

 <p style="text-align: center;">STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES</p> <h2 style="text-align: center;">Policy and Procedure</h2>		POLICY AND PROCEDURE NUMBER 10.01.040	PAGE 1 of 9
		EFFECTIVE DATE July 21, 2016	
SUBJECT Alternate Procurements		SUPERSEDES 10.01.040	DATED March 31, 2016
TITLE Procurement and Property	CHAPTER General Procurement	APPROVED BY Signature on File	

PURPOSE

This formalizes the policy and procedure (P&P) of the department to establish uniform guidelines to follow when using alternate procurement methods for construction, commodities, services, and professional services.

POLICY

It is the policy of the Department of Transportation and Public Facilities (DOT&PF) that the waiver request for Alternate Procurement Methods (waiver), Form 25D-026, is the document and permanent record method to approve all Alternate Procurements for construction and construction-related work.

The department's procurement actions shall be accomplished in compliance with the State Procurement Code (AS 36.30); Alaska Administrative Code (2 AAC 12); State Administrative Manual; department's delegation of authority from the Department of Administration; and department's policies and procedures relating to procurement and contracting. Reference P&P 10.01.010 *Procurement Authority From The Department of Administration*.

PROCEDURE

A. Alternate Procurement Methods

1. Forms

The requester shall prepare the appropriate form and submit it for review and approval.

- a. The DOT&PF "Waiver Request for Procurement" (waiver) form (25D-026), most recent version, shall be submitted for all procurements made under DOT&PF statutory authority (Construction, State Equipment Fleet, and Vessel

Maintenance and Repair for Alaska Marine Highway System) and procurements made under authority delegated from the Department of Administration not exceeding the limit for Small Procurements.

Construction-related Small Procurement thresholds by funding source:

- \$150,000 - Federally Funded¹ (FHWA, FAA, and FTA²)
- \$200,000 - State funded

- b. The Department of Administration (DOA) "Request for Alternate Procurement" (RAP) form (02-100), most recent version, shall be submitted for procurements made under the delegation of authority from the DOA which exceed the limit for Small Procurements, which is \$100,000 (non-construction).

2. Emergency Procurements

Procurements may be made under emergency conditions when a condition is a threat to public health, welfare, or safety; when a condition exists that makes the procurement through competitive sealed bidding or competitive sealed proposals impracticable or contrary to the public interest; or to protect public or private property.

- a. An Emergency Procurement shall be made with competition that is practicable under the circumstances.
- b. A written determination of the basis for the emergency and selection of the particular contractor shall be included in the procurement file. The written determination must include findings of fact that support the determination. Written determinations shall set out the basis of the emergency and why it is impractical or contrary to the public interest to circulate a competitive sealed bid or competitive sealed proposal.
- c. Persons making Emergency Procurements shall obtain competitive prices whenever possible, and award to the lowest responsible bidder or offeror. All provisions of the laws, regulations, and procedures shall be adhered to as far as practical in making Emergency Procurements. It is the responsibility of each individual employee to exercise discretion in making such procurements. Each employee shall be held responsible for any abuses of the required procurement procedures.

¹ In accordance with the Simplified Acquisition threshold (\$150,000) established under 2 CFR 200.88 and adopted by USDOT in 2 CFR 1201.

² For FTA funded procurements, the Small Procurement threshold is \$150,000 for grants released (effective date) after December 26, 2014. And the Small Procurement threshold is \$100,000 for grants released prior to December 26, 2014.

- d. Only those supplies, services, or professional services required to relieve the immediate emergency situation noted in the "determination" shall be procured under Emergency Procurement procedures. Emergency Procurements shall be limited to the procurement of the minimum level of supplies, services, or professional services necessary to correct the emergency situation. For example, if a sewer line in a major facility springs a leak and it is declared an emergency, procurements shall be limited to repairing the damaged portion to resolve the emergency situation. Emergency Procurement procedures shall not be used to replace the entire sewer line.
- e. Emergency Procurements do not require confirmation by a written order. However, a copy of the written determination of emergency must accompany the invoice when it is submitted for payment. Emergency Procurements must always be fully evaluated prior to taking purchasing action. The regional and statewide procurement offices are available to assist in locating the required items.

3. Single Source Procurements

- a. A Single Source Procurement is the restriction of the purchase of supplies, services, or professional services to one potential vendor or contractor because no other source is suitable or acceptable to meet the need. A Single Source Procurement may be awarded when:
 - 1) It is not practicable to award a contract by competitive sealed bidding, competitive sealed proposals, limited competition, or small procurement procedures.
 - 2) Award of the contract is in the state's best interest. Requests must cite the specific and significant interests that justify not using a competitive method. For definition of "in the state's best interest," see P&P 10.01.011 *Small Procurements*.
- b. A written determination that includes findings of fact that support the determination is required prior to making a Single Source Procurement.
 - 1) This determination must include evidence consisting of material facts sufficient for independent examination and verification.
 - 2) The determination should be structured as follows:
 - "It is not practicable to award a contract by a competitive process because ..."* (cite the specific reasons why a competitive process is not practicable)
 - "Awarding a contract as a Single Source is in the state's best interest because ..."* (cite the specific and significant interests which justify not using a competitive process)

Per AS 36.30.300 and 2 AAC 12.410, we are requesting a Single Source determination to establish the aforesaid contract.

