

Department of Transportation & Public Facilities

CONTRACTS OFFICER BULLETIN¹

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WHAT IS CONSTRUCTION

INTRODUCTION

This document serves to provide guidance when determining whether or not a procurement meets the statutory definition of construction. It is important for Procurement Officers to make that determination prior to initiating a procurement. There are significant differences between construction and non-construction procurement types with respect to delegated authority, certification/warrant requirements, competitive levels, public notice, forms, procedures and reports.

Delegation - You must possess a written delegation of purchasing authority before initiating any procurement. The Department of Transportation and Public Facilities (DOT/PF) delegate's authority for construction procurements, the Department of Administration (DOA) delegates authority for non-construction procurements.

Certification/Warrant – Prior to exercising a delegation from DOT/PF you must possess a Construction Contracting Warrant commensurate with the type and dollar amount of the procurement. Before exercising a delegation from DOA you must possess an appropriate Procurement Officer's Certificate.

Competitive Levels – Construction small procurement thresholds are established by funding source:

Construction Services and Professional Services² (construction-related)

- State: \$200,000
- Federal: \$200,000³

The non-construction small procurement threshold (State and Federal) is \$100,000.

¹ **CONTRACTS 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 department's 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 the Chief Contracts Officer.

² FHWA Policy Memo December 3, 2018 <https://www.fhwa.dot.gov/federalaid/services/181203.cfm>

³ Federal Register / Vol. 85, No. 157 Final guidance, OMB Guidance for Grants and Agreements, issued August 13, 2020. Increased the Federal simplified acquisition threshold to \$250,000. The construction-related small procurement threshold for state agencies (grantees) is the lesser amount of state and federal thresholds, which is \$200,000.

Public Notice – DOT/PF has public notice and online posting requirements that must be met for construction procurements (see department policy and procedure 10.02.014). Non-construction procurements must comply with DOA’s public notice and online posting requirements.

Forms, Procedures & Reports – Construction procurements are subject to DOT/PF’s procedure manuals, forms and reporting requirements. Non-construction procurements are subject to Sections 81 and 82 of the Alaska Administration Manual, DOA’s forms and reporting requirements.

The definition of construction under AS 36.30.990(7) states:

"construction" means the process of building, altering, repairing, maintaining, improving, or demolishing a public highway, structure, building, or other public improvement of any kind to real property other than privately owned real property leased for the use of agencies; it includes services and professional services relating to planning and design required for the construction; it does not include the routine operation of a public improvement to real property nor does it include the construction of public housing;"

Construction includes the following activities:

- **Altering** – to make different without changing into something else
- **Building** – to form by ordering and uniting materials by gradual means into a composite whole
- **Demolishing** – to destroy or tear down
- **Improving** – to make useful additions or betterment’s
- **Maintaining** – work necessary to preserve or maintain a facility so it can be used for its designated purpose
- **Repairing** – to mend, remedy, restore, or renovate an existing structure to restore it to its original condition

To assist you in making the construction vs. non-construction determination, guidelines and examples are provided for four separate contract types:

- 1) Supplies and Materials;
- 2) Services;
- 3) Architectural/Engineering/Land Surveying, and
- 4) Professional Services.

Keep in mind that construction procurements related to *“privately owned real property leased for the use of agencies”* do not meet the definition of construction and thus fall under DOA’s delegation and procedures.

SUPPLIES AND MATERIALS

The definition of construction under AS 36.30.990(b)(6) includes *“the process of building, altering, repairing, maintaining, improving, or demolishing a public highway, structure, building, or other public improvement...”* Generally, supplies and materials used in a construction project meet the statutory definition of construction and are procured under DOT/PF’s delegated authority. For example:

- building materials, lumber, aggregate, paint, etc.

Items that are attached to a facility by means of a hard connection would also meet the definition of construction. For example, a built-in dishwasher that is attached to the building structurally, hard wired to the electrical system and plumbed to the mechanical system meets the construction definition. However, a portable dishwasher that is easily movable, plugs into an existing outlet and attaches in some temporary fashion to the mechanical system would not be considered construction.

Supplies and materials that are not directly related to a construction project fall under DOA's delegated authority for non-construction procurements. Examples:

- office equipment and supplies used to deliver the construction projects
- fuel, electricity and other utilities that facilitate the routine operation of the facility

SERVICES

The following examples are provided to define services that are considered construction procurements. These procurements fall under DOT/PF's delegated authority:

- maintenance, repair, or replacement of a facility's boiler
- maintenance, repair, or replacement of a building's roof
- painting both the interior and exterior of buildings or other state facilities
- heavy equipment rented for use on a construction project
- clearing and grubbing relating to a construction project
- removal of material when it relates to the demolition or construction of a state facility
- demolition of a building or facility
- carpet replacement
- installation of security systems, public address systems and associated maintenance contracts
- building caulking
- elevator, fire alarm and sprinkler maintenance contracts

The following examples are provided to define non-construction services that fall under DOA's delegated procurement authority:

- security guards
- furniture installation, systems furniture
- environmental remediation or cleanup (i.e. oil clean up)
- heavy equipment rentals for environmental remediation
- telephones or cable television

The following routine maintenance and repair contracts meet the statutory definition of "construction." Agencies may award these, and similar types of routine maintenance and repair contracts under delegations issued by DOT/PF or DOA. Agencies must comply with all aspects of the departmental delegation they select, including certification/warrant requirements, public notice, forms, procedures, and reporting requirements. However, the small procurement threshold for construction would apply under either delegation.

- janitorial
- parking lot maintenance, including striping, patching, snow plowing and sanding
- lawn care
- window washing

ARCHITECTURAL/ENGINEERING/LAND SURVEYING

The Request for Proposal process is used for the selection of Architects, Engineers and Land Surveyors when seeking professional services for construction projects. These contracts are subject to AS 36.30.270 which requires a qualifications based selection process. Architectural, Engineering or Land Surveyor contracts that do not directly relate to construction fall under DOA's delegation. For example:

- an architectural contract for space planning or the design of a systems furniture layout

PROFESSIONAL SERVICES

Since the definition of construction under AS 36.30.990(b)(6) includes "*professional services relating to planning and design required for the construction*", a professional services contract related to a specific construction project meets the definition of construction and is procured under DOT/PF's authority. Price must be considered during evaluation of these contracts. Examples:

- a study to determine the effect a public works project will have on wildlife populations
- aerial photography to assist in project development
- real estate appraisals and other professional services necessary to acquire land for the construction of a project

Professional services contracts that are not related to "*planning and design required for construction*" fall under the DOA's delegated authority for non-construction and are subject to the non-construction procurement laws and procedures:

- environmental, wildlife or fisheries studies not associated with a construction project
- marketing/ Public Relations services
- economic analysis

If you have questions regarding a particular procurement contact your department's procurement section, DOT/PF, or DOA for assistance. Keep in mind that the criteria used to determine the applicability of Wage and Hour determinations are different than the criteria discussed in this document. Contact the Department of Labor with questions regarding Little Davis-Bacon prevailing wage requirements.