



November 3, 2023

## Final Investigative Report Concerning Ombudsman Complaint 2022-1287

### COMPLAINT

On November 16, 2022, a Municipal employee contacted the Ombudsman to express concerns regarding multiple sole source contracts that the Municipality had signed with Denali FSP, LLC. The employee alleged that the requirements of Anchorage Title 7, the Municipality's purchasing code, had not been followed regarding the contracts.

### FINDINGS

The complaint involving the Municipality of Anchorage, Purchasing Department is **JUSTIFIED**.

### BACKGROUND AND TIMELINE

On November 16, 2022, a Municipal employee contacted the Ombudsman to express concerns regarding multiple sole source contracts that the Municipality of Anchorage (MOA) had signed with Denali FSP, LLC (Denali), a local business. The employee alleged that the requirements of Anchorage Title 7, the Municipality's purchasing code, had not been followed regarding the development and processing of the contracts, including the timeline for the required sole source memo and the reporting of the contract to the Assembly.

Denali FSP Fundraising & Grant Consultants is a local business "that manages all aspects of grant management, writing, evaluation and reporting for tribal entities, non-profits and governments". In late 2021, the MOA began looking for a contractor to prepare and manage grant proposals for American Rescue Plan Act (ARPA) funding allotted to the MOA.

AMC 7.20.080.A.5 – Proprietary and non-competitive procurements, states that for contracts where the purchasing officer determines in writing that the municipality's requirements reasonably limit the source for the supplies, services, professional service or construction to one person, the MOA may execute a sole source contract. The code does not specify what form the Director's written determination should take -it is usually accomplished by the Director signing-off on sole source memos submitted by the departments desiring to execute sole source contracts.

AMC 7.15.040.A – Assembly approval of contracts, states that no contracts "more than \$30,000.00 including any amendments pursuant to contracts awarded under section

7.20.080.A.5, or more than \$50,000.00 pursuant to contracts awarded through other authorized procedures, may be executed unless the assembly has approved a memorandum setting forth the essential terms of the contract”.

The MOA, Purchasing Department has a long-established policy of monthly reporting to the Assembly sole source contracts that are more than \$10,000 and less than \$30,000, based on the commitment made by a former Mayor and Purchasing Director in AIM 26-88, which was accepted by the Assembly on January 26, 1988.

During his inquiry, the Ombudsman reviewed the relevant sections of code and the Charter, copies of all contracts, contract amendments, and Assembly documents related to the Denali contracts, as well as relevant emails and memorandums. The Ombudsman also met with Purchasing staff, including the Director. The Ombudsman met with the Internal Auditor and reviewed Internal Audit Report 2022-02, Sole Source Purchases, dated April 28, 2022.

To assist in understanding the chain of events related to this matter, the Ombudsman has developed a timeline -

- A \$27,000 contract, reported to the Assembly as a sole source contract (AIM 119-2022), between the MOA and Denali, with a performance period of 01/25/22-06/25/22, was signed by the contractor on 01/24/22. The contract was under the \$30,000 threshold that required Assembly approval, but over the \$10,000 threshold that triggered reporting the contract to the Assembly. The executed, legal contract contains the initials of the Purchasing Director.
- A \$48,600 second contract between the MOA and Denali was executed on 02/04/22, with a performance period of 02/04/22-10/31/22. The contract was over the \$30,000 threshold that required Assembly approval – the contract was not submitted to the Assembly for approval. The executed, legal contract contains the signature of the Purchasing Director.
- The sole source memo from the Mayor’s Chief of Staff to the Purchasing Director regarding the Denali contracts was dated 04/20/22 – the same memo was used for multiple contracts between the MOA and Denali. The memo states (in part) that “Due to the time constraints, expertise credentials, and the budget from which we were working with, Ken Miller was the best of the few options that were explored. Ken come from a background in grant administration and based on the budget, his ability to start almost immediately, and his very articulate knowledge of ARPA, he was the best fit for the administration”. The copies of the sole source memo that were provided to the Ombudsman and that are part of the public record do not contain the initials or signature of the Purchasing Director.
- After an internal review by the MOA, it was determined that the intent was to amend the original contract, not to execute a second contract. Amendment #1 to increase the original contract from \$27,000 to \$46,000 and to extend the end date of the contract from 06/25/22 to 08/31/22 was signed on 07/08/22. Amendment #1 raised the amount of the contract over the \$30,000 threshold found in Title 7 that required Assembly

approval. The executed amendment document contains the signature of the Purchasing Director, dated 07/08/22.

- AIM 119-2022 was submitted to Assembly on 07/12/22, reporting sole source procurements over \$10,000 & under \$30,000 for the month of May 2022. The AIM states that it was “Prepared by: Rachelle Alger, Purchasing Director.” The original Denali contract, signed by the contractor on 01/24/22 was listed in the AIM as a sole source contract. The contract contains the signatures of the Chief of Staff and Purchasing Director, but neither signature is dated. It appears that the document was fully executed on 04/26/22, after the contractor had started providing services under the contract. The AIM references AIM 26-88, which was submitted to the Assembly on January 26, 1988. AIM 26-88 stated that “In order to ensure that full and open knowledge of the non-competitive process is readily available, the Purchasing Department will prepare an Assembly Information Memorandum detailing those sole source procurements that are more than \$10,000 and less than \$30,000. The purchase order number, vendor, dollar amount, and the reason for the sole source will be set forth in the reports”. It is questionable if a 1988 AIM places a legal obligation on the Purchasing Department to continue providing these reports indefinitely – this requirement needs to be in code.
- The original sole source contracts between the MOA and Denali, signed on 01/24/22 and 02/04/22, were cancelled “for reasons of convenience” on 10/07/22. On 10/11/22, the cancellation letter was retracted and the “duplicate Contract between the parties dated January 25, 2022” was cancelled – this is the original contract for \$27,000 that was signed by the contractor on 01/24/22. The Purchasing Director stated that the original contract was cancelled at the direction of the new Chief of Staff and that the Municipal Manager and Acting Municipal Attorney agreed that the \$48,000 contract should be the contract that was kept in-play.
- AM 664-2022 (laid-on-the-table) was submitted to the Assembly on 11/09/22. The AM outlined the history of the contracts & requested Assembly approval of a contract with Denali to provide services through 12/31/22. The AM was not reviewed by the Purchasing Director. The contract totaled \$84,400.33, which was over the \$30,000 threshold for Assembly approval – the AM was approved by the Assembly. The contract was signed by the contractor on 11/10/22 and by the Municipal Manager on 11/15/22.
- A new sole source memo dated 12/01/22 was drafted by the Chief of Staff and sent to the Purchasing Director for a contract with Denali, not to exceed \$135,600, with a performance term of 01/01/23 – 12/31/23. This memo was approved (initialed) by the Purchasing Director.
- AM 744-2022(A-1) from the Mayor requested approval of the \$135, 600 contract referenced in the Chief of Staff’s 12/01/22 memo. The contract was over the \$30,000 threshold for Assembly approval – the AM was approved by the Assembly on 01/10/23. The AM listed the Purchasing Director as concurring. The Municipal Manager signed the contract.



## ANALYSIS AND CONCLUSIONS

When reviewing the history of the contracts between the MOA and Denali, it was obvious to the Ombudsman that much of the confusion generated during the process of developing and executing the Denali contracts was due to the old idiom “Too many hands in the pot will spoil the sauce” – meaning that when there are too many people trying to do something, they make a mess of it.

The process surrounding the development and execution of the contracts between the MOA and Denali is a prime example of this idiom in practice. The development process for the Denali contracts involved MOA personnel from Purchasing, the Mayor’s Office, and the Municipal Manager’s Office. Poor coordination and communication were exacerbated by personal conflicts between some of the persons involved in the processing and execution of the contracts, and the lack of institutional knowledge due to the high turnover in Purchasing Department staff.

The original Denali contracts and amendments contain the signature or initials of the Purchasing Director. Common practice at the MOA, over the past several decades, has been for the Municipal Manager (Manager) or their designee to sign all MOA contracts. The Manager can designate the Purchasing Director to sign contracts, which has occurred during previous administrations. In this instance, the Manager had not designated the Director to sign the Denali contracts – the Manager stated that she was unaware of the development and processing of the original contracts between the MOA and Denali. The Purchasing Director disputes this and stated that the Municipal Manager was aware of the contracts and was aware that the Mayor had delegated signature authority to her.

Policy & Procedure 1-4 Delegation of Signature Approval/Authority, originally implemented on January 27, 1988, and updated on January 1, 2020, states that “It is the policy of the Municipality to formally delegate signature approval/authority from the Mayor to the Municipal Manager, and executive positions”. P&P 1-4 further states that “The Municipal Manager shall have authority to execute and/or delegate the authority to execute (after Assembly approval, if required) - Contracts and contract amendments/change orders for supplies, services or construction, specifically those services which are executed on the long-form legal contract and the construction form contract that have been awarded by the Purchasing Officer pursuant to the bid proposal or other approval processes”.

AMC 7.15.050 – Execution of Contracts states that “All municipal contracts for supplies, services, professional services and construction, and any amendments thereto, shall be signed by the mayor or his designee, except those contracts pursuant to section 4.06 of the Charter shall be signed by the chairman of the assembly after the chairman of the assembly confirms with the purchasing officer that the contract complies with this code”.

Section 5.03.(b) of the Anchorage Home Rule Charter states that “The manager is responsible to the mayor for the overall conduct of the administrative functions of the municipality”. Over the

past 11 years, multiple Municipal Attorneys, Deputy Municipal Attorneys, and Assistant Municipal Attorneys have opined to the Ombudsman that this Charter section gives the Manager the authority to sign MOA contracts; that nothing is more “administrative” than signing contracts.

The Ombudsman believes that the disconnect between P&P 1-4, AMC 7.15.050, and Legal’s past interpretation of Charter Section 5.03(b) led to a certain level of confusion and frustration during the development and execution of the original contracts between the MOA and Denali. The Mayor had delegated signature authority to the Director, as allowed by AMC 7.15.050, apparently without informing the Manager, who, based on P&P 1-4 and Legal’s interpretation of Charter Section 5.03(b), believed that she, and persons that she had designated, were the only persons authorized to sign MOA contracts. This also removed one additional level of review from the process. Ultimately, the code trumps policy, and the Charter trumps code – if Legal continues to opine that Charter Section 5.03(b) delegates signature authority to the Manager, the code needs to be changed to align with P&P 1-4 and Legal’s opinion. If Legal’s opinion has changed, P&P 1-4 needs to be revised to align with AMC 7.15.050.

This matter was further complicated by what the Ombudsman believes to be deficiencies in code and policy related to sole source and open market procurements that have extended across multiple administrations. AMC 7.20.080.A.5 states that “For contracts where the purchasing officer determines in writing that the municipality’s requirements reasonably limit the source for the supplies, services, professional service or construction to one person”, the MOA may execute a sole source contract. The Director’s written determination is usually documented by them signing-off on sole source memos submitted by the departments.

AMC 7.20.070.A states that “The purchasing officer may procure all supplies, services professional services and construction having an estimated value of not more than \$50,000 on the open market without formal advertising or other formal bid procedures.” The code requires that, “whenever practicable, at least three informal bids or quotations shall be solicited for any procurement under this section” – the informal bids can be oral or written. The code requires that, “where practicable”, awards will be made to “the lowest responsive and responsible bidder”, and that “The purchasing officer shall keep a record of all open market bids received and awards made thereon”.

On 02/21/23, the Ombudsman spoke with the Purchasing Director, who stated that the original contract was intended to be an open market procurement, but the employee handling the contract did not keep a record of who they had contacted and the quotes that were received, so the contract became a sole source contract – which was one reason that the sole source memo was drafted after the contract was finalized. The Purchasing Director later disputed that she had provided this response to the Ombudsman. To quote the late, great Queen Elizabeth II - recollections may vary. The Purchasing Director stated to the Ombudsman that Denali’s bid was determined to be the best of the responsive proposals that were received. SAP only allows entry of contracts as “competitive bid” or “sole source” – this can cause confusion when entering open market procurements into the system. Open market procurements are

considered competitive bids, and the departments are expected to make notations in their SAP baskets identifying the purchases as being open market purchases, and to upload documentation of the informal bids that they solicited and received. Unfortunately, departments don't always upload the documentation and may confuse open market procurements with sole source procurements. A checklist for departments to use for sole source and open market procurements would be helpful in addressing these issues.

Sole source and open market procurements are intended to be a way for the MOA to streamline and simplify the process for MOA staff and contractors under certain circumstances, allowing for efficiencies in purchasing and operations. However, it is obvious that the MOA's purchasing code and related policies need to be revised to ensure that the sole source and open market procurement processes function efficiently and effectively. The current sole source code is clear – the Director must determine that only one person can provide the goods or services. Sole source memos that talk about unique experiences, knowledge, and relationships, without quantifying that they are the only person who can provide the goods or services, do not meet the requirements of AMC 7.20.080.A.5.

Some of these issues were addressed in Internal Audits Report 2022-02 Sole Source Purchases – a copy is attached to this report. During their Audit, Internal Audit reviewed all sole source purchases reported on AIMs from January 2019 through August 2021; they also selected random samples of sole source purchases reported on AIMs and AMs and judgmental samples of purchase orders from January 2019 through August 2021 for more in-depth review. Internal Audit identified several issues regarding sole source purchasing –

- Seven sole source purchases over \$30,000 each, totaling \$276, 326, made between May 2019 and June 2021, were not reported to the Assembly as required by AMC Title 7. These included purchases that were amended so that they exceeded \$30,000, and a purchase that was split into two purchase orders to stay under \$30,000.
- Internal Audit's review of a sample of 57 sole source purchases between \$10,000 and \$30,000 found 22 (39%) that were not reported to the Assembly.
- Internal Audit's review of a sample of 184 sole source purchases found that 21 (11%) had questionable sole source justifications. The auditors identified instances where there was more than one vendor who could provide the goods or services purchased through sole source procurement. The auditors noted that in many of the sole source justification memorandums "the factor used to justify the sole source purchases appeared to be a preference for the vendor, rather than the supply or services being available from only one source as required by AMC Title 7".
- The auditors noted that "When reviewing sole source justification memorandums, we noted that there were no requirements stating what a sole source memorandum should include. As a result, each sole source justification memorandum was different and may or may not have addressed why a sole source purchase was necessary". The auditors recommended that Purchasing develop and implement a sole source justification memorandum template.

- Regarding reporting sole source purchases to the Assembly, the auditors noted that “Other than AIM 26-88, there is nothing in AMC or Municipal Policies and Procedures requiring this report. In addition, we did not find any requirement for reporting of sole source purchases between \$5,000 and \$10,000 to the Assembly”.

During his review of this matter, the Ombudsman could find nothing to demonstrate that any MOA employee knowingly circumvented the requirements of the code or policies - they were simply following longstanding purchasing practices that stretch across multiple administrations. The process of developing and implementing the Denali contracts was confusing and convoluted, which can largely be attributed to a lack of communication and coordination between the multiple persons and offices involved in the process, the lack of clarity in code and policies, and long-standing purchasing practices that don't always comply with the requirements of the code. These long-standing practices, which have extended over multiple administrations, affecting both the Executive and Legislative branches, often place Purchasing staff in difficult positions. If they approve a sole source memo for one department that does not meet the strict requirements of the code, but don't approve memos for other departments that use the same justification, they can be accused of playing favorites, or favoring one branch of government over the other.

Regardless of intent, the process of developing and executing the Denali contracts did not comply with all the requirements of Title 7, and the Ombudsman finds this complaint involving the Municipality of Anchorage, Purchasing Department to be **JUSTIFIED**.

A copy of the preliminary investigative report was provided to the department on August 2, 2023, with responses and comments requested to be provided to the Ombudsman by the close of business on August 16<sup>th</sup>. The department requested multiple extensions of the time to submit responses and comments regarding the preliminary report. The last request was to extend the deadline to October 5<sup>th</sup>. The Ombudsman responded in the affirmative and advised the department that he would plan on issuing the final report on October 6<sup>th</sup>. The department subsequently requested an extension to October 6<sup>th</sup>, and extensive comments were received on October 6<sup>th</sup>.

The Ombudsman reviewed the Director's comments and made some edits to the preliminary report. The Ombudsman contacted the Administration to see if they wanted the Director's comments appended to the final report, or if they would like to revise the comments or submit new comments – the Administration requested to submit new comments to be appended to the final report. The new comments were received on November 4<sup>th</sup> and are appended to this report. Responses to recommendations are incorporated into the report.

***The Ombudsman would like to note that the problems related to the development and processing of the Denali contracts were due to internal MOA processes and had nothing to do with Denali FSP, LLC.***

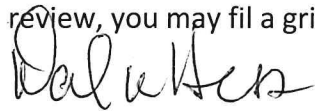
**Based on the investigation of this case, the Municipal Ombudsman recommends:**



1. That the Municipal Attorney's Office review the conflicts between their past interpretation of Charter Section 5.03(b), AMC 7.15.050, and Policy & Procedure 1-4, and that they work with the Administration and Purchasing Department to develop a pathway to resolving the conflicts. ***The Administration accepted this recommendation.***
2. That AMC 7.20.080 – Proprietary and non-competitive procurements be revised to make sole source contracting more practicable and allow for justifications other than only one person being qualified to provide the goods or services. ***The Administration accepted this recommendation.***
3. That the Purchasing Department and Municipal Attorney's Office collaboratively develop a sole source memo template that includes an approval/signature box for the Purchasing Director (or their designee). ***The Administration accepted this recommendation.***
4. That the Purchasing Department develop checklists for Purchasing staff to use for sole source and open market procurements, and a checklist for departments to use for sole source and open market procurements. ***The Administration accepted this recommendation.***
5. That AMC 7.20.070 – Open market procedures revised to mandate that the required informal bids or quotations be in writing, and to clarify how long copies of the informal bids or quotations are to be retained by the Purchasing Department. ***The administration agrees with the intent of this recommendation, which is to add clarity and consistency to Open Market Procedure requirements. The administration will develop a Policy & Procedure formalizing the requirement that bids or quotations be in writing where practicable, and that if oral quotations are received, that such quotations be entered into a written tabulation with an attestation from the municipal employee collecting the quotations. The Policy & Procedure will also establish a timeframe for retaining quotations.***
6. That Anchorage Title 7 be revised to require monthly reporting to the Assembly of all sole source contracts that are greater than \$5,000, but less than \$30,000. ***The Administration did not accept this recommendation.***

**Based on these findings and these recommendations, this case is closed.**

If you object to the Ombudsman's decision to decline, discontinue, or close this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C. 2.60.165.



Darrel W. Hess  
Municipal Ombudsman



Administration's additional response regarding facts:

The Purchasing Director (Director) states that she did not intend to amend any version of the Denali FSP contracts, neither the \$27,000 contract executed on 1/24/22, nor the \$48,600 contract on 2/3/22. The Director reviewed historical contracts within Purchasing and would like it stated on the record that her review confirms that both previous Purchasing Directors and their deputies regularly signed contracts on behalf of the Municipality. She would also like to state on the record that, per an email sent to her by the Municipal Manager on January 6, 2022, she believed that she had authority to sign the contracts in question.

While the administration disagrees with other additional facts in the Ombudsman's report, it generally agrees with the Ombudsman's recommendations -- except as noted above -- and therefore concludes here.