

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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SUMMARY OF: A Special Report on the Department of Administration's Professional Services Procurement Process, October 17, 2006

PURPOSE OF THE REPORT

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have conducted an audit to review and analyze all formal professional services procurements at the Department of Administration (DOA) over the previous two years. In addition, we identified any improvements that could be made to the procurement code.

REPORT CONCLUSIONS

There were no systematic violations of Alaska's procurement code by the Department of Administration; however, several avoidable errors did occur during the procurement process. Some changes could be made to the procurement code to improve efficiency and enhance competitiveness. Overall, vendors are generally satisfied with the procurement process.

The avoidable errors were a result of (1) misplacing a portion of a vendor's proposal combined with a subsequent misunderstanding between the State and the vendor on how to move forward with a modified procurement process; (2) poorly-designed timelines in a request for proposals (RFP) for a replacement payroll system; and (3) poorly written RFPs.

FINDINGS AND RECOMMENDATIONS

1. Changes to improve the procurement code are necessary.
 - A. Consider removing or modifying the requirement that contractor listings be maintained.

- B. The DOA commissioner and chief procurement officer should seek to modify AS 36.30.210(e) and AS 36.30.110(b) to make a business license necessary at the time of contract award.
 - C. The DOA commissioner and chief procurement officer should reevaluate the Alaskan offeror and Alaskan bidder procurement preferences.
 - D. The DOA commissioner and chief procurement officer should consider policies to better safeguard vendor proposals.
2. The Division of Administrative Services (DAS) should ensure RFPs contain clear and realistic timeframes for all phases of the proposal evaluation process.
 3. The Division of General Services (DGS) should institute review procedures to ensure RFPs are clear and unambiguous before release.

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November 1, 2006

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF ADMINISTRATION PROFESSIONAL SERVICES PROCUREMENT PROCESS

October 17, 2006

Audit Control Number

02-30043-06

This report summarizes our review of formal professional service procurements at the Department of Administration over the previous two years. This audit evaluates how often errors occurred in the procurement process, the nature of those errors, and potential improvements that could be made to Alaska's procurement code.

The audit was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology.

A handwritten signature in black ink that reads "Pat Davidson".

Pat Davidson, CPA
Legislative Auditor

TABLE OF CONTENTS

	<u>Page</u>
Objectives, Scope, and Methodology	1
Organization and Function	3
Background Information.....	5
Report Conclusions.....	11
Findings and Recommendations.....	17
Appendix A – Vendor Satisfaction Survey	23
Agency Response	
Department of Administration	25

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have conducted this audit to evaluate professional services procurements made by the Department of Administration (DOA) over the last two years.

Objectives

The objectives of this audit were to:

1. Determine how often errors in the procurement process have occurred and what steps were taken by DOA to address those errors.
2. If an error occurred how often did that error result in:
 - a. The solicitation being cancelled.
 - b. The cancelled solicitation being reissued.
 - c. Non-standard evaluation or awarding processes being used.
3. What, if any, statutory or regulatory changes could be made to improve the procurement process.
4. Determine vendor satisfaction with DOA's formal, professional services procurement process.

Scope and Methodology

The audit focused on formal professional services procurements initiated by DOA in the last two years, April 2004 through May 2006. This included formal professional services procurements made by the Divisions of General Services, Administrative Services (DAS), and Enterprise Technology Services (ETS). The audit also reviewed alternative procurements for professional services at DOA.

Our evaluation of formal professional services procurements at DOA involved:

- Interviews with the chief procurement officer.
- Interviews with the DAS procurement specialist and ETS contracting officer.
- Review of Alaska's procurement code (Alaska Statute, Administrative Code, and Administrative Manual) for formal professional services procurements.

- Interview with incumbent vendor in the claims administration and pharmacy benefits manager procurement.
- Review of Administrative Law Judge opinion on claims administration and pharmacy benefits manager procurement appeal.
- Review and analysis of all DOA formal, professional services procurement files in the last two years.
- Review and analysis of all DOA alternative procurements for professional services.
- Review of 12 other states' formal, professional services procurement codes.
- Review and comparison of the American Bar Association's *2000 Model Procurement Code for State and Local Governments* to Alaska's procurement code.
- Survey of vendors concerning satisfaction with DOA's formal professional service procurement process.

ORGANIZATION AND FUNCTION

Alaska Statute 36.30.005 centralizes procurement authority with the Department of Administration (DOA) commissioner and the chief procurement officer. This purchasing authority has been delegated from DOA's commissioner and the chief procurement officer to all departments, boards, commissions, public corporations, and other agencies under their span of control. While the delegation was made directly to the heads of the agencies, the commissioners of these agencies are only able to further delegate this authority, in writing, to individuals certified under the Division of General Services' procurement officer certification program.

DOA provides centralized administrative and telecommunications support services to state agencies', legal and advocacy service for indigent Alaskans, vehicle licensing and registration services to the public, and administrative support to commissions assigned to the department. Within DOA, the Divisions of General Services (DGS), Administrative Services (DAS), and Enterprise Technology Services (ETS) are the divisions performing formal professional services procurements.

DGS provides purchasing, leasing and facilities management, property management, and central mail services for all state agencies. The chief procurement officer oversees the operations of DGS and is appointed for a six-year term of office by the DOA commissioner.

The chief procurement officer's position oversees procurement, contracting, and state leasing and facilities. Per statute duties include:

- Procuring or supervising the procurement of all supplies, services, and professional services needed by agencies;
- Exercising general supervision and control over all inventories of supplies belonging to an agency and prescribing the manner in which supplies shall be purchased, delivered, stored, and distributed;
- Prescribing the time, manner, authentication, and form of making requisitions for supplies and services;
- Selling, trading, transferring between agencies, or otherwise disposing of surplus, obsolete, or unused supplies and making proper adjustments in the account of agencies concerned;
- Establishing and maintaining programs for inspection, testing, and acceptance of supplies and services and the testing of samples submitted with bids;
- Prescribing standard forms for bids and contracts; and
- Providing for other matters that may be necessary to carry out the Alaska procurement code.

While authority for procurement has been delegated to the departments, the duty to procure for multi-agency use rests with DGS. The chief procurement officer and DGS' staff also provide procurement-related consulting services and assistance to other departments. At times, DGS may assist DAS' procurement staff when its workload exceeds its capacity. In addition, the chief procurement officer and DGS staff provide procurement training classes for procurement certification.

DAS provides support services to departmental programs such as:

- Establishing departmental business management policies and procedures and providing training for all administrative staff in the Department of Administration.
- Developing the department's annual budget, liaison with the Office of Management and Budget (OMB) and the legislature on budget matters.
- Overseeing department business management practices to ensure compliance with state and federal rules; coordinate legislative and OMB audits of DOA programs.
- Providing centralized procurement and management support to divisions.

