \$50,000 or more. You must solicit Alaskan vendors, unless a waiver has been approved.

All RFPs must receive the approval of the RFP Review Committee before they are released to the public. The agenda for the RFP Review Committee is coordinated by the Procurement Specialist in DAS. When you submit an ASPS for approval, let the Procurement Specialist know your preference for the date of the RFP Review Committee meeting. The division director of the requesting division and the author of the RFP are required to attend the RFP Review Committee Meeting. After preparing the RFP, submit it to the Procurement Specialist in DAS. Remember to include a "cheat sheet" that shows how the standard boiler plate has been changed to help move the RFP review process along faster.

RFP Contents The department has a standard boiler plate RFP that contains many of the requirements applicable to all RFPs. You can obtain a copy from DAS. All RFPs must contain the following:

- The date, time, and place for delivery of proposals.

- A specific description of the supplies, construction, services or professional services to be provided, and the terms under which they will be provided. See Specifications.
- A requirement that proof of the proposer's valid Alaska business license be submitted at the time the proposals are opened.
- A description of the evaluation factors that will be used in evaluating proposals and their relative weight in the overall evaluation.
- The following statement must appear in every RFP:

“Offerors shall carefully review this RFP for defects and questionable or objectionable materials. Offerors comments concerning defects and questionable or objectionable material in the RFP must be made in writing and received by the purchasing authority at least ten (10) days before the proposal opening date. This will allow time for an amendment to be issued if one is required. It will also help prevent the opening of a defective solicitation and the exposure of offerors’ proposals upon which award cannot be made. Offerors’ comments should be sent to the purchasing authority at the address shown on the front of this RFP. A copy of the offerors’ comments should be forwarded to Commissioner, Department of Administration, P.O. Box 110200 Juneau, Alaska 99811-0200.”

- Any information necessary for an offeror to submit a proposal or contain references to any information that cannot reasonably be included with the request.
- A requirement that the bidder or offeror certifies under penalty of perjury that the price submitted was independently arrived at without collusion.
- A "subject to funding" clause if the funding for the contract is dependent upon legislative approval for future periods.
- Copies of standard agreement forms with appendixes, including insurance requirements.
- A list of evaluation criteria.

AS 36.30.210; 2 AAC 12.800; AAM 81.4000-0410

RFP Evaluation Criteria General evaluation criteria should define the problem, contain minimum requirements, minimum qualifications of the firm, adequacy of work plan, and reputation and capability of the firm. Establish minimum requirements necessary to accomplish the task so that all proposals that meet these minimums will be determined as acceptable for further evaluation. The value assigned to a specific criteria should be based on its relative importance.

Cost must be an evaluation factor except for architectural, engineering, or surveying services. These procurements shall be negotiated with the most qualified and suitable firm or person for the job. The minimum weight given to price must be at least forty percent (40%) of the total evaluation points. If the forty percent (40%) minimum will prevent you from accomplishing your mission, prepare a written request to the Commissioner and explain why the minimum would prevent you from accomplishing your mission. Include a signature line and approved/disapproved blocks.

Use the Alaskan Offerors preference as an evaluation factor when soliciting and evaluating RFPs involving both in-state and out-of-state proposals. In addition to the five percent (5%) Alaskan Bidder cost preference, at least ten percent (10%) of the points must be assigned to the Alaskan Offeror preference. State this in the RFP along with the weight it will be given. This factor may be prorated based on the amount of the contract performed in Alaska.

It is recommended that an evaluation scale of one hundred (100) points be used with ten (10) of the points assigned to the Alaskan Offerors preference.

For example:

Total Points of 100 = 10 points assigned to Alaskan Offerors Preference

2 AAC 12.260; AAM 81.470

Public Notice Public notice of all RFPs must be given at least twenty-one (21) days before the date of the opening of the proposals. Notice of all RFPs must be published in the Alaska Administrative Journal. Contact the Commissioner's Office, telephone number 465-2200, to place your notice. Additionally, RFPs must either be mailed to those contractors appearing on the contractor's list for that particular service code, or published in a newspaper of general local circulation in the area pertinent to the contract or in other appropriate media. All notices must include the RFP number.



The twenty-one (21) day time frame may be shortened after the procurement officer has independently determined that it is advantageous to the State and adequate competition is anticipated. If a division advertises the RFP, a copy of the Advertising Order Affidavit and a copy of the actual advertisement must accompany your contract package when submitted for approval.

AS 36.30.210; 2 AAC 12.220; AAM 81.090

RFP Questions/Amendment/Extension/Cancellation When questions are received from potential offerors that involve clarification or interpretation of the RFP, provide a written addendum to the RFP to all potential offerors. If questions are received over the telephone, keep a record of all questions asked and answers given. Advise all potential offerors to put their questions in writing and confirm telephone conversations in writing.

Before the opening of proposals, an RFP may be amended, canceled in whole or part, or the time for opening the proposals may be extended if it is in the State's best interest. Prepare a written determination which explains the reasons for the cancellation, extension, or amendment of the RFP. See "Written Determinations" section. Notify all potential offerors known to have copies of the solicitation of an extension or amendment to the RFP. Include the reasons in the procurement file.

