

 <p style="text-align: center;"><b>STATE OF ALASKA</b> DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES</p> <p style="text-align: center;"><b>Policy and Procedure</b></p>	POLICY AND PROCEDURE NUMBER <b>10.02.011</b>	PAGE 1 of 11
	EFFECTIVE DATE March 1, 2014	
SUBJECT <b>Bid Openings</b>	SUPERSEDES 10.02.011	DATED February 15, 2001
CHAPTER <b>Procurement and Property</b>	SECTION <b>Contracting</b>	APPROVED BY <b>Signature on File</b>

## PURPOSE

This formalizes the policy and procedure (P&P) of the department to establish guidelines for opening competitive sealed bids and for determining low bidder.

## POLICY

It is the policy of the Department of Transportation and Public Facilities (DOT&PF) that all competitive sealed bids be opened and administered uniformly throughout the department.

## PROCEDURE

### A. Preparation for Bid Opening

1. Bid File. A bid file should be prepared for each solicitation. It shall consist of:
  - a. A set of bidding and contract documents including plans and specifications as advertised.
  - b. Copies of all addenda (amendments)
  - c. Bid Requirement Sheet
  - d. Bid Worksheet
  - e. Bid Compilation Sheet showing the engineer's estimate (construction only). Make copies of this sheet so all interested persons at the bid opening can have one.
2. Receipt of Bids and Modifications
  - a. Bids may be corrected, modified or withdrawn by written notice prior to the time and date set for opening. All bids must be submitted with the contractor's name, bid title, and bid/project number clearly identified and in a way such that the bid/project is not viewable until opened by the procurement officer (2 AAC 12.140 and 150).

- b. As bids, corrections, and modifications are received, they should be date stamped, logged on the Bid Worksheet and securely stored until bid opening. If a bid is withdrawn, the bid security, as well as the unopened bid, shall be returned to the bidder with transmittal letter of explanation. A signed receipt shall be obtained in person or by certified mail. All documents relating to the correction, modification, or withdrawal of a bid must be made a part of the bid file.
- c. Before the scheduled date and time for opening of bids, the invitation to bid may be amended, or time for opening may be extended, upon the contracting officer's determination that the extension or amendment is in the state's best interest (2 AAC 12.850).
  - 1) All potential bidders known to have copies of the bid shall be advised of the extension or amendment.
  - 2) Bid modifications may be submitted by fax. When the transmission is complete, the fax should be immediately date/time stamped. Modifications received after the scheduled opening date and time shall be rejected as late.

## B. Bid Opening

1. The bid file for each solicitation, as well as all bids, corrections, and modifications should be brought to the bid opening.
2. The contracting officer or his designee shall open bids at the time and place designated in the solicitation. The bid opening room should be equipped with a clock that reflects the official time.
3. To preclude bidders from amending their offers based on the engineer's estimate, copies of the itemized engineer's estimate shall be distributed to the attendees only after the time of the bid opening, not before. The bids shall be opened in the order listed on the Bid Worksheet.
4. At the exact time of bid opening, the contracting officer or designee should begin by announcing the order in which the bids will be opened. Prior to opening bids for each contract, the contracting officer or designee should read the bid/project number, as well as a brief description of the project, the engineer's estimate, Disadvantage Business Enterprise (DBE) goals, basis of award including the budgeted amount for bids with additive alternates, and any special considerations regarding the bid.
5. The name of the bidder and the amount of the bid is read and logged on the Bid Worksheet (2 AAC 12.150). If a correction or modification has been received, the

amount is read, logged on the Bid Worksheet, combined with the bid amount, and the total adjusted bid read. The contracting officer shall announce whether the bid has been signed and the addenda acknowledged, and if a Bid Bond was required, whether it was provided.

6. When bids include alternate bid items, refer to Section C.10 for evaluation and award.
7. After all bids have been opened, an announcement should be made that the bid opening has been concluded and a Notice of Intent to Award will be issued when the lowest responsive and responsible bid has been determined.
8. The information recorded on the Bid Worksheet is open to public inspection as soon as practicable after the bid opening. Bids are not open to the public inspection until after the Notice of Intent to Award is issued (AS 36.30.140).

