

ALASKA PERMANENT FUND CORPORATION

SUBJECT: Procurement Delegation/Regulations

ACTION: XX

DATE: December 14, 2015

INFORMATION: _____

Staff recommends pursuing legislation to add the Alaska Permanent Fund Corporation to the list of public corporations authorized to adopt customized procurement procedures, so long as such procedures are similar to the State Procurement Code. If such legislation is enacted and signed into law, the Board would then be required to adopt regulations to govern the procurement of supplies, services, and professional services which meet the intent of the State Procurement Code, while still allowing the Corporation to tailor these procurement procedures to enhance its ability to achieve the statutory mission of prudently investing and managing assets of the Alaska Permanent Fund. Importantly, this proposed change would bring the procurement of all supplies and services within the control of the Board rather than an external agency.

Background and Grounds for Recommendation:

Under existing law (AS 36.30.850(a)(13) and (15)), the APFC is fully exempt from the application of the State Procurement Code when it acquires income-producing assets, or delegates, in whole or in part, its investment authority. When procuring all other supplies and services, the Corporation is considered an “agency” that is required to comply with the State Procurement Code (AS 36.30.005 – AS 36.30.995), including the regulations and administrative manuals adopted pursuant to this state law.

The procedures of the State Procurement Code are designed around the concept of providing a framework for fair competition and obtaining an acceptable product or service at the lowest price. These procedures include specific timeframes, noticing requirements, amendment dollar thresholds, and evaluation criteria with a cost emphasis that often hinders Corporation’s ability to secure the desired resources quickly enough to meet the Fund's needs. While there is a mechanism for obtaining approval from the Chief Procurement Officer to deviate from the State Procurement process, this in itself creates delays and difficulties, and can leave decisions that impact Fund investments in the hands of another agency.

More specifically, the APFC’s procurement staff has found it administratively difficult to secure the investment-related goods and services in a timeframe that meets the deadlines for investments. As the Corporation moves into more internally managed investments, it is imperative to have the flexibility (i.e. nimbleness) to secure specialized consultants and subject matter experts necessary for conducting the required due diligence needed to make timely and sound investment decisions.

Additionally, financial information and system tools for assessing, tracking, and monitoring investments are extremely challenging to procure in a timeframe that meets the Corporation's business needs.

In addition to time delays, the State Procurement Code regulations require the use of evaluation criteria that, at times, places too much emphasis on cost at the expense of quality or experience. While the Corporation has been successful in requesting approval to reduce the weight of the cost factor from 40 percent to 20 percent, this simply highlights another instance in which adoption of customized procurement procedures would allow APFC to tailor the procurement process to provide the product or services that best meets the Fund's needs.

Other State public corporations (including the Alaska Railroad Corporation, the Alaska Aerospace Corporation, The Alaska Housing Finance Corporation, The Alaska Industrial Development and Export Authority, and the Alaska Retirement Management Board) have identified similar administrative difficulties in complying with all of the requirements of the State Procurement Code. In response, these State public corporations have been excluded from the definition of an "agency" (AS 36.30.9901(1)(B)) subject to the State Procurement Code, but this exclusion was made contingent upon: (1) the adoption of regulations to govern the procurement of supplies and services; and (2) the adopted regulations must be similar to the procedures contained in the State Procurement Code.

For demonstrative purposes, attached is a copy of the procurement regulations adopted by the Alaska Retirement Management Board. Because of the similarity in mission between the ARMB and the Corporation, these regulations could serve as a good starting point for the Board to consider should the Board decide in support of this legislative proposal.

The next step should this legislative proposal get approved by the Board, would be for staff to find a bill sponsor to guide the bill through the legislative review and approval process. If approved by the Legislature, and signed into law by the Governor, the Board would then be required to put forth regulations. These proposed regulations would be subject to a fifteen day public notice and comment period before they could be adopted.