Within DAS is the procurement unit. The procurement unit's function is to ensure that the department consistently complies with state procurement rules, regulations, and procedures. In addition to this, the procurement unit maintains a complete record of archived material; educates employees in procurement rules; and, maintains the department's controlled property.

The procurement unit is headed by a procurement specialist III. The procurement specialist handles larger formal procurements for which other divisions do not have the delegated authority to procure.

ETS is an internal service fund organized within DOA. ETS provides telephone, centralized computer, and other technology-related services to all departments of the State. Part of providing technology services to other departments involves procurement of goods and services. ETS staff includes a contracting officer III who is responsible for procurements within ETS.

BACKGROUND INFORMATION

Recent problems in high-profile procurements by the Department of Administration (DOA) have brought Alaska's procurement code, and DOA's implementation of it, to the forefront. Procurement is vital for state government to acquire the goods and services it needs to carry out its duties and responsibilities. Good procurement systems foster competition, are ethical, understandable, and predicable. Alaska's current procurement code was initially put into place in 1988.

In Alaska, formal professional services procurements are completed through a decentralized procurement system.

Procurement authority in Alaska has been delegated to all departments, boards, commissions, and public corporations under the purview of the DOA's commissioner and chief procurement officer. Alaska's procurement code is comprised of three sources, Alaska Statute (AS 36.30), Administrative Code (2 AAC 12), and the Administrative Manual (AAM 81 and 82). The Department of Transportation and Public Facilities' commissioner provides oversight for construction-related procurements.

Procurements totaling less than \$50,000¹ are considered small procurements and have varying procurement steps, depending on the total dollar value of the procurement. Procurements over \$50,000² are considered formal procurements and require specifically prescribed steps during their execution. Our review focused on nonconstruction-related, formal professional services procurements by DOA.

Professional services are defined as services that are predominately professional, technical, or consultative in character. They include analysis, evaluation, prediction, planning, or recommendation, and result in the production of a completed report or task. Professional services can be procured through various procurement methods.

The procurement code provides specific requirements for professional services procurements.

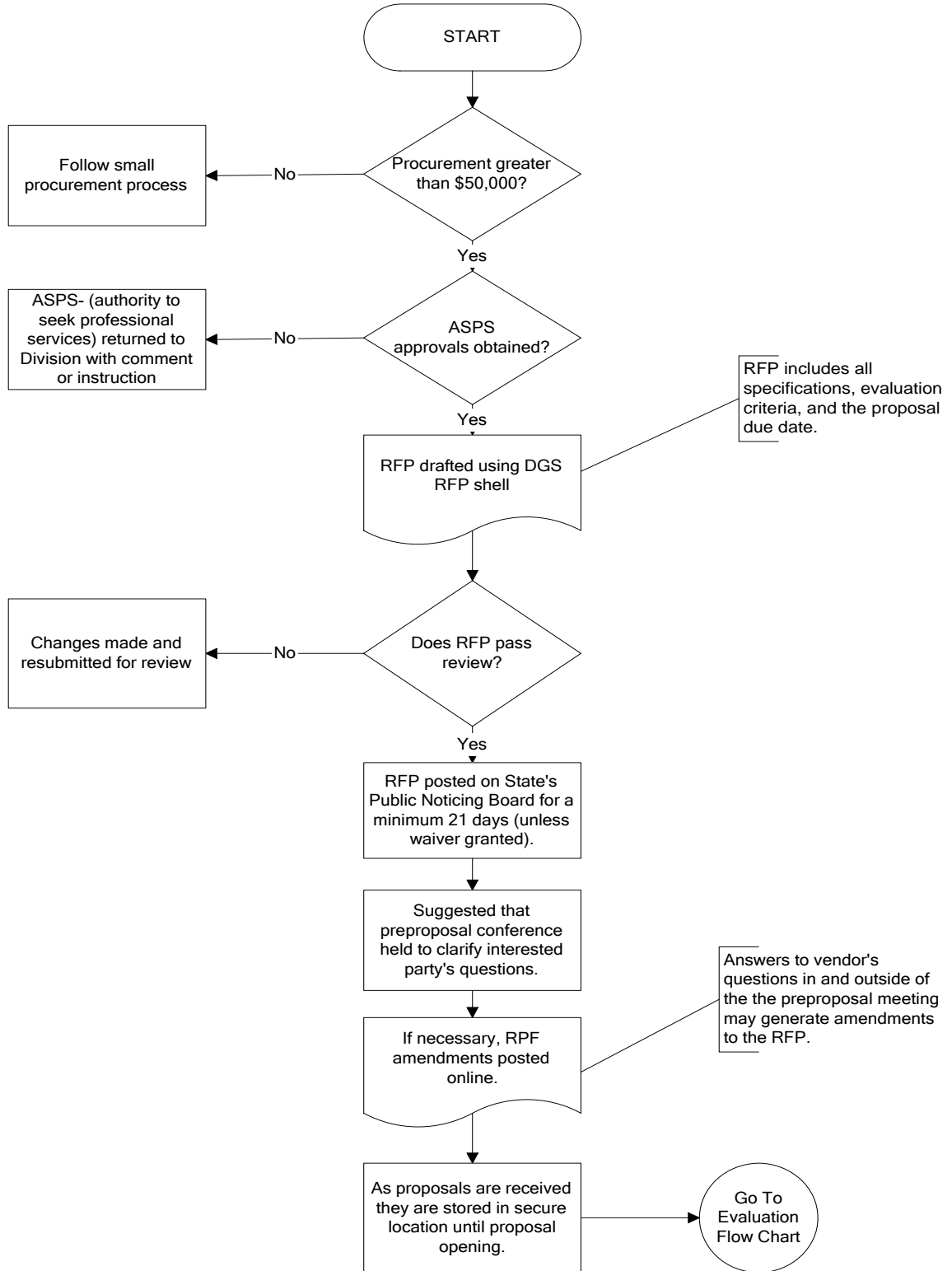
The Alaska Administrative Code (AAC) exempts professional services procurements from the competitive, sealed bidding process (Invitation to Bid, ITB). Professional services procurements are most commonly made through the competitive, sealed proposal process (Request for Proposals, RFP).

¹Threshold basis is calculated using the total value of the procurement, including all allowed contract extensions.

² The threshold for construction-related formal procurements is \$100,000.

Exhibit 1

Professional Services RFP Flowchart



- The RFP procurement process is well-defined

The award of a professional services contract, through a RFP, is based on price and varying evaluation factors defined in the specific RFP. The formal RFP process begins with an assessment of the need for a professional services contract and ensuring the project qualifies as a professional service. The project manager must then request and receive authority to seek professional services. (See Exhibit 1.)