#### C. Bid Evaluation and Award

1. Following the Bid Opening, the low bid offer must be evaluated for responsiveness and responsibility, including examination of the bid for required documents. Once the lowest responsive, responsible bid has been identified, it is not necessary to evaluate any other offers (2 AAC 12.860-870). If requested for the purpose of providing “feedback” to the non-low bidders, the contracting officer may evaluate additional bids for responsiveness and responsibility. Bid Compilations should be reviewed to determine that the low bid is in line with the other bidders.
2. Bid documents shall be reviewed to be sure that the contracting officer did not overlook a discrepancy. All arithmetic on each bid schedule should be checked for accuracy. If an error is found, do not mark the original. Make a copy and show corrections on the copy.
3. After all bids are checked, the Bid Compilation Sheet is completed, checked for errors, signed by the contracting officer or designee and distributed in-house.
4. Inadvertent errors discovered after opening but before award, other than minor informalities, may not be corrected (2 AAC 12.170). Minor informalities mean matter of form rather than substance which are evident from the bid document, or are insignificant matters that have a negligible effect on price, quantity, quality, delivery, or contractual conditions and can be waived or corrected without prejudice to other bidders (2 AAC 12.990).
  - a. If the contracting officer knows of an error in a bid, the contracting officer shall notify the bidder of the error prior to award (2 AAC 12.170). If a bidder submits proof that clearly and convincingly demonstrates that an inadvertent

- error other than a minor informality was made, the bidder may withdraw the bid.
- b. If a bidder wishes to claim an error in the bid, it is their burden to prove the error. A meeting should be set up with the bidder and they should be instructed to bring to the meeting a letter that explains the error, how the error was made, and the original bidding documents used to prepare the bid (to show that no alterations have been made). The letter should be signed and dated by the bidder. The bidding documents are then reviewed to determine the nature of the error and whether the error was one of omission or judgment. If there is doubt as to the nature of the error (omission or judgment), the chief contract's officer should be contacted for advice.
  - c. If the error is determined to be one of omission, the bidder is allowed to withdraw the bid without penalty. The award would then be made to the second low responsive, responsible bidder. If the error is determined to be one of judgment, the bidder is given the choice of accepting the contract award as originally bid, or forfeiture of Bid Bond.
  - d. A memo shall be written to the file, and signed by the contracting officer, which documents the actions taken during the course of the investigation and the reasoning for allowing or disallowing the claim of error.
  - e. Errors which may be waived as minor informalities:
    - 1) Bid Documents
      - a) The bidder did not fill in their name and address on the form.
      - b) The bidder did not fill in the date of the Invitation for Bids.
      - c) The bidder did not acknowledge one or more of the addenda, and the addenda had only a negligible effect on price, quantity, quality, time, or contractual conditions and can be waived or corrected without prejudice to other bidders.
    - 2) Bid Guarantee
      - a) The individual principal or corporate principal did not sign the Bid Bond, but their name is listed in the space provided at the top of the form as principal.
      - b) A power of attorney is not attached for the signer for the corporate surety. This should be obtained immediately after the bid opening and prior to Intent to Award.
      - c) Bid Bond Forms other than 25D-14 may be used, but they must contain essentially the same information as 25D-14, and the State of Alaska must be listed as recipient.

f. Errors which are non-waivable:

1) Bid Documents

- a) The Bid Form, which includes the Non-Collusion Declaration, is not signed in the signature block (2 AAC 12.120).
- b) Failure to acknowledge addenda that are determined to have a more restrictive effect on time, quality, quantity, or cost of performance, or impose a technical requirement.
- c) The bid is irregular. The bid may be considered irregular if:
  - It is on a form other than that furnished by the department; or if the form is altered or any part thereof is detached.
  - There are unauthorized additions, conditions or alternative bids, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
  - The bidder adds any provisions reserving the right to accept or reject any award, or to enter into a contract pursuant to an award. This does not exclude a bid limiting the maximum gross amount of awards acceptable to any one bidder at any one-bid opening, providing that the department will make any selection of awards.

2) Bid Guarantee

- a) A personal or business check is submitted. (Only cashier's check, certified checks or postal money orders are allowed. The department does not accept currency as an acceptable form of Bid Guarantee.)
- b) Individual sureties are submitted.
- c) The name of the principal and/or surety is not listed in the top two lines of the Bid Bond.
- d) The penal sum of the bond is missing or inadequate to cover the total amount of bid.
- e) The corporate surety did not sign the Bid Bond.

3) General

- a) Exceptions, conditions, or any deviation from the project plans and specifications will not be allowed. Any bid which is conditioned upon receiving award of both the particular contract being solicited and another state contract shall be deemed non-responsive and not acceptable unless conditioned bids are specifically authorized in the invitation to bid (2 AAC 12.840).