- 3) The determination must specify the duration of its effectiveness.
 - c. Public advertisement of the intent to make a Single Source Procurement may be used to determine if such an award is appropriate.
 - d. The procurement officer shall negotiate with the single source supplier to the extent practicable as to price, delivery, and terms.
 - e. Procurement requirements may not be aggregated or structured so as to constitute a Single Source Procurement or to circumvent the source selection procedures of AS 36.30.100-270 (Competitive Sealed Bids and Competitive Sealed Proposals).
4. Limited Competition Procurements
- a. A Limited Competition Procurement is one in which the procurement is restricted to two or more potential contractors or when competitive sealed bid or competitive sealed proposal processes are impractical or contrary to the public interest.
 - 1) This situation can arise when there are only a limited number of firms that can provide the supplies, services, or professional services required.
 - 2) This situation can also arise when the use of a competitive sealed bid, competitive sealed proposal, or small procurement procedures, as applicable, is impractical or contrary to the public interest because of legitimate operational requirements.
 - b. A written determination that includes findings of fact that support the determination is required prior to making a Limited Competition Procurement. The format for the determination should be the same as discussed under Single Source Procurements.
 - 1) This determination must include evidence consisting of material facts sufficient for independent examination and verification.
 - 2) Public advertisement of the intent to make a Limited Competition Procurement may be used to determine if such an award is appropriate.
 - c. Procurement requirements may not be artificially divided, fragmented, aggregated, or structured so as to constitute a Limited Competition Procurement or to circumvent the source selection procedures required by AS 36.30.100-270 (Competitive Sealed Bids and Competitive Sealed Proposals).
 - d. Single Source Procurements may not be made using Limited Competition Procurement procedures.

- e. Contracts for construction exceeding \$100,000.00 may not be made using Limited Competition Procurement procedures.
- f. The procurement officer shall solicit competitive offers or conduct negotiations, as appropriate, as to price, delivery, and terms, equally with each potential contractor.

B. Procedures and Routing

1. Emergency Procurements

- a. When action is required within 72 hours, the procurement officer or the agency official responsible shall make a written determination of emergency stating in detail the factual basis for a finding of emergency. Immediately upon completion of the procurement, the written determination along with copies of invoices, shall be forwarded to:
 - 1) The chief contracts officer, through the regional contracting office, for construction related procurements.
 - 2) The statewide procurement manager, through the regional procurement office, for non-construction related procurements.
 - 3) The chief contracts officer, through SEF procurement office, for SEF related procurements.
- b. When action is not required in less than 72 hours.
 - 1) The waiver or RAP, including a written determination of emergency stating in detail the factual basis for a finding of emergency, shall be submitted for review and recommendation to:
 - a) The chief contracts officer, through the regional contracting office, for construction related procurements.
 - b) The statewide procurement manager, through the regional procurement office, for non-construction related procurements. The waiver or RAP shall be accompanied by a requisition.
 - c) The SEF Headquarters Procurement Office for SEF related procurements. The waiver or RAP shall be accompanied by a requisition.
 - 2) Upon receipt of the waiver or RAP, the reviewing office shall prepare a recommendation. If the recommendation substantiates the documentation provided by the requester, the waiver or RAP shall be forwarded for approval. Otherwise, it shall be returned to the requester for further justification.

2. Single Source & Limited Competition Procurements

- a. The waiver or RAP for Single Source and Limited Competition Procurements shall be submitted for review and recommendation to:
 - 1) The regional contracting office for construction related procurements.
 - 2) The regional procurement office for non-construction related procurements. The waiver or RAP shall be accompanied by a requisition.
 - 3) The SEF Headquarters Procurement Office for SEF related procurements. The waiver or RAP shall be accompanied by a requisition.
 - b. The waiver or RAP must include the required written determination, including evidence consisting of material facts sufficient for independent examination and evaluation.
 - c. Upon receipt of the waiver or RAP, the reviewing office shall prepare a recommendation. If the recommendation substantiates the documentation provided by the requester, the waiver or RAP shall be forwarded for approval. Otherwise, it shall be returned to the requester for further justification.
3. Approval Authorities

NOTE: SEE ATTACHMENT "APPROVAL MATRIX"

- a. Waivers or RAPs Within the Limits for Small Procurements:
 - 1) *Regions*
 - a) A waiver for a region that is within the limits for Small Procurements (EXCEPT EMERGENCIES) can be approved by the regional director.
 - b) Upon receipt of the waiver, the reviewing (contracting or procurement) office shall prepare a recommendation.
 - If the recommendation substantiates the documentation provided by the requester, the waiver shall be forwarded to the regional director for approval. Otherwise, it shall be returned to the requester for further justification.
 - If approved, the waiver shall be routed back to the reviewing office to complete the procurement. If not approved, the waiver shall be returned to the requester (through the reviewing office).
 - 2) *Statewide Divisions and International Airports*
 - a) All Small Procurement waivers, within the limits for Small Procurements (EXCEPT EMERGENCIES) for Statewide Divisions and International Airports, must be approved by a deputy commissioner.
 - For construction related, the reviewing contracts office shall send waivers to the chief contracts officer.