Once authority has been obtained, a RFP is drafted and approved. The authority to seek professional services and approval of the RFP varies between divisions. The RFP outlines the services being sought, the minimum requirements the offerors must meet to have their proposals considered responsive, the date of any preproposal conferences, and the scoring system used to evaluate the proposals. Potential vendors are solicited by posting the RFP on the State of Alaska's Online Public Notice System (AOPNS). Additional solicitation, such as newspaper advertisement or contacting vendors on the State-maintained contractor lists, may be used, but are not required. Vendors interested in the RFP are required to register with the procurement officer, in order to receive amendments to the RFP, although amendments are also posted to AOPNS.

While not required, it is strongly encouraged that a preproposal conference be held. The purpose of this conference is to clarify any questions offerors may have about the RFP. Any significant clarification or change to the RFP is issued to all registered vendors after the preproposal conference. Any significant clarification made to the RFP for a single vendor, before or after the preproposal conference, is also issued to all registered vendors and posted on AOPNS.

Once proposals have been submitted, they are reviewed by the procurement officer, with assistance as needed, to determine if they are responsive. (See Exhibit 2, page 8.) To be considered responsive, the proposal must meet the minimum requirements stated in the RFP. All responsive proposals are then, either evaluated by the procurement officer or a proposal evaluation committee (PEC). DOA uses a PEC the majority of the time. The PEC must consist of at least three state employees or public officials. The evaluation must be based only on the evaluation factors set out in the RFP. Sixty percent³ of the score is based on price, with the remaining 40% based on other evaluation factors set out in the RFP.

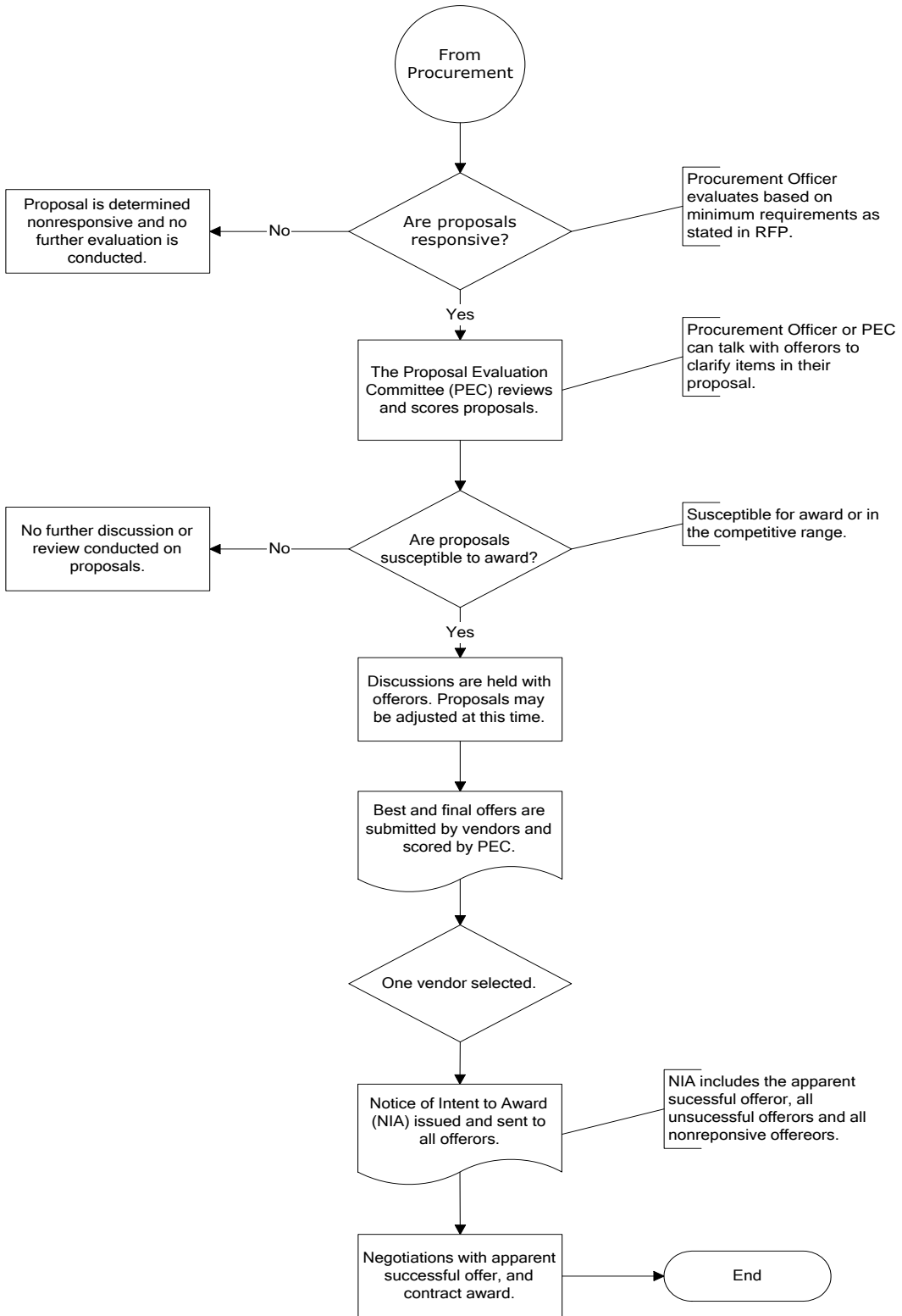
In order to determine if a proposal is "reasonably susceptible for award,"⁴ the procurement officer or the PEC is permitted to clarify items with offerors. These communications may not materially or substantially change the proposal. As a result of these communications and/or clarifications, an original evaluation may be adjusted.

³ AAM 81.470(3) - Except for those services procured under AS 36.30.270 (architectural, engineering, and land surveying contracts), price is a mandatory evaluation factor. The minimum weight given to price must be 75% for supplies, 60% for both professional and nonprofessional services, and between 60% and 75% for procurements involving a combination of both.

⁴ This phrase is common to the procurement code and means that a vendor's proposal was determined to be competitive and could potentially be awarded a contract based on best and final offer discussions.

Exhibit 2

Evaluation Flowchart



Proposals evaluated as “reasonably susceptible for award” may be offered the opportunity to discuss their proposals with the procurement officer or the PEC. The opportunity for confidential discussions, if held, must be extended to all offerors submitting proposals deemed “reasonably susceptible for award.”

Following discussions, the procurement officer may set a time and date for the submission of best and final offers. The conditions, terms, or price of the proposal may be altered or otherwise changed during the course of the discussions, provided the changes are within the scope of the RFP. After best and final offers are received, final evaluations by the PEC are conducted.