- b) All items must be bid unless noted otherwise in the solicitation (AS 36.30.150).
- c) A bid, a withdrawal, a correction, or a modification received after the time and date of the bid opening is late and shall be non-responsive unless the lateness of the bid, withdrawal, correction, or modification is caused solely by mishandling or error of the contracting agency. If a bid is received timely, but the withdrawal, correction, or modification is late, the bid shall be read but the withdrawal, correction, or modification shall be declared non-responsive (AS 36.30.160).
- d) Alternate or multiple bids are not permitted and will be declared non-responsive, unless the invitation to bid states that such bids or proposals may be accepted (2 AAC 12.830).

#### 5. Subcontractors (Construction Only)

- a. Within five working days after receipt of written notification, the apparent low bidder must submit Form 25D-5 listing all firms with which the prime contractor intends to execute subcontracts which exceed one half (1/2) of one percent (1%) of the contract amount. The list must include the name and location of the place of business for each subcontractor, as well as the scope of the work to be performed. Evidence of the subcontractor's valid Alaska business license and registration under AS 08.18 is also required (AS 36.30.115).
- b. As soon as practicable after bids are opened, a letter will be sent to the apparent low bidder advising them of their status as apparent low bidder and of the requirements for the list of subcontractors.
- c. If after opening, the ranking of the bidders change, a phone call will immediately be made to the new low bidder and the original apparent low bidder informing them of this change. The requirements for the subcontractor list shall become effective upon the low bidder at the time of this notification. A letter to the new low bidder reiterating the contents of the phone conversation must be documented.

#### 6. State Funded Projects

Bid evaluation for state funded projects are evaluated as above and then the following preferences are applied:

- a. Alaska Bidder Preference: All Alaska bidders are given a preference of five percent (5%) when their bids are compared to bids received from out-of-state bidders. An Alaska bidder means a person (or firm) who:
  - 1) Holds a current Alaska business license;

- 2) Submits a bid 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 bidder or an employee of the bidder for a period of six months 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 (a)-(d) of this subsection (AS 36.30.170).
- b. Alaska Products Preference
- 1) An Alaska Products Preference Worksheet must be completed and attached to the Bid Schedule to support any product preference requested by a bidder.
  - 2) A Bid Schedule Summary Sheet must be filled out and submitted by each bidder in order to determine the lowest adjusted bid and to be considered responsive. When alternate bid items are in the contract, a bid Schedule Summary Sheet and supporting Alaska Products Preference Worksheets are also required. Except for the Alaska products preference, if multiple preferences apply to a solicitation, the values of the applicable preferences shall be summed and applied to the qualifying bid. If applying the Alaska products preference, the preference shall only be applied to the qualifying products (AS 36.30.336 and 2 AAC 12.890).

## 7. Tie Bids

Tied bids or proposal are low bids or highest ranked proposals that are responsive, responsible, and are identical in price or score after application of preferences under AS 36.30.321. If tied bids or proposals exist, award shall be made through a random drawing. Award may not be made by dividing the procurement among identical bidders (2 AAC 12.900).

## 8. One Responsive Bid

If only one responsive bid is received in response to an invitation for bids, an award may be made to the single bidder if the bidder is responsible, the price submitted is fair and reasonable, and other prospective bidders had reasonable opportunity to respond (2 AAC 12.190).

Otherwise the bid may be rejected and:

- a. New bids may be solicited;
- b. The proposed bid may be canceled; or

- c. If the contracting officer determines in writing that the need for the supplies, services, or construction continues, but that the price of the one bid is not fair and reasonable and there is not time for re-solicitation, or it is unlikely that re-solicitation would increase the number of bids, the procurement may be conducted under 2 AAC 12.410 (Single Source Procurement) or 2 AAC 12.440 (Emergency Procurement), as appropriate.

9. Other Evaluation Criteria

Award of a bid may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, handicap, or political affiliation of the bidder. Prior to award bids shall be evaluated to determine whether the bidder meets goals established in the invitation to bid 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 (2 AAC 12.180).