AS 36.30.350; 2 AAC 12.850; AAM 81.470

Treatment of Proposals/Register of Proposals Upon arrival, insure that the date and time of receipt is stamped on the envelope of all proposals, corrections, modifications, or notice of withdrawal of a proposal received. Hold the proposals in a secure place. The procurement officer will open the proposals in order to avoid disclosure of their contents to competing offerors during the process of negotiation. To the extent that the offerer designates and the procurement officer concurs, trade secrets and other proprietary data contained in the proposal documents are confidential.

A register shall be prepared of all proposals received. The register must contain the name and address of each offeror and a description of the supply, service, or construction item offered. The register of proposals and all proposals are open for public inspection after the Notice of Intent to Award has been issued.

Keep any bids or proposals that have been rejected in the procurement file.

AS 36.30.230; 2 AAC 12.240 & .880; AAM 81.460

Proposal Discussions As provided in the RFP, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Proposals may be revised after submission and before the award of the contract for the purpose of obtaining best and final offers. All modifications to a proposal must be in writing by the offeror. Following discussion with offerors, the procurement officer sets a date and time for the submission of best and final proposals. A written determination may be prepared that justifies another submission of best and final proposals. This determination must be approved by the Commissioner. If a written determination is not prepared or approved, discussions of or changes in the best and final proposals are not allowed before award. If an offeror does not submit a best and final proposal or a notice of withdrawal, the offeror's last proposal is considered the offeror's best and final proposal. The procurement officer may not disclose information derived from proposals submitted by competing offerors.

The procurement officer must not disclose proposal contents to competing offerors prior to Notice of Intent to Award. This will avoid exposure of proposal contents until after an award decision is made and will uphold the integrity of the process.

AS 36.30.240; 2 AAC 12.230 & 290; AAM 81.470

Proposal Evaluation Committee (PEC) Proposals may be evaluated by a PEC. The procurement officer does not have to be a voting member of the Proposal Evaluation Committee.

Include State personnel who are knowledgeable in the subject area of the work to be accomplished on the committee. A nonresident of the state, other than State employees or officials, may not serve in a voting capacity on a PEC without prior written approval by the



Commissioner. Explain the value of the nonresident evaluator's participation in the request. There is no limit to the number of persons on the committee as long as you have a workable number of members. Selecting an odd number of members may be helpful depending on the evaluation situation and method you are using.

A representative from the Division of Information Services must be on every PEC involving software development which will interact with the State's mainframe computer.

2 AAC 12.260

Proposal Evaluation Proposals may be evaluated by either the procurement officer or a PEC. It is recommended that responses to RFPs be evaluated by a PEC. All members of a PEC exercise *independent judgement* and no member's vote may be considered more favorably than another's. Evaluation meetings may be held between the PEC only to discuss the RFP, the evaluation process, the weighting of evaluation factors, and proposals received before evaluation.

All proposals must be evaluated only on the evaluation factors set out in the RFP. Evaluation factors not specified in the RFP may not be considered. If a proposal does not meet the minimum requirements set out in the RFP or the procurement regulations, the proposal must be rejected as nonresponsive. The PEC or the procurement officer should outline the evaluation criteria and the corresponding point assignment as stated in the RFP. If a numerical rating system is not used to evaluate the proposals, the procurement officer or each member of the PEC must explain in writing their ranking.

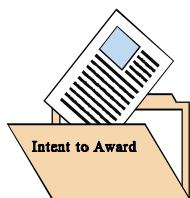
Unless otherwise provided in the RFP, a proposal, correction, modification, or notice of withdrawal of a proposal may not be accepted if received after the date set for receipt of proposals, unless the delay is due to an error of the contracting agency.

A proposal received from a debarred or suspended offeror must be rejected. Evaluations may not be based on discrimination.

If only one responsive and responsible proposal is received, the procurement officer may either make an award, reject the proposal, or reject the proposal and re-solicit proposals.

Apply the Alaskan Bidder and Offeror preferences to proposals when both in-state and out-of-state proposals are received. Alaskan vendors must provide proof of a valid Alaska business license before the preferences can be given.

AS 36.30.250; 2 AAC 12.250-.270 & .860; AAM 81.470



Award/Notice of Intent to Award Award the contract to the responsible and responsive offeror whose proposal is the most advantageous to the state taking price, preferences, and the evaluation factors set out in the RFP into consideration. If, after applying the allowable preferences, a low-tie bid exists, make the award through a random drawing. Do not divide the procurement among identical bidders. Multiple awards may not be made if a single award will meet your needs without sacrificing economy or service. The procurement officer must prepare a written determination on the selection process. See "Written Determinations" section.

Send a completed Notice of Intent to Award form, to all persons who submitted a proposal in response to an RFP. The date of the form must reflect the date it was mailed. The Notice of Intent to Award must be sent out at least *ten (10) days before the formal award of the contract. This document does not constitute a formal award of a contract. If a protest has not been received within *ten (10) days following the issuance of the Notice of Intent to Award, you may proceed with the final award of the contract.

*Days are calendar days unless the last day falls on a weekend or a holiday in which case the last day will be the first workday following the weekend or holiday.

When an RFP is canceled prior to notice of intent to award, the State will maintain a list of proposals received, but will return the proposals to the proposers after ensuring no protests are filed.

AS 36.30.250; 2 AAC 12.300-.310, .900 & .920; AAM 81.180

RFP Materials The department's boiler plate RFP can be obtained from DAS.

The Administrative Manual, Chapter 8200, Appendix A, lists items to consider when preparing RFPs.

GS has manuals and other helpful references for developing specifications, RFPs, and other procurement related activities. DAS has a book entitled *Contract Cookbook for Purchase of Services*.

PROFESSIONAL SERVICE CONTRACTING

Contracting Steps The following is the sequence of professional services contracting steps:

- Assess your need for a PSC and ensure the project qualifies as a professional service.
- Request and receive authority to seek professional services.
- Solicit proposals for desired services.
- Evaluate proposals submitted and select contractor.
- Negotiate with the selected contractor and prepare a contract.
- Obtain approval of negotiated contract.
- Administer (monitor) the contract.
- Evaluate contractor's performance.

AAM 81.420 - 480

Obtaining Authority to Seek Professional Services (ASPS) An ASPS form must be completed on all professional service procurements of \$10,000 or more. *Do not* enter into a contract, enter into negotiations with any prospective contractors, advertise, or release a solicitation until the ASPS is approved. If the ASPS is over \$50,000, let the Procurement Specialist know at the time of approval when you'd like the RFP Review Committee meeting to be held.

To amend a contract that was originally let under \$10,000 that would exceed \$10,000 total, prepare an ASPS form and obtain approval before amending the contract.

An amending ASPS form is required if the contract(s) amount(s) exceeds ten percent (10%) or more of the estimated dollar value of the project as stated on the original ASPS form and any subsequent amendments.



The Deputy Commissioner will approve all ASPSs by signing as “head of department.”

AAM 81.440

Contract Formation Policy It is departmental policy that all professional services contracts or agreements will be in written form, clearly stating the scope of services to be provided, the duration of the agreement, the method of payment, and be approved by the appropriate purchasing authority.

The use of the Professional Services Standard Agreement form and insurance Appendix B are not required on contracts of less than \$10,000. However, contact the Division of Risk Management before omitting the insurance Appendix B, if the activity is a high risk operation.

Award contracts in excess of \$10,000 on the Professional Services Standard Agreement or a form approved by the Department of Law. Include the insurance Appendix B in the contract package. Obtain advance approval for any changes or modifications to the Standard Agreement form or Appendix A boiler plates from the Department of Law. Any modification to Appendix B--insurance must be approved in advance by the Division of Risk Management. Complete a procurement report and submit it to DAS on all contracts of \$25,000 or more or on RAP procurements.

Use the checklist developed by DAS when submitting the contract package to DAS for approval.

Appendix A - General Provisions Appendix A is found on the backside of the standard agreement form. This appendix contains the general provisions applicable to all professional services contracts. Its provisions address definitions, rights of the contracting division to inspection of the contractor's facilities and activities, the handling of disputes, equal employment requirements, State's rights to termination of the contract, ownership of documents, etc. Any changes to these provisions require prior approval by the Department of Law.

Appendix B - Insurance Appendix B contains the liability and insurance provisions for contracts. Any revision of the standard insurance or hold harmless clauses requires prior approval from the Division of Risk Management. If you are uncertain about insurance provisions or have any questions regarding insurance, contact Risk Management. Include either Appendix B1 or B2 for contracts or agreements over \$10,000.

Appendix B1 details professional services contract's liability and insurance provisions.

Appendix B2 requires professional liability insurance and should only be used when contracting with the following:

Physicians	Appraisers
Dentists	Claims (Loss) Adjusters
Attorneys	Tax Consultants
Architects	Accountants
Engineers	Risk Management/Insurance Consultants
Insurance Agents and Brokers	Investment Brokers
	Investment/Divestiture Consultants

Obtain a copy of the contractor's Certificate of Insurance and verify that there is sufficient coverage. Submit the Certificate of Insurance with the contract package to DAS.

Appendix C - Scope of Services Appendix C is the statement of work to be performed. It should define in specific terms the services and products to be provided. The statement of work has a direct influence on the quality of the contractor's performance and the nature of the project's results. It describes the tasks which are to be accomplished by the contractor, the conditions under which the work is to be performed, and the assistance and products to be supplied. Inadequate or deficient statements of work can potentially lead to: failure of the project, receipt of substandard services, delays in scheduled work, and disputes between you and the contractor.

Appendix D - Method of Payment Indicate in Appendix D the method by which the contractor will receive payment. This refers to the conditions and/or schedule by which the contractor will be paid. This appendix must also contain a "do not exceed" dollar amount and a "subject to funding" clause if the contract is contingent upon future funding.

AS 36.30.260

Solicitation and Procurement Fact Sheet The intent of this form is to assist you in collecting information regarding the procurement and the existence of any employer/employee relationships. Completion and submission of this form is not mandatory, but is encouraged.

Change of Name If it becomes necessary to change the name of the contractor, such as the business was sold, obtain approval from the CPO in GS. Prepare a memorandum addressed to



the CPO explaining the situation and provide a signature line and approved/disapproved blocks. After receiving approval, complete an amendment.

2 AAC 12.480

Contract Close Out A PSC is deemed closed when the amount of the contract has been fully expended and the completion date has past or when a written request is received or from a division to liquidate existing funds on a contract and the completion date has past.

Approval of Contract The Deputy Commissioner must approve all contracts over \$10,000. Submit the entire contract package to DAS for review. DAS will then obtain the approving signature. Any contracts sent directly to the Deputy Commissioner will not be signed until DAS reviews the contract. Only one contract package is required.

WRITTEN DETERMINATIONS

The procurement officer is required to prepare written determinations for any of the following conditions:

- When the procurement officer wishes to exclude a potential contractor from bidding; (Ref. 2 AAC 12.020, AS 36.30.040 and .050) Form: memo to the file and letter to potential offeror.
- Before conducting multi-step bidding; (Ref. AS 36.30.190) Form: memo to the file.
- Before using a multi-term contract; (Ref. AS 36.30.390) Form: memo to the file.
- To limit the bid circulation period to less than twenty-one (21) days; (Ref. 2 AAC 12.130, AS 36.30.040 and .130) Form: memo to the file.
- To amend the bid or proposal even if the amendment only extends the bid opening; (Ref. 2 AAC 12.850, AS 36.30.040 and .350)
- To cancel a bid or proposal in whole or in part before opening bids or proposals; (Ref. 2 AAC 12.850, AS 36.30.040 and .350)
- To permit the correction or withdrawal of a bid, or to cancel an Award of Contract based on a bid mistake; (Ref. 2 AAC 12.170, AS 36.30.040 and .160) Form: memo to the file.
- When only one responsive bid is received; (Ref. 2 AAC 12.190, AS 36.30.040 and .350) Form: memo to the file.
- To determine that the prospective contractor is responsible/nonresponsible; (Ref. 2 AAC 12.490, AS 36.30.040 and .360) Form: Notice of Intent to Award.

- Before award of a contract to a person who does not reside or maintain a place of business in the state. Only required if the service could have been obtained from sources in the state; (Ref. AS 36.30.362) Form: memo to the file.
- To reject all bids or proposals in whole or in part; (Ref. 2 AAC 12.860, AS 36.30.040 and .350) Form: memo approved by signature by the CPO.
- When the Invitation to Bid requires security. The procurement officer shall reject a bid that does not comply with the bid security requirements unless, in accordance with regulations, the procurement officer determines that the bid fails to comply in a nonsubstantial manner with the security requirements; (Ref. AS 36.30.120) Form: Memo to CPO.
- To transfer or otherwise assign a State contract from one contractor to another. (Ref. 2 AAC 12.480, AS 36.30.040) Form: memo approved by signature by the CPO.

Cite the applicable statute and regulations that require the determination and submit to DAS for inclusion into the departmental procurement files.

AAM 81.140



AMENDMENTS TO PROCUREMENTS

There are circumstances when an amendment to an existing procurement is in the State's best interest. Amendments are divided into two basic types: anticipated and unanticipated. There are differences in the way each should be handled.

Anticipated These are amendments which are foreseen at the time of procurement. To qualify as an anticipated amendment, the RFP or solicitation must have advised offerers or bidders of the potential of an amendment, the contract or agreement must have referenced the potential amendment, and the amendment must be within the scope of the original contract or agreement. The procurement officer must make a determination in writing that the estimated requirements covered by the contract are reasonably firm and continuing; and the contract will serve the best interests of the State by encouraging effective competition or otherwise promoting economies in State procurement.

Unanticipated Unanticipated amendments are unforeseen at the time of procurement. The amendments must meet the constraints of the legitimacy, scope, contract clauses, and extent discussed below.

Legitimacy: A legitimate change is due to unforeseen circumstances or predicaments which occur as work progresses. The reasons for the change must have been unforeseen at the time of contract and not be an attempt to evade the procurement statutes.

Scope: The work must be within the scope of the original contract.

Contract Clauses: Does the contract contain clauses authorizing modification? Such clauses may not be so broadly read as to negate the statutory requirement for competition.

Extent: No important general change may be made which alters the essential identity or main purpose of the original contract or is of such importance as to constitute a new undertaking.

Amendments that exceed the maximum limitations outlined below must be treated as either an exemption to the procurement process or as a new procurement. See "Requests for Exemption from Competitive Solicitation Requirements" section.

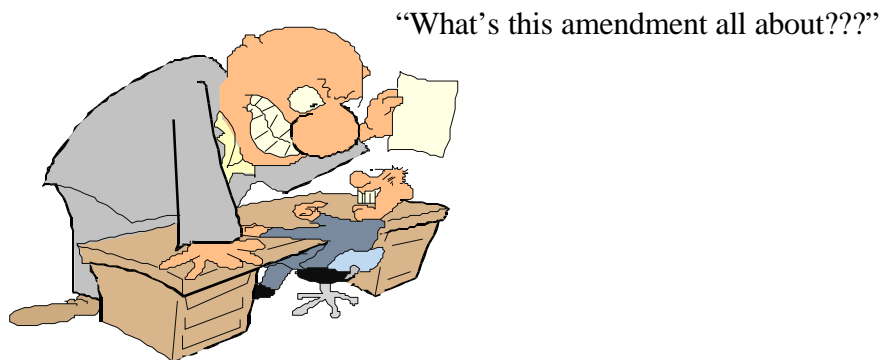
PSC Amendments A contract amendment is required for any of the following:

- To exercise a renewal option. The original RFP and contract must have stated this option.
- If the scope of services to be performed is changed or modified.

- If the period of performance is extended. (The amendment must be signed before the contract expires.)
- If you wish to increase the dollar amount of the original contract.

Amendments to Contracts for Legal Counsel When the timetable, scope, and cost of legal services are outside the State's control and selection of different legal counsel would be inappropriate, contracts for the services of legal counsel may be amended so as to enable such counsel to continue to advise or represent the State in specific legal proceedings.

AAM 81.700



EXEMPTION REQUESTS FROM COMPETITIVE SOLICITATION REQUIREMENTS

RAPs (Form 02-100) A RAP is used when normal procurement methods are impractical or contrary to public interest for procurements expected to exceed \$5,000. State on the RAP the impacts of nonapproval, explain the situation that requires the RAP, provide a complete description of the item to be procured, and specify the RAPs duration of effectiveness. RAPs must also include an itemized finding of facts that can be reviewed and verified. Include contacts, telephone numbers, support documentation, and a list of facts that support the exemption. If you wish a one-time delegation of authority to procure the goods or services, state your request on the RAP form. If your request is approved, proceed with the procurement as recommended. The procurement must take place before the stated authority on the RAP expires.

If you are interested in conducting an *innovative procurement*, prepare a RAP and submit it to DAS for processing. You must also submit a plan for the procurement to the Department of Law and obtain their approval.

If it becomes necessary to request an amendment to your approved RAP, prepare a memorandum to GS that explains the required changes and provide an explanation that the conditions that allowed approval of the original RAP still exist. Provide a signature line and approved/disapproved blocks.

All RAPs, RAP amendments, and other pertinent documents should be routed through DAS for approval and incorporation into the departmental procurement files. The Deputy Commissioner will have final approval on RAPs less than \$50,000. The Deputy Commissioner will review, sign, and forward to GS for final approval for RAPs greater than \$50,000. You are required to complete a procurement report on all approved RAPs.

The RAP form is used to request the following types of exemption:

Single Source A single source procurement may be requested when you have determined that only one source exists or is acceptable or suitable to meet your needs. State the facts or attach supporting documentation which support by clear and convincing evidence that only one source exists or a detailed explanation why competitive sealed bidding, competitive sealed proposals, or small procurement procedures is not suitable or acceptable. You must also include a statement as to why award to a single source is in the State's best interest. Acceptable evidence includes a letter from the manufacturer that states the item(s) is (are) available from only one source, a "no quote" response from at least two other vendors which states they do not carry the item(s) requested, or a statement from GS that, to the best of their knowledge, only one source exists. You may advertise an intent to make a sole source procurement to determine if other sources are available or interested in a particular procurement.

Do not award a sole source procurement if an alternative source exists. Conduct negotiations with the contractor, as appropriate, as to price, delivery, and terms of the procurement.

AS 36.30.300; 2 AAC 12.410-.420; AAM 81.530

Limited Competition A limited competition procurement is a procurement that is restricted to a group of potential contractors or a situation that makes the open competitive sealed bidding, competitive sealed proposals, or small procurement procedures processes impractical or contrary to the public interest. You may advertise an intent to make a limited competition procurement to determine if other sources are available or interested in a particular procurement. State on the RAP why other sources are not suitable or available or why competitive sealed bidding or competitive sealed proposals are impractical or contrary to the public interest. A limited competition RAP may not exceed \$100,000. Do not use a limited competition RAP to make a sole source procurement. The Attorney General will make limited competition determinations for legal services contracts.

AS 36.30.305; 2 AAC 12.430; AAM 81.520

Exception to Administrative Manual Amendment Limitations When an amendment to a procurement would exceed the limits authorized in the Amendments to Procurements section of this manual, you may either request an alternate procurement method or treat the amendment as a new procurement. If you choose to request an alternate procurement, you must address the following on the RAP:

Legitimacy: A legitimate change is due to unforeseen circumstances or predicaments which occur as work progresses. The reasons for the change must have been unforeseen at the time of contract and not an attempt to evade the procurement statutes.

Scope: The work must be within the scope of the original contract.

Contract Clauses: Does the contract contain clauses authorizing modification? Such clauses may not be so broadly read as to negate the statutory requirement for competition.

Extent: No important general change may be made which alters the essential identity or main purpose of the original contract or is of such importance as to constitute a new undertaking.

AAM 81.550

Innovative Procurements A contract may be awarded for supplies, services, or professional services using an innovative procurement process. A contract may only be awarded using this method when the Chief Procurement Officer determines in writing 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 procurement officer must also submit a procurement plan to the Department of Law for review and approval as to form before issuing a public notice and solicitation.

AS 36.30.308; 2 AAC 12.575 & 577; AAM 81.540

VENDOR PERFORMANCE AFTER AWARD

After issuing a purchasing document, such as a DO, a contract exists between the State and the vendor. The vendor agreed to sell you a specific item, at a specified price, to be delivered at a specified time and place. You have the responsibility of assuring that the item delivered meets the requirements of the procurement contract. If the vendor does not meet one or more of the conditions, the contract has been breached.

If the item delivered does not meet the requirements of the purchasing document, you have several options. In effect, the vendor is now making a counter offer, which, for most situations, is unacceptable.

