

**ALASKA COURT SYSTEM
PROCUREMENT GUIDELINES
TABLE OF CONTENTS**

I.	GENERAL PROVISIONS.....	1
1-101	Authority for Guidelines	1
	1-101.01 Authority of administrative director.....	1
	1-101.02 Authority of supreme court.	1
	1-101.02.1 Court facility.....	1
1-102	Authority of Fiscal Office	2
	1-102.01 Delegation.	2
	1-102.02 Office supplies.....	2
	1-102.03 Duties.....	2
1-103	Authority for Library Purchases	4
1-104	Authority for Facilities Procurement.....	5
	1-104.01 Authority.....	5
	1-104.02 Duties.....	5
1-105	Ethics in Alaska Court System Procurement	6
	1-105.01 Conflict of interest.	6
	1-105.02 Definitions.	6
	1-105.03 Financial interest in a blind trust.....	6
	1-105.04 Discovery of actual or potential conflict of interest, disqualification, and waiver.	7
	1-105.05 Acceptance of gifts, entertainment, and loans.	7
	1-105.06 Nonessential purchases.	7
	1-105.07 Remedies for breach of ethical standards.	8
1-106	Exemptions From Procurement Guidelines	9
	1-106.01 Other purchases.	9
	1-106.02 Grants.	9
	1-106.03 Guest speakers.	9
	1-106.04 Professional witnesses.	9
	1-106.05 Advertising.	9
	1-106.06 Products or services manufactured by employment program or youth education and employment program.	9
	1-106.07 Products or services provided by the correctional industries program.....	9
	1-106.08 Real property.....	9
	1-106.09 Contracts with governmental entities.....	10
	1-106.10 Disposal of obsolete property.	10

	1-106.11	Curatorial and conservation services.....	10
	1-106.12	Rates set by law.....	10
	1-106.13	Travel.....	10
	1-106.14	Court-ordered appointments.....	10
	1-106.15	Compliance with terms.....	10
	1-106.16	Medical doctors and dentists.....	10
1-107		Public Access to Procurement Information.....	12
	1-107.01	Inspection.....	12
	1-107.02	Confidential records.....	12
II.		PROCUREMENT METHODS.....	13
2-201		General Provisions	13
	2-201.01	Procurement methods.....	13
	2-201.02	Division of requirements.....	13
	2-201.03	Non-discrimination in source selection.....	13
	2-201.04	Exclusion of prospective contractor from competition.....	13
	2-201.05	Solicitations	13
	2-201.05.1	Solicitation notices.....	13
	2-201.05.2	Failure to respond.....	13
	2-201.05.3	Public inspection.....	14
	2-201.06	Bid, performance, and payment bonds.....	14
	2-201.06.1	Bid bonds.....	14
	2-201.06.2	Performance and payment bonds.....	14
	2-201.06.3	Construction contracts.....	14
	2-201.06.4	Solicitation.....	14
	2-201.07	Equal employment opportunity contract compliance.....	14
	2-201.08	Prohibition of procurement from persons headquartered in certain countries.....	14
2-202		Competitive Sealed Bidding.....	15
	2-202.01	Conditions for use.....	15
	2-202.02	Invitation to bid.....	15
	2-202.02.1	Use.....	15
	2-202.02.2	Content.....	15
	2-202.02.3	Incorporation by reference.....	16
	2-202.02.4	Acknowledgement of amendments.....	16
	2-202.03	Public notice.....	16
	2-202.03.1	Time of notice.....	16
	2-202.03.2	Publication.....	16
	2-202.03.3	Content.....	16
	2-202.03.4	Other notice.....	16
	2-202.03.5	Duplication costs.....	16
	2-202.03.6	List of prospective bidders.....	16

2-202.04	Pre-bid conferences.	17
2-202.05	Amendments to invitations to bid.	17
2-202.05.1	Form.....	17
2-202.05.2	Distribution.	17
2-202.05.3	Timeliness.....	17
2-202.06	Extension of solicitation.	17
2-202.07	Pre-opening modification or withdrawal of bids.	17
2-202.07.1	Procedure.....	17
2-202.07.2	Disposition of bid security.....	18
2-202.07.3	Records.	18
2-202.08	Late bids, late withdrawals, and late modifications.	18
2-202.08.1	Definition.	18
2-202.08.2	Treatment.	18
2-202.08.3	Notice.....	18
2-202.08.4	No action against bidder.....	18
2-202.09	Receipt, opening and recording of bids.	18
2-202.09.1	Submittal.	18
2-202.09.2	Receipt.....	18
2-202.09.3	Opening and recording.	19
2-202.09.4	Confidential data.....	19
2-202.10	Mistakes in bids.....	19
2-202.10.1	General.	19
2-202.10.2	Mistakes discovered before bid opening.	19
2-202.10.3	Mistakes discovered after opening but before award.	19
2-202.10.4	Mistakes discovered after award.....	20
2-202.10.5	Written determination.....	20
2-202.10.6	Confirmation of bid.....	20
2-202.11	Bid acceptance.	20
2-202.12	Bid evaluation and award.	21
2-202.12.1	General.	21
2-202.12.2	Responsibility and responsiveness.....	21
2-202.12.3	Product acceptability.	21
2-202.12.4	Nonresponsive bids.	21
2-202.12.5	Rejection for nonresponsibility.	22
2-202.12.6	Conditional bids.....	22
2-202.12.7	Alternate bids.....	22
2-202.12.8	Prompt payment discounts.	22
2-202.12.9	Bidder preferences.....	22
2-202.12.10	Restrictions.....	23
2-202.13	Low tie bids.....	24
2-202.13.1	Definition.	24
2-202.13.2	Award.....	24
2-202.14	Notice of intent to award.....	24
2-202.14.1	Contents of notice.	24

2-202.14.2	Notice is not formal award.....	24
2-202.15	Documentation of award.....	24
2-202.16	Subcontractors for construction contracts.....	24
2-202.16.1	List of subcontractors.....	24
2-202.16.2	Replacement of subcontractor.....	25
2-202.16.3	Penalties.....	25
2-202.16.4	Inapplicability to design-build construction contracts.	26
2-202.17	Bid cancellation.	26
2-202.17.1	Reasons for cancellation.	26
2-202.17.2	Procedures.....	26
2-202.18	Rejection of all bids.....	27
2-202.18.1	Reasons for rejection.....	27
2-202.18.2	Notification.....	27
2-202.18.3	Records.	27
2-202.19	Rejection of individual bids.	28
2-202.19.1	Reasons for rejection.....	28
2-202.20	Only one bid received.	28
2-202.21	Qualified bidders.	28
2-203	Multi-Step Sealed Bidding.....	30
2-203.01	Definition.....	30
2-203.02	Conditions for use.....	30
2-202.03	Pre-bid conferences in multi-step sealed bidding.....	30
2-203.04	Procedure for phase one of multi-step sealed bidding.....	30
2-203.04.1	Form.....	30
2-203.04.2	Amendments to the invitation to bid.....	31
2-203.04.3	Receipt and handling of technical offers.....	31
2-203.04.4	Evaluation of technical offers.....	31
2-203.04.5	Discussion of technical offers.....	32
2-203.04.6	Notice of unacceptable technical offer.....	32
2-203.05	Mistakes during multi-step sealed bidding.	32
2-203.06	Procedure for phase two.....	32
2-203.06.1	Initiation.....	32
2-203.06.2	Conduct.	32
2-204	Competitive Sealed Proposals.....	34
2-204.01	General discussion.....	34
2-204.01.1	When use of competitive sealed proposals is advantageous.....	34
2-204.02	Conditions for use.....	35
2-204.03	Bid procedures apply.....	36
2-204.04	Public notice of competitive sealed proposals...	36
2-204.05	Contents of the request for proposals.....	36

2-204.06	Correction, modification or withdrawal of proposals.	37
2-204.07	Pre-proposal conferences.	37
2-204.08	Amendments to requests for proposals.....	37
2-204.09	Late proposals, late corrections, late modifications, and late withdrawals.	37
2-204.10	Receipt and registration of proposals.	38
2-204.11	Opening of proposals.....	38
2-204.12	Evaluation of proposals.	38
2-204.12.1	Evaluation committee.....	38
2-204.12.2	Evaluation meetings.....	38
2-204.12.3	Evaluation factors.....	38
2-204.12.4	Cost, bidder preferences, and cost formula.....	38
2-204.12.5	Non-discrimination.....	39
2-204.12.6	Selection.....	39
2-204.12.7	Written record.	39
2-204.12.8	Proposals from debarred offerors.....	40
2-204.13	Only one responsive proposal received.....	40
2-204.14	Proposal discussions with individual offerors. ..	40
2-204.14.1	Classifying proposals.	40
2-202.14.2	"Offerors" defined.	40
2-204.14.3	Purposes of discussions.	40
2-204.14.4	Conduct of discussions.	40
2-204.14.5	Evaluation adjustments.	41
2-204.14.6	Best and final proposals.....	41
2-204.14.7	Final evaluations.....	41
2-204.14.8	Memorandum of evaluation.	41
2-204.15	Mistakes in proposals.	41
2-204.15.1	Pre-opening modification or withdrawal of proposals.	41
2-204.15.2	Confirmation of proposal.....	42
2-204.15.3	Mistakes discovered after receipt of proposals..	42
2-204.15.4	Mistakes discovered after award.....	43
2-204.15.5	Determinations required.	43
2-204.16	Negotiation and award of contract.....	43
2-204.16.1	Contract negotiations.....	43
2-204.16.2	Award.....	43
2-204.16.3	Contract execution.	43
2-204.16.4	Failure to negotiate contract.	44
2-204.17	Multi-step sealed proposals.	44
2-205	Limited Competition Procurements	45
2-205.01	Conditions for use.	45
2-205.02	Written explanation.	45
2-205.03	Public notice.	45
2-206	Small Purchases	46

	2-206.01	Definition.....	46
	2-206.02	Procedures for procurement of \$10,000 or less, and of specific items costing in excess of \$10,000	46
	2-206.03	Procedure for procurement of more than \$10,000, but no more than \$50,000	46
	2-206.04	Procedure for procurement of more than \$50,000, but no more than \$100,000 (more than \$50,000, but no more than \$200,000 for construction).....	47
	2-206.05	Procedure for procurement of leased space.....	48
	2-206.06	Preferences.	49
	2-206.07	Division of Requirements.	49
	2-206.08	Electronic media.....	49
	2-206.09	Established catalog prices.	49
2-207		Single Source Procurement	51
	2-207.01	Conditions for use.....	51
	2-207.02	Advertisement.....	52
	2-207.03	Negotiation.....	52
	2-207.04	Record.	52
2-208		Emergency Procurement.....	53
	2-208.01	Definition of emergency conditions.....	53
	2-208.02	Scope of emergency procurement.....	53
	2-208.03	Procurement methods.....	53
	2-208.04	Authority.....	53
	2-208.05	Determination and record of emergency procurement.....	53
	2-208.05.1	Determination.....	53
	2-208.05.2	Record.	54
2-209		Innovative Procurement	55
	2-209.01	Conditions for use.	55
	2-209.02	Procedure.....	55
	2-209.03	Notice.....	55
	2-209.04	Records.	55
2-210		Professional Services.....	56
	2-210.01	Definition.	56
	2-210.02	Applicable procedures for contracts of \$100,000 and below.	56
	2-210.03	Applicable procedures for contracts over \$100,000.....	56
	2-210.03.1	Contents of requests for proposals.....	56
	2-210.03.2	Architectural, engineering or land surveying services.	57

	2-210.03.3	Evaluation.	57
	2-210.03.4	Pre-proposal conferences.	58
	2-210.03.5	Receipt and handling of proposals.	58
	2-210.03.6	Discussions.	58
	2-210.03.7	Modification or withdrawal of proposals.	59
	2-210.03.8	Selection of the best qualified offerors.	59
	2-210.03.9	Negotiation and award of contract.	59
	2-210.03.10	Notice of intent to award.	60
	2-210.04	Legal services.	61
2-211		Contracts Awarded by the State of Alaska or Federal Government	62
	2-211.01	Office supplies.	62
	2-211.02	Purchases by fiscal office.	62
	2-211.03	Purchases through General Services Administration.	62
2-212		Design-Build Construction Contracts	63
	2-212.01	Purpose.	63
	2-212.02	General design-build requirements.	63
	2-212.03	Design-builders.	63
	2-212.04	Development of performance criteria.	65
	2-212.05	Solicitation of proposals.	65
	2-212.06	Preparation and submission of proposals.	67
	2-212.07	Evaluation and award of design-build contracts.	68
	2-212.08	Protests and claims.	70
2-213		Responsibility of Bidders	71
	2-213.01	Definition.	71
	2-213.02	Standards of responsibility.	71
	2-213.03	Information pertaining to responsibility.	71
	2-213.04	Ability to meet standards.	71
	2-213.05	Right of non-disclosure.	72
	2-213.06	Written determination of nonresponsibility required.	72
III.		SPECIFICATIONS	73
3-301		Specifications	73
	3-301.01	Purpose.	73
	3-301.02	Policy.	73
	3-301.03	Procedures for the development of specifications.	73
	3-301.03.1	Usual preparation.	73
	3-301.03.2	Special expertise.	73
	3-301.03.3	Use of functional or performance descriptions. .	73
	3-301.03.4	No restrictive specifications.	73

3-301.03.5	Review.	74
3-301.04	Form of specifications.	74
3-301.04.1	Design specifications.....	74
3-301.04.2	Performance specifications.....	74
3-301.04.3	Brand name specification.....	74
3-301.04.4	Brand name or equal specification	74
3-301.05	Qualified products list.....	75
3-301.05.1	Use.....	75
3-301.05.2	Solicitation.....	75
3-301.05.3	Testing and confidential data.....	75
3-301.05.4	No prequalification.....	75
IV.	LEGAL & CONTRACTUAL REMEDIES.....	76
4-401	Legal Remedies.....	76
4-401.01	Right to protest.....	76
4-401.01.1	Protests of small purchases.....	76
4-401.02	Filing of protest.....	77
4-401.02.1	When filed.	77
4-401.02.2	Form.....	77
4-401.02.3	Requested information; time for filing.....	78
4-401.02.4	Notice of a protest.	78
4-401.02.5	Stay of procurement.....	78
4-401.02.6	Decision by the fiscal office.	78
4-401.02.7	Decision without hearing.....	79
4-401.03	Hearing procedures.....	79
4-401.03.1	Scheduling.	79
4-401.03.2	Hearing officer.	79
4-401.03.3	Notice of hearing.	79
4-401.03.4	Authority of hearing officer.....	79
4-401.03.5	Hearings.	80
4-401.03.6	Records.	80
4-401.03.7	Witnesses.....	80
4-401.03.8	Bid preparation costs.....	80
4-401.04	Final decision.....	81
4-401.04.1	Recommendation and decision.....	81
4-401.04.2	Protest upheld before award.	81
4-401.04.3	Protest upheld after award.	81
4-401.04.4	Judicial appeals.....	81
4-402	Debarment of Vendors from Consideration for Contracts	82
4-402.01	Authority to debar.....	82
4-402.02	Causes for debarment.....	82
4-402.03	Notice of proposed debarment.....	82
4-402.04	Hearing procedure.....	83
4-402.04.1	Written request.	83

	4-402.04.2	Procurement protest procedures apply.....	83
	4-402.04.3	Written decision.....	83
	4-402.05	Reinstatement.....	83
	4-402.05.1	Written statement.	83
	4-402.05.2	Determination by administrative director.....	83
	4-402.05.3	Hearing.	84
	4-402.05.4	Limited participation.	84
	4-402.06	List of persons debarred.....	84
4-403		Contractual Remedies	85
	4-403.01	Contract claims.....	85
	4-403.02	Time of Filing.	85
V.		CONTRACT FORMATION AND MODIFICATION.....	86
5-501		Contract Formation and Modification	86
	5-501.01	Types of contracts.....	86
	5-501.02	Out-of-state contracts.	86
	5-501.03	Right to inspect plant.....	86
	5-501.04	Right to audit records.	86
	5-501.05	Contractors and subcontractors.....	86
	5-501.06	Definite quantity contracts.	87
	5-501.07	Transfer.	87
	5-501.08	Multi-term contracts.	87
	5-501.08.1	General guidelines.....	87
	5-501.08.2	Written determination.....	87
	5-501.08.3	Contract cancellation.	88
	5-501.09	Leases.	88
	5-501.09.1	Occupancy periods.	88
	5-501.09.2	Rent exceeding certain amounts.....	88
	5-501.09.3	Lease-purchase agreements.	88
	5-501.09.4	Lease extensions authorized.....	89
VI.		INTERGOVERNMENTAL RELATIONS.....	90
6-601		Intergovernmental Relations.....	90
	6-601.01	Intergovernmental procurement.....	90
	6-601.02	Disposition of surplus supplies.	90
	6-601.03	Federal Assistance.....	90
VII.		RETENTION AND CONTENT OF PROCUREMENT RECORDS.....	91
7-701		Retention and Content of Procurement Records	91
	7-701.01	Procurement files.	91
	7-701.02	Single source and emergency procurement records.	91

7-701.03	Public inspection.....	91
----------	------------------------	----

VIII. DEFINITIONS OF TERMS USED IN THESE GUIDELINES 92

8-801	Definitions of Terms Used in These Guidelines	92
8-801.01	Accredited youth education and employment program	92
8-801.02	Alaska product.....	92
8-801.03	Approval plans.....	92
8-801.04	Archival materials.....	92
8-801.05	Audio-visual materials	93
8-801.06	Business.....	93
8-801.07	Business license.....	93
8-801.08	Construction	93
8-801.09	Contract.....	93
8-801.10	Design-build construction contract	93
8-801.11	Fiscal office.....	93
8-801.12	Interested party.....	93
8-801.13	Invitation to bid.....	93
8-801.14	May denotes the permissive	94
8-801.15	Minor informalities.....	94
8-801.16	Network information services.....	94
8-801.17	Nonresponsive.....	94
8-801.18	Person	94
8-801.19	Practicable	94
8-801.20	Procurement	94
8-801.21	Produced or manufactured.....	94
8-801.22	Product means materials or supplies.....	94
8-801.23	Professional services.....	94
8-801.24	Protester	95
8-801.25	Request for proposals.....	95
8-801.26	Requestor	95
8-801.27	Responsible bidder or offeror	95
8-801.28	Responsive bidder.....	95
8-801.29	Services.....	95
8-801.30	Solicitation	95
8-801.31	Specification	95
8-801.32	Supplies.....	95
8-801.33	User.....	96
8-801.34	Will, shall and must denote the imperative.	96
8-801.35	Written or in writing.....	96

I. GENERAL PROVISIONS

1-101 Authority for Guidelines

1-101.01 Authority of administrative director. The administrative director of the courts has the authority to adopt and publish procedures to govern procurement by the judicial branch of supplies, services, professional services, and construction. These procedures are based on competitive principles consistent with AS 36.30 and are adapted to the special needs of the judicial branch as determined by the administrative director of the courts. Under unusual and extenuating circumstances, the administrative director may waive the application of these guidelines. See Administrative Rule 1(o) (Appendix A). AS 36.30.030.

