



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

**Department of
Health and Social Services**

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April 15, 2021

The Honorable Click Bishop
Co-Chair, Senate Finance Committee
Alaska State Senate
Alaska State Capitol Room 516
Juneau, AK 99801

The Honorable Bert Stedman
Co-Chair, Senate Finance Committee
Alaska State Senate
Alaska State Capitol Room 518
Juneau, AK 99801

Dear Senator Bishop and Senator Stedman:

This letter presents responses to the Senate Finance Committee member questions received by the Department of Health and Social Services (DHSS) at the Wednesday, April 14, 2021 Senate Finance Committee hearing on HB 76 Extending COVID-19 Disaster Emergency.

Emergency Procurement

As part of the limited authority the administration is requesting – coordination, allocation, distribution and management of vaccine doses and therapeutics during a public health emergency – these actions should be supported by emergency procurement procedures under AS 36.30.310.

AS 36.30.310. Emergency Procurements. *Procurements may be made under emergency conditions as defined in regulations adopted by the commissioner when there exists a threat to public health, welfare, or safety, when a situation exists that makes a procurement through competitive sealed bidding or competitive sealed proposals impracticable or contrary to the public interest, or to protect public or private property. An emergency procurement need not be made through competitive sealed bidding or competitive sealed proposals but shall be made with competition that is practicable under the circumstances. A written determination by the chief procurement officer of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The written determination must include findings of fact that support the determination. Except when there is insufficient time for the chief procurement officer to make the written determination required by this section, the chief procurement officer may not delegate the authority to make the determination.*

DHSS uses standard procurement process to follow the Invitation for Bid (IFB) or Request for Proposal (RFP) process as outlined in Alaska Statute 36.30.110 and 36.30.210.

When using the current competitive process, there is generally a long public notice period. For example, State procurement code in Alaska Statute 36.30.130 requires a procurement officer to give adequate public notice of the invitation to bid at least 21 days before the date for the opening of bids.

Request for proposal processes include seven primary steps which are: (This time-period can take between 30 days to six months depending on the complexities of the proposal.)

- development of the request for proposal
- defining the scope of services
- posting the proposal online
- responding to clarifying questions from potential bidders
- a reasonable pause to allow bidders to submit a complete and responsive proposal
- forming a review committee to review and select the successful bidder,
- and finally, a 10-day protest period

Alaska statute procurement codes provide an opportunity for maximum competition and opportunity for better pricing. And yes, DHSS's intent is to follow the normal procurement processes as much as possible. These processes are specifically tailored for a normal procurement environment, but the normal process takes time.

The authority to procure on an emergency basis is a recognized exception in our State procurement code at Alaska Statute 36.30.310, 2 Alaska Administrative Code 12.440 and Alaska Administrative Manual 81.510. Emergency procurement procedures are also a uniquely recognized aspect of other Federal and local government procurement rules. For example, the Federal Acquisition Regulations (FAR) recognizes in FAR Part 18, under Emergency Acquisitions, that certain situations like the COVID-19 pandemic requires more flexible procurements in order to protect life, welfare and safety of our citizens.

While emergency procurements are initially used, we will use the standard competitive RFP process to follow up with long term contracts. The department has done this throughout the State's response to COVID-19.

Senator Olson asked if there is a cap on the amount of a contract that can be done utilizing emergency procurement under AS 36.30.310. The department reached out to the Chief Procurement Officer in the Department of Administration. The cap is not limited to amount, it is limited to time frame. Emergency procurements can be used to acquire supplies and/or services to address the immediate threat or emergency and should only last for the period reasonably needed to allow for a follow-on contract that will utilize standard competitive process.

Since the issuance of the initial March 11, 2020 disaster declaration, the department has followed the emergency procurement process accordingly. All long-term contracts that were procured under emergency procurement were followed up with a competitive bid process. In some situations, the contractors changed after the competitive bid process was completed. The department is flexible enough to use emergency procurement to address an immediate situation and followed up with a competitive bid process.

Sincerely,

A handwritten signature in dark ink, appearing to read 'A. Crum', with a long horizontal flourish extending to the right.

Adam Crum
Commissioner

CC: The Honorable David Wilson, Alaska State Senate
 The Honorable Lyman Hoffman, Alaska State Senate
 The Honorable Natasha von Imhof, Alaska State Senate
 The Honorable Bill Wielechowski, Alaska State Senate
 The Honorable Donny Olson, Alaska State Senate
 Mr. Miles Baker, Legislative Director, Office of Governor Mike Dunleavy