For example:

1. You asked for product A; you are offered product B, which could be a different product or is simply the same product delivered at a different time, place, or price. One option is to accept the counter offer. If you do, ensure that you have not paid a premium for something you did not get, for example, expedited delivery. Another option would be to make your own counter offer, for example, accept late delivery at a reduced price. Remember, you do not have to accept less than what you ordered and the vendor can be made to make up for damages caused by the seller's failure to perform.
2. An agency orders product P from vendor A to be delivered July 1. On July 2, product P has not arrived. A call to vendor A indicates that delivery will not take place soon. The agency has the right to secure product P from another source and charge vendor A the difference in cost, including extra costs incurred by the agency such as air freight or long distance calls. There are variations on the example. Vendor A might be able to deliver by July 7 and another source could not deliver sooner. Delivery by vendor A may then be the easiest approach, but you would still be entitled to quantifiable damages, i.e., you might have to rent a vehicle while awaiting delivery of your truck. Vendor A will have incentive to compensate you for damages because they may be considered nonresponsive for future bids or may be suspended or debarred from doing business with the State if they do not.

PSC Evaluation A contract evaluation must be completed by the project director when the services provided by the contractor were less than satisfactory. Submit two (2) copies of the evaluation to DAS and a copy to the contractor. DAS will retain one (1) copy for the procurement file and forward a copy to GS.

PROCUREMENT VIOLATIONS

All violations of the procurement code and regulations will be handled according to AAM 81.260. If an apparent violation has occurred, you will receive notification from DAS. You will be required to cooperate with the investigation. DAS will conduct an investigation to determine the cause and to provide recommendations to avoid similar incidents. DAS will forward the report to GS, who will recommend any additional action to be taken. Attach a copy of the report to all accounts payable documents.

Anyone who knowingly contracts for professional services, other services, or goods in a manner that is contrary to AS 36.30, can be held liable for all costs and damages arising from the violation. Anyone who contracts for professional services, other services or goods in order to avoid the requirements of AS 36.30 is guilty of a class C felony.

AS 36.30.930; AAM 82.300 - 350



When in doubt, ask for help!

PROTESTS/APPEALS

The protest and appeal process can be found in AS 36.30.560-.605. The hearing process can be found in AS 36.30.610.

Be sure to include all protest information in the procurement file.



Any interested party may file a protest concerning the solicitation, cancellation of the solicitation, proposed award of a contract, or award of a contract. Each written solicitation should contain an explanation of the protest procedures.

Protest of Small Procurements An interested party shall attempt to informally resolve a dispute with the procurement officer regarding a small procurement. If the attempt is unsuccessful, the interested party may protest the solicitation or the award of a small procurement contract under AS 36.30.320. The protest must be filed with the commissioner of the purchasing agency or the commissioner's designee. The protester must file a copy of the protest with the procurement officer for the purchasing agency. See 2 AAC 12.695.

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

If protesting the award of a small procurement contract of no more than \$25,000, the protest shall be filed within ten (10) days from the date of the solicitation or award, whichever is later.

If protesting the award of a small procurement contract greater than \$25,000, a protest shall be filed within ten (10) days from the date that notice of award is made.

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

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

The appropriate commissioner or commissioner's designee shall:

✓ With the concurrence of the protester, assign the protest to the procurement officer or other responsible State official for a final administrative resolution under alternate dispute resolution;

✓ Issue a decision denying the protest and stating the reasons for denial;

✓ Issue a decision that sustains the protest, in whole or in part, and instruct the procurement officer to implement an appropriate remedy; or

✓ Conduct a hearing on the protest consistent with the procedures contained in AS 36.30.670(b).

Protest Period A protest regarding a solicitation must be received no less than ten (10) days before the date of the bid or proposal opening or by the date set out in the Invitation to Bid or RFP, unless the RFP or ITB provides for a shorter period. If the public notice period has been shortened, the protest must be made prior to the bid or proposal opening date.

Protests concerning the cancellation of solicitations must be received no less than ten (10) days after a notice of cancellation is issued.

Protests concerning the proposed award of a contract or protests of the award of a contract must be received within ten (10) days following the issuance of the Notice of Intent to Award document.

If a pre-bid or pre-proposal conference is held within twelve (12) days of bid opening, a protest of a solicitation must be filed only prior to bid.



Timeliness of Protest A protest must be filed within ten (10) calendar days of the Notice of Intent to Award, starting from the day after the Notice of Intent to Award is issued by the procurement officer. If the first day is a weekend or a holiday, that day is counted as one day. If the final day falls on a weekend or holiday, the final day is extended to the next working day.

For protests regarding the solicitation, if a protest is received before opening of the proposals or bids, but later than the ten (10) day protest period, pointing out an obvious error which would impact the evaluation of proposals or award of a contract, the process should be halted and the error resolved.

Protests that are untimely as the result of actions by the State should be considered as timely.

Protest Content Protests must be timely, in written form, and contain the following:

- the name, address, and telephone number of the protester;
- the signature of the protester or the protester's representative;
- identification of the contracting division and the solicitation or contract at issue;

- a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
- the form of relief requested.

Timely protests received by telegram do not contain the signature of the protester and are not acceptable. Timely protests received by fax that contain a signature are acceptable.