Based on the final scoring of vendors’ best and final offers, an apparent successful offeror is determined and a notice of intent to award (NIA) is issued. The NIA does not constitute a formal awarding of the contract. It only indicates the apparent successful offeror, and the nonresponsive and/or unsuccessful offerors. The NIA includes a statement of the offerors’ rights, under Alaska Statute, to protest the award – including the time frame within which the protest must be received.

After a NIA is issued, the procurement officer will, at the procurement officer’s discretion, negotiate with the apparent successful offeror. The purpose of the negotiation is to obtain contract terms consistent with the solicitation and favorable to the State. If the State and the offeror cannot come to agreeable terms, then the procurement officer can negotiate with the next highest-scoring offeror, and so on.

Once negotiations have been satisfactorily completed and all necessary contract approvals have been obtained, the contract is returned to the originating division for administering, monitoring, and evaluation of the contractor’s performance.

- Alternative procurements allow for the procurement of professional services in unique situations.

While procuring professional services through the RFP process is the most common method used, professional services can also be procured through alternative procurement methods. In instances where the RFP process is not practical such as emergency situations, or when particular goods or services are unique to one vendor, then alternative procurement procedures can be used. Alternative professional services procurement methods include, but are not limited to, single source procurements, unanticipated (emergency) procurements, and limited competition procurements. Justification for the use of an alternative procurement procedure must be approved by the chief procurement officer.

Alaska's procurement code is similar to the American Bar Association's 2000 Model Procurement Code for State and Local Governments.

Alaska's procurement code is similar to, and indirectly taken from, the American Bar Association's *2000 Model Procurement Code for State and Local Governments*. Discussions with the chief procurement officer revealed that Alaska's procurement code is modeled after Arizona's procurement code, which was modeled after the American Bar Association's Model Procurement Code at that time.

Alaska's procurement code is generally comparable to 12 other states' procurement codes.

Twelve other states' procurement codes were also reviewed and compared to Alaska's for potential improvements. While more complete and thorough than many, Alaska's procurement code was at least comparable to all 12 states. Some items of interest are discussed below.

In Alaska, it is not a requirement that the proposal evaluation committee (PEC) members complete nonconflict of interest certifications. However, in Hawaii's procurement code similar nonconflict of interest statements are required from proposal review committee members. State-employee PEC members are covered by the Executive Branch Ethics Act which prohibits them from taking, or withholding, any official action in which they have a personal or financial interest. However, signing a certification would give them an opportunity to think about any conflicts of interest they might have. Currently, the Division of General Services (DGS) has a standard nonconflict-of-interest certification form, but it is not required to be used.

None of the states reviewed had local preference provisions as favorable, to local vendors in professional services procurements, as Alaska's procurement code does. Alaska allows not only a 5% bidders' preference on price for all procurements (AS 36.30.170(b)), but also an overall 10% Alaska offerors' preference on all RFP procurements (2 AAC 12.260(e)). In fact, three of the states reviewed (Hawaii, Montana, and North Dakota) have reciprocal preferences in place. A reciprocal preference works by penalizing a vendor whose home state has local preferences. The penalty is equal to the preference they would have received in their home state. The American Bar Association's *2000 Model Procurement Code for State and Local Governments* is silent on local preference. This issue is addressed further in Recommendation No. 1.

REPORT CONCLUSIONS

There were no systematic violations of Alaska's procurement code by the Department of Administration; however, several avoidable errors did occur during the procurement process. Some changes could be made to the procurement code to improve efficiency and enhance competitiveness. And, overall, vendors are generally satisfied with the procurement process.

The avoidable errors were a result of: (1) misplacing a portion of a vendor's proposal combined with a subsequent misunderstanding between the State and the vendor on how to move forward with a modified procurement process; (2) poorly-designed timelines in a request for proposals (RFP) for a replacement payroll system; and (3) poorly written RFPs. Each situation is discussed in detail below. In addition, an error profile summary can be seen in Exhibit 3 on page 12.

1. Corrective action taken due to vendor's lost proposal was misapplied by DOA.

A portion of a proposal for the Claims Administration and Pharmacy Benefits Manager procurement was temporarily misplaced by DOA. According to the chief procurement officer, losing a proposal or portion of a proposal had never happened in his 14-year tenure. The missing portions of the proposal were found and the State met with the vendors to determine if there was a mutually agreeable process under which the procurement could continue.

All parties agreed to the modified procurement process that involved an evaluation by a new proposal evaluation committee. While all the parties agreed to a modified process, evidently there was not a shared understanding of exactly how that process would be applied. The process was not carried out in accordance with the expectations of the vendor whose proposal had been misplaced. The vendor protested and was eventually upheld in appeal.

The lack of sufficient lead time⁵ on this procurement contributed to the limited number of solutions available to the State, in dealing with issues that arose during the process. The protesting vendor had sought to have the contract award stayed until the resolution of the protest and subsequent appeal. However, if the award was stayed and the appeal was not upheld, then the other vendor would not have sufficient time to set up the necessary infrastructure before services were needed. DOA believed staying the award was not in the State's best interest, and were confident the State's position would be upheld; thus, they awarded the contract to the other vendor.

⁵ The RFP for this procurement was issued seven months before the incumbent vendor's contract was due to expire.

EXHIBIT 3

ERROR PROFILES

Health Insurance Claims Administration and Pharmacy Benefits Management

Value: Contract is for \$34 million over a three-year period

Error: Two errors occurred. First, the Division of Administrative Services' procurement officer misplaced a portion of the incumbent offeror's proposal. After the misplaced portion of the proposal was found, an agreement was forged between DOA and all the affected vendors on how to salvage the procurement and proceed. The second error occurred in the execution of the agreement. DOA did not have the newly-formed PEC rescure the best and final offer from both of the responsive offerors.

Result: The losing offeror appealed. The Administrative Law Judge upheld the appeal and ordered payment of proposal preparation costs of approximately \$82,800, and a three-year limitation on the awarded contract.

Human Resources/Payroll System Replacement

Value: Contract, tentatively, for \$17 million in total

Error: Poor timelines established in the RFP resulted in the Division of Administrative Services not verifying vendor references prior to scheduling demonstration dates. An apparent, responsive vendor was scheduled to make a presentation. However, reference checks revealed that the provided references did not meet the requirements of the RFP. The vendor was notified less than two days in advance that their presentation was cancelled.

Result: DOA paid the vendor \$92,501 for demonstration preparations and travel costs, due to the short notice provided in canceling their demonstration.

Janitorial Contracts

Value: Five contracts totaling \$333,000

Error: The RFPs were not properly reviewed by the applicable Division of General Service's procurement officer prior to their issuance. The request for proposals had ambiguous specifications and an unclear method of proposal evaluation.