1-101.02 Authority of supreme court. The supreme court has authority over all matters relating to the planning, design, construction, leasing, maintenance, occupancy and operation of court facilities. The court shall cooperate with the Department of Transportation and Public Facilities so that court facility construction projects are carried out in accordance with the statutes and regulations applicable to state public works projects. AS 22.05.025(a).

1-101.02.1 Court facility. The term "court facility" means a state facility in which 75 percent or more of the net usable space is occupied by the court system and other justice-related agencies. AS 22.05.025(b).

1-102 Authority of Fiscal Office

1-102.01 Delegation. Responsibility for the procurement of supplies and services (other than services related to leasing and construction of court facilities) is delegated to the fiscal office by the administrative director. The fiscal office is the central procurement authority for the Alaska Court System, except as provided in this section. Under the supervision of the fiscal office, the purchasing office will manage the day-to-day operations of the procurement process.

1-102.02 Office supplies. On request by an area court administrator or the clerk of the appellate courts, the fiscal office may delegate to one or more persons in each court location the authority to procure office supplies. The delegation must be in writing and must specify any restrictions on the exercise of the delegated authority, whether the authority may be further delegated, and the duration of the delegation.

1-102.03 Duties. The duties of the fiscal office are as follows:

- (1) to prescribe the time, manner, and form of making requisitions for supplies and services;
- (2) to process requests for procurement;
- (3) to review specifications for accuracy, clarity, and suitability to the procurement;
- (4) after consultation with requestors, to determine which of the procurement methods specified in these guidelines will be followed;
- (5) to procure supplies, services, and professional services needed by the Alaska Court System;
- (6) to exercise general supervision and control over all inventories of supplies and to prescribe the manner in which supplies will be purchased, delivered, inspected, stored, inventoried, marked, and distributed;
- (7) to maintain a property inventory and control system;
- (8) to ensure vendor performance, including enforcement of warranties and guarantees;
- (9) to sell, trade or transfer excess supplies between courts and state departments, or otherwise dispose of surplus, obsolete, or unused supplies and make proper adjustments in accounting;

(10) to maintain all records pertaining to procurement by the Alaska Court System, including copies of all bid documents, contracts, and amendments;

(11) to prescribe standard forms for bids and contracts;

(12) to establish and maintain programs for the inspection, testing, and acceptance of supplies and services and the testing of samples submitted with bids;

(13) to join with other units of government in cooperative procurement ventures which will serve the best interests of the Alaska Court System; and

(14) to provide for other matters that the administrative director determines may be necessary to carry out the procurement function. AS 36.30.010.

1-103 Authority for Library Purchases

The responsibility for the selection and purchase of publications for use in law libraries is delegated to the state law librarian. If the law librarian and the fiscal office agree that an item can be procured competitively, procurement is the responsibility of the fiscal office.

1-104 Authority for Facilities Procurement

1-104.01 Authority. The facilities manager is responsible for procurement of construction and leasing of court facilities and related services as assigned by the administrative director. References to the "fiscal office" in these guidelines mean the "facilities manager" if the procurement concerns construction, leasing, or operation of court facilities.

1-104.02 Duties. The duties of the facilities manager are as follows:

- (1) to process requests for procurement of construction and leasing of court facilities and related services;
- (2) to review specifications for accuracy, clarity, and suitability to the procurement;
- (3) after consultation with requestors, to determine which of the procurement methods specified in these guidelines will be followed;
- (4) to procure services and professional services related to the construction, leasing, and operation of court facilities;
- (5) to maintain a building inventory and control system;
- (6) to ensure vendor performance, including enforcement of warranties and guarantees;
- (7) to maintain all records pertaining to procurement of construction and leasing of court facilities and related services by the Alaska Court System, including copies of all bid documents, contracts, and amendments;
- (8) to prescribe standard forms for bids and contracts of construction and leasing of court facilities and related services;
- (9) to establish and maintain programs for the inspection, testing, and acceptance of supplies and services and the testing of samples submitted with bids;
- (10) to join with other units of government in cooperative procurement ventures which will serve the best interests of the Alaska Court System; and
- (11) to provide for other matters that the administrative director determines may be necessary to carry out the procurement of construction and leasing of court facilities and related services. AS 36.30.030 .

1-105 Ethics in Alaska Court System Procurement

1-105.01 Conflict of interest. No Alaska Court System employee may participate directly or indirectly in a procurement when the employee knows that

(1) the employee or the employee's spouse, child, parent, brother or sister has a financial interest pertaining to the procurement;

(2) a business or organization in which the employee or employee's spouse, child, parent, brother or sister is involved has a financial interest pertaining to the procurement; or

(3) any other person, business, or organization with whom the employee or the employee's spouse, child, parent, brother, or sister is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

1-105.02 Definitions. In 1-105

(1) "participate directly or indirectly" means

(A) involvement through decision, approval, disapproval, recommendation, or preparation of any part of a procurement request;

(B) influencing the content of any specification or procurement standard; or

(C) rendering of advice, investigation, auditing, or participation in any other advisory capacity;

(2) "financial interest" means

(A) ownership or involvement in any property, business or relationship from which the person receives income; or

(B) holding a position in a business such as officer, director, trustee, partner or employee.

1-105.03 Financial interest in a blind trust. (a) If an employee or the employee's spouse, child, parent, brother, or sister holds a financial interest in a blind trust, the employee does not have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the administrative director.

(b) A blind trust is an independently managed trust in which the person has no management rights and in which the person is not given notice of any disposition of the property subject to the trust.

1-105.04 Discovery of actual or potential conflict of interest, disqualification, and waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file with the administrative director a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may request from the administrative director an advisory opinion as to what further participation, if any, the employee may have in the transaction.

1-105.05 Acceptance of gifts, entertainment, and loans. (a) An employee of the Alaska Court System may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the employee's personal or financial interest, under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment.

(b) This section does not prohibit

(1) the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the motivation for the transaction is unrelated to any procurement or program requirements with the Alaska Court System and is based upon a personal or family relationship;

(2) the participation in the activities of, or the acceptance of an award for, a meritorious public contribution or achievement from a charitable, religious, professional, social, or fraternal organization, or from a non-profit educational, recreational, public service, or civic organization;

(3) the acceptance of unsolicited advertising products or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value (under \$25).

1-105.06 Nonessential purchases. Procurement with Alaska Court System funds is limited to services, supplies, professional services and construction necessary to the administration of justice or to the operation of the court system. The following items are examples of nonessential purchases that may be procured at court system expense only upon the administrative director's written waiver and finding that the

procurement is not contrary to the court system's best interests, based on written justification from the requestor or fiscal office:

(1) Office Fixtures. Nonfunctional or nonessential office fixtures and equipment.

(2) Membership Dues. The administrative director may approve payment of membership dues by the Alaska Court System only in court-related professional associations and only if the director determines that these memberships directly benefit the court system. The chief justice may approve membership dues for the administrative director.

1-105.07 Remedies for breach of ethical standards. An employee whom the administrative director determines has breached these standards is subject to disciplinary action under the Alaska Court System personnel rules, including but not limited to oral or written reprimand, suspension, or dismissal.

1-106 Exemptions From Procurement Guidelines

1-106.01 Other purchases. These guidelines do not apply to the purchase of books except for those specified in 1-103 (Authority for Library Purchases); book binding services; newspapers; periodicals; audio-visual materials; network information services access; book binding services; approval plans; archival materials; objects of art; or items for museum or archival acquisition having cultural, historical, or archaeological significance. AS 36.30.850(b)(17).

1-106.02 Grants. These guidelines do not apply to grants, or to contracts for supplies or services for research projects funded by money received from the federal government or private grants. AS 36.30.850(b)(1), 36.30.850(b)(20).

1-106.03 Guest speakers. These guidelines do not apply to guest speakers, trainers or performers for an educational or cultural activity. AS 36.30.850(b)(21).

1-106.04 Professional witnesses. These guidelines do not apply to contracts for professional witnesses to provide for professional services or testimony relating to existing or probable lawsuits in which the state is or may become a party. AS 36.30.850(b)(2).

1-106.05 Advertising. These guidelines do not apply to procurements of contracts with the media for advertising. AS 36.30.850(b)(35).

1-106.06 Products or services manufactured by employment program or youth education and employment program. A procurement of products or services manufactured or provided by an employment program of the state or an accredited youth education and employment program may be made without competitive sealed bidding or competitive sealed proposals. AS 36.30.311.

1-106.07 Products or services provided by the correctional industries program. A procurement of products or services provided by the correctional industries program established under AS 33.32 may be made without competitive sealed bidding or competitive sealed proposals. AS 36.30.313.

1-106.08 Real property. These guidelines do not apply to acquisitions or disposals of real property or interest in real property, except as set forth in this section:

(1) these guidelines apply to the lease of space for use of the Alaska Court System; and

(2) 5-501.09.3 (Lease-Purchase Agreements) applies to the acquisition of real property by lease-purchase agreement. AS 36.30.080, 36.30.085, 36.30.850(b)(5).

1-106.09 Contracts with governmental entities. Except for 6-601.01 (Intergovernmental procurement), these guidelines do not apply to contracts with the state or its agencies, political subdivisions of the state, instrumentalities of the state, and other governments. AS 36.30.850(c).

1-106.10 Disposal of obsolete property. These guidelines do not apply to the sale, exchange, or disposal of obsolete machinery, equipment, and material no longer needed, required, or useful for construction or maintenance purposes. AS 36.30.850(b)(9), (10).

1-106.11 Curatorial and conservation services. These guidelines do not apply to the purchase of curatorial and conservation services to maintain, preserve, and interpret objects of art and items having cultural, historical, or archeological significance to the state. AS 36.30.850(b)(24).

1-106.12 Rates set by law. These guidelines do not apply to expenditures when rates are set by law or ordinance. AS 36.30.850(b)(28).

1-106.13 Travel. These guidelines do not apply to contracts for travel services, including airplane travel, hotel accommodations, and travel agency services, but excluding motor vehicle rentals. AS 36.30.030(b)(43).

1-106.14 Court-ordered appointments. These guidelines do not apply to an appointment made by a judicial officer in a judicial proceeding.

1-106.15 Compliance with terms. Nothing in these guidelines prevents compliance with the terms and conditions of a grant, gift, bequest, cooperative agreement, or federal assistance agreement. AS 36.30.850(d).

1-106.16 Medical doctors and dentists. These guidelines do not apply to contracts for medical doctors or dentists. AS 36.30.850(b)(4)

1-106.17 Hospitality and government protocol. These guidelines do not apply to contracts for hospitality or government protocol.

1-107 Public Access to Procurement Information.

1-107.01 Inspection. In accordance with Administrative Rule 37.5 (Appendix B), all procurement records, with the exception of those records listed below or otherwise identified as confidential by these guidelines or by Administrative Rule 37.5(e), will be open to the public and will be available for inspection during normal business hours at the fiscal office.

1-107.02 Confidential records. Confidential records include

- (1) information furnished by bidders which is clearly labeled as proprietary and readily separable from the bid, and which the fiscal office agrees is proprietary;
- (2) information concerning negotiations in progress;
- (3) responses to invitations to bid prior to public opening;
- (4) responses to requests for proposals prior to notice of intent to award contract;
- (5) information supplied by a bidder in response to an inquiry by the court system concerning the bidder's responsibility which the bidder has asked to be kept confidential; and
- (6) drafts of specifications, solicitations and related working papers, before notice of the invitation or request is published or is otherwise made public. AS 36.30.530.

II. PROCUREMENT METHODS

2-201 General Provisions

2-201.01 Procurement methods. Procurement of any services, supplies, professional services, or construction must follow a procurement method described in these guidelines. Requestors shall justify proposed methods, other than competitive proposals or bidding. After consultation with the requestor, the fiscal office will determine the procurement method to use.

2-201.02 Division of requirements. Procurement requirements may not be aggregated or structured to circumvent the source selections procedures required by 2-202 (Competitive Sealed Bidding), 2-203 (Multi-Step Sealed Bidding), 2-204 (Competitive Sealed Proposals), or 2-210 (Professional Services). AS 36.30.300.

2-201.03 Non-discrimination in source selection. Source selection may not be based on discrimination because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation. 2 AAC 12.010.

2-201.04 Exclusion of prospective contractor from competition. The administrative director may exclude a prospective contractor from submitting a bid or proposal or may reject a prospective contractor's bid or proposal after making a written determination that the prospective contractor assisted in drafting the invitation to bid or request for proposal or gained substantial information regarding the invitation to bid or request for proposal that was not available to the public. 2 AAC 12.020.

2-201.05 Solicitations

2-201.05.1 Solicitation notices. Solicitation notices may be sent to those persons who, in the opinion of the fiscal office, are in the business of providing the supplies, services, or construction to be procured. The failure of any person or business to receive notice under this paragraph will not affect the validity of an award.

2-201.05.2 Failure to respond. Persons who fail to respond to solicitations after three consecutive procurements of similar items may not be notified for future solicitations unless the person specifically requests notification.

2-201.05.3 Public inspection. Names and addresses of contractors notified will be available for public inspection. AS 36.30.050.

2-201.06 Bid, performance, and payment bonds.

2-201.06.1 Bid bonds. The fiscal office may require submission of a bid bond or other security for the bid and may specify the amount and the form of the bond. If a bond is required, it must be provided by a surety company authorized to do business in the state in an amount equal to at least five percent of the amount of the bid. Other bid security must be in the form of a certified check or similar instrument. A condition of the bond must be that the bidder will enter into a contract with the Alaska Court System if the bidder receives the award. AS 36.30.120.

2-201.06.2 Performance and payment bonds. The fiscal office may require that any person or business awarded a contract furnish performance and payment bonds, issued by a company authorized to do business in the state. The bonds must be in an amount determined by the fiscal office. At a minimum, the bonds must guarantee the full and faithful performance of all contract obligations and the payment for all labor and materials to be used under the contract. 2 AAC 12.810.

2-201.06.3 Construction contracts. Bid, payment, and performance bonds or other security are required for all construction contracts over \$100,000. The payment and performance bonds must each be in a sum equal to at least one-half of the total amount payable by the terms of the contract. AS 36.25.010(a), 2 AAC 12.810.

2-201.06.4 Solicitation. Bid, payment and performance bond requirements must be set out in the solicitation.

2-201.07 Equal employment opportunity contract compliance. A bidder's signature on a bid or proposal indicates that the bidder is complying with the applicable portion of the Federal Civil Rights Act of 1964 and the Equal Employment Opportunity Act and the regulations issued under these acts by the State and Federal government. If any bidder fails to comply with these acts or the regulations issued under these acts, the Alaska Court System may terminate the contract.

2-201.08 Prohibition of procurement from persons headquartered in certain countries. A prospective contractor that had headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C) is not eligible to participate in a procurement or to be awarded a contract. AS 36.30.030.

2-202 Competitive Sealed Bidding.

2-202.01 Conditions for use. Contracts will be awarded by competitive sealed bidding unless otherwise provided in these guidelines. AS 36.30.100.

2-202.02 Invitation to bid.

2-202.02.1 Use. The invitation to bid is used to initiate a competitive sealed bid procurement.

2-202.02.2 Content. The invitation to bid must include the following:

(1) instructions to bidders about bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the time for bid acceptance by the Alaska Court System and any other special information;

(2) the purchase or project description, evaluation factors, delivery or performance schedule, and the inspection and acceptance requirements that are not included in the purchase description.