- For non-construction, the reviewing regional procurement office shall send waivers to the department procurement manager.
- b) Upon receipt of the waiver, the chief contracts officer or department procurement manager shall prepare a recommendation.
 - If the recommendation substantiates the documentation provided by the requester, the waiver will be forwarded to the appropriate deputy commissioner for approval. Otherwise, it will be returned to the requester for further justification.
 - If approved, the waiver will be routed back to the regional reviewing office to complete the procurement. If not approved, the waiver will be returned to the requester (through the reviewing office).
- b. Waivers or RAPs exceeding limits for Small Procurements and ALL Emergency Procurements for which action does not have to be taken within 72 hours.
 - 1) *Regions*
 - a) With a regional director's concurrence, the reviewing office shall send these waivers or RAPs to the chief contracts officer.
 - b) Upon receipt of the waiver or RAP, the chief contracts officer shall prepare a recommendation.
 - If the recommendation substantiates the documentation provided by the requester, the waiver or RAP shall be forwarded for final approval to:
 - (i) The commissioner (DOT&PF) for construction (waiver); or,
 - (ii) The chief procurement officer (DOA) for non-construction (RAP).Otherwise, it shall be returned to the requester for additional justification.
 - If approved, the waiver or RAP shall be routed back to the regional reviewing office to complete the procurement. If not approved, the waiver or RAP shall be returned to the requester (through the regional reviewing office).
 - 2) *Statewide Divisions and International Airports*
 - a) All waivers or RAPs for Statewide Divisions and International Airports must be initially approved by a deputy commissioner. These waivers or RAPs are to be sent directly to the chief contracts officer or the department procurement manager by the reviewing office.
 - b) Upon receipt of the waiver or RAP, the chief contracts officer or the department procurement manager shall prepare a recommendation.

- If the recommendation substantiates the documentation provided by the requester, the waiver or RAP shall be forwarded for final approval to:
 - (i) The commissioner (DOT&PF) for construction (waiver); or,
 - (ii) The chief procurement officer (DOA) for non-construction (RAP).

Otherwise, it shall be returned to the requester for further justification.

- If approved, the waiver or RAP shall be routed back to the regional reviewing office to complete the procurement. If not approved, the waiver or RAP shall be returned to the requester (through the regional reviewing office).

C. Records And Reporting

1. Records

- a. A record of all Alternate Procurements shall be maintained in the procurement file.
- b. The record shall contain the written determination, copies of all purchasing documents, copies of all quotations or informal proposals received, and a completed Procurement Report.
 - 1) This report shall contain the vendor or contractor's name, the amount and type of the contract, and a listing of the supplies or services procured under the contract.
 - 2) When the DOT&PF Waiver Form (25D-026) is used, Part 6 of the form constitutes this report. When the DOA RAP Form (02-100) is used, use the DOA Procurement Report Form (02-115).

2. Reporting

- a. All Alternate Procurements require the submission of a Procurement Report with a copy of the procurement records to the chief contracts officer. These reports shall be submitted within five days after completion of the procurement. Submission of the reports shall be the responsibility of the regional reviewing office.
- b. Reports shall be submitted on **ALL** of the following Alternate Procurements:
 - 1) **ALL** Single Source Procurements
 - 2) **ALL** Limited Competition Procurements
 - 3) **ALL** Emergency Procurements

D. False Statements In Determinations For Alternate Procurement Methods

Per AS 36.30.315. FALSE STATEMENTS IN DETERMINATIONS; CRIMINAL PENALTIES: In a determination made by a state official under AS 36.30.300 - 36.30.310 (Emergency, Single Source, and Limited Competition), the state official making the determination shall independently examine the material facts of the procurement and independently determine whether the procurement is eligible for the procurement method requested. If a state official knowingly makes a false statement in a determination made under AS 36.30.300 - 36.30.310, the state official is guilty of a class A misdemeanor.

E. Violations

Violations of procurement statutes, regulations, the State Administrative Manual, or the terms set forth above may be cause for revocation of purchasing authority, disciplinary action up to and including dismissal, and/or prosecution under AS 36.30.315.

ATTACHMENTS:

Attachment A: Alternate Procurement Approval Matrix
Attachment B: Waiver Request Form 25D-026

AUTHORITY

AS 36.30 (State Procurement Code)
2 AAC 12 (Procurement Regulations)

IMPLEMENTATION RESPONSIBILITY

Deputy commissioners, regional directors, system directors/managers, contracting officers, and procurement officers

DISTRIBUTION

All department employees via the DOT&PF website