

# DOT&PF CONTRACTS OFFICER BULLETIN <sup>1</sup>

NO. 06 - 007

## FOREIGN OUTSOURCING IN STATE CONTRACTS

Issued: October 1, 2006

Chief Contracts Officer: Mark O'Brien

As a result of Administrative Order No. 216 issued by Governor Murkowski on August 5, 2004, the Department of Transportation and Public Facilities (DOT&PF) has developed the following policy and guidance regarding foreign outsourcing. This policy affects all state construction related solicitations and contracts above \$25,000 for professional services and non-professional services issued on, or after October 15, 2004, including alternate and exempt procurements. Professional services and services are defined under AS 36.30.990(19) & (21). Bids and contracts to actually construct our highway, airport, buildings, dock, harbors, ferries, etc. are not "service" contracts and are not covered by Administrative Order 216.

**NOTE:** This requirement also does not apply to contracts for construction "supplies" as defined under AS 36.30.990 (24), even though some items purchased may include warranty and/or maintenance services that are provided by vendors located outside the United States.

**POLICY:** In an effort to ensure that funds spent on construction related service contracts provide the maximum economic benefit to the State of Alaska and the United States, the State of Alaska shall require all service contracts above \$25,000 to be performed in the United States, unless a waiver is approved by the Chief Contracts Officer.

**PROCEDURE:** The following clause must be added to the mandatory phrase section of construction related ITB and RFP shell documents.

**FOREIGN CONTRACTING:** *By signature on this solicitation, the offeror/bidder certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States. Failure to comply with this requirement will cause the state to reject the bid or proposal as non-responsive, or cancel the contract.*

The clause must also be included in all informal RFPs, RFQs, alternate and exempt procurement solicitations and contracts above \$25,000 for construction related professional and non-professional services. The first sentence of the clause may be changed to, "By signature on this contract..." for negotiated procurements.

If an agency believes that is in the states best interest to contract with a vendor to provide services from outside the United States, the agency may submit a request for waiver to the Chief Contracts Officer for approval.

The request for waiver must address the following:

1. Why it is in the states best interest to allow the services to be performed outside the United States, and
2. Why limiting competition to service providers located in the United States could damage the agency's ability to accomplish its public mission.

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<sup>1</sup> **CONTRACT OFFICER BULLETINS** - From time to time, it is expedient to issue information, guidance, or directives on certain construction contract matters. Such communications can best be accomplished through the medium of 'bulletins'. These bulletins are "interpretive" in nature and serve to inform and direct. They reflect the departments' policy on the issue being addressed. If a conflict between a bulletin and a statute or a formally adopted regulation is found to exist, the law/regulation takes precedence [ref. AS 44.62.640(a)(3)]. Comments or suggestions are appreciated and can be directed to Ira Rosen @ Ira\_Rosen@dot.state.ak.us. phone, 465-8878, Fax 586-8365.

Visit our Website at <http://www.dot.state.ak.us/external/hq/proc/cob.html> for electronic access to Contract Officer Bulletins.

If the waiver is approved, all offerors shall be required to provide a certified list verifying the country(ies) the contracted or subcontracted work will be performed. A copy of the list must be maintained in the procurement file. If a numerical scoring method is utilized, state agencies are encouraged to evaluate and consider the percentage of work to be performed outside the United States as compared to work to be performed inside the United States.

The following types of contracts may involve services provided outside the country and do not require a waiver:

**Statutory Exemption** - AS 36.30.850(31) "Contracts that are to be performed in an area outside the country and that require a knowledge of the customs, procedures, rules, or laws of the area".

**Foreign Offices** - Agencies with offices located overseas may require foreign contractors to perform work for the State of Alaska.

If you have any questions regarding this bulletin, please contact DOT&PF Procurement at 465-8878.