(3) contract terms and conditions, including any warranty and bonding or other security requirements;

(4) a statement that Alaska products from Alaska forests must be used whenever practical, in accordance with AS 36.15.010 and 36.15.020;

(5) a statement that at bid opening the bidder must provide evidence of the bidder's valid Alaska business license. A bidder for a construction contract also must provide evidence of the bidder's registration under AS 08.18;

(6) a requirement for certification by the bidder of compliance with the applicable portions of 42 U.S.C. §§ 1971, 1975, and 2000 (the Federal Civil Rights Act of 1964); the Equal Employment Opportunity Act, AS 18.80; and regulations adopted or promulgated under those laws by the federal government and this state, as applicable; and

(7) notification that, by submitting a bid, the bidder certifies under penalty of perjury that the price submitted was independently arrived at without collusion. AS 36.30.110, 2 AAC 12.120(a).

2-202.02.3 Incorporation by reference. The invitation to bid may incorporate documents by reference by specifying where they can be obtained.

2-202.02.4 Acknowledgement of amendments. The invitation to bid shall require the acknowledgment of the receipt of all amendments issued.

2-202.03 Public notice.

2-202.03.1 Time of notice. The fiscal office will give adequate public notice of the invitation to bid at least 21 days before the bid opening unless it determines in writing that a shorter period is advantageous for a particular bid and adequate competition is anticipated. AS 36.30.130(a).

2-202.03.2 Publication. For a procurement that is not a small purchase under 2-206, the notice of an invitation to bid shall be posted on the Alaska Online Public Notice System (AS 44.62.175). When practicable, notice may include

- (1) publication in a newspaper calculated to reach prospective bidders;
- (2) notices posted in public places within the area where the work is to be performed or the material furnished; and
- (3) notices mailed to all prospective contractors on the appropriate list maintained under 2-201.05. AS 36.30.130(a).

2-202.03.3 Content. The notice must inform interested persons of the general nature of the procurement and the procedure for submitting a bid.

2-202.03.4 Other notice. The fiscal office may use additional forms of notice that it finds reasonable to alert as many interested and responsive bidders as is feasible. 2 AAC 12.130.

2-202.03.5 Duplication costs. The fiscal office may require a person requesting a copy of an invitation to bid to pay for its duplication costs. 2 AAC 12.130(e).

2-202.03.6 List of prospective bidders. The fiscal office will maintain a list of all persons who are given an invitation to bid by the office.

2-202.04 Pre-bid conferences. Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an invitation to bid. The conference should be held long enough after the invitation to bid has been issued to allow bidders to become familiar with the invitation, but sufficiently before bid opening to allow the prospective bidders to consider the conference results in preparing their bids. Nothing stated at the pre-bid conference may change the invitation to bid. An invitation to bid may be changed only by an amendment under 2-202.05. On request, the fiscal office will supply an audiocassette or written summary of the conference. The fiscal office may require the requestor to pay for duplication.

2-202.05 Amendments to invitations to bid.

2-202.05.1 Form. Amendments to invitations to bid must be identified as such and must require that the bidder acknowledge receipt of all amendments issued. The amendment will reference the portion of the invitation to bid it amends.

2-202.05.2 Distribution. Amendments will be sent to all prospective bidders known to have received an invitation to bid.

2-202.05.3 Timeliness. Amendments will be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, such time will be increased to the extent possible in the amendment or, if necessary, by telegram, telephone, or facsimile and confirmed in the amendment.

2-202.06 Extension of solicitation. Before the opening of bids, the time for opening may be extended upon the fiscal office's determination that the extension is in the Alaska Court System's best interest. All potential bidders known to have copies of the solicitation must be advised of the extension. AS 36.30.350, 2 AAC 12.850.

2-202.07 Pre-opening modification or withdrawal of bids.

2-202.07.1 Procedure. Bids may be modified or withdrawn by written request received in the fiscal office before the time and date set for opening. A request must provide authorization for the person making the modification or withdrawal to do so. 2 AAC 12.140.

2-202.07.2 Disposition of bid security. If a bid is withdrawn in accordance with this section, any bid security will be returned to the bidder. 2 AAC 12.140.

2-202.07.3 Records. All documents relating to the modification or withdrawal of bids will be made a part of the appropriate procurement file. 2 AAC 12.140.

2-202.08 Late bids, late withdrawals, and late modifications.

2-202.08.1 Definition. Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late.

2-202.08.2 Treatment. Late bids, late withdrawals, and late modifications will be rejected unless the delay was due to an error of the Alaska Court System. The envelopes of late bids, late withdrawals, and late modifications will be labeled with the notation "late bid - rejected" and with the time and date of receipt and will not be opened. A photocopy of the labeled envelope will be retained in the bid file and the original bid envelope will be returned to the bidder. AS 36.30.160, 2 AAC 12.160.

2-202.08.3 Notice. Bidders submitting late bids that will not be considered for award will be so notified as soon as practical.

2-202.08.4 No action against bidder. If a bidder is permitted to withdraw a bid before award, an action may not be maintained against the bidder or the bid security. AS 36.30.160.

2-202.09 Receipt, opening and recording of bids.

2-202.09.1 Submittal. A bid must be submitted in a sealed envelope with the invitation to bid number identified on the outside of the envelope. Bids must be submitted by mail or in person at the place specified in the invitation to bid, and must be received no later than the time specified in the invitation to bid. Bids not submitted at the proper place or within the time specified will not be opened or considered.

2-202.09.2 Receipt. Upon receipt, each bid and modification will be date-stamped and time-stamped and stored in a secure place until the time and date set for

bid opening. Bids not submitted at the proper place or within the time specified will not be opened or considered. 2 AAC 12.150(a).

2-202.09.3 Opening and recording. Bids and modifications will be publicly opened in the presence of at least one witness from the Alaska Court System at the time, date and place designated in the invitation to bid. The name of each bidder, the bid price and other information that is deemed appropriate by the fiscal office will be read aloud or otherwise made available and recorded. This information will be open to public inspection as soon as practical before the notice of intent to award is given. The bids are not open for public inspection until after the notice of intent to award a contract is issued. AS 36.30.140(b), 2 AAC 12.150(b).

2-202.09.4 Confidential data. To the extent the bidder designates and the fiscal office concurs, trade secrets and other proprietary data contained in a bid document are confidential. Material so designated must be clearly labeled, and must be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. AS 36.30.140.

2-202.10 Mistakes in bids.

2-202.10.1 General. To protect the integrity of the competitive bidding process and to assure fairness, the fiscal office shall carefully consider a request to correct or withdraw a bid because of an inadvertent, nonjudgmental mistake in the bid. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of the Alaska Court System or to the fair treatment of other bidders.

2-202.10.2 Mistakes discovered before bid opening. A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in 2-202.07 (Pre-opening modification or withdrawal of bids).

2-202.10.3 Mistakes discovered after opening but before award. After bid opening, changes in bid prices or other provisions prejudicial to the interest of the Alaska Court System or fair competition will not be permitted. The following procedures will be applied in three situations in which mistakes in bids are discovered after the time and date set for bid opening but before award:

(1) Minor informalities. Minor informalities are matters of form rather than substance, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The fiscal office shall waive in writing these informalities or allow a bidder to correct them depending on which is in the best interest of the Alaska Court System.

(2) Mistakes where intended correct bid is evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid will be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transportation errors, and arithmetical errors. Unit price is the governing factor if an error is made in extending the unit price.

(3) Mistakes where intended correct bid is not evident. A bidder may be permitted to withdraw a low bid if:

(A) a mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or

(B) the bidder submits proof which clearly and convincingly demonstrates that a mistake was made. AS 36.30.160(b), 2 AAC 12.170(a).

2-202.10.4 Mistakes discovered after award. Mistakes may not be corrected after award of the contract except where the fiscal office makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

2-202.10.5 Written determination. When a bid is corrected or withdrawn, or correction or withdrawal is denied, the fiscal office shall prepare a written determination showing that the relief was granted or denied in accordance with these guidelines.

2-202.10.6 Confirmation of bid. When the fiscal office knows or has reason to conclude that a mistake has been made and the intended correct bid is not clearly evident on the bid document, the office shall ask the bidder to confirm the bid. Situations in which confirmation will be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. 2 AAC 12.170(b).

2-202.11 Bid acceptance. Bids will be unconditionally accepted without alteration or correction except as provided above. AS 36.30.150.

2-202.12 Bid evaluation and award.

2-202.12.1 General. The contract will be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. The invitation to bid will set forth the requirements and criteria that will be used to determine the lowest responsive bidder. The criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable. No bid will be evaluated for any requirement or criteria that is not disclosed in the invitation to bid. AS 36.30.150(a).

2-202.12.2 Responsibility and responsiveness. Responsibility of prospective contractors is covered by 2-213 (Responsibility of Bidders). A responsive bid is defined as a bid that conforms in all material respects to the invitation to bid and which complies with state law.

2-202.12.3 Product acceptability. (a) The invitation to bid will set forth any evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for the following prior to award:

- (1) inspection or testing of a product for such characteristics as quality or workmanship;
- (2) examination of such elements as appearance, finish, taste, or feel; or
- (3) other examinations to determine whether the product conforms with any other purchase description requirements.

(b) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the invitation to bid. A bidder's offering that does not meet acceptability requirements will be rejected as nonresponsive. 2 AAC 12.120(d), 2 AAC 12.180(b).

2-202.12.4 Nonresponsive bids. Bids that do not conform in all material respects to the invitation to bid must be rejected as nonresponsive. Bidders whose bids have been determined to be nonresponsive will be advised in writing of the reasons for rejection at the time the Alaska Court System determines the bid is nonresponsive. A determination that a bid is nonresponsive may be protested under 4-401 (Legal Remedies) of these guidelines.

2-202.12.5 Rejection for nonresponsibility. A low bid from a bidder determined not to be responsible will be rejected.

2-202.12.6 Conditional bids. A bid that is conditioned upon receiving award of both the particular contract being solicited and another Alaska Court System contract is nonresponsive unless the conditioned bids are specifically authorized in the solicitation. 2 AAC 12.840.

2-202.12.7 Alternate bids. Alternate bids are nonresponsive unless the solicitation states that they may be accepted. 2 AAC 12.830.

2-202.12.8 Prompt payment discounts. Prompt payment discounts will not be considered in determining the low bid but will be taken if earned.

2-202.12.9 Bidder preferences. (a) A bid will be awarded to an Alaska bidder if the bid is not more than 5 percent higher than the lowest nonresident bidder, calculated by taking the lowest responsive bid, multiplying by 1.05 and comparing the lowest Alaska bidder. An Alaska bidder is a person who

(1) holds a current Alaska business license;

(2) submits a bid for goods, services, or construction under the name appearing on the bidder's current Alaska business license;

(3) has maintained a place of business within the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid submission;

(4) is incorporated or qualified to do business under the laws of the state; is a sole proprietorship, and the proprietor is a resident of the state; is a limited liability company organized under AS 10.50 and all members are residents of the state; or is a partnership, and all partners are residents of the state; and

(5) if a joint venture, is composed entirely of ventures that qualify under (1) - (4).

(b) The following preferences will also be applied:

(1) an employment program preference as described in AS 36.30.321(b);

(2) a disabled bidder's preference as described in AS 36.30.321(d);

- (3) an Alaska Veteran's preference as described in AS 36.30.321(f);
- (4) an Alaska products preference as described in AS 36.30.322 - 36.30.338;
- (5) a preference for recycled products as described in AS 36.30.337;
- (6) a preference for recycled paper as described in AS 36.30.333; and
- (7) agricultural and fisheries product preferences as described in AS 36.15.050.

(c) In order to qualify for a preference under (b)(1), (b)(2), or (b)(3) of this section, a bidder must add value by actually performing, controlling, managing, and supervising the services provided, or a bidder must have sold supplies of the general nature solicited to other state entities, governments, or the general public. 36.30.321(i).

(d) A preference under (b)(1), (b)(2), or (b)(3) of this section is in addition to any other preference for which the bidder qualifies; however, a bidder may only receive one of the preferences listed under (b)(1) or (b)(2) of this section, and only one of the preferences listed under (b)(4) or (b)(7) of this section. AS 36.30.321(g).

(e) Supplies shall be delivered at a location within the state unless the fiscal office determines that a point of delivery outside the state would be in the best interest of the court system. A solicitation involving the procurement of supplies must specify the delivery location and must state that the price is the delivered price at that location. AS 36.30.331.

2-202.12.10 Restrictions. A bidder submitting a higher quality item than that designated in the invitation to bid will be awarded the contract only if the bidder is also the lowest bidder. This section does not permit negotiations with any bidder. 2 AAC 12.180(d).

2-202.13 Low tie bids.

2-202.13.1 Definition. Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the invitation to bid, after application of all bidder preferences allowed under 2-202.12.9.

2-202.13.2 Award. Low tie bids involving Alaska produced or manufactured products and non-Alaska products will be resolved in favor of the Alaska product. Other tie bids will be resolved by a random drawing.

2-202.14 Notice of intent to award. After selecting the lowest responsive and responsible bidder, the fiscal office shall send all bidders a notice of intent to award a contract at least ten calendar days before the formal award of a contract. This requirement does not apply to limited competition, single source, small, innovative, and emergency procurements. AS 36.30.365.

2-202.14.1 Contents of notice. The notice will include the name of the successful bidder and a statement of the right to protest the award, including the date by which the protest must be received. 2 AAC 12.210.

2-202.14.2 Notice is not formal award. The notice of intent to award does not constitute a formal award of a contract. 2 AAC 12.210.

2-202.15 Documentation of award. Following award, a record showing the basis for determining the successful bidder must be made a part of the procurement file.

2-202.16 Subcontractors for construction contracts.

2-202.16.1 List of subcontractors. Within five working days after the issuance of the notice of intent to award for a construction contract, except a design-build construction contract, the apparent low bidder shall submit a list of the subcontractors the bidder proposes to use in the performance of the construction contract. The list must include the name and location of the place of business for each subcontractor, evidence of each subcontractor's valid Alaska business license, and evidence of each subcontractor's registration under AS 08.18. AS 36.30.115(a).

2-202.16.2 Replacement of subcontractor. (a) With prior approval by the fiscal office, a construction contractor or the apparent low bidder may replace a listed subcontractor for a construction contract if the subcontractor

- (1) fails to comply with AS 08.18;
- (2) files for bankruptcy or becomes insolvent;
- (3) fails to execute a contract with the construction contractor or bidder involving performance of the work for which the subcontractor was listed and the bidder acted in good faith;
- (4) fails to obtain bonding;
- (5) fails to obtain insurance acceptable to the state;
- (6) fails to perform a contract with the construction contractor or bidder involving work for which the subcontractor was listed;
- (7) must be substituted in order for the contractor to satisfy required state and federal affirmative action requirements;
- (8) refuses to agree or abide with the labor agreement of the construction contractor or bidder; or
- (9) is determined by the fiscal office not to be a responsible subcontractor. AS 36.30.115(b).

(b) In addition to the circumstances described in (a) of this section, a construction contractor may request permission from the fiscal office to add or replace a listed subcontractor. The request must be in writing, specifically detailing the basis for the request, and include appropriate supporting documentation. The fiscal office shall approve the request if the fiscal office determines in writing that the requested addition or replacement is in the best interest of the court system. AS 36.30.115(f).

2-202.16.3 Penalties. (a) If a bidder for a construction contract fails to list a subcontractor or lists more than one subcontractor for the same portion of work and the value of that work is in excess of half of one percent of the total bid, the bidder shall be considered to have agreed to perform that portion of work without the use of a subcontractor and to have represented the bidder to be qualified to perform that work. AS 36.30.115(c).

(b) A bidder for a construction contract who attempts to circumvent the requirements of 2-202.16 by listing as a subcontractor another contractor who, in turn,

sublets the majority of the work required under the contract violates 2-202.16. AS 36.30.115(d).

(c) If a construction contract is awarded to a bidder who violates 2-202.16, the fiscal office may

(1) cancel the contract; or

(2) after notice and a hearing, assess a penalty on the bidder in an amount that does not exceed 10 percent of the value of the subcontract at issue. AS 36.30.115(e).

2-202.16.4 Inapplicability to design-build construction contracts. The requirements of 2-202.16 do not apply to a design-build construction contract. AS 36.30.115(g).

2-202.17 Bid cancellation.

2-202.17.1 Reasons for cancellation. An invitation to bid may be cancelled before opening, in whole or in part, when the fiscal office determines in writing that cancellation is in the best interest of the Alaska Court System for reasons including but not limited to the following:

(1) the court system no longer requires the supplies, services or construction;

(2) the court system no longer can reasonably expect to fund the procurement;

(3) proposed amendments to the invitation would be of such magnitude that a new invitation is desirable; or

(4) the court system determines that the solicitation is in violation of law. 2 AAC 12.850.

2-202.17.2 Procedures. (a) The notice of cancellation will be sent to all persons known to have obtained copies of the invitation.

(b) The notice of cancellation must identify the invitation, briefly explain the reasons for the cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or future procurement of similar items or services.

(c) The reasons for the cancellation must be included in the procurement file. AS 36.30.350.

2-202.18 Rejection of all bids. All bids may be rejected in whole or in part or the date for opening bids may be delayed when it is in the best interests of the Alaska Court System. AS 36.30.350.

