

26-LS0791\NP
Bannister
3/8/10

CS FOR HOUSE BILL NO. 225(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE FAIRCLOUGH

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the State Procurement Code; relating to the procurement of**
2 **supplies, services, professional services, construction services, state fisheries products,**
3 **state agricultural products, state timber, and state lumber; relating to procurement**
4 **preferences; relating to procurement by the office of the ombudsman, the Alaska**
5 **Industrial Development and Export Authority, the Alaska Energy Authority, and other**
6 **state agencies and public corporations; and providing for an effective date."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 *** Section 1.** AS 24.55.275 is amended to read:

9 **Sec. 24.55.275. Contract procedures.** The ombudsman shall adopt by
10 regulation procedures consistent with AS 36.30 to be followed by the office of the
11 ombudsman in contracting for services. However, the procedure for requests for
12 proposals does not apply to contracts for investigations under AS 24.55.100, and the
13 office of the ombudsman shall comply with the five percent preference for bidders

1 under AS 36.30.321(a) [AS 36.30.170(b)].

2 * **Sec. 2.** AS 36.15.050(a) is amended to read:

3 (a) When agricultural products are purchased by the state or by a school
4 district that receives state money, **a seven percent preference shall be applied to the**
5 **price of the products harvested in the state** [ONLY AGRICULTURAL
6 PRODUCTS HARVESTED IN THE STATE SHALL BE PURCHASED
7 WHENEVER PRICED NO MORE THAN SEVEN PERCENT ABOVE PRODUCTS
8 HARVESTED OUTSIDE THE STATE, AVAILABLE, AND OF LIKE QUALITY
9 COMPARED WITH AGRICULTURAL PRODUCTS HARVESTED OUTSIDE
10 THE STATE].

11 * **Sec. 3.** AS 36.15.050(b) is amended to read:

12 (b) When fisheries products are purchased by the state or by a school district
13 that receives state money, **a seven percent preference shall be applied to the price**
14 **of the products harvested or processed within the jurisdiction of the state** [ONLY
15 FISHERIES PRODUCTS HARVESTED OR PROCESSED WITHIN THE
16 JURISDICTION OF THE STATE SHALL BE PURCHASED WHENEVER PRICED
17 NO MORE THAN SEVEN PERCENT ABOVE PRODUCTS HARVESTED OR
18 PROCESSED OUTSIDE THE JURISDICTION OF THE STATE, AVAILABLE,
19 AND OF LIKE QUALITY COMPARED WITH FISHERIES PRODUCTS
20 HARVESTED OR PROCESSED OUTSIDE THE JURISDICTION OF THE
21 STATE].

22 * **Sec. 4.** AS 36.15.050 is amended by adding a new subsection to read:

23 (h) A bidder receiving a preference under this section may not receive a
24 preference under AS 36.30.322.

25 * **Sec. 5.** AS 36.30.015(e) is amended to read:

26 (e) The board of directors of the Alaska Railroad Corporation and the board of
27 directors of the Alaska Aerospace Corporation shall adopt procedures to govern the
28 procurement of supplies, services, professional services, and construction. The
29 procedures must be substantially equivalent to the procedures prescribed in this
30 chapter and in regulations adopted under this chapter. Notwithstanding the other
31 provisions of this subsection, the Alaska Railroad Corporation and the Alaska

1 Aerospace Corporation shall **apply the five percent preference for bidders under**
2 **AS 36.30.321(a)** [COMPLY WITH AS 36.30.170(b)], and, when the Department of
3 Transportation and Public Facilities authorizes the Alaska Railroad Corporation to
4 perform construction work instead of the Department of Transportation and Public
5 Facilities, the Alaska Railroad Corporation shall use competitive sealed bidding or
6 competitive sealed proposals under AS 36.30.100 - 36.30.270 to procure the supplies,
7 services, professional services, and construction services necessary for the work and,
8 to ensure the state obtains the lowest cost for the project, may submit a bid or proposal
9 for the work.

10 * **Sec. 6.** AS 36.30.015(f) is amended to read:

11 (f) The board of directors of the Alaska Housing Finance Corporation,
12 notwithstanding AS 18.56.088, **members of the Alaska Industrial Development and**
13 **Export Authority,** [AND] the board of directors of the Knik Arm Bridge and Toll
14 Authority under AS 19.75.111, **and the board of directors of the Alaska Energy**
15 **Authority under AS 44.83.080** shall adopt regulations under AS 44.62
16 (Administrative Procedure Act) and the board of trustees of the Alaska Retirement
17 Management Board shall adopt regulations under AS 37.10.240 to govern the
18 procurement of supplies, services, professional services, and construction for the
19 respective public corporation and board. The regulations must reflect competitive
20 bidding principles and provide vendors reasonable and equitable opportunities to
21 participate in the procurement process and must include procurement methods to meet
22 emergency and extraordinary circumstances. Notwithstanding the other provisions of
23 this subsection, the Alaska Housing Finance Corporation, **the Alaska Industrial**
24 **Development and Export Authority,** the Knik Arm Bridge and Toll Authority, **the**
25 **Alaska Energy Authority,** and the Alaska Retirement Management Board shall
26 comply with **the five percent preference for bidders under AS 36.30.321(a)**
27 **[AS 36.30.170(b)].**

28 * **Sec. 7.** AS 36.30.015(h) is amended to read:

29 (h) The board of directors of the Alaska Seafood Marketing Institute shall
30 adopt procedures to govern the procurement of supplies, services, and professional
31 services. The procedures must be similar to the procedures prescribed in this chapter

1 and in regulations adopted under this chapter, except that the Alaska Seafood
 2 Marketing Institute shall comply with **the five percent preference for bidders under**
 3 **AS 36.30.321(a)** [AS 36.30.170(b)].

4 * **Sec. 8.** AS 36.30.020 is amended to read:

5 **Sec. 36.30.020. Legislature.** The legislative council shall adopt and publish
 6 procedures to govern the procurement of supplies, services, professional services, and
 7 construction by the legislative branch. The procedures must be based on the
 8 competitive principles consistent with this chapter and must be adapted to the special
 9 needs of the legislative branch as determined by the legislative council. The
 10 procedures must contain provisions for prohibiting procurement from a person that has
 11 headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons
 12 Report published by the United States Secretary of State under 22 U.S.C.
 13 7107(b)(1)(C). The procedures may contain provisions for restricting procurement
 14 from a person that conducts business in but does not have headquarters in a country
 15 listed in Tier 3 of the most recent Trafficking in Persons Report published by the
 16 United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). The procedures must
 17 be consistent with the provisions of AS 36.30.080(c) - (e) and 36.30.085.
 18 Notwithstanding the other provisions of this section, the legislative agencies subject to
 19 the legislative council's regulations shall comply with **the five percent preference for**
 20 **bidders under AS 36.30.321(a)** [AS 36.30.170(b)].

21 * **Sec. 9.** AS 36.30.030 is amended to read:

22 **Sec. 36.30.030. Court system.** The administrative director of courts shall
 23 adopt and publish procedures to govern the procurement of supplies, services,
 24 professional services, and construction by the judicial branch. The procedures must be
 25 based on the competitive principles consistent with this chapter and must be adapted to
 26 the special needs of the judicial branch as determined by the administrative director of
 27 courts. The procedures must contain provisions for prohibiting procurement from a
 28 person that has headquarters in a country listed in Tier 3 of the most recent Trafficking
 29 in Persons Report published by the United States Secretary of State under 22 U.S.C.
 30 7107(b)(1)(C). The procedures may contain provisions for restricting procurