

MEMORANDUM

State of Alaska Department of Law

TO: Ben Stevens
Chief of Staff

DATE: January 29, 2021

TEL. NO.: (907) 269-5100

FROM: Treg Taylor
Deputy Attorney General

SUBJECT: Penney Capital Contract

You requested a memorandum from the Department of Law that can be provided to the legislature related to our investigation of whether the contract with Clark Penney complied with the law. Our investigation concluded that there were no violations of state law or regulations.

The Department of Law completed an investigation of the procurement process used by the Alaska Industrial Development and Export Authority (AIDEA) to contract with Penney Capital, Inc. (Penney Capital) for consulting and oversight of the Alaska Development Team (formerly, the New Industry Development Team). AIDEA is exempt from the standard state procurement regulations, but must adhere to its own procurement regulations.

Because AIDEA does not have a written policy for investigating procurement violations, the process described in the Department of Administration's Administrative Manual informed Department of Law's investigation process to determine whether a violation had occurred.

The investigation was conducted to ascertain how the procurement came about, the contractor selection process, and whether AIDEA complied with the procurement process.

AIDEA's regulations require the procurement file include the determination regarding the source selection method used, cost or pricing information, and a copy of the contract. All were included, and the Penney Capital contract therefore complied with the procurement process. The state benefitted from the contract, and there were no damages to the state caused by the procurement process.

Although we find that this procurement complied with AIDEA's process, we recommend that AIDEA consider amending its regulations to include the following requirements in future procurements:

- Procurement specifications, and the reasons for including them;
- Qualifications of any subject matter expert relied on to develop procurement specifications; and
- Subject matter expert's reasoning for arriving at the advice given, if any.

In conclusion, AIDEA did not violate its procurement process when contracting with Penney Capital.