



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

Office of the Governor

OFFICE OF MANAGEMENT AND BUDGET
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March 19, 2019

Senator Bert Stedman, Co-Chair
Senate Finance Committee
State Capitol, Rm 518
Juneau, AK 99801

Senator Natasha von Imhof, Co-Chair
Senate Finance Committee
State Capitol, Room 516
Juneau, AK 99801

Dear Co-Chairs Stedman and von Imhof,

Below, please see the responses to questions asked during the Office of Management and Budget's presentation to the Senate Finance Committee on March 14, 2019 and again this morning, March 19, 2019.

1. *Senator Olson: Please provide the list of sole source contracts issued for the disaster relief response.*

Department of Transportation and Public Facilities:

Alaska Statute 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 nor 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.

Federal Highway Administration Emergency Relief Manual - Chapter V.M.1.c - Negotiated Contract

Under certain emergency circumstances where it is critical to restore essential travel in an expedited manner, it may be appropriate to enter into a negotiated contract with one firm. The contracting agency must document the process it used for selecting and negotiating a reasonable price with a single firm. States are encouraged to use negotiated contracts only when the State determines that the circumstances are such that competitive bidding is not effective nor feasible. Lump sum contracting should be used only when unusual or rare circumstances are present, making it virtually impossible to estimate quantities of work for a competitively bid unit-price contract or a cost reimbursable negotiated contract.

Department of Military and Veterans' Affairs:

The State of Alaska (SOA) Public Assistance Program mirrors the Federal Emergency Management Agency's (FEMA) and federal Office of Management and Budget procurement laws and regulations. This includes complying with the basic tenets of maximizing fair and open procurement methods. In general, the State of Alaska and its agencies are authorized by FEMA to utilize Alaska's Procurement Code established in Title 36, Chapter 30, of the Alaska Statutes and accompanying procurement regulations in the Title 2, Chapter 12, of the Alaska Administrative Code. Local jurisdictions, school districts, and certain private non-profits that are eligible for disaster funding must comply with local procurement regulations or federal regulations – whichever is stricter.

In general, SOA and FEMA discourage the use of any non-competitive procurements for disaster response and recovery work. However, exceptions are made during the immediate response to a catastrophe, and generally are for work performed under categories known as "emergency work". Emergency work includes debris removal and emergency protective measures (e.g. sandbagging operations, other types of flood-fighting, evacuations, etc.). Sole source procurements can be performed under permanent repair and restoration categories of work, but they require substantial scrutiny and pre-approval before the procurements are made. If an agency performing disaster response and recovery work does not obtain pre-approval, it is likely they will not be reimbursed for those costs. (Pre-approval is not required for emergency work, although a procurement method report detailing the justification for non-competitive procurements is still required.)

Attached are three documents developed by the Department of Military and Veterans' Affairs, Division of Homeland Security and Emergency Management, to assist disaster grant applicants with understanding the legal requirements for all procurements, and the process to request alternate (non-competitive) procurements.

For the 2018 Cook Inlet Earthquake Disaster, the Public Assistance program is in the beginning phases. As we work with agencies and jurisdictions who responded to the initial disaster, and who are responsible for long-term reconstruction and restoration activities, the department will be able to provide the Finance Committees with a list of any sole source contracts procured for the disaster. Specifically for this disaster, the Department requested that FEMA deploy a Procurement Disaster Assistance Team to provide training at the beginning of the recovery process to all State and local disaster grant applicants. The team is comprised of FEMA attorneys who are subject matter experts in procurement law, and to date they have trained over 110

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individuals in disaster procurement law and applicant responsibilities. The team is available to all disaster applicants throughout the recovery phase of this disaster.

Please let me know if you have additional questions.

Sincerely,



Donna Arduin, Director
Office of Management and Budget

Enclosures

1. DOT&PF Prime Contractor – Sole Sourced – Earthquake Responders
2. Procurement Handout – DMVA
3. Procurement Method Report for Disaster Grants as of Sept 15 – DMVA
4. Request for Pre-Approval of Sole Source and Above \$50,000 Procurement For DHS&EM Disaster Grants

cc: Ms. Suzanne Cunningham, Director, Governor's Legislative Office
Mr. David Teal, Director, Legislative Finance Division