2-202.18.1 Reasons for rejection. Reasons for rejection of all bids include but are not limited to the following:

(1) the supplies, services, or construction being procured are no longer required;

(2) ambiguous or otherwise inadequate specifications were part of the solicitation;

(3) the invitation did not provide for consideration of all factors of significance to the court system;

(4) prices exceed available money and it would not be appropriate to adjust quantities to accommodate available money;

(5) all otherwise acceptable bids received are for clearly unreasonable prices; or

(6) there is reason to believe that the bids may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(7) the award is not in the best interests of the Alaska Court System. 2 AAC 12.860.

2-202.18.2 Notification. If all bids are rejected, all persons or businesses that submitted bids will be notified in writing at the time of the determination of the reasons for rejection of all bids.

2-202.18.3 Records. The reasons for rejection will be included in the procurement file and are available for public inspection. If bids or proposals are rejected, the bids or proposals that have been opened must be retained in the procurement file. AS 36.30.350, 2 AAC 12.880.

2-202.19 Rejection of individual bids. Individual bids may be rejected when rejection is in the best interests of the court system. The reasons for rejection must be made part of the procurement file. AS 36.30.350.

2-202.19.1 Reasons for rejection. Reasons for rejection of an individual bid include but are not limited to the following:

- (1) the person who submitted the bid is not responsible;
- (2) the bid is nonresponsive;
- (3) the service, supply, professional service, or construction item fails to meet the specifications or other acceptability criteria set out in the solicitation; or
- (4) the bid fails to meet any goals set out in the solicitation to eliminate and prevent discrimination in state contracting because of race, religion, national origin, sex, age, marital status, pregnancy, parenthood, or handicap.
- (5) the bidder did not meet the qualification requirements of 2-202.21. AS 36.30.040(16), 2 AAC 12.870.

2-202.20 Only one bid received. If only one responsive bid is received in response to an invitation to bid, an award may be made to the single bidder if the fiscal office finds that the price submitted is fair and reasonable, that the bidder is responsible, and that either other prospective bidders had reasonable opportunity to respond or there is not adequate time for resolicitation. If the bid is rejected

- (1) new bids may be solicited;
- (2) the proposed procurement may be cancelled; or
- (3) if the fiscal office determines in writing that the need for the supply or service continues but that the price of the bid is not fair and reasonable and there is no time for resolicitation or it is unlikely that resolicitation would increase the number of bids, the procurement may be conducted as a limited, single source or emergency procurement, as appropriate. 2 AAC 12.190.

2-202.21 Qualified bidders. (a) Unless provided for otherwise in the solicitation, to qualify as a bidder for award of a contract, a bidder must

- (1) add value in the contract by actually performing, controlling, managing, or supervising the services to be provided; or

(2) be in the business of selling and have actually sold on a regular basis the supplies that are the subject of the solicitation.

(b) If a bidder leases services or supplies or acts as a broker or agent in providing the services or supplies in order to meet the requirements of (a) of this section, the fiscal office may not accept the bidder as a qualified bidder. 2 AAC 12.875.

2-203 Multi-Step Sealed Bidding.

2-203.01 Definition. Multi-step sealed bidding is a process consisting of a first phase in which bidders submit unpriced technical offers to be evaluated by the Alaska Court System, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.

2-203.02 Conditions for use. Multi-step sealed bidding may be used when it is impractical to prepare initially a definitive purchase description suitable for an award based on listed selection criteria. Multi-step sealed bidding may be used when it is considered desirable

(1) to invite and evaluate technical offers to determine whether they fulfill the purchase description requirements;

(2) to conduct discussions for the purpose of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, to obtain supplemental information, permit amendments to technical offers, or to amend the purchase description; and

(3) to invite formal priced bids. AS 36.30.190, AS 36.30.265.

2-202.03 Pre-bid conferences in multi-step sealed bidding. The fiscal office may hold conferences with all potential bidders before the submission and during the evaluation of unpriced technical offers.

2-203.04 Procedure for phase one of multi-step sealed bidding.

2-203.04.1 Form. Multi-step sealed bidding begins with issuance of an invitation to bid. In addition to the requirements set forth in 2-202.02 (Invitation to bid), the invitation to bid will state

(1) that unpriced offers are requested;

(2) whether priced bids are to be submitted at the same time as the unpriced technical offer; if they are, priced bids shall be submitted in a separate sealed envelope;

(3) that it is a two-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

(4) the criteria to be used in the evaluation of the unpriced technical offers;

(5) that, to the extent the fiscal office deems appropriate, the Alaska Court System may conduct oral or written discussions with bidders submitting unpriced technical offers;

(6) that bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are, subject to review by the fiscal office, to remain confidential; and

(7) that the item being procured must be furnished generally in accordance with the bidder's accepted technical offer and must meet the requirements of the invitation to bid.

2-203.04.2 Amendments to the invitation to bid. After receipt of unpriced technical offers, amendments to the invitation to bid will be distributed only to bidders who submitted unpriced technical offers, and these bidders may submit new unpriced technical offers or amend those submitted. If, in the opinion of the fiscal office, a contemplated amendment will significantly change the nature of the procurement, the invitation to bid will be cancelled and a new invitation to bid issued.

2-203.04.3 Receipt and handling of technical offers. Technical offers will not be opened publicly but will be opened in front of one or more procurement officials. These offers will not be disclosed to other bidders until after notice of award. Bidders may request nondisclosure of trade secrets and other **proprietary data identified in writing**.

2-203.04.4 Evaluation of technical offers. Evaluation of technical offers must be based solely on criteria set forth in the invitation to bid. The technical offers shall be categorized as

(1) acceptable;

(2) potentially acceptable (that is, reasonably susceptible of being made acceptable); or

(3) unacceptable.

2-203.04.5 Discussion of technical offers. The fiscal office may conduct discussions with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of these discussions the fiscal office shall not disclose any information derived from any technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that the bidder's offer is unacceptable may submit supplemental information amending its technical offer at any time until the closing date established by the fiscal office.

2-203.04.6 Notice of unacceptable technical offer. The fiscal office or its designee will place in the procurement file the written reasons for finding an offer unacceptable. They will be made available to the person or firm submitting the offer and for public inspection. The offeror will not be given an additional opportunity to supplement its technical offer.

2-203.05 Mistakes during multi-step sealed bidding. Mistakes may be corrected or bids may be withdrawn during phase one before the determination of acceptability is made. During phase two, mistakes may be corrected or withdrawal permitted only in accordance with 2-202.10 (Mistakes in bids).

2-203.06 Procedure for phase two

2-203.06.1 Initiation. The fiscal office may initiate phase two of the procedure if, in the fiscal office's opinion, after consultation with the requestor, there are enough acceptable technical offers to assure effective price competition in the second phase. If the fiscal office finds that there are not enough offers, an amendment to the invitation to bid may be issued, or the bid may be cancelled. Upon the completion of phase one, the fiscal office shall either

- (1) open priced bids submitted in phase one (if priced bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or
- (2) if priced bids have not been submitted, invite each acceptable bidder to submit a priced bid.

2-203.06.2 Conduct. Phase two will be conducted as any other competitive sealed bid procurement except as specifically set forth in this section:

- (1) no public notice need be given of this invitation to submit priced bids because notice was previously given;

(2) after award, the technical offer of the successful bidder will be disclosed as follows: the fiscal office shall examine written requests for confidentiality for trade secrets and proprietary data in the offers to determine the validity of the requests. If the parties do not agree as to the disclosure of data, the fiscal office shall inform the bidder in writing what portions of the unpriced technical offer will be disclosed and that, unless the bidder protests 4-401 (Legal Remedies), the offer will be so disclosed. The offer shall be open to public inspection subject to any continuing prohibition of the disclosure of confidential data; and

(3) technical offers of bidders who are not awarded the contract will not be open to public inspection, unless the fiscal office determines in writing that public inspection of the offers is essential to assure confidence in the integrity of the procurement process.

2-204 Competitive Sealed Proposals

2-204.01 General discussion. (a) Competitive sealed bidding is the preferred method of procurement; however, if it is determined with particularity that the use of competitive sealed proposals is more advantageous to the court system than competitive sealed bidding, then competitive sealed proposals may be used when authorized as provided in 2-204.02.

(b) The key element in determining whether the use of competitive sealed proposals is advantageous is the need for flexibility. The competitive sealed proposals method differs from competitive sealed bidding in two important ways:

(1) it permits discussions with competing offerors and changes in their proposals including price; and

(2) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

(c) An important difference between competitive sealed proposals and competitive sealed bidding is the finality of initial offers. Under competitive sealed proposals, alterations in the nature of a proposal and in prices may be made after proposals are opened. Such changes are not allowed, however, under competitive sealed bidding (except to the extent allowed in the first phase of multi-step sealed bidding). Therefore, unless it is anticipated that a contract can be awarded solely on the basis of information submitted by bidders at the time of opening, competitive sealed bidding is not practical or advantageous.

(d) Another consideration concerns the type of evaluations needed after offers are received. Where evaluation factors involve the relative abilities of offerors to perform, including degrees of technical or professional experience or expertise, use of competitive sealed proposals is the appropriate procurement method. Similarly, such method is appropriate where the type of need to be satisfied involves weighing artistic and aesthetic values to the extent that price is a secondary consideration. Further, where the types of supplies, services, or construction may require the use of comparative, judgmental evaluations to evaluate them adequately, use of competitive sealed proposals is the appropriate method.

2-204.01.1 When use of competitive sealed proposals is advantageous. A determination may be made to use competitive sealed proposals if it is determined that it is more advantageous to the Alaska Court System than to use competitive sealed bidding. Factors to be considered in determining whether the use of competitive sealed proposals is more advantageous include

(1) if prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the Alaska Court System; and

(2) whether the following factors are desirable in conducting a procurement; if they are, then such factors may be used to support a determination that the use of competitive sealed proposals is more advantageous:

(A) whether the contract needs to be other than a fixed-price type;

(B) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;

(C) whether offerors may need to be afforded the opportunity to revise their proposals, including price;

(D) whether award may need to be based upon a comparative evaluation as stated in the Request for Proposals of differing price, quality, and contractual factors in order to determine the most advantageous offering to the Alaska Court System. Quality factors include technical and performance capability and the content of the technical proposal; and

(E) whether the primary consideration in determining award may not be price.

2-204.02 Conditions for use. (a) When the fiscal office determines with particularity in writing that the use of competitive sealed proposals is more advantageous to the Alaska Court System than competitive sealing bidding, it may issue a request for competitive sealed proposals. The basis for this determination must be documented in the procurement file. AS 36.30.200(b).

(b) The following types of supplies and services, for which the use of competitive sealed proposals is generally more advantageous to the Alaska Court System than competitive sealed bidding, may be procured by competitive sealed proposals without a written determination by the fiscal office:

(1) professional services;

(2) supplies and services for the clean up of oil and hazardous substances;

(3) telephone systems and telephone system maintenance;

(4) concession contracts;

(5) leased office space; and

(6) security services and systems. 2 AAC 12.215.

(c) When the administrative director determines that it is advantageous to the Alaska Court System, the fiscal office may issue a request for proposals requesting the submission of offers to provide construction in accordance with a design provided by the offeror. The request for proposals shall require that each proposal submitted contain a single price that includes the design/build. AS 36.30.200(c).

2-204.03 Bid procedures apply. Unless otherwise specified, procedures for competitive sealed bids also apply to requests for competitive sealed proposals.

2-204.04 Public notice of competitive sealed proposals. Public notice will be given by distributing the request for proposals in the same manner as 2-202.03 (Public notice).

2-204.05 Contents of the request for proposals. (a) A request for proposals must be prepared in accordance with 2-202 (Competitive Sealed Bidding) and must include the following:

- (1) the date, time and place for delivering proposals;
- (2) a specific description of the construction, supplies, services or professional services to be provided under the contract;
- (3) the terms under which the items or services are to be provided;
- (4) a requirement that the offeror submit evidence of the offeror's valid Alaska business license at the time designated for opening of the proposals;
- (5) if the contract is for construction, a requirement that, no later than five working days after notice of intent to award, the offeror must submit:
 - (A) a list of subcontractors the offeror proposes to use in performance of the contract. The list must include the name and location of the place of business for each subcontractor, the work to be subcontracted to each subcontractor, and evidence of the subcontractor's valid Alaska business license; and
 - (B) evidence of offeror's registration under AS 08.18 and evidence of registration for each listed subcontractor;
- (6) a list of information which the offeror must submit with a proposal;

(7) clear references to any document incorporated by reference into the request for proposals;

(8) a description of all of the factors that will be considered in evaluating the proposals received, including the relative importance of price and other evaluation factors; and

(9) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but a proposal may be accepted without such discussions.

(b) A request for proposals to provide construction in accordance with a design provided by the offeror must require that each proposal submitted contain a single price that includes the design/build. AS 36.30.210, 2 AAC 12.290.

2-204.06 Correction, modification or withdrawal of proposals. A proposal may be corrected, modified, or withdrawn before the time and date set for receipt of proposals in accordance with 2-202.07 (Pre-opening modification or withdrawal of bids). 2 AAC 12.230.

2-204.07 Pre-proposal conferences. Pre-proposal conferences may be conducted in accordance with 2-202.04 (Pre-bid conferences). They should be held prior to submission of initial proposals.

2-204.08 Amendments to requests for proposals. (a) Prior to submission of proposals, amendments to requests for proposals may be made in accordance with 2-202.05 (Amendments to invitations to bid).

(b) If, after submission of proposals, there is a need for any substantial clarification of or material change in the request for proposals, the request must be amended to incorporate the clarification or change, and a date and time established by the fiscal office for receipt of new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals. 2 AAC 12.295.

2-204.09 Late proposals, late corrections, late modifications, and late withdrawals. Unless otherwise provided in the request for proposals, a proposal, correction, modification, or withdrawal received after the date set for receipt of proposals is late, and may not be accepted unless the delay is due to an error of the Alaska Court System. 2 AAC 12.250.

2-204.10 Receipt and registration of proposals. Proposals, modifications, and corrections will have the date and time of receipt noted on the envelope upon receipt, and will be held in a secure place. After the date set for receipt of proposals, the fiscal office will prepare a register of proposals, including the name of each offeror and a description of the supply, service, or construction item offered. AS 36.30.230, 2 AAC 12.240.

2-204.11 Opening of proposals. (a) Proposals will be opened so as to avoid disclosure of the contents to competing offerors before notice of intent to award a contract is issued. AS 36.30.230.

(b) If a solicitation is cancelled after proposals are received but before a notice of intent to award a contract has been issued, a protest of the solicitation or of the cancellation of the solicitation has not been filed by an interested party, and the time specified for filing such a protest has expired, the fiscal office may return a proposal to the offeror that made the proposal. A list of returned proposals shall be kept in the procurement file. AS 36.30.230.

2-204.12 Evaluation of proposals.

2-204.12.1 Evaluation committee. The fiscal office or a committee designated by the administrative director will evaluate the proposal. Each member shall exercise independent judgment, and no member's vote may be weighed more than any other. 2 AAC 12.260(a), 2 AAC 12.260(i).

2-204.12.2 Evaluation meetings. Evaluation meetings may be held by the evaluation committee to discuss the requests for proposals, the evaluation process, the weighing of evaluation factors, and the proposals received, before evaluation. 2 AAC 12.260(h).

2-204.12.3 Evaluation factors. The evaluation will be based on the evaluation factors set out in the request for proposals. Factors not specified in the request for proposals will not be considered. Numerical rating systems may be used but are not required. If they are used, the weighing value or numerical system to be applied to each factor must be set out in the request for proposals. If a numerical rating system is not used, each committee member shall document his or her ranking determination in writing. 2 AAC 12.260(b).

2-204.12.4 Cost, bidder preferences, and cost formula. (a) Cost must be an evaluation factor unless professional, architectural, engineering or land surveying services are sought. 2 AAC 12.260(c).

(b) The proposed costs of an offeror who qualifies for a bidder preference will be calculated according to 2-202.12.9 (Bidder preferences). If a numerical rating system is used, an Alaska offeror's preference of at least 10 percent of the total possible value of the rating system must be assigned to a proposal of an offeror who qualifies as an Alaska bidder. 2 AAC 12.260(d), 2 AAC 12.260(e).

(c) The proposal with the lowest cost must receive the highest available rating allocated to cost. A proposal that has a higher cost than the next lowest must receive a lower rating for cost. 2 AAC 12.260(c).

(d) The following are some additional evaluation factors that may be considered:

(1) the offeror's experience in Alaska performing work similar to that sought in the request for proposals;

(2) the percentage of work that will be performed in Alaska;

(3) the location of the office of the offeror where the work will be performed;

(4) The offeror's past performance, including conformance to specifications and standards of good workmanship, forecasting and containment of costs or prices, history of reasonable and cooperative behavior and overall concern for the interests of the customer, and adherence to contract schedules. 2 AAC 12.260(f).

2-204.12.5 Non-discrimination. Evaluations may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror. A proposal shall be evaluated to determine whether the offeror responds to the provisions, including goals and financial incentives, established in the request for proposals in order to eliminate and prevent discrimination in court system contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror. 2 AAC 12.260(j).

2-204.12.6 Selection. The evaluation committee will select the proposal most advantageous to the Alaska Court System.