Result: The RFP had to be cancelled and reissued. This delayed the procurement by over two months.

DOA should make an effort, on procurements of this size and importance, to issue the RFP with enough lead time to adequately deal with unforeseen problems. In addition, sufficient lead time would allow for a smooth transition if an incumbent vendor is not selected in the current period.

Additionally, in prior years a consultant was retained to help in the writing of this RFP and the evaluation of proposals received. However, no consultant was used for this procurement. In a procurement of this magnitude and complexity, it would be in the State's best interest to retain a consultant to help write the RFP and to provide nonvoting evaluation of the proposals received. DOA should continue to use consultants on large and/or complex procurements, such as software systems and healthcare.

This issue will be addressed further in Recommendation No. 1.

2. Poorly-designed timelines in an RFP cost the State over \$92,500.

The Human Resources/Payroll procurement RFP did not contain sufficient time to check the references of the vendors prior to scheduling the presentations. The RFP timelines provided for two days between when the proposals were opened and when the vendors were contacted to schedule their presentations. Presentations were being scheduled at least two weeks in advance, ostensibly to give the vendors sufficient lead time to prepare for their presentations.

An initial screening was done in the two days between the opening of the proposals and the scheduling of the presentation. The initial screening just determined if the proposal contained the appropriate number of references. It is not practical to expect an evaluation of the references in those two days.

The RFP indicated a multi-tiered evaluation process; however, it did not clearly indicate when references would actually be checked. In this instance, one of the vendor's references was not sufficient and the vendor's presentation was cancelled less than two days in advance.

While there was no direct violation of the State's procurement code, the Division of Administrative Services has attempted to mitigate this error by offering to pay the vendor for their demonstration preparation and travel costs of \$92,501. This issue is addressed further in Recommendation No. 2.

3. Five janitorial RFPs⁶ were canceled and reissued due to poor wording.

Ambiguities in the wording of five janitorial RFPs lead to cancellation, and later reissue, of reworded RFPs. In September 2004, the Division of General Services released five

⁶ While technically not considered a professional service, these RFPs followed practically the same procedures as formal professional services procurements and, therefore, were reviewed.

RFPs for janitorial services for five state-owned buildings in Juneau. While no apparent procurement code requirements were violated, the RFP specifications were ambiguous and the method of evaluation was not clearly outlined.

While it was definitely in the State's best interest to cancel these five RFPs, it not only cost the State time and effort, but also the vendors that submitted proposals. In addition, the cancellation resulted in the procurement process being delayed. This error is further addressed in Recommendation No. 3.

These errors highlight the need for clear communications between the State and potential vendors, especially in situations when the normal procurement process has been modified.

Additionally, DOA needs to have a thorough review of each RFP prior to its issuance.

Alternative professional services procurement procedures were correctly applied.

There were 12 alternative procurements in the last two years at DOA for professional services. The majority of the alternative procurements were either single source or unanticipated contract amendments. The prescribed alternative procurement procedures were followed in all 12 instances. No problems or appeals occurred.

The lack of an Alaska business license was a contributing factor in 50% of nonresponsive determinations.

In the last two years, DOA determined 20 of almost 160 formal RFP proposals to be nonresponse. Of these 20 nonresponsive proposals, the lack of a valid Alaska business license at the time of proposal opening was a contributing factor in the nonresponsive determination in ten instances, or 50% of the time. It was the only factor listed in five instances or 25% of the time. In one RFP there were so few responsive proposals, largely due to the lack of a business license, that the RFP was cancelled and reissued.

Offerors are considered "nonresponsive" when their proposals do not meet the requirements of the RFP. Nonresponsive proposals are excluded from the review and scoring process. A standard requirement to be considered responsive is to have a valid Alaska business license at the time of proposal opening.⁷

The Division of General Services encourages procurement officers to allow the correction of minor errors in vendor proposals. However, the requirement for a business license at time of proposal opening is in statute, and consequently cannot be considered a minor error. As a result the State is hindering competition by requiring a business license at time of proposal

⁷AS 36.30.210(e) – "The offeror must have a valid Alaska business license at the time designated, in the request for proposals, for opening of the proposals."

opening and, therefore, missing potentially advantageous proposals. This issue is further discussed in Recommendation No. 1.

Vendors responding to the survey were generally satisfied with DOA's procurement procedures.

A survey was sent to all 119 vendors that submitted proposals for DOA's formal professional services procurements during the previous two years, with 49% responding.

Overall, the vendors that responded considered the procurement process fair and equitable, resulted in the best monetary value for DOA, and the time from receipt of proposals to award reasonable. In addition, they felt protest procedures were adequately communicated to them, with resolution of protests being equitable and fair to all concerned. See Appendix A for the actual survey results.

Vendors were also asked to provide suggestions for improvements to the procurement process. Some of the procurement-related responses focused on doing away with the Alaska vendor preferences; difficulty in finding procurement notices online, without knowing where to look; and, finally, that too much emphasis is put on price of tangibles and not enough on experience. Some of these issues are addressed further in Recommendation No. 1.

Overall, we conclude that DOA is performing professional services procurements in accordance with Alaska's procurement procedures. However, some errors were noted and improvements to the procurement code and procedural changes should be considered by DOA.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

Changes to improve the procurement code are necessary.

Changes to Alaska's procurement statutes, regulations, and policies are necessary to stimulate additional competition; minimize advantages provided to one vendor over another; and, generally, improve the code. As stated by the American Bar Association, in the drafting concepts of the *2000 Model Procurement Code for State and Local Governments*,

“Procurement continues to be a dynamic process that is continually evolving and that requires revision of procurement methods as experience and requirements change.”

Consider removing or modifying the requirement that contractor listings be maintained.

Under AS 36.30.050, the Department of Administration (DOA) is required to maintain listings of contractors interested in doing business with the State of Alaska in various fields. However, both AS 36.30.050(c) and AS 36.30.130(a) suggest, but do not require, that these lists be used by procurement officers in issuing invitations to bid (ITB) or request for proposals (RFP).

It is inefficient for DOA to maintain vendor lists when their use is not required. It is also an inefficient use of the vendor's time when the listing may or may not be used. Advertising in state newspapers is another option allowed in the procurement code, but due to high cost not encouraged.

Currently, the only required notification is that all ITBs and RFPs be posted on the State of Alaska's Online Public Notice System (AOPNS). The AOPNS is the one source where all state items requiring public noticing, including procurement notices are posted. The AOPNS has a feature allowing individuals to sign up for a nightly notice of additions to the AOPNS. This appears to be a viable method for actively notifying potential offerors or bidders of ITBs and RFPs posted to AOPNS.