10. Additive Alternative Bid Items

In order to establish a clear and definitive basis of award, the state shall establish a budgeted dollar amount from which the order of bidders will be determined. This amount shall be announced just prior to opening bids. The apparent low bid will be determined by considering the basic bid and additive alternate(s) in the order listed up to this amount. The determination of the apparent low bidder does not obligate the state to award either the basic bid or the basic bid plus alternate(s). The state may award the contract in excess of the budgeted dollar amount, to the lowest responsive/responsible bidder, based on any combination of basic bid and alternates, providing that the ranking of the apparent low bidder, as determined by the budgeted dollar amount, remains unchanged.

11. Rejection of Individual Bids

Reasons for rejecting individual bids include the following:

- a. The bid is non-responsive;
- b. The products or services offered fail to meet the specifications or other acceptability criteria set forth in the invitation to bid;
- c. The business that submitted the bid is not responsible as determined under 2 AAC 12.500; or
- d. The bid fails to meet the goals set forth in the bid to eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, or disability (2 AAC 12.870).

12. Rejection of All Bids

After the opening but before award, bids or proposals may be rejected only with the prior written approval of the DOT&PF commissioner (2 AAC 12.860-870). The request for such rejection shall be sent to the chief contracts officer for submittal to the commissioner.

The rejection of a bid or proposal is conditioned on the occurrence of one or more of the following:

- a. The supplies, services, or construction being procured is/are no longer required;
- b. Ambiguous or otherwise inadequate specifications were part of the invitation to bid;
- c. The invitation to bid did not provide for consideration of all factors of significance to the state;
- d. Prices exceed available funds;
- e. All otherwise acceptable bids received are at unacceptable prices;
- f. There is reason to believe that the bids may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or
- g. The award is not in the best interest of the state (2 AAC 12.860).

13. Bid Guarantees, other than Bid Bonds, shall be returned to bidders except the low and second low bidders.

D. Notice of Intent to Award

1. Notice of Intent to Award (NOI) does not constitute a formal award of a contract. (Note: a copy of the NOI is to be sent to all respondents to the bid, including those who responded late). The NOI must include:
  - a. A statement of all bidders right to protest the award under the state procurement code, including the date by which the protest must be received;
  - b. The name of the successful bidder (2 AAC 12.210);
  - c. The names of all bidders that responded to the solicitation;
  - d. The award total for each bidder; and
  - e. If any bid was rejected, the reason for such rejection.
2. If any bids were declared non-responsive, the NOI must explain the reason for this declaration.

3. The NOI must be issued at least ten days prior to the award of the contract (AS 36.30.365). This period can be reduced to five days if approved by the contracting officer.
4. If the contracting 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, or construction that is the subject of the contract could have been obtained from sources in the state, the contracting officer shall issue a written statement explaining the basis of the award. The statement shall be kept in the contract file (AS 36.30.362).
5. If the Bid Security is other than a Bid Bond, it shall be returned to the low and second low bidder after the contract is successfully executed.

#### E. Bid Protests

An interested party may protest the NOI. The protest must be received within ten days from the date of the NOI (AS 36.30.565). It must be filed with the contracting 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 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.

#### F. Letter of Award

Once the apparent low bidder has submitted all documents required for award and they are approved, the final step is to issue a Letter of Award. This letter should not be issued until the protest period has expired or after all protests have been resolved (AS 36.30.575), whichever is later. Under limited conditions and after consultation with the chief contracts officer, the Letter of Award may be issued sooner.

All respondents to the bid should be copied on the Letter of Award.

## G. Records

1. Procurement files for bids shall include:
  - a. A copy of the bid documents;
  - b. A copy of the Public Notice;
  - c. All responses (including non-responsive/responsive bids);
  - d. All documents pertaining to the correction or withdrawal of a bid or bids;
  - e. A tabulation of bids;
  - f. Other information deemed appropriate by the contracting officer;
  - g. Documentation of contractor selection;
  - h. A copy of the NOI; and
  - i. Any protests and final decisions.
2. When bids are rejected, all bids that have been opened must be retained in the procurement file. Late bids shall be retained until at least the time for protest has expired (2 AAC 12.880).
3. Any signed waiver or RAP, Single Source, Limited Competition, or Emergency Procurement must be documented.
4. The above listed records shall be retained, on a fiscal year basis, for life of contract plus 6 years (State of Alaska, General Records Retention Schedule).

## **AUTHORITY**

AS 36.30 State Procurement Code  
2 AAC 12 Procurement Regulations

## **IMPLEMENTATION RESPONSIBILITY**

Regional and Headquarters Contracting and Procurement Officers

## **DISTRIBUTION**

All department employees via the DOT&PF website