2-204.12.7 Written record. The committee or its designee shall enter into the procurement file a written record of the basis on which the selection was found to be most advantageous to the Alaska Court System. 2 AAC 12.300.

2-204.12.8 Proposals from debarred offerors. A proposal from an offeror debarred under 4-402 (Debarment of Vendors from Consideration for Contracts) must be rejected. 2 AAC 12.260(g).

2-204.13 Only one responsive proposal received. If only one responsive and responsible proposal is received in response to a request for proposals, the procurement officer may award the contract to the offeror, may reject the proposal or may reject the proposal and resolicit proposals. 2 AAC 12.270.

2-204.14 Proposal discussions with individual offerors.

2-204.14.1 Classifying proposals. (a) For the purpose of conducting discussions, proposals shall be initially classified as

- (1) acceptable;
- (2) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
- (3) unacceptable.

(b) Offerors whose proposals are unacceptable shall be so notified in writing promptly.

2-202.14.2 "Offerors" defined. For the purposes of this section of the Procurement Guidelines, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses that submitted unacceptable proposals.

2-204.14.3 Purposes of discussions. Discussions are held to

- (1) promote understanding of the Alaska Court System's requirements and the offerors' proposals; and
- (2) facilitate arriving at a contract that will be most advantageous to the Alaska Court System taking into consideration price, as applicable, and other evaluation factors set forth in the request for proposals.

2-204.14.4 Conduct of discussions. In its discretion, the fiscal office or the evaluation committee may conduct discussions with offerors. Offerors will be accorded

fair and equal treatment with respect to any opportunity for discussion and revision of proposals. The fiscal office may limit discussions to specific sections of the request for proposals. If during discussions there is a need for any substantial clarification of or change in the request for proposals, the request must be amended to incorporate the clarification or change. Auction techniques that reveal one offeror's price to another, and disclosure of any information derived from competing proposals, are prohibited. Any oral modification of a proposal must be confirmed in writing by the offeror. AS 36.30.240, 2 AAC 12.290(b).

2-204.14.5 Evaluation adjustments. The evaluation of a proposal may be adjusted as a result of a discussion under this section. The conditions, terms or price of the proposed contract may be altered or otherwise changed during the course of the discussions. 2 AAC 12.290(a).

2-204.14.6 Best and final proposals. After discussions, the fiscal office may set a date and time for the submission of best and final proposals. These proposals may be submitted only once unless the fiscal office determines in writing that it is in the Alaska Court System's best interest to conduct additional discussions or change the requirements and require another submission of best and final proposals. Otherwise, no discussion of or changes in the best and final proposals may be allowed before the award. If an offeror does not submit a best and final proposal or a notice of withdrawal, the offeror's immediately previous proposal is considered the offeror's best and final proposal. 2 AAC 12.290(c).

2-204.14.7 Final evaluations. After best and final proposals are received, final evaluations will be conducted as described in 2-204.12 (Evaluation of Proposals). 2 AAC 12.290(d).

2-204.14.8 Memorandum of evaluation. At the conclusion of evaluation resulting in the award of the contract, the fiscal office will prepare a memorandum setting forth how the evaluation factors stated in the request for proposals were applied to determine the most advantageous proposal.

2-204.15 Mistakes in proposals.

2-204.15.1 Pre-opening modification or withdrawal of proposals. Proposals may be modified or withdrawn as provided in 2-202.07 (Pre-opening modification or withdrawal of bids).

2-204.15.2 Confirmation of proposal. When the fiscal office knows or has reason to conclude before award that a mistake has been made, it should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in 2-204.15.1 and 2-204.15.3 are met.

2-204.15.3 Mistakes discovered after receipt of proposals. The procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award are as follows:

(1) During discussions; prior to best and final offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

(2) Minor informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this section, shall be treated as they are under competitive sealed bidding, 2-202.10 (Mistakes in bids).

(3) Correction of mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:

(A) the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or

(B) the mistake is not clearly evident on the face of the proposal, but the offeror submits proof which clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.

(4) Withdrawal of proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if

(A) the mistake is clearly evident on the face of the proposal and the intended correct offer is not;

(B) the offeror submits proof which clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or

(C) the offeror submits proof of evidentiary value which clearly and convincingly demonstrates the intended correct offer, but to allow correction would be contrary to the fair and equal treatment of the other offerors.

2-204.15.4 Mistakes discovered after award. Mistakes shall not be corrected after award of the contract except where the fiscal office finds it would be unconscionable not to allow the mistake to be corrected.

2-204.15.5 Determinations required. When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination will be prepared by the fiscal office showing that relief was granted or denied in accordance with these guidelines. The determination will be placed in the procurement file.

2-204.16 Negotiation and award of contract.

2-204.16.1 Contract negotiations. (a) After evaluation of proposals under 2-204.12, including an adjustment of an evaluation of a proposal as authorized under 2-204.08(b), the fiscal office will, in its discretion, negotiate with the offeror of the highest ranked proposal for the purpose of obtaining contract terms consistent with the solicitation and with terms favorable to the state. If changes are made to the proposal during contract negotiations, the changes must be reasonable; however, the changes may not have the effect of changing the ranking of the highest ranked proposal. If the fiscal office determines that the offeror of the highest ranked proposal fails to negotiate in good faith or fails to negotiate within the time period set by the fiscal office, the fiscal office may terminate negotiations and begin contract negotiations with the offeror of the next highest ranked proposal. 2 AAC 12.315.

2-204.16.2 Award. (a) The fiscal office shall make a written determination showing the basis on which the award was found to be most advantageous to the Alaska Court System based on the factors set forth in the request for proposals. AS 36.30.250, 2 AAC 12.300.

(b) Notice of Intent to Award shall be issued in accordance with 2-202.14.

2-204.16.3 Contract execution. A contract awarded under this procedure must contain

- (1) a statement of the amount of the contract;
- (2) the date for the supplies to be delivered or the dates for services, construction, or professional services to begin and be completed;
- (3) a description of the supplies, services, construction, or professional services to be provided; and

(4) certification by the fiscal office or a designee that sufficient money is available in an appropriation to be encumbered for the amount of the contract. AS 36.30.260.

2-204.16.4 Failure to negotiate contract. Upon failure to negotiate a contract with the best qualified offeror, the fiscal office may either

(1) select the next most qualified offeror from remaining proposals. If negotiations again fail, negotiations will be terminated and commenced with the next most qualified offeror; or

(2) reject all offers. 2 AAC 12.315, 2 AAC 12.860.

2-204.17 Multi-step sealed proposals. When it is considered impractical to initially prepare a definitive purchase description to support an award based on listed selection criteria, the fiscal office may issue an expression of interest requesting the submission of unpriced technical offers, and then later issue a request for proposals limited to the offerors whose offers are determined to be technically qualified under the criteria set out in the expression of interest. Procedures for multi-step sealed bidding also apply to multi-step sealed proposals. AS 36.30.265.

2-205 Limited Competition Procurements

2-205.01 Conditions for use. A contract for construction under \$100,000, or a contract for services, supplies, or professional services may be awarded without competitive sealed bidding, competitive sealed proposals, or small procurement procedures when the administrative director determines in writing that circumstances make those procurement methods impractical or contrary to the public interest. The reasons for this determination must be set forth in the determination. The authority to make this determination may not be delegated. Procurements under this section must be made with the degree of competition that is most practical under the circumstances. Single source procurements and architectural, engineering and land survey contracts may not be made under this section. AS 36.30.305, 2 AAC 12.430.

2-205.02 Written explanation. The requestor shall submit a written explanation as to why other sources are not suitable or available and why the competitive sealed bidding or competitive sealed proposal processes are impractical or contrary to the public interest. 2 AAC 12.430(a).

2-205.03 Public notice. The Alaska Court System may advertise an intent to make a limited competition procurement for the purpose of determining available and interested procurement sources. 2 AAC 12.430(d).

2-206 Small Purchases

2-206.01 Definition. Small purchases are supplies, services, and professional services with an estimated dollar value of 100,000 or less, construction with an estimated dollar value of \$200,000 or less, or lease of space that does not exceed 7,000 square feet. AS 36.30.320(a), 2 AAC 12.400.

2-206.02 Procedures for procurement of \$10,000 or less, and of specific items costing in excess of \$10,000 . (a) A procurement that costs no more than \$5,000 may be made with a state purchasing card designated by the fiscal office, after receiving only one quotation or informal proposal from a qualified firm or person. 2 AAC 12.400(a).

(b) The fiscal office shall use reasonable and adequate procedures and make records that facilitate auditing, when procuring

(1) supplies, services, professional services, or construction costing no more than \$10,000 ;

(2) concession contracts estimated to have annual gross receipts of no more than \$10,000 ;

(3) supplies or services while on travel status with, or on behalf of the chief justice, costing no more than \$30,000 ;

(4) air transportation costing no more than \$30,000 ;

(5) professional services for the supreme court, legal services, or hearing officer services costing no more than \$50,000 . AS 36.30.320(a), 2 AAC 12.400(b).

(c) "reasonable and adequate procedures" means procedures that ensure fairness to potential offerors and competition commensurate with the circumstances of the procurement, considering price, mission requirements, and available competition. In some circumstances, reasonable and adequate procedures may mean contacting only one potential offeror. 2 AAC 12.990(a)(17).

2-206.03 Procedure for procurement of more than \$10,000, but no more than \$50,000 . (a) Except for procurements under 2-206.02, the fiscal office shall use the following procedures in the procurement of supplies, services, professional services, or construction estimated to cost more than \$10,000 , but no more than \$50,000 , or for concession contracts estimated to have gross receipts of more than \$10,000 , but no more than \$50,000 :

(1) for the solicitation,

(A) at least three firms or persons shall be contacted for a quotation or informal proposal and the fiscal office shall designate whether the response may be made in writing or verbally; and

(B) the solicitation may be made verbally or in writing and shall include the specifications, the award criteria, and the date and time responses are due;

(2) for the award, the fiscal office shall make the award

(A) in accordance with the specifications and award criteria in the solicitation, and

(B) to the responsive and responsible firm or person that submitted the lowest quotation or the informal proposal that is the most advantageous to the Alaska Court System.

(3) as part of the file on the procurement, the fiscal office shall include the

(A) name of the person who made the solicitation and the date of the solicitation;

(B) information provided by the fiscal office under (1)(B) of this section;

(C) names of the firms or persons contacted, a summary of any verbal responses, and copies of all quotations or informal proposals received; and

(D) justification for the award.

(b) If it is determined in writing by the fiscal office that the procedures specified in (a) are not practicable under the circumstances, the procedures required by 2-206.02 shall be followed. 2 AAC 12.400(c).

2-206.04 Procedure for procurement of more than \$50,000, but no more than \$100,000 (more than \$50,000, but no more than \$200,000 for construction).

The fiscal office shall use the following procedures for the procurement of supplies, services, or professional services estimated to cost more than \$50,000, but no more than \$100,000 ; for concession contracts estimated to have gross receipts of more than \$50,000 , but no more than \$100,000 ; or for construction estimated to cost more than \$50,000 , but no more than \$200,000 :

- (1) for the solicitation,
 - (A) at least three firms or persons shall be contacted for a quotation or informal proposal and the fiscal office shall require the response to be made in writing; and
 - (B) the solicitation shall be made in writing and shall include the specifications, the award criteria, and the date and time responses are due;
- (2) for the award, the fiscal office shall
 - (A) make the award
 - (i) in accordance with the specifications and award criteria in the solicitation, and
 - (ii) to the responsive and responsible firm or person that submitted the lowest quotation or the informal proposal that is the most advantageous to the Alaska Court System; and
 - (B) provide written notice of the award, including the name of the successful offeror, to each firm or person providing a quotation or informal proposal, and shall describe protest rights under 4-401 and the time limitations within which a protest must be received by the fiscal office.
- (3) as part of the file on the procurement, the fiscal office shall include
 - (A) a copy of the solicitation made under (1)(B) of this section;
 - (B) the names of the firms or persons contacted and copies of all quotations or informal proposals received; and
 - (C) documentation of and the justification for the award. 2 AAC 12.400(d).

2-206.05 Procedure for procurement of leased space. For procurement of lease of space that does not exceed 7,000 square feet, the procedures described in 2-206.02 and 2-206.03 shall be followed for the appropriate estimated cost limitations, except as provided in this section. A notice of award under this section shall be in writing. For procurement of lease of space that does not exceed 7,000 square feet and estimated to cost more than \$100,000 for the term of the lease, including extensions, the fiscal office shall provide public notice by at least one of the following notification methods for the solicitation:

(1) mailing to prospective contractors on a contractors list compiled under 2-201.05, and, if practicable, located in the state;

(2) publication in a newspaper of general circulation, and, if practicable, in a way calculated to reach prospective contractors located in the state;

(3) publication in a newspaper of local circulation in the area pertinent to the procurement, and, if practicable, in a way calculated to reach prospective contractors located in the state;

(4) notices posted in public locations within the area where the work is to be performed or the material or supplies furnished;

(5) publication in other appropriate media, including postings in electronic media, and, if practicable, in a way calculated to reach prospective contractors located in the state. 2 AAC 12.400(e).

2-206.06 Preferences. A procurement made under 2-206 shall be solicited from Alaskan vendors whenever practicable, and is subject to applicable Alaskan bidder and Alaskan product preferences as set out in 2-202.12.9. 2 AAC 12.400(f).

2-206.07 Division of Requirements. Procurement requirements may not be artificially divided or fragmented so as to constitute a small purchase under 2-206 or to circumvent the source selections procedures required by 2-202 (Competitive Sealed Bidding), 2-203 (Multi-Step Sealed Bidding), 2-204 (Competitive Sealed Proposals), or 2-210 (Professional Services). AS 36.30.320(d).

2-206.08 Electronic media. Nothing in this section prevents postings in electronic media to satisfy the competitive solicitation and notice of award requirements. Quotes and informal proposals may be submitted in electronic media when permitted by the fiscal office.

2-206.09 Established catalog prices. When seeking verbal quotations, the use of established catalog prices or published discounts from established catalog prices may be used in place of direct contact with a vendor. "Established catalog prices" means the price included in an up-to-date catalog, price list, schedule, or other form that

(1) is regularly maintained by a manufacturer or vendor;

(2) is either published or otherwise available for inspection by customers;

and

(3) states prices at which sales are currently or were last made to a significant number of a category of buyers or buyers constituting the general buying public.

2-207 Single Source Procurement

2-207.01 Conditions for use. (a) A contract may be awarded for supplies, services, professional services, or construction without competitive sealed bidding, competitive sealed proposals, or other competition when the administrative director determines in writing that

(1) it is not practicable to award a contract by competitive sealed bidding, competitive sealed proposals, or limited competition; and

(2) award of the contract under this section is in best interest of the Alaska Court System.

(b) The requestor must submit written evidence to support a request for single source procurement.

(c) The following are examples of circumstances in which single source procurement may be appropriate:

(1) if the compatibility of equipment, accessories or replacement parts is the paramount consideration;

(2) if a single supplier's item is needed for trial use or testing;

(3) if a single supplier's item is to be procured for resale;

(4) if there exists a single source of expertise required to perform a specific professional service;

(5) if the procurement is for operation of a concession contract on state property by a non-profit organization whose sole purpose is to operate the concession and provide other public services on the property;

(6) if the procurement is for the services of legal counsel for the purpose of advising or representing the state in specific civil or criminal proceedings or on specific matters before federal or state regulatory agencies, boards, or commissions;

(7) if the procurement is for labor negotiation;

(8) if the procurement is for information technology and the compatibility with existing hardware, software, services or supporting infrastructure is a major consideration.

(d) Procurement requirements may not be aggregated or structured so as to constitute a purchase under this section or to circumvent the source selection procedures required by 2-202, 2-203 or 2-204. AS 36.30.300, 2 AAC 12.410.

(e) A determination by the fiscal office that a specific course of action is or is not "in the Alaska Court System's best interest" under this section means a determination that is reasonable under the circumstances and is neither arbitrary, capricious, or prompted by corruption. A request to employ the single source procurement method under this section that is based on a determination that it is "in the Alaska Court System's best interest" shall cite the specific and significant interest to support use of the single source procurement method. 2 AAC 12.415.

(f) In this section, "information technology" means the use of hardware, software, services, and supporting infrastructure to manage and deliver information using voice, data, and video.

2-207.02 Advertisement. The fiscal office may advertise its intent to make a single source award to determine if other sources are available or interested in the procurement. 2 AAC 12.410(a).

2-207.03 Negotiation. The fiscal office shall negotiate, to the extent practical, to obtain a contract advantageous to the Alaska Court System. AS 36.30.300, 2 AAC 12.410(c).

2-207.04 Record. The record of a single source procurement must include

- (1) the supplier's name;
- (2) the amount and type of contract;
- (3) a listing of supplies, services or construction procured; and
- (4) the identification number of the procurement file. 2 AAC 12.420.

2-208 Emergency Procurement

2-208.01 Definition of emergency conditions. Emergency conditions include

- (1) fire, flood, epidemic, riot, environmental accident, or a similar condition;
- (2) equipment failure, if the need for timely repair is essential;
- (3) a need to protect public or private property; or
- (4) a situation in which procurement through competitive sealed bidding or competitive sealed proposals is impractical or contrary to the public interest. AS 36.30.310, 2 AAC 12.440.

2-208.02 Scope of emergency procurement. Emergency procurement is limited to the services, supplies, professional services or construction necessary to meet the emergency. AS 36.30.310, 2 AAC 12.450.

2-208.03 Procurement methods. The procedure used will be selected to assure that the required supplies, services or construction items are procured in time to meet the emergency. An emergency procurement may be made by any reasonable means, using competition that is practicable under the circumstances. AS 36.30.310, 2 AAC 12.450.

2-208.04 Authority. The administrative director has the authority to make emergency procurements under 2-208.01. The authority to make emergency procurements under 2-208.01(1), (2) and (3) may be delegated.

2-208.05 Determination and record of emergency procurement.

2-208.05.1 Determination. (a) The administrative director shall make a written determination, including findings of fact that state the basis for an emergency procurement, for the selection of the procurement method, and for the selection of the particular contractor.

(b) The administrative director may delegate to a responsible official the authority to make a determination of emergency under 2-208.01(1), (2), or (3) under the following circumstances:

(1) if immediate action is necessary to protect public health, welfare, or safety, or to protect public or private property; and

(2) if insufficient time exists

(A) to provide the explanation and evidence required under (a) of this section; and

(B) for the administrative director to make the written determination of emergency required under (a) of this section. AS 36.30.310, 2 AAC 12.440.

2-208.05.2 Record. A record of each emergency procurement shall be made as soon as practical after the procurement and shall include

(1) the contractor's name;

(2) the amount and type of the contract;

(3) a listing of the supplies, services, or construction procured under the contract;

(4) the identification number of the contract file; and

(5) the written determination. AS 36.30.310, 2 AAC 12.460.

2-209 Innovative Procurement

2-209.01 Conditions for use. A contract may be awarded for supplies, services, professional services, or construction using an innovative procurement process, with or without competitive sealed bidding or competitive sealed proposals. A contract may be awarded only when the administrative director determines in writing that it is advantageous to the Alaska Court System to use an innovative competitive procurement process

- (1) in the procurement of new or unique requirements of the court system;
- (2) in the procurement of new technologies; or
- (3) to achieve best value. AS 36.30.308.

2-209.02 Procedure. (a) A request to use an innovative procurement procedure shall be submitted in writing by the fiscal office to the administrative director. The fiscal office must include with the request a discussion of the proposed procedure and an explanation how this procedure will achieve the best value or why it is advantageous to the Alaska Court System.

(b) Following approval under (a) above, the fiscal office shall submit a detailed procurement plan to the staff counsel for review and approval as to form before issuing public notice. AS 36.30.308(b), 2 AAC 12.575.

2-209.03 Notice. A procurement under this section is subject to the requirements of 2-202.03. AS 36.30.308(c).

2-209.04 Records. The record of an innovative procurement must include

- (1) a copy of the contract;
- (2) the written determination of the administrative director;
- (3) the procurement plan as approved to form by the staff counsel;
- (4) the record of notice as required under 2-202.03; and
- (5) the record of respondents to the solicitation. AS 36.30.522, 2 AAC

12.577.

2-210 Professional Services

2-210.01 Definition. The term "professional services" means legal, technical, advisory, consulting, architectural, engineering, research or developmental services which involve the exercise of discretion and independent judgment together with an advanced or specialized knowledge, expertise or training gained by formal studies or experience.

2-210.02 Applicable procedures for contracts of \$100,000 and below. The fiscal office may procure professional services with an estimated value of \$100,000 and below using the procedures in 2-206 (Small Purchases).

2-210.03 Applicable procedures for contracts over \$100,000. Procedures for competitive sealed proposals apply to the procurement of professional services with an estimated value over \$100,000.

2-210.03.1 Contents of requests for proposals. The request for proposals shall be in the form specified by the fiscal office and contain at least the following information:

- (1) the type of service required;
- (2) a description of the work involved;
- (3) an estimate of when and for how long the services will be required;
- (4) the type of contract to be used;
- (5) a date by which proposals for the performance of the services must be submitted;
- (6) a statement that the proposals must be in writing;
- (7) a statement that offerors may designate those portions of the proposals which contain trade secrets or other proprietary data which may remain confidential;
- (8) a statement of the minimum information that the proposal must contain, to include:
 - (9) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;

(A) if deemed relevant by the procurement officer, the age of offeror's business and average number of employees over a previous period of time, as specified in the request for proposals;

(B) the abilities, qualifications and experience of all persons who would be assigned to provide the required services;

(C) a listing of other contracts under which services similar in scope, size or discipline to the required services were performed or undertaken within a previous period of time, as specified in the request for proposals;

(D) past performance as reflected by the evaluations of others who have retained the services of the firm or persons with respect to such factors as control of costs, quality of work and ability to meet deadlines;

(E) a plan giving as much detail as is practical explaining how the services will be performed; and

(F) the factors to be used in the evaluation and selection process and their relative importance.

2-210.03.2 Architectural, engineering or land surveying services. If the contract is for architectural, engineering or land surveying services, the request for proposals must also require

(1) a statement of the proximity to the project site of the office of the firm or person unless federal law prohibits this factor from being considered in the awarding of the contract; and

(2) employment practices of the firm or person with regard to women and minorities. AS 36.30.270

2-210.03.3 Evaluation. (a) Proposals will be evaluated only on the basis of evaluation factors stated in the request for proposals. The minimum factors are

(1) the plan for performing the required services;

(2) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services and the qualifications and abilities of personnel proposed to be assigned to perform the services;

(3) the equipment and facilities to perform the services which will be available at the time of contracting;

(4) a record of past performance of similar work.

(b) The relative importance of the factors in (a) and other factors will vary according to the type of services being procured.

2-210.03.4 Pre-proposal conferences. Pre-proposal conferences, as appropriate, may be conducted in accordance with 2-202.04 (Pre-bid conferences). A conference may be held anytime prior to the date established for submission of proposals.

2-210.03.5 Receipt and handling of proposals. Proposals shall be handled as follows:

(1) Registration. Proposals and modifications shall be date-stamped and time-stamped upon receipt and held in a secure place until the established due date. Proposals will not be opened publicly nor disclosed to unauthorized persons, but will be opened in the presence of two or more court system personnel. A Register of Proposals must be established which will include for all proposals the name of each offeror, the number of modifications received from each offeror and a description of the services offered. The Register of Proposals will be open to public inspection only after award of the contract. Proposals of offerors who are not awarded the contract will not be open to public inspection.

(2) Requests for nondisclosure of data. If the offeror selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the fiscal office shall examine the request to determine its validity prior to entering negotiations. If the parties do not agree as to the disclosure of data in the contract, the fiscal office shall inform the offeror in writing what portion of the proposal will be disclosed and that, unless the offeror withdraws the proposal or protests under 4-401 (Legal Remedies) of these guidelines, the proposal will be so disclosed.

2-210.03.6 Discussions. Discussions may be held as follows:

(1) Discussions permissible. The fiscal office shall evaluate all proposals submitted and may conduct discussions with any offeror. The purposes of the discussions will be to:

(A) determine in greater detail the offeror's qualifications; and

(B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance and the relative utility of alternative methods of approach.

(2) No disclosure of information. Discussions must not disclose any information derived from proposals submitted by other offerors, and the Alaska Court System shall not disclose any information contained in any proposals until after award of the proposed contract has been made. The proposal of the offeror awarded the contract will be open to public inspection except as otherwise provided in the contract.

2-210.03.7 Modification or withdrawal of proposals. Proposals may be modified or withdrawn at any time prior to initial selection of best qualified offerors.

2-210.03.8 Selection of the best qualified offerors. After conclusion of validation of qualifications, evaluation and discussion as provided in 2-210.03.6, the fiscal office shall select, in the order of their respective qualification ranking, no fewer than three acceptable offerors (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the required services.

2-210.03.9 Negotiation and award of contract. Negotiation and award of contract shall be handled as follows:

(1) General. The fiscal office and staff counsel shall negotiate a contract with the best qualified offeror for the required services at compensation determined in writing to be fair and reasonable.

(2) Elements of negotiation. Contract negotiations shall be directed toward:

(A) making certain that the offeror has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;

(B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and

(C) agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity and nature of such services.

(3) Successful negotiation of contract with best qualified offeror. If compensation, contract requirements and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror.

(4) Failure to negotiate contract with the best qualified offeror.

(A) If compensation, contract requirements or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefore shall be placed in the file and the fiscal office must advise such offeror of the termination of negotiations which will be confirmed by written notice within three days.

(B) Upon failure to negotiate a contract with the best qualified offeror, the fiscal office may enter into negotiations with the next most qualified offeror. If compensation, contract requirements and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations again fail, negotiations shall be terminated as provided above and commenced with the next most qualified offeror.

(5) Failure to negotiate contract with offerors initially selected as best qualified. If the fiscal office is unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, offers may be resolicited or additional offerors may be selected based on original, acceptable submissions in the order of their respective qualification ranking, and negotiations may continue.

(6) Memorandum of evaluation and negotiation.

(A) At the conclusion of negotiations resulting in the award of the contract, the fiscal office shall prepare a memorandum setting forth the basis of award including:

(i) how the evaluation factors stated in the request for proposals were applied to determine the best qualified offerors; and

(ii) the principal elements of the negotiations including the significant considerations relating to price and the other terms of the contract.

(B) All memoranda shall be included in the procurement file and be available to the public on request.

2-210.03.10 Notice of intent to award. The fiscal office shall notify all offerors in writing of the intent to award. The notice of intent to award is available to the public on request.

2-210.04 Legal services. (a) Legal services may be procured from lists of qualified persons and law firms used by the Department of Law or the Department of Administration for similar services.

(b) Contracts for the services of legal counsel may incorporate clauses for adjustments in prices, times of performance, and total dollar amount. 2 AAC 12.040

2-211 Contracts Awarded by the State of Alaska or Federal Government

2-211.01 Office supplies. The fiscal office will obtain and distribute information about office supplies for which the state or federal government has negotiated a standard price. Purchases of office supplies covered by a contract award do not require prior approval or processing by the fiscal office if the fiscal officer has delegated purchase authority and if the expenditure is within the delegated dollar limit. Courts may contact a vendor directly and purchase items at the prices established. If an item is not included in a contract award or the cost exceeds delegated purchasing authority, the purchase must be made through the fiscal office.

2-211.02 Purchases by fiscal office. The fiscal office may procure any item from state or federal contract vendors. If there is only one contractor for the item, the procurement will be made directly without a bid. If there is more than one contractor, the fiscal office will develop selection criteria and will select the contractor who offers the item that is most advantageous to the Alaska Court System based on the criteria. AS 36.30.700 -- 36.30.790.

2-211.03 Purchases through General Services Administration. Notwithstanding any other provision of these guidelines, purchasing through the General Services Administration or from federal supply schedules of the General Services Administration may be made without competitive sealed bidding, competitive sealed proposals, or other competition, so long as the purchasing is from persons located in the state and as provided under 41 U.S.C. 251 -- 266. AS 36.30.910.

2-212 Design-Build Construction Contracts

2-212.01 Purpose. The provisions of 2-212 set out requirements for the procurement and administration under 2-204.02(c) of design-build construction contracts. AS 36.30.200(c), 2 AAC 12.931.

2-212.02 General design-build requirements. (a) The fiscal office may conduct a design-build procurement process only if the administrative director determines in writing that it is advantageous to the Alaska Court System.

(b) When a design-build procurement process is used, the request for proposals must solicit a single price for both design and construction services. Nothing in this subsection prohibits a multi-step award process.

(c) The provisions of 2-212 apply to, and are incorporated in, all design-build construction contracts entered by the Alaska Court System.

(d) Design-build construction contracts must be procured in accordance with 2-204 (Competitive Sealed Proposals) and 2-210 (Professional Services). In the case of inconsistency with 2-204 or 2-210, the provisions of 2-212 control. AS 36.30.200(c), 2 AAC 12.933.

2-212.03 Design-builders. (a) A design-builder must have a valid business license issued under AS 43.70 and must be

(1) registered as a general contractor in accordance with AS 08.18 and 12 AAC 21; or

(2) licensed as an architect or engineer in accordance with AS 08.48 and 12 AAC 36.

(b) A design-builder may provide professional or construction services that the design-builder is not itself licensed or registered to provide, if those services are assigned or subcontracted to a person that

(1) is a member of the design-build team;

(2) has a valid business license issued under AS 43.70 and 12 AAC 12; and

(3) is registered or licensed to provide the services in accordance with AS 08.18 and 12 AAC 21, or with AS 08.48 and 12 AAC 36, as applicable.

(c) The fiscal office shall evaluate a design-builder for at least the following qualification factors:

- (1) bonding capacity;
- (2) financial strength and capabilities;
- (3) experience and technical expertise with projects of similar size and scope;
- (4) past performance;
- (5) qualifications and experience of key management and professional staff who will be assigned to the project;
- (6) the capacity to accomplish work in the required time; as part of the evaluation, the fiscal office shall consider, and the design-builder must disclose, the design-builder's present workload;
- (7) quality control and quality assurance policies and programs;
- (8) the design-builder's safety record, to include safety and drug-testing policies and programs;
- (9) equipment, including technical resources and information technology;
- (10) a subcontracting plan, including the qualifications and capabilities of any subcontractor required to be identified by the request for proposals.

(d) When evaluating a design-builder, the fiscal office shall take into account whether the design-builder qualifies as an Alaskan bidder under 2-202.12.9 (Bidder preferences), is offering the service of an employment program, or qualifies for a preference under AS 36.30.321(d).

(e) The fiscal office shall preclude or disqualify a design-builder or member of the design-build team from participation in a design-build construction contract if the fiscal office determines that the design-builder or design-build team member has an unfair competitive advantage or a conflict of interest.

(f) A consultant or subconsultant to the Alaska Court System may not be allowed to participate in a project in other than a consultant or subconsultant capacity unless the fiscal office determines that

- (1) the role of the consultant or subconsultant

(A) was limited to provision of preliminary design, reports, or similar low-level documents that will be incorporated in to the request for proposals; and

(B) did not include assistance in the development of instructions to offerors, qualification factors, performance criteria, or other evaluation criteria; or

(2) each document or report that the consultant or subconsultant delivered to the fiscal office is made available to all offerors.

(g) With or without a request from the fiscal office, a design-builder, or a member of the design-build team, must promptly disclose to the fiscal office, in writing, any factor that may provide an unfair competitive advantage or potential or actual conflict of interest for the design-builder or design-build team member.

(h) Nothing in 2-212 limits or eliminates any responsibility or liability that a professional on a design-build construction contract owes to the Alaska Court System or to a third party. AS 36.30.200(c), 2 AAC 12.935.

2-212.04 Development of performance criteria. The fiscal office shall establish the scope and level of detail required for performance criteria contained in a request for proposals. The performance criteria must be detailed enough to permit offerors to submit proposals in accordance with the request for proposals. AS 36.30.200(c), 2 AAC 12.937.

2-212.05 Solicitation of proposals. (a) The fiscal office shall prepare a request for proposals for each design-build construction contract. The request for proposals must contain, at a minimum, the following elements:

(1) the name and purpose of the project;

(2) a statement that the Alaska Court System is the entity that will award the design-build construction contract;

(3) a description of the method selected under 2-212.07 as the basis for awarding the design-build construction contract;

(4) the procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, the procedures for making awards, and a statement that the requirements of 2-212 are incorporated;

(5) the date on or before which the fiscal office must receive proposals; that date may not be less than 21 days after issuance of the request for proposals;

(6) provisions for the payment of a stipend, if any;

- (7) provisions specifying ownership of design plans or concepts or of technical plans or concepts;
- (8) the proposed contract form, terms, and conditions;
- (9) performance criteria developed under 2-212.04, including, as appropriate, capacity, durability, and production standards, ingress and egress requirements, and other criteria for the intended use of the project, expressed in performance-oriented drawings and specifications suitable to allow the design-builder to make a proposal;
- (10) a description of the drawings, specifications, or other required submittals, with guidance as to the form and level of completeness that will be acceptable; that description must include a description of the submittal review process;
- (11) a schedule for planned commencement and completion of the design-build construction contract, unless contract time is to be proposed by the design-builder and is one of the weighted proposal evaluation criteria;
- (12) budget limits, if any, for the design-build construction contract;
- (13) affirmative action, disadvantaged business, or set-aside goals, if any, for the design-build construction contract;
- (14) the qualifications the design-builder will be required to have;
- (15) detailed material quality standards;
- (16) the method for handling pre-proposal inquiries;
- (17) long-term maintenance provisions, if any;
- (18) a reference to the provisions of 2-204.12.4(b) and (d);
- (19) a requirement that an offeror provide, in the offeror's proposal, information regarding actual or potential conflicts of interest;
- (20) requirements related to changes in design-build team members or changes in personnel within design-build teams;
- (21) each evaluation factor, including cost or price, and including each significant subfactor, if any, that will affect the award of the design-build construction contract;
- (22) the relative importance of each evaluation factor and each subfactor, if any, in determining the award of the design-build construction contract;

(23) a requirement that the design-builder review the request for proposals to ascertain the project requirements, and a requirement that the design-builder notify the agency in the event of any ambiguity or uncertainty;

(24) terms or conditions detailing incentives, disincentives, or liquidated damages, if any;

(25) warranty provisions; the request for proposals must include notice that in addition to warranting materials, workmanship, and construction, and providing any additional warranties that the Alaska Court System requires, a design-builder must warrant the design of the project;

(26) notice that the design-builder must provide, in a form and amount acceptable to the Alaska Court System, insurance coverage for a defined period after final payment for the cost of

(A) correcting defects or deficiencies arising from or associated with design or construction negligence;

(B) errors or omissions; and

(C) legal defense and payment of indemnity;

(27) identification of the disciplines to be evaluated.