Further, additional details could be added to the automatic notification feature of AOPNS to notify registered vendors only about specific categories of ITB or RFP postings. By posting RFPs and ITBs on AOPNS, it would not only serve the public noticing requirement, but also push notification about ITBs and RFPs out to interested vendors on a nightly basis with minimal additional cost to the State. In essence, it would automate and blend the current vendor listings with the AOPNS, serving both the public notice requirement and maximizing potential competition.

The DOA commissioner and chief procurement officer should seek to modify AS 36.30.210(e) and AS 36.30.110(b) to make a business license necessary at the time of contract award.

As noted in the Conclusion section, in the last two years, 50% of proposals determined nonresponsive were at least partially caused by a vendor not having a business license at the time of proposal opening. A nonresponsive determination results in the vendor's proposal being excluded from the evaluation process. Vendors invest time and resources into the preparation of proposals for formal RFPs; and, to have their proposal excluded due to the lack of a business license only serves to frustrate vendors. Further, it prevents the State from evaluating potentially beneficial proposals.

Non-formal procurements do not require a vendor to have a business license, to put forth a proposal to the State. The only requirement is that they have a business license before a contract can be awarded. There is no apparent benefit to the State in requiring a business license at the time of proposal opening, other than to generate a small amount of additional revenue in business license sales. The current requirement is limiting competition by excluding vendors' proposals over a technical oversight and, potentially, costing the State through unnecessarily limiting competition.

We recommend that the DOA commissioner and chief procurement officer seek to have AS 36.30.210(e), AS 36.30.110(b), and any related regulation, changed to only require a business license before contract award and not at the time of proposal or bid opening.

The DOA commissioner and chief procurement officer should reevaluate the Alaska offeror and Alaska bidder procurement preferences.

Current procurement regulations provide a higher preference for Alaska vendors under the RFP procurement process versus the ITB procurement process.

Under AS 36.30.170(b), Alaska bidders are provided a 5% preference. In order to receive the Alaska vendor preference, five requirements must be met:

1. Vendor must have an Alaska business license.
2. The bid or proposal must be submitted under the name listed on the business license.
3. Maintain a place of business in Alaska for six months prior to bid.
4. If a Limited Liability Company, partnership, or sole proprietor—then all member(s) must be residents of Alaska and corporations must be qualified to do business in Alaska.
5. If a joint venture, then all parties must meet the above four requirements.

The Alaska bidders' preference is applied by adjusting, for evaluation purposes, an Alaska bidders' price down by 5%. After adjustment, all prices are compared to determine which bidder has the lowest adjusted price.

In addition to the Alaska bidders' preference, discussed on the previous page, 2 AAC 12.260(e) gives Alaska offerors a 10% overall point advantage on all RFP procurements. The same five eligibility requirements, under AS 36.30.170(b), apply to 2 AAC 12.260(e). This preference is applied by taking 10% of the total points possible for the RFP and assigning that to each Alaska offeror.

See Exhibit 4, below, that gives a comparison of how the bidders' and offerors' preferences affect the scoring for invitation to bid and for request for proposal evaluations.

Exhibit 4

Comparison of a Bidders' Preference and an Offerors' Preference			
Invitation to Bid with Bidders' Preference		RFP with Bidders' and Offerors' Preferences	
<i>Scoring: Based on price only</i>		<i>Scoring: 60 points for price, 40 points for other</i>	
	<u>Price</u>		<u>Points</u>
<u>Alaska bidder</u>		<u>Price Factors</u>	
Original bid	\$52,000	Original bid	\$52,000
5% bidders' preference	<u>(2,600)</u>	5% bidders' preference	<u>(2,600)</u>
Adjusted Bid	\$49,400	Adjusted Price	\$49,400
			60.0 pts
<u>Non-Alaska Bidder</u>		<u>Non-Alaska Bidder</u>	
	\$50,000	<i>(\$49,400 / \$50,000 x 60)</i>	59.3 pts
<i>The 5% bidders' preference is applied to the price. So, the Alaska bidder is considered the low bidder and awarded the contract for \$52,000.</i>		Other Factors	
		<u>Alaska Bidder</u>	40.0 pts
		Offerors' preference	<u>10.0 pts</u>
		Total Alaska Bidder	50.0 pts
		<u>Non-Alaska Bidder</u>	40.0 pts
		Point Totals	
		Alaska Bidder	110.0 pts
		Non-Alaska Bidder	99.3 pts
<i>The combination of the 5% Alaska bidders' preference and the 10% Alaska offerors preference typically results in a 10% - 13% overall Alaska preference. In this example the difference is 12.3%. Ten percent for the offerors' preference with another 2.3% attributed to the price based 5% bidders' preference. (Without the 5% bidders' preference the Alaska bidder would have received 57.7 pts for price factor and the Non-Alaska bidder would have received 60 pts)</i>			

The Alaska bidders' and offerors' preferences are in addition to a 3-7% Alaska product, 5% recycled products, 15% employment program, and 10% Alaska with disabilities preferences.

Providing a 5% preference on price and a 10% overall point preference on RFP procurements results in a significant advantage for Alaska offerors in RFP procurements (10% – 13% advantage versus 5%). While a straight 5% price preference on RFP procurements would not be as advantageous due to nonprice scoring factors, regulations could be modified so the statutorily established 5% advantage could be the goal for RFPs as well. This would equalize the advantages provided to Alaskan businesses for both ITB and RFP procurements. In addition, it would be more in line with the 5% preference specifically identified in AS 36.30.170(b).

We recommend the DOA commissioner and chief procurement officer review Alaska vendor preferences, particularly those that are not associated with a specific statutory threshold percentage. This review should ensure the regulations are consistent with statutory intent and the preference percentages are balanced between the advantage given to in-state vendors and the need to operate state business in an economical manner.

The DOA commissioner and chief procurement officer should consider policies to better safeguard vendor proposals.

As noted in the Conclusions section, a proposal for the claims administration and pharmacy benefits manager procurement was misplaced, resulting in the State having to adopt a nonstandard review process which ultimately resulted in an appeal. The loss of the proposal potentially could have been avoided if additional procedures were in place to track the number of boxes received from each vendor.

Alaska's receipt and tracking of proposals could be improved by the adoption of procedures used by the State of Nevada. Nevada's procedures, in part, include the receptionist date-stamping every proposal received and noting the company name, company address, and number of boxes. This information is maintained for each RFP. The proposals are then stored in a secure location until opening time. At opening time, the documented information is compared to the proposals to ensure that all received information is available for proposal evaluation.

DOA should consider adopting statewide regulations or procedures similar to those of Nevada to help prevent the future loss of proposals.

Recommendation No. 2

The Division of Administrative Services (DAS) should ensure RFPs contain clear and realistic timeframes for all phases of the proposal evaluation process.