Regulations would be drafted to maintain the competitive and transparent objectives of the State's procurement practices, but in a manner that enhances the Corporation's ability to achieve its statutory mission. At this juncture, the following areas have been highlighted as goals for the regulations to better tailor procurement practices to meet the needs of the APFC's mission:

1. Reducing the time delays inherent in the existing procurement process, which hinder business operations;
2. Structuring the evaluation criteria based on the specific procurement needs, with the ability to weight the cost component appropriately when the service or expertise is critical to the procurement;
3. Structuring a limited competition procurement process to allow the Corporation to secure essential and specialized expertise or services when only a handful of qualified vendors are available to provide such services or supplies.
4. Structuring an emergency procurement process that will allow the Corporation to respond quickly to fast moving investment opportunities that would otherwise be forgone using a standard procurement solicitation, assuming such an expedited process is in the Fund's best interest;
5. The attainment of simplified procedures to gain efficiencies and cost-savings where appropriate.

Attachments

Draft legislation and the ARMB's current procurement regulations are attached for consideration.

Proposed Motion:

"I move that that staff be authorized to pursue and find support for legislation to authorize the Corporation to adopt its own procurement procedures, so long as such procedures are similar to the State Procurement Code, but are tailored to enhance the Corporation's ability to achieve its statutory mission."

"An Act relating to the State Procurement Code and its application to the the Alaska Permanent Fund Corporation; relating to the adoption of procurement regulations by the Alaska Permanent Fund Corporation; and providing for an effective date."

* **Section 1.** AS 36.30.015 is amended by adding a new subsection to read:

(l) The board of trustees of the Alaska Permanent Fund Corporation shall adopt procedures to govern the procurement of supplies, services, and professional services. The procedures must be similar to the procedures described in this chapter and in regulations adopted under this chapter. Notwithstanding the other provisions of this subsection, The Alaska Permanent Fund Corporation shall comply with the five percent preference under AS 36.30.321(a) and the requirement that contracts for legal services be approved by the Attorney General under (d) of this section.

* **Sec. 2.** AS 36.30.990(1)(B) is amended by adding a new subparagraph to read:

(xi) the Alaska Permanent Fund Corporation;

* **Sec. 3.** AS 37.13.206 is amended to read:

(a) The board may adopt regulations to carry out the purposes of this chapter and shall adopt regulations under AS 37.13.120(a) **and AS 36.30.015(l)**. The provisions of AS 44.62 (Administrative Procedure Act) regarding the adoption of regulations do not apply to the regulations of the corporation.

* **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

**Summary of Proposed Legislation re:
Procurement by APFC**

There are four parts to the proposed legislation:

- **1. Excluded from the Definition of “Agency”**-Section 2 of the bill would add the Alaska Permanent Fund Corporation (APFC) to the list of state entities that are not included in the definition of an “agency”, which has the effect of removing APFC from direct application of the State Procurement Code.

- **2. Required to Adopt Procurement Procedures**-Section 1 of the bill would then obligate the APFC to adopt its own procedures to govern the procurement of supplies and services. Section 1 of the bill would also set some sideboards on these procedures:
 - Procedures must be similar to those that currently exist under the State Procurement Code and regulations.
 - Procedures must apply five percent preference to Alaska bidders under AS 36.30.321
 - Procurement of legal services must be approved by the Attorney General under AS 36.30.015(d)

- **3. Required to Adopt Procedures by Regulation**- Section 3 of the bill amends an existing APFC statute regarding regulations of the Board to require the Board to adopt regulations to implement the procurement procedures required by section 1 of the bill. There are no changes proposed to the process by which the Board adopts regulations, only a requirement that regulations be adopted to implement these changes.

- **4. Immediate Effective Date**-Section 4 of the bill provides for an immediate effective date, which would have this change in law take effect the day after it is signed into law by the Governor. This could shorten by a number of months the period of time it would take for the Board to replace the existing procurement procedures with its own procedures.