(b) In a request for proposals, the Alaska Court System may require a cash deposit, letter of credit, or bond not to exceed five percent of the maximum cost of the design-build construction contract, as established by the proposal. AS 36.30.200(c), 2 AAC 12.939.

2-212.06 Preparation and submission of proposals. (a) An offeror must submit its proposal to the fiscal office at the specific place and at or before the specific time identified in the request for proposals.

(b) An offeror must complete any form required in the request for proposals and provided by the fiscal office. The offeror must include with its proposal each completed form and any necessary attachment or additional information.

(c) Proposals shall be sealed and may not be opened until expiration of the time set in the request for proposals for submitting proposals.

(d) If the request for proposals requires a cash deposit or bond as described in 2-212.05(b) , the deposit or bond is subject to forfeiture if the proposal is accepted but the offeror fails to execute the design-build construction contract.

(e) For each discipline that the fiscal office identifies in the request for proposals, proposals must identify each person within that discipline to whom the offeror proposes to subcontract obligations under the design-build construction contract. A person that the offeror identifies may not be replaced without the approval of the fiscal office. AS 36.30.200(c), 2 AAC 12.941.

2-212.07 Evaluation and award of design-build contracts. (a) The fiscal office shall use one or a combination of the following methods as a basis for award unless the commissioner of transportation and public facilities approves another method:

(1) the best value method, in which the fiscal office gives numerical scores to technical proposals, and then uses those numerical scores and the bid price to establish a best value in accordance with a formula published in the request for proposals;

(2) the two-step method, in which the fiscal office

(A) first, uses a request for qualifications and the qualification factors under 2-212.03 to short-list offerors; the request for qualifications must contain, at a minimum, the following elements:

(i) the date on or before which the fiscal office must receive qualifications submissions; that date may not be less than 21 days after issuance of the request for qualifications;

(ii) the qualifications the offerors will be required to have;

(iii) a description of the project in enough detail to let offerors determine if they wish to compete and to form the basis for their qualification submissions;

(iv) qualification factors and their relative weights;

(v) identification of the maximum number of offerors that will be permitted, at the second step described in (B) of this paragraph, to submit price and technical proposals; the maximum number may not exceed five offerors, unless the fiscal office determines that a maximum number greater than five is in the best interest of the Alaska Court System; and

(B) second, uses a request for proposals to evaluate price and technical proposals from the offerors that are short-listed;

(3) the low-bid method, in which

(A) an offeror must submit a technically qualified proposal in order for the fiscal office to consider the bid; and

(B) the fiscal office awards the design-build construction contract to the offeror that submits a proposal that is technically qualified and lowest price.

(b) If the fiscal office uses a request for qualifications to short-list offerors, then it shall issue notice of the request for qualifications in accordance with 2-202.03 (Public notice)

(c) To evaluate either submissions made in response to a request for qualifications or submissions made in response to a request for proposals, the fiscal office may form evaluation committees. To assist in the evaluation process, an evaluation committee may retain the services of non-voting members, including consultants or subconsultants.

(d) The fiscal office is not required to award a design-build construction contract as a result of a request for proposals. In accordance with 2-202.18 (Rejection of all bids) and 2.202.19 (Rejection of individual bids), the fiscal office may reject a proposal.

(e) Notice of intent to award a design-build construction contract shall be issued in accordance with 2-202.14 (Notice of intent to award).

(f) The award of a design-build construction contract, if any, shall be made in accordance with 2-204.16.2 (Award).

(g) If the fiscal office awards a design-build construction contract, it shall execute the contract and issue the successful offeror a written notice to proceed.

(h) At the time of award of a design-build construction contract, the fiscal office may negotiate minor changes with the selected offeror for the purpose of clarifying the design criteria and work to be done, if the negotiated changes do not affect the ranking of the proposals based on their adjusted scores.

(i) In this section,

(1) "short-list" means to narrow the field of offerors through the selection of the most qualified offerors who have responded to a request for qualifications;

(2) "technical proposal" means the portion of a proposal that contains design solutions and other qualitative factors that are provided in response to the request for proposals. AS 36.30.200(c), 2 AAC 12.943.

2-212.08 Protests and claims. Protests and claims arising from the procurement process under 2-212 shall be reviewed in accordance with 4-401 (Legal remedies) and 4-403 (Contractual remedies). AS 36.30.200(c), 2 AAC 12.943.

2-213 Responsibility of Bidders

2-213.01 Definition. A bid may be awarded only to a responsible bidder. A responsible bidder has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance.

2-213.02 Standards of responsibility. Factors to be considered in determining whether the standard of responsibility has been met include whether a bidder has

(1) available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate the bidder's capability to meet all contractual requirements;

(2) a satisfactory record of performance;

(3) a satisfactory record of integrity;

(4) qualified legally to contract with the Alaska Court System; and

(5) supplied all necessary information in connection with an inquiry concerning responsibility.

2-213.03 Information pertaining to responsibility. The bidder shall supply information requested by the fiscal office concerning responsibility. If the bidder fails to supply the requested information, the fiscal office shall base the determination of responsibility upon any available information or may find the bidder nonresponsible if the failure is unreasonable.

2-213.04 Ability to meet standards. The bidder may demonstrate the availability of necessary financing, equipment, facilities, expertise and personnel by submitting the following upon request:

(1) evidence that the bidder possesses the necessary items;

(2) acceptable plans to subcontract for the necessary items; or

(3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

2-213.05 Right of non-disclosure. Information supplied by a bidder in response to an inquiry by the court system concerning the bidder's responsibility which the bidder has asked to be kept confidential will not be disclosed without the bidder's prior written consent. AS 36.30.360.

2-213.06 Written determination of nonresponsibility required. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the fiscal office. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file. A determination that a bidder is not responsible may be protested under 4-401 (Legal Remedies) of these guidelines.

III. SPECIFICATIONS

3-301 Specifications

3-301.01 Purpose. The purpose of a specification is to serve as a basis for obtaining a supply, service or construction item suitable for the needs of the Alaska Court System in a cost effective manner. Specifications must promote overall economy for the purposes intended, encourage competition and not be unduly restrictive. AS 36.30.060(c), 2 AAC 12.080.

3-301.02 Policy. It is the policy of the Alaska Court System to procure standard commercial products if practical. 2 AAC 12.080(c).

3-301.03 Procedures for the development of specifications.

3-301.03.1 Usual preparation. For types of procurement that do not require special knowledge or technical expertise, the requestor shall provide information as required by the fiscal office. The fiscal office will prepare the specifications.

3-301.03.2 Special expertise. The requestor of the procurement shall prepare specifications for types of procurement that require special knowledge or technical expertise.

3-301.03.3 Use of functional or performance descriptions. To the extent practical, specifications must emphasize functional or performance criteria necessary to meet the needs of the Alaska Court System. The preference for functional or performance specifications is primarily applicable to the procurement of supplies and services. This preference is often not practical in construction, apart from the procurement of supply type items for a construction project. 2 AAC 12.090.

3-301.03.4 No restrictive specifications. Except for small procurements under 2-206.02, all specifications must describe the requirements to be met without having the effect of exclusively requiring a proprietary supply, service or construction item, or procurement from a single source, unless no other manner of description will suffice. 2 AAC 12.080(b).

3-301.03.5 Review. The fiscal office shall review the specifications for content, clarity, and completeness and to assure that they do not unduly restrict competition. Final approval of specifications rests with the fiscal office, but revisions by the fiscal office that change substantive elements must be made in consultation with the requestor.

3-301.04 Form of specifications. Specifications may take one or a combination of the following forms.

3-301.04.1 Design specifications detail the precise characteristics that the purchased item must possess. The specifications may be so detailed as to describe how the product is manufactured.

3-301.04.2 Performance specifications establish the performance requirements for an item or service rather than the specific design criteria.

3-301.04.3 Brand name specification. (a) Brand name specification means a specification limited to one or more items by manufacturers' names or catalogue numbers.

(b) Because use of a brand name specification is restrictive, it may be used only when the fiscal office makes a written determination that only the identified brand name item or items will satisfy the needs of the court system, except for small procurements under 2-206.02. 2 AAC 12.12.100.

3-301.04.4 Brand name or equal specification (a) Brand name or equal specification means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet court system requirements and which provides for the submission of equivalent products.

(b) Bidders proposing an "equal" product shall be responsible for submitting all additional information on the product necessary for the fiscal office to determine whether the product offered meets the essential characteristics of the brand name included in the specifications.

3-301.05 Qualified products list.

3-301.05.1 Use. A qualified products list may be developed with the approval of the fiscal office if testing or examination of the supplies or construction items before issuance of the solicitation is desirable or necessary in order to best satisfy court system requirements. 2 AAC 12.110(a).

3-301.05.2 Solicitation. When developing a qualified products list, a representative group of potential suppliers must be solicited in writing to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration. 2 AAC 12.110(b).

3-301.05.3 Testing and confidential data. Inclusion on a qualified products list must be based on results of tests or examinations conducted in accordance with prior published requirements. Test results may be made public in a manner that protects the confidentiality of the identity of the competitors, such as using numerical designations. Except as otherwise provided by law, trade secrets, test data and similar information provided by the supplier will be kept confidential if requested in writing by the supplier. 2 AAC 12.110(c).

3-301.05.4 No prequalification. The existence of a qualified products list does not constitute prequalification of any prospective supplier of prequalified products. 2 AAC 12.110(d).

IV. LEGAL & CONTRACTUAL REMEDIES

4-401 Legal Remedies

4-401.01 Right to protest. (a) An interested party may protest the award of a contract, the proposed award of a contract or a solicitation for supplies, services, professional services or construction.

(b) Except for the protest of a small purchase made under 2-206, the provisions of 4-401.02 – 4-401.04.3 shall apply to a protest of the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction.

4-401.01.1 Protests of small purchases. (a) If an interested party is not able to informally resolve a dispute with the fiscal office, the interested party may protest the solicitation or the award of a contract under 2-206 (Small Purchases). The protest must be filed with the fiscal office. If protesting the award of a contract, a protest must be filed within five days after notice of award is made. If protesting a solicitation, a protest must be filed prior to the date and time quotations or informal proposals are due. A protest must contain the information required under 4-401.02.2 (Form).

(b) the fiscal office shall immediately give notice of the protest to the contractor or, if no award has been made, to all potential contractors who were solicited for the procurement.

(c) The administrative director or administrative director's designee shall

(1) issue a decision denying the protest, stating the reasons for the denial;

(2) issue a decision which sustains the protest in whole or in part, instructing the fiscal office to implement the appropriate remedy;

(3) with the concurrence of the protester, assign the protest to the procurement officer or other responsible official for a final administrative solution under alternative dispute resolution; or

(4) order a hearing on the protest consistent with the procedures contained in 4-401.03 (Hearing procedures). 2 AAC 12.695.

4-401.02 Filing of protest.

4-401.02.1 When filed. Time periods for filing protests are as follows:

(1) Protest of provisions.

(A) An interested party may protest provisions of an invitation to bid or request for proposals by filing with the fiscal office a written protest that contains the information required by 4-401.02.2 no less than 10 calendar days before the date of bid opening or proposal opening, or by the date set out in the invitation to bid or request for proposals for filing the protest. AS 36.30.565(a).

(B) If an invitation to bid or request for proposals was made with a shortened public notice period, a protest of provisions must be filed before the date of bid opening or proposal opening. AS 36.30.565(a).

(C) If a pre-bid or pre-proposal conference was held within 12 days of the date of bid opening or proposal opening, a protest of provisions must be filed before the date of bid opening or proposal opening. AS 36.30.565(a).

(2) Protest of cancellation. An interested party may protest the cancellation of an invitation to bid or request for proposals by filing with the fiscal office a written protest that includes the information required by 4-401.02.2 no more than 10 calendar days after a notice of cancellation is issued. 2 AAC 12.615(b).

(3) Other protests. A protest may be filed no later than 10 calendar days after receipt of verbal or written notification of the intent to award.

(4) Time limits. A protest is considered filed when received by the fiscal office. Protests filed after the 10-day period shall not be considered. AS 36.30.565 .

4-401.02.2 Form. To expedite handling of protests, the envelope should be labeled "Protest." The written protest must include as a minimum the following:

- (1) the name, address and telephone number of the protester;
- (2) appropriate identification of the procurement and, if a contract has been awarded, its number;
- (3) a statement of reasons for the protest;
- (4) supporting exhibits, evidence or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date must be indicated;

(5) the relief requested; and

(6) the signature of the protestor or the protestor's representative. AS 36.30.560.

4-401.02.3 Requested information; time for filing. Any additional information requested of any of the parties should be submitted within the time periods established by the fiscal office in order to expedite consideration of the protest. Failure of any party to comply expeditiously with a request for information by the fiscal office or staff counsel may result in resolution of the protest without consideration of any information that is untimely filed pursuant to the request.

4-401.02.4 Notice of a protest. The fiscal office shall immediately give notice of a timely protest to the contractor if a contract has been awarded or, if no award has been made, to all interested parties. AS 36.30.570.

4-401.02.5 Stay of procurement. If a timely protest is filed, the Alaska Court System may proceed with the solicitation or award of the contract, unless the administrative director makes a written determination that

(1) a reasonable probability exists that the protest will be sustained; or

(2) a stay of the proceeding or award is not contrary to the best interests of the Alaska Court System. AS 36.30.575.

4-401.02.6 Decision by the fiscal office. (a) A protest will be reviewed by the fiscal office in conjunction with staff counsel. If it is determined that the protest is valid in whole or in part, the fiscal office may reevaluate the bids or proposals, cancel the solicitation and re-issue a new invitation to bid or request for proposals, or implement another appropriate remedy.

(b) In determining an appropriate remedy, the fiscal office shall consider the circumstances surrounding the solicitation or procurement including the seriousness of the procurement deficiencies, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to the Alaska Court System and other impacts on it of a proposed remedy, and the urgency of the procurement to the welfare of the state. AS 36.30.585.

4-401.02.7 Decision without hearing by the administrative director. (a) The administrative director shall dismiss a protest before a hearing is held if it is determined in writing that the protest lacks an arguable basis in fact or law, or is untimely under 4-401.02.1 (when filed).

(b) The administrative director may issue a decision on a protest without a hearing if it involves questions of law without genuine issues of fact. AS 36.30.610

4-401.03 Hearing procedures.

4-401.03.1 Scheduling. A hearing will be scheduled expeditiously if a decision adverse to the protestor is made by the fiscal office under 4-401.02.6 (Decision by the fiscal office). The administrative director may direct that the hearing take place within a specified time period.

4-401.03.2 Hearing officer. The deputy administrative director shall designate a hearing officer.

4-401.03.3 Notice of hearing. The hearing officer shall send a written notice of the time and place of the hearing to the protester, to the fiscal office and to all other bidders, by certified mail, return receipt requested. The notice must state the nature and purpose of the proceeding. AS 36.30.670.

4-401.03.4 Authority of hearing officer. The hearing officer may

- (1) hold prehearing conferences to settle, simplify or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- (2) require parties to state their positions concerning the various issues in the proceeding;
- (3) require parties to produce for examination those relevant witnesses and documents under their control;
- (4) issue subpoenas and subpoenas duces tecum at the request of a party in accordance with the Alaska Rules of Civil Procedure.
- (5) rule on motions and other procedural matters;
- (6) regulate the course of the hearing and conduct of participants;

- (7) establish time limits for submission of motions or memoranda;
- (8) receive, exclude or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial or unduly repetitious;
- (9) take official notice of a material fact not appearing in evidence, if the fact is among the traditional matters subject to judicial notice;
- (10) impose appropriate sanctions against a person who fails to obey an order of the hearing officer, including
 - (A) prohibiting the person from asserting or opposing designated claims or defenses or introducing designated matters into evidence;
 - (B) excluding all testimony of an unresponsive or evasive witness;
 - (C) excluding a person from further participation in the hearing;
- (11) administer oaths or affirmations. AS 36.30.670.

4-401.03.5 Hearings. Hearings will be conducted in an informal manner. The weight to be attached to evidence is within the discretion of the hearing officer. Stipulations of fact agreed upon by the parties may be used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The hearing officer may require evidence in addition to that offered by the parties. AS 36.30.670.

4-401.03.6 Records. The hearing will be recorded. A record of the hearing will be made available at cost to a party that requests it.

4-401.03.7 Witnesses. Witnesses shall testify under oath or affirmation and may be cross-examined.

4-401.03.8 Bid preparation costs. If a protest is sustained in whole or in part, the protester's damages are limited to reasonable bid or proposal preparation costs. A protester who requests reimbursement for bid or proposal preparation costs must provide detailed proof of these costs. AS 36.30.585(c).

4-401.04 Final decision.