The late cancellation of a vendor's scheduled presentation for the Human Resources' (HR)/Payroll system replacement procurement cost the State \$92,501. As discussed in the Conclusions section, DOA issued a RFP for a HR/Payroll system replacement. Part of the review process was to have offerors provide an on-site demonstration, assuming their proposals were responsive to the RFP. One vendor's references did not meet the

requirements set forth in the RFP and their demonstration was cancelled less than two days before the demonstration date. DAS did not verify references, supplied by vendors, prior to scheduling demonstration dates. This was a result of poor timelines established in the RFP.

This late cancellation of the presentation resulted in the vendor incurring costs to compile an on-site demonstration and travel to Juneau to perform the demonstration. The late cancellation was the result of various factors with the RFP, including poor timelines and insufficient clarity as to when the references were to be evaluated. This untimely notification resulted in DOA offering to reimburse the vendor for their proposal demonstration and travel costs, which were calculated by DOA to be \$92,501.

Clear and realistic timelines for proposal evaluations should be part of all RFPs. In procurements where a presentation is required, DOA should verify the responsiveness of vendors, including references if applicable, before scheduling a presentation date for vendors.

Recommendation No. 3

The Division of General Services (DGS) should institute review procedures to ensure RFPs are clear and unambiguous before release.

As discussed in the Conclusions section, DGS issued five janitorial RFPs which were ultimately cancelled prior to award. The cancellation was due to the specifications in the RFP being ambiguous and the method of evaluation not clearly outlined. It appears that these RFPs were not thoroughly reviewed prior to being released.

The subsequent cancellation of the RFPs not only caused the State additional work in having to cancel and reissue the RFPs, but also substantial work for the vendors as well. While not a common occurrence,⁸ having RFPs cancelled due to poor wording is an inefficient use of state resources. In addition, it could cause dissatisfaction with the procurement process in the eyes of the vendors, potentially resulting in less competition for future RFPs.

DGS should establish a procedure which requires RFPs, within DGS, be reviewed by applicable personnel before being publicly posted for response.

⁸ These RFPs were the only ones identified as being cancelled, due to poor wording, out of all 42 DOA professional service RFPs reviewed in the last two years.

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Appendix A

Vendor Satisfaction Survey

The survey questionnaire asked vendors to indicate to what degree they agreed with the following statements:

- “The Department of Administration’s professional services (RFP) procurement process is fair and equitable overall.”
 - 53% Strongly Agreed
 - 19% Mildly Agreed
 - 19% Neutral
 - 7% Mildly Disagreed
 - 2% Strongly Disagreed

- “The current procurement process results in DOA getting the best value for its monetary investment.”
 - 50% Strongly Agreed
 - 14% Mildly Agreed
 - 27% Neutral
 - 7% Mildly Disagreed
 - 2% Strongly Disagreed

- “Protest and appeal procedures are clearly communicated to me by DOA.”
 - 48% Strongly Agreed
 - 19% Mildly Agreed
 - 33% Neutral
 - 0% Mildly Disagreed
 - 0% Strongly Disagreed

- “When there is a procurement related problem or issue, the resolution is equitable and fair to all concerned.”
 - 32% Strongly Agreed
 - 17% Mildly Agreed
 - 46% Neutral
 - 2% Mildly Disagreed
 - 3% Strongly Disagreed

- “The time between when proposals are received by DOA and awards are issued is reasonable.”
 - 53% Strongly Agreed
 - 21% Mildly Agreed
 - 16% Neutral
 - 5% Mildly Disagreed
 - 5% Strongly Disagreed

(Intentionally left blank)

STATE OF ALASKA

SARAH PALIN, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

P.O. BOX 110200
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200
FAX: (907) 465-2135

December 4, 2006

Ms. Pat Davidson, CPA
Legislative Auditor
Division of Legislative Audit
Alaska Legislature
P.O. Box 113300
Juneau, AK 99811-3300

RE: Audit Control Number 02-30043-06

Dear Ms. Davidson:

The Department of Administration has carefully reviewed the subject audit and offer the following comments.

FINDINGS AND RECOMMENDATIONS

Recommendation No 1. - Changes to improve the procurement code are necessary.

- Consider removing or modifying the requirement that contractor lists be maintained.

The department agrees that the requirement to maintain vendor lists under AS 36.30.050 is neither effective nor efficient. DOA will recommend legislation to the new administration to eliminate this statute.

- The DOA Commissioner and Chief Procurement Officer should seek to modify AS 36.30.210(e) and 36.30.110(b) to make a business license necessary at the time of contract award.

The department agrees that the statutory requirement for an Alaska business license at the time of proposal opening hinders competition; therefore the state is missing potentially advantageous proposals. DOA will recommend legislation to the new administration that will require evidence of an Alaska business license to be provided before the award of a contract, rather than at proposal opening.

- The DOA Commissioner and Chief Procurement Officer should re-evaluate the Alaskan offeror and Alaska bidder procurement preferences.

The department agrees that providing a 5% preference and a 10% overall point preference on RFP procurements creates an artificial situation that limits competition. DOA will recommend legislation to the new administration to eliminate the 5% Alaska bidders' preference for RFPs and decrease the Alaska offerors' preference from 10% to an overall 5% point preference. This change will put the bidder preference for RFPs on par with the 5% bidder preference that is applied to Invitations to Bid.

- The DOA Commissioner and Chief Procurement Officer should consider policies to better safeguard vendor proposals.

The State's misplacement of proposals is not a systematic problem as evidenced by this audit. However, on October 19, 2006 the Division of General Services issued a state-wide policy entitled 'Proper Handling of Formal Bids and Proposals' (attached).

Recommendation No 2. – DAS should ensure RFPs contain clear and realistic timeframes for all phases of the proposal evaluation process.

The department agrees that clear and realistic timelines for proposal evaluations should be part of all RFPs and will endeavor to accomplish this recommendation. However, as previously noted, many factors both at the program level and at the Division of Administrative Services influence the timeframes associated with RFPs.

Your letter also recommends *the State retain a consultant to help write the RFP and to provide non-voting evaluation of proposals*. The department has used consultants in the past (e.g., Payroll System Replacement), but we disagree that a consultant is needed for each large procurement. In cases where the terms, conditions, and specifications were essentially the same as successfully used in prior procurements, and if the program is a mature one, we believe that the cost of a consultant is not cost effective. However, for the Claims Administration and Pharmacy Benefits Manager procurement a consultant may have been helpful. We intend to engage the services of a consultant to assist in redrafting the RFP, specifications, and in evaluating proposals when this contract is re-bid in three years.

Recommendation No 3. – DGS should institute review procedures to ensure RFPs are clear and unambiguous before release.

