

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-2450
LAA.Legal@akleg.gov
120 4th Street, Room 3


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

September 29, 2022

SUBJECT: Legislative Procurement Procedures: Section 020 Amendment
(Work Order No. 33-LS0111)

TO: Representative Sara Hannan
Legislative Council Chair
Attn: Tim Clark

FROM: Emily Nauman
Deputy Director 

You requested a memorandum explaining the attached draft amendment to sec. 020 of the Legislative Procurement Procedures (LPP). The amendment clarifies changes made by a conceptual amendment approved by the Legislative Council on December 16, 2021. This memorandum sets out the history of the changes to sec. 020, including the 2021 conceptual amendment to sec. 020, and explains the effects of the attached draft amendment.

History

On December 16, 2021, Legislative Council considered an amendment to the LPP to increase the monetary cap exempting contracts from the LPP. Prior to the amendment, the LPP exempted contracts of less than \$35,000 each year, and sec. 020(a) read:

These procedures apply to all contracts entered into after December 31, 1987, for services, professional services, supplies, or construction to be provided to a legislative agency or legislative committee except:

...

(2) contracts that do not exceed \$35,000 each year;

...

At the December 16, 2021, meeting, the Legislative Council considered an amendment increasing the amount in sec. 020(a)(2) from \$35,000 to \$50,000 each year. During the meeting, the Legislative Council instead adopted a conceptual amendment to sec. 020, increasing the amount of the exemption to \$50,000 for contracts "for Legislative Council" and to \$40,000 for all other contracts.¹

¹ Meeting of the Alaska Legislative Council, December 16, 2021, beginning at 1:01:00.

Section 020, as amended by the 2021 conceptual amendment, currently reads:

These procedures apply to all contracts entered into after December 31, 1987, for services, professional services, supplies, or construction to be provided to a legislative agency or legislative committee except:

...

(2) contracts that do not exceed

(A) \$50,000 each year and that are authorized by Legislative Council;

(B) \$40,000 each year and that are authorized by a legislative agency or legislative committee other than Legislative Council;

Issue

Problems with applying sec. 020, as amended in 2021, were subsequently identified. Specifically, it is not clear which contracts are subject to the \$50,000 exemption because it is ambiguous which contracts are "authorized" by Legislative Council (or by a legislative agency or legislative committee other than Legislative Council).

The term "authorized" only appears in one other section of the LPP, sec. 150,² which requires Legislative Council authorization for certain contracts. However, sec. 020

² Section 150(b) of the Alaska Legislative Procurement Procedure states:

(b) Contracts and amendments to contracts must be authorized as follows:

(1) contracts involving House operating funds must be authorized by the Speaker of the House and a majority of the members of the Legislative Council in a meeting, except that contracts for legal services need be authorized by the Speaker only;

(2) contracts involving Senate operating funds must be authorized by the President of the Senate and a majority of the members of the Legislative Council in a meeting, except that contracts for legal services need be authorized by the President only;

(3) contracts of a legislative committee must be authorized by a majority of the members of the committee in a meeting;

(4) contracts of the Legislative Affairs Agency must be authorized by a majority of the members of the Legislative Council in a meeting of the Legislative Council;

(5) contracts of the Legislative Finance Division and the Legislative Audit Division must be authorized by a majority of the members of the Legislative Budget and Audit Committee in a meeting of the committee;

(6) contracts of a research agency established by the legislature must be authorized by a majority of the members of the Legislative Council in a meeting.

exempts contracts from applicability of the remainder of the LPP. In other words, sec. 150 cannot be considered to determine which contracts are "authorized" by Legislative Council. Because "authorized" is undefined, the term as used in sec. 020 could be construed narrowly, to only exempt contracts that are entered into by the Legislative Council. Alternatively, "authorized" could be interpreted more broadly to include all contracts that would otherwise come before the Legislative Council, but for the sec. 020(2) exemption.³ Without further direction from Legislative Council, application of the sec. 020(2) exemption will remain unclear.

Draft amendment

To resolve these ambiguities with sec. 020 as conceptually amended in 2021, the attached draft amendment aims to clarify the sec. 020(2) exemptions by listing which legislative agencies and legislative committees fall within the increased monetary amount for procurement exemptions (\$50,000). Specifically, the amendment exempts from the LPP contracts that do not exceed \$50,000 that are entered into by the Legislative Council and the Legislative Affairs Agency. All contracts entered into by another legislative agency or legislative committee are exempt if they do not exceed \$40,000.

Please review this proposed amendment carefully to be sure it captures the intent of the Council.

If I may be of further assistance, please advise.

ELN:boo

22-172.boo

Attachment

³ Under this reading, it is unclear which exemption would apply to contracts involving House or Senate operating funds, since those contracts must be approved by both the Legislative Council and the Speaker of the House (for contracts involving House operating funds) under sec. 150(b)(1) or the President of the Senate (for contracts involving Senate operating funds) under sec. 150(b)(2).