4-401.04.1 Recommendation and decision. The hearing officer shall issue a recommendation to the administrative director within five working days after the hearing. The recommendation must include findings of fact and conclusions of law. The administrative director shall approve, modify or disapprove the decision in whole or in part within two working days. A copy of the hearing officer's recommendation and the administrative director's final decision will be provided to all parties. AS 36.30.675.

4-401.04.2 Protest upheld before award. If the protest is made before award of the contract and is upheld, the fiscal office may cancel or reinstate the solicitation, reject or accept a bid or take other appropriate action.

4-401.04.3 Protest upheld after award. If a protest is upheld after contract award, the administrative director may cancel the award or permit it to stand after determining that the best interests of the court system warrant this action. Factors that will be considered include but are not limited to the following:

(1) the circumstances surrounding the solicitation or procurement including the seriousness of the procurement deficiencies;

(2) the degree of prejudice to other interested parties or to the integrity of the procurement system;

(3) the good faith of the parties;

(4) the extent the procurement has been accomplished;

(5) costs to and other impacts on the Alaska Court System of a proposed remedy; and

(6) the urgency of the procurement to the Alaska Court System. AS 36.30.585.

4-401.04.4 Judicial appeals. A final decision of the administrative director may be appealed to the superior court pursuant to the Alaska Rules of Appellate Procedure.

4-402 Debarment of Vendors from Consideration for Contracts

4-402.01 Authority to debar. After reasonable notification and opportunity for the person involved to be heard, the fiscal office, after consultation with staff counsel and approval of the administrative director, may debar a person for cause from consideration for award of contracts. The debarment may not be for a period of more than three years. AS 36.30.635(a).

4-402.02 Causes for debarment. Causes for debarment include the following:

(1) conviction of a criminal offense in connection with obtaining or attempting to obtain a public or private contract or subcontract or in the performance of the contract or subcontract;

(2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or other offense indicating a lack of business integrity or business honesty;

(3) conviction or civil judgment finding a violation under state or federal antitrust statutes;

(4) violation of any contract provisions that is regarded by the fiscal office to be so serious as to justify debarment action, such as:

(A) knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(B) failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(5) violation of the ethical standards set out in law or regulation; and

(6) any other cause the fiscal office determines to be so serious and compelling as to affect responsibility as an Alaska Court System contractor, including debarment by another governmental entity. AS 36.30.640.

4-402.03 Notice of proposed debarment. Written notice of a proposed debarment action must be sent by certified mail, return receipt requested, to the last known address of the contractor or prospective contractor. This notice must

- (1) state that debarment is being considered;
- (2) set out the reasons for the action; and
- (3) state that the contractor or prospective contractor has a right to a hearing and may be represented by counsel. AS 36.30.635, 2 AAC 12.630.

4-402.04 Hearing procedure.

4-402.04.1 Written request. A person who has received a notice of proposed debarment is entitled to a hearing if the person files a written request for hearing within ten calendar days of issuance of the notice of proposed debarment. The request must set out specific grounds for the hearing. 2 AAC 12.650.

4-402.04.2 Procurement protest procedures apply. The provisions of 4-402.04 (Hearing procedures) apply to debarment hearings.

4-402.04.3 Written decision. (a) The administrative director, upon recommendation of the fiscal office, shall issue a written decision to debar. The decision must

- (1) state the reasons for the action taken; and
- (2) inform the debarred person of his or her rights to judicial appeal.

(b) A copy of the decision must be mailed or otherwise furnished immediately to the debarred person and any intervening party. AS 36.30.645.

4-402.05 Reinstatement.

4-402.05.1 Written statement. A debarred person may request reinstatement by submitting a written statement to the fiscal office showing that the cause for the debarment no longer exists or has been substantially mitigated. AS 36.30.660(b).

4-402.05.2 Determination by administrative director. The administrative director may, at any time after a final decision to debar a person from consideration for award of contracts, reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated. AS 36.30.660(a).

4-402.05.3 Hearing. The fiscal office may require a hearing on the request for reinstatement. A written decision by the administrative director on the request will be made within ten calendar days of the submission of the request or within ten calendar days of the hearing. The decision must specify the factors on which it is based. AS 36.30.660(c).

4-402.05.4 Limited participation. The fiscal office may permit a debarred person to participate in a contract on a limited basis during the debarment period if the administrative director determines in writing that the participation is advantageous to the Alaska Court System. The determination shall specify the factors on which it is based and the limits imposed on the debarred person. AS 36.30.665.

4-402.06 List of persons debarred. The fiscal office shall maintain a current list of all persons debarred from consideration for award of contracts. AS 36.30.655

4-403 Contractual Remedies

4-403.01 Contract claims. A contractor shall file a claim concerning a contract awarded under these guidelines as directed in Administrative Rule 47 of the Alaska Rules of Court (Appendix C)

4-403.02 Time of Filing. (a) A claim under this section must be filed within 90 days after the contractor becomes aware of the basis of the claim or should have known the basis of the claim, whichever is earlier.

(b) Notwithstanding (a) of this section, a claim for a lease rate adjustment called for in a lease may be filed anytime prior to the expiration date of the lease. AS 36.30.605(a).

V. CONTRACT FORMATION AND MODIFICATION

5-501 Contract Formation and Modification

5-501.01 Types of contracts. Any type of contract that will promote the best interests of the Alaska Court System may be used, except that

- (1) the use of a cost-plus-a-percentage-of-cost contract is prohibited; and
- (2) a cost-reimbursement contract may be used only when a determination is made in writing by the fiscal office that a cost-reimbursement contract is likely to be less costly to the Alaska Court System than any other type or that it is impractical to obtain the services, supplies, professional services or construction required except under a cost-reimbursement contract. AS 36.30.370.

5-501.02 Out-of-state contracts. Except for awards made under competitive sealed bidding, if the fiscal office awards a contract to a person who does not reside or maintain a place of business in the state and if the services, supplies, professional services or construction that is the subject of the contract could have been obtained from sources in the state, the fiscal office shall issue a written statement explaining the basis of the award. The statement will be kept in the contract file. AS 36.30.362.

5-501.03 Right to inspect plant. The Alaska Court System may, at reasonable times, inspect the part of the plant or place of business of a contractor or subcontractor for any purpose that is related to the performance of a contract awarded or to be awarded. AS 36.30.410.

5-501.04 Right to audit records. The Alaska Court System may, at reasonable times and places, audit the books and records of a person who has submitted cost or pricing data to the extent that the books and records relate to the cost or pricing data. A person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain books and records that relate to the cost or pricing data for three years after the date of final payment under the contract, unless a shorter period is authorized in writing by the fiscal office. AS 36.30.420(a).

5-501.05 Contractors and subcontractors. The Alaska Court System may audit the books and records of a contractor or a subcontractor to the extent that the books and records relate to the performance of the contract or subcontract. The contractor must maintain books and records for a period of three years after the date of

final payment under the prime contract and by the subcontractor for a period of three years after the date of final payment under the subcontract, unless a shorter period is authorized in writing by the fiscal office. AS 36.30.420(b).

5-501.06 Definite quantity contracts. The following clause may be used in definite quantity supply or service contracts:

Variation in quantity. Upon the agreement of the parties, the services or quantity of supplies or both specified in this contract may be increased, provided that

(1) the unit prices will remain the same (except for any price adjustments otherwise applicable); and

(2) the administrative director approves a written determination by the fiscal office that it would be in the best interest of the court system to allow the increase.

5-501.07 Transfer. A contract may not be transferred or otherwise assigned without the prior written consent of the fiscal office. 12 AAC 480.

5-501.08 Multi-term contracts.

5-501.08.1 General guidelines. Unless otherwise provided by law, a contract for services, supplies or professional services may be entered into for any period of time considered to be in the best interests of the Alaska Court System provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds. AS 36.30.390(a).

5-501.08.2 Written determination. Before using a multi-term contract, the fiscal office shall determine in writing that:

(1) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) the contract will serve the best interests of the Alaska Court System by encouraging effective competition or otherwise promoting economies in procurement. AS 36.30.390(b).

5-501.08.3 Contract cancellation. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract will be cancelled. The contractor may be reimbursed only for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the services, supplies or professional services delivered under the contract that are not otherwise recoverable. The cost of cancellation may be paid from any appropriations available for these purposes. AS 36.30.390(c).

5-501.09 Leases.

5-501.09.1 Occupancy periods. A lease may not provide for a period of occupancy greater than 40 years. AS 36.30.080(a).

5-501.09.2 Rent exceeding certain amounts. The Alaska Court System shall provide notice to the legislature if it intends to enter into or renew a lease of real property with an annual rent anticipated to exceed \$500,000 or with total lease payments that exceed \$2,500,000 for the full term of the lease, including any renewal options that are defined in the lease. The notice must include the anticipated annual lease obligation amount and the total lease payments for the full term of the lease. The Alaska Court System may not enter into or renew a lease of real property

(1) requiring notice under this section unless the proposed lease or renewal of a lease has been approved by the legislature by law; an appropriation for the rent payable during the initial period of the lease or the initial period of lease renewal constitutes approval of the proposed lease or renewal of a lease;

(2) under this section if the total of all optional renewal periods provided for in the lease exceeds the original term of the lease exclusive of the total period of all renewal options. AS 36.30.080(c).

5-501.09.3 Lease-purchase agreements. (a) The Alaska Court System shall provide notice to the legislature if it intends to enter into or renew a lease-purchase agreement to acquire or improve real property, other than an agreement related to the refinancing of an outstanding balance owing on an existing lease-purchase agreement. The notice must include the anticipated total construction, acquisition, or other costs of the project, the anticipated annual amount of the rental obligation, and the total lease payments for the full term of the lease-purchase agreement.

(b) When evaluating proposals to acquire or improve real property under a lease-purchase agreement, the court system shall consider

(1) in addition to lease costs, the life cycle costs, function, indoor environment, public convenience, planning, design, appearance, and location of the real property proposed for acquisition or improvement; and

(2) whether acquisition or improvement of the real property by lease-purchase agreement is likely to be the least costly means to provide the space.

(c) A lease-purchase agreement may not provide for a period of occupancy under the full term of the agreement that is greater than 40 years, and must provide that lease payments are subject to annual appropriation. The court system must be the lessee under the agreement.

(d) "Full term of the lease-purchase agreement" includes all renewal options that are defined within the lease-purchase agreement. "Lease-purchase agreement" includes a lease-financing agreement. AS 36.30.085.

5-501.09.4 Lease extensions authorized. (a) The Alaska Court System may extend, for up to a maximum extension of 10 years, a real property lease that is entered into under these guidelines, if a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension can be achieved on the rent due under the lease. The market rental value must be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value.

(b) By August 31 of each year, an annual report shall be submitted to the Legislative Budget and Audit Committee detailing the leases extended and the cost savings achieved. AS 36.30.083.

VI. INTERGOVERNMENTAL RELATIONS

6-601 Intergovernmental Relations

6-601.01 Intergovernmental procurement. The Alaska Court system may participate in intergovernmental procurement pursuant to AS 36.30.700 -- 36.30.790.

6-601.02 Disposition of surplus supplies. The fiscal office will dispose of all obsolete or surplus property of the court system for which there is no immediate or prospective use. Disposal will be made through the Department of Administration as provided in AS 44.71.010.

6-601.03 Federal Assistance. If a procurement involves the expenditure of federal money or requires federal assistance and there is a conflict between a provision of these guidelines and a federal statute, regulation, policy, or requirement, the fiscal office shall comply with the federal statute, regulation, policy, or requirement. 2 AAC 12.790.

VII. RETENTION AND CONTENT OF PROCUREMENT RECORDS

7-701 Retention and Content of Procurement Records

7-701.01 Procurement files. The fiscal office shall retain procurement files for ten years from the date of award. The procurement files will contain the following, as applicable:

- (1) a copy of the contract;
- (2) the register of bids or proposals and a copy of each submitted; and
- (3) the written determination to award the contract. AS 36.30.510.

7-701.02 Single source and emergency procurement records. The fiscal office shall maintain a record of single source and emergency procurements for five years from the date of award. The record will contain the following:

- (1) each contractor's name;
- (2) the amount and type of each contract;
- (3) a list of the services, supplies, professional services or construction procured under each contract; and
- (4) the identification number of the contract file.

7-701.03 Public inspection. The records described in 7-701.01 and 7-701.02 above shall be available for public inspection.

VIII. DEFINITIONS OF TERMS USED IN THESE GUIDELINES

8-801 Definitions of Terms Used in These Guidelines

8-801.01 Accredited youth education and employment program means a program that allows participants to earn academic credits which are recognized by an Alaskan school district.

8-801.02 Alaska product means a product of which not less than 25 percent of the value, as determined in accordance with regulations adopted under AS 36.30.332(a), has been added by manufacturing or production in the state.

8-801.03 Approval plans means book selection services in which current book titles meeting the court system's customized specifications are provided to the court system subject to the right of the court system to return those books that do not meet with the court system's approval.

8-801.04 Archival materials means non-current records that are preserved after appraisal because of their value.

8-801.05 Alaska Veteran means an individual who is a

individual who

- (1) resident of this state; and
- (2) veteran; in this paragraph, "veteran" means an
 - (A) served in the
 - (i) armed forces of the United States, including a reserve unit of the United States armed forces; or
 - (ii) Alaska Territorial Guard, the Alaska Army National Guard, the Alaska Air National Guard; or the Alaska Naval Militia; and
 - (B) was separated from service under a condition that was not dishonorable.

8-801.06 Audio-visual materials means non-book slides, transparencies, films and items that require the use of equipment

8-801.07 Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

8-801.08 Business license means the license required under the Alaska Business License Act (AS 43.70) and, for a person engaging in a business subject to licensing provisions of a regulatory nature, a license, certificate, permit, registration or similar evidence of authority issued for an occupation by competent legal authority.

8-801.09 Construction means the process of building, altering, repairing, improving or demolishing any structure or building, or other improvements of any kind to real property. It includes services and professional services relating to planning and design required for construction.

8-801.10 Contract means all types of Alaska Court System agreements, regardless of what they may be called, for the procurement or disposal of supplies, equipment, services, professional services or construction.

8-801.11 Design-build construction contract means a construction contract between an agency and a design-builder to furnish architecture, engineering, and related design services, and to furnish construction services, including labor and materials.

8-801.12 Fiscal office means the fiscal officer and purchasing agents within the office of the administrative director of Alaska Court System. This term means the facilities manager if the procurement concerns leasing or construction of court facilities or related services.

8-801.13 Interested party means an actual or prospective bidder or offeror whose economic interest might be affected substantially and directly by the issuance of a contract solicitation, the award of a contract or the failure to award a contract.

8-801.14 Invitation to bid means all documents, whether attached or incorporated by reference, used for soliciting bids.

8-801.15 **May** denotes the permissive.

8-801.16 **Minor informalities** means matters of form rather than substance which are evident from the bid document, or are insignificant matters that have a negligible effect on price, quantity, quality, delivery or contractual conditions and can be waived or corrected without prejudice to other bidders.

8-801.17 **Network information services** means a group of resources from which cataloging information, holdings records, inter-library loans, acquisitions information, and other reference resources can be obtained.

8-801.18 **Nonresponsive** means a bid or proposal that does not conform in all material respects to the solicitation.

8-801.19 **Person** means a business, individual, union, committee, club, other organization or group of individuals.

8-801.20 **Practicable** means what may reasonably be accomplished or put into practical application. The terms "practical" and "practicable" shall be considered to have the same meaning.

8-801.21 **Procurement** means buying, purchasing, renting, leasing or otherwise acquiring supplies, equipment, services or construction. It also includes functions that pertain to the obtaining of supplies, equipment, services or construction (including description of requirements), selection and solicitation of sources, preparation and award of contracts and all phases of contract administration.

8-801.22 **Produced or manufactured** means processing, developing or making an item into a new item with a distinct character and use through the application within the state of materials, labor, skill or other services.

8-801.23 **Product** means materials or supplies.

8-801.24 **Professional services** means professional, technical or consultant's services that are predominantly intellectual in character, result in the production of a report or the completion of a task and include analysis, evaluation, prediction, planning or recommendation.

8-801.25 Protester means an interested party who is aggrieved in connection with the solicitation, cancellation or the award of a contract and who files a protest.

8-801.26 Request for proposals means all documents, whether attached or incorporated by reference, used for soliciting proposals.

8-801.27 Requestor means any office of the Alaska Court System which requests procurement of supplies, services or construction.

8-801.28 Responsible bidder or offeror means a person or business who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

8-801.29 Responsive bidder means a person or business who has submitted a bid that conforms in all material respects to the solicitation.

8-801.30 Services means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

8-801.31 Solicitation means an invitation to bid, a request for proposals, a request for quotations or any other document issued for the purpose of soliciting bids or proposals to perform a contract.

8-801.32 Specification means a description of the physical or functional characteristics or of the nature of a supply, service, professional service or construction item. It may include requirements for licensing, inspection, testing, preparation and delivery. AS 36.30.060(d).

8-801.33 Supplies means all personal property, including but not limited to equipment, materials, printing and insurance; it includes privately owned real property leased for court system use, but does not include the acquisition or disposition of other interests in land.

8-801.34 **User** means any office of the Alaska Court System which uses any supplies, services or construction procured under these guidelines.

8-801.35 **Will, shall, and must** denote the imperative.

8-801.36 **Written or in writing**, includes information that is electronically transmitted and stored, unless otherwise indicated.