The Division of General Services implemented a peer review process for Facility Section procurements on October 9, 2006 (attached). DGS has had longstanding peer and supervisory review procedures in-place for the Central Purchasing and Leasing Sections.

In addition to responding to your recommendations, I would like to offer the following as it relates to your conclusions. Page 5 of your letter states *corrective action taken due to vendor's lost proposal was misapplied by DOA*.

The department made an extraordinary effort to correctly apply the law and follow the process that was agreed to in writing by all parties in the only practical manner possible. I recognize the Administrative Law Judge found otherwise, however it was determined at the time to not be in the State's best interest to challenge the decision but to move forward and comply with the finding.

Thank you for the careful and thoughtful audit of the DOA's professional services procurements. Please contact me directly should you have any questions regarding the contents of this memorandum.

Sincerely,



Kevin Brooks
Acting Commissioner

Attachments: Proper Handling of Formal Bids and Proposals
Peer review process for Facility Section procurements (email)

cc: Eric Swanson
Director
Division of Administrative Services

Vern Jones
Chief Procurement Officer
Division of General Services

PROCUREMENT INFORMATION MESSAGE

Procurement Information Message # 75
Division of General Services

October 2006
Juneau 465-2250

PROPER HANDLING OF FORMAL BIDS AND PROPOSALS

The purpose of this Procurement Information Message is to provide guidance regarding the initial receipt and subsequent handling of formal bids and proposals. Formal bids and proposals must be handled in a careful manner to ensure bids or proposals received by the state are not misplaced or overlooked.

State regulation and policy (see 2 AAC 12.150 & 240 and AAM 81.310 & 460) requires bids and proposals to:

- have the date and time of receipt by the state noted on the envelope, package or box,
- be stored in a secure location, and
- be recorded on a register after the deadline for receipt of proposals or bid opening.

However, those procedures may not provide adequate security to prevent the misplacement of bids or proposals between the time of initial receipt and solicitation opening. The Division of General Services has developed the attached "Formal Bid and Proposal Tracking Form" to maintain the integrity of the process and provide an extra safeguard against misplacement of formal bids or proposals.

When used, this form becomes part of the official procurement record and must be kept as part of the solicitation file. As bids or proposals are received, pertinent information is logged on the form, including the number of boxes or envelopes that make-up the bid or proposal. The "Date/Time Received" shall be the actual date/time as noted on the envelope, package or box. If multiple items are received from the same offeror the items should also be directly labeled sequentially (1 of 4, 2 of 4, etc).

The form may be updated by a bid clerk, procurement officer, or other official who is responsible for the security of formal bids and proposals received by the state. At solicitation opening, the procurement officer shall verify that all envelopes, packages or boxes received are accounted for and initial next to each log entry.

Formal Bid and Proposal Tracking Form
Solicitation # _____

Record bids or proposals in the spaces provided below as they are received.

INITIAL RECEIPT		Verified at Opening
Vendor Name: _____		Initials
Date/Time Received: _____ # of Boxes/Envelope: _____		
Received By: _____ <small>Printed Name/Signature</small>		
Vendor Name: _____		Initials
Date/Time Received: _____ # of Boxes/Envelope: _____		
Received By: _____ <small>Printed Name/Signature</small>		
Vendor Name: _____		Initials
Date/Time Received: _____ # of Boxes/Envelope: _____		
Received By: _____ <small>Printed Name/Signature</small>		
Vendor Name: _____		Initials
Date/Time Received: _____ # of Boxes/Envelope: _____		
Received By: _____ <small>Printed Name/Signature</small>		
Vendor Name: _____		Initials
Date/Time Received: _____ # of Boxes/Envelope: _____		
Received By: _____ <small>Printed Name/Signature</small>		
Vendor Name: _____		Initials
Date/Time Received: _____ # of Boxes/Envelope: _____		
Received By: _____ <small>Printed Name/Signature</small>		
Vendor Name: _____		Initials
Date/Time Received: _____ # of Boxes/Envelope: _____		
Received By: _____ <small>Printed Name/Signature</small>		

This form shall be maintained in the solicitation file and provided to the procurement officer at solicitation opening.

The procurement officer shall verify that all envelopes/packages/boxes indicated above are accounted for and initial next to each entry.

Subject: [Fwd: Re: Facilities Peer Review]

From: dan beerman <dan_beerman@admin.state.ak.us>

Date: Mon, 04 Dec 2006 13:11:28 -0900

To: Dave A Blaisdell <dave_blaisdell@admin.state.ak.us>

----- Original Message -----

Subject: Re: Facilities Peer Review

Date: Mon, 09 Oct 2006 06:51:06 -0800

From: Tanci Mintz <tanci_mintz@admin.state.ak.us>

Organization: State of Alaska

To: Michael J Szewc <michael_szewc@admin.state.ak.us>, Demetria S Veasy <demetria_veasy@admin.state.ak.us>

CC: Barbie Smedley <barbie_smedley@admin.state.ak.us>, Gary C Ulmer <gary_ulmer@admin.state.ak.us>, John Schauwecker <john_schauwecker@admin.state.ak.us>, Dan C Beerman <dan_beerman@admin.state.ak.us>, Vern Jones <vern_jones@admin.state.ak.us>, Wendy M Gillespie <wendy_gillespie@admin.state.ak.us>

References: <4527D171.9090101@admin.state.ak.us>

Mike & Demetria:

Would you both make time this morning to review the peer review process with all the Juneau facilities staff to confirm everyone completely understand the process and be available to answer any questions?

Tanci

Tanci Mintz wrote:

For years now the Anchorage office has established and followed a peer review practice for all outgoing documents. This practice will now also be implemented in the Juneau office. Following are the steps:

Step 1) Author's of **all** outgoing documents shall provide the original to their assigned peer (in a folder labeled peer review) for their review, comment and acknowledgment by initialing at the signature block.

Step 2) Copy of the peered document shall be faxed to the attention of Tanci and/or Mike for their final peer review. After the final peer review has been completed the signing page will be initialed and returned. This copy must be kept in the project / contract folder.

This process will provide an improved end product and help to eliminate errors. It will also provide everyone with a knowledge of all the multiple projects and happenings which is key to a team approach.

The assignment of first peers is changed every few months to provide interaction with everyone. At this time the peers shall be:

Dan provides his documents to John (this does not eliminate the need for Tom Erickson to act as the CO III of record if that is how the project has been set up).

John provides his documents to Dan

Barbie provides her documents to John

Gary provides (if you have any!) to Dan

Again, **final** peers for all of the Juneau staff are:

Tanci and Mike

This process will add 1-3 days in the processing of your final documents, take this into account as you schedule your priorities. Mike and Demetria, if I've left any points out please feel free to add your comments.

Thanks everyone,
Tanci