Responding to the Protest The procurement officer shall immediately give notice of a protest filed under AS 36.30.565 to the contractor if a contract has been awarded or if no award has been made, to all interested parties.

The procurement officer has fifteen (15) calendar days after a protest has been filed to issue a written decision containing the basis of the decision.

You may request an extension up to thirty (30) days from the Office of the Commissioner for good cause. Your request must explain the reasons for delay. If the extension is granted, notify the protester in writing of the date the decision is due.

The written decision must be sent to the protester by certified mail, return receipt requested, or other method that provides evidence of receipt. A copy of the protest and your written decision must be filed with the Office of the Commissioner.

If a protest is untimely, does not contain the required information, or is not valid for some reason, you still must respond with a written decision explaining the reasons for rejecting the protest.

If a decision is not made and forwarded to the protester within the allotted time, whether the protest is valid or not, the protester may proceed as if you had issued a decision adverse to the protester.

Staying the Award If a protest is filed, the award may be made unless the procurement officer of the contracting agency determines in writing that a reasonable probability exists that the protest will be sustained or stay of the award is not contrary to the best interest of the State.

Appeal of a Protest If a protester wishes to appeal the decision of the procurement officer, he may do so by filing an appeal with the Commissioner of Administration within ten (10) calendar days following the date of receipt of the procurement officer's decision. The protester shall file a copy of the appeal with the procurement officer. The appeal must contain the items found in Protest Content, page 31, as well as a copy of the decision being appealed, and identification of the factual or legal errors in the decision that form the basis for the appeal.

The procurement officer should receive a copy of the appeal and upon notice of an appeal being filed should immediately notify all interested parties of the appeal.

The procurement officer must file a protest report within ten (10) calendar days after a protest appeal is filed. The protest report must also be sent to the protester (certified mail, return receipt requested). If necessary, a request for an extension may be made to the Commissioner stating the reasons for the request.

The appellant may file comments on the protest report with the Commissioner within ten (10) calendar days following receipt of the protest report. The appellant may request an extension of the period of time to file comments.

If the award of a contract was stopped (stayed) during the protest period, that stay automatically continues during the appeal process, unless the Commissioner determines otherwise.

If no appeal is received during the ten (10) calendar day appeal period following receipt by the protester of the procurement officer's decision, you should check with the Commissioner's Office to determine if an appeal has been received by that office. If no appeal has been filed, proceed with the final award of the contract.

A protester's damages are limited to reasonable bid or proposal preparation costs.

Decision on Appeal of a Protest After having received the procurement officer's report and any comments filed by the appellant, the Commissioner will:

- issue a decision without a hearing;
- reject the appeal for lack of merit or technical compliance with the appeal process; or
- accept the appeal for hearing and assign the matter to a hearing officer.

If the Commissioner accepts the appeal for hearing, your office is responsible for preparation of the case and presentation of the case at the hearing or arranging for legal representation, usually the Attorney General's office, on your behalf. If you have procedural questions concerning the protest or appeal process, contact the departmental hearing officer in DAS. Do not contact the hearing officer to discuss the merits of the appeal.

AAM 82.100 - 260

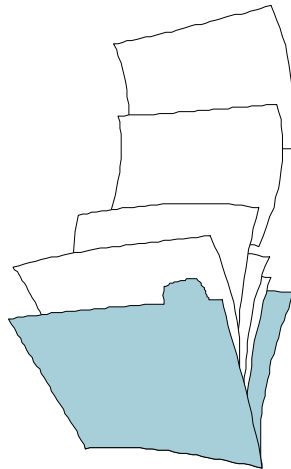
Timing of the Procurement Process Although it seems an inordinate amount of time, the solicitation, evaluation, and tentative award process should be scheduled so that the "Notice of Intent to Award" is issued approximately ninety (90) days before the date performance will be required under the contract. This is to ensure that if a protest is filed and subsequently appealed and the appeal is accepted for hearing, that such activity may run its course without impacting the scheduled date for beginning performance under the contract.

PROCUREMENT FILES

The DAS maintains and archives the required procurement files for the department. These files consist of the following:

Professional Service Procurements The file must include a copy of the RFP, the advertising order and the advertisement, screen print or FTP register of the encumbrance open item. The proposals and the dated and timed envelopes they were received in; register of proposals; required written determinations; procurement reports; ASPS; complete contract package (Standard Agreement Form, Appendix B, C, and D); Letter of Agreements or Understanding or other documents used in lieu of the Standard Agreement form and Appendices; Notice of Intent to Award; Amendments to contracts; all correspondence, records or notes applicable to the procurement; Solicitation and Procurement Fact Sheet (optional); and RAPs (if applicable).

Other Services and Goods The file must include a copy of the RAP, determination of impracticability, or negotiated abstract, and associated purchasing document(s); copy of all DOs, RFQ, solicitation documentation.



AAM 81.190

DEFINITIONS



- **Accredited youth education and employment program** means a program that allows participants to earn academic credits that are recognized by a school district in this state.
- An **Alaskan Bidder** is a person who (1) holds a current and valid Alaska business license for the line of business being offered to the state; (2) submits a bid for goods, services, or construction under the name that appears on the person's current Alaska business license; (3) has maintained a place of business for the six-month period immediately preceding the date of the bid; (4) 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 or is a partnership, and all partners are residents of the state; **and** (5) if a joint venture, is composed entirely of ventures that qualify under (1) through (4).
- An **Alaskan Offeror** is an Alaskan firm or person who qualifies as an Alaskan Bidder.
- An **Alaskan product** is a product of which at least twenty-five percent (25%) of the value has been added by manufacturing or production in the state of Alaska.
- An **alternate dispute resolution** means an informal technique that is voluntarily used to resolve issues in controversy; an “alternate dispute resolution” includes negotiation, mediation, facilitation, and arbitration.
- A **business license** is the license required under the Alaska Business License Act (AS 43.70) and, for a person engaging in a business subject to licensing provisions of a regulatory nature, a license, certificate, permit, registration, or similar evidence of authority issued for an occupation by competent legal authority.
- **Chief Procurement Officer** is a position in General Services who conducts the procurement process for the State as stated in AS 36.30.010.
- **Construction** is the process of building, altering, repairing, maintaining, improving, or demolishing a public highway, structure, building, or other public improvement of any kind to real property other than privately owned real property leased for the use of agencies. It includes services and professional services relating to planning and design required for the construction. It does not include the routine operation of a public improvement to real property nor does it include the construction of public housing. All delegations for construction must be secured in writing from DOT&PF.

- An **external procurement unit** is a buying organization not located in this state that, if located in this state, would qualify as an agency of the State, municipality or other entity that expends public funds; an agency of the United States.
- **Established catalog price** means the price included in an up-to-date catalog, price list, schedule, or other form that is regularly maintained by a manufacturer or contractor; is either published or otherwise available for inspection by customers; 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.
- **External publications** are printed documents which may be similar to internal publications, but are created for the primary purpose of communicating with the general public or others outside of government.
- **Internal publications** are comprised of newsletters, reports, brochures, and other publications created for the primary purpose of communicating with other government agencies or the legislature.
- **Limited competition** is a determination made in writing that a situation exists where competitive sealed bidding or competitive sealed proposals for procurement would be impractical or contrary to public interest. This requires prior approval of a RAP.
- **Nonresponsive** means a bid or proposal that does not conform in all material respects to a solicitation.
- **Practicable** means what may reasonably be accomplished or applied; practical has the meaning given “practicable” in this subsection.
- **Procurement** means buying, purchasing, renting, leasing, or otherwise acquiring supplies, equipment for the State equipment fleet, services, or construction. It also includes functions that pertain to the obtaining of a supply, equipment for the State fleet, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- **Professional services** are any professional, technical, or consultant services that are predominantly intellectual in character. They include analysis, evaluation, predicting, planning, or recommendation and result in the production of a report or the completion of a task.
- A **public procurement unit** is a municipality or other subdivision of the State or another State agency or other entity that expends public funds and any nonprofit corporation operating a charitable hospital.

- A **Purchasing or Procurement Officer** is an individual who is delegated the authority to procure supplies or services or obligate the funds of a division.
- A **Project Director or Manager** is the person within the contracting division who is responsible for the administration of the contract and is an authorized representative of a procurement officer acting within the limits of purchasing authority. The Project Director is responsible for preparing the contracting documents, soliciting the services, evaluating or coordinating the evaluation of the proposals, writing the contract, monitoring the contract, and evaluating the contractor's performance.
- **Reasonable and adequate procedures** means procedures that ensure fairness to potential offerors and competition commensurate with the circumstances of the procurement, considering price, mission requirements, and available competition. "Reasonable and adequate procedures" includes contacting only one potential offeror in appropriate circumstances.
- A **recycled Alaskan product** is an Alaskan product of which not less than fifty percent (50%) of the value of the product consists of a product that was previously used in another product, if the recycling process is done in the state.
- A **responsive bidder/proposer** is a firm or person who has submitted a bid that conforms in all material respects to the solicitation.
- **Services** are the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. It does not include employment agreements or collective bargaining agreements.
- A **sole source procurement** occurs when only one source is available for the required procurement.
- A **solicitation** means an invitation to bid, a request for proposals, a request for quotations, or any other method of soliciting bids, proposals, or quotes to perform a State contract.
- A **specification** is a description of the physical or functional characteristics, or of the nature of a supply, service, professional service, or construction project. It may include requirements for licensing, inspecting, testing, and delivery.

- **Supplies** are all property of an agency, including equipment, materials, and insurance. It includes privately owned real property leased for the use of agencies, such as office space, but does not include the acquisition or disposition of other interests in land.

Acronyms

AAC	Alaska Administrative Code
AAM	Alaska Administrative Manual
AKSAS	Alaska Statewide Accounting System
AS	Alaska Statutes
ASPS	Authority to Seek Professional Service
CA	Contract Award
CPO	Chief Procurement Officer
DAS	Division of Administrative Services
DO	Delivery Order
DOT&PF	Department of Transportation and Public Facilities
GS	General Services
OMB	Office of Management and Budget
PEC	Proposal Evaluation Committee
PO	Purchase Order
PR	Purchase Requisition
PSC	Professional Service Contract
RAP	Request for Alternate Procurement
RFP	Request for Proposals
RFQ	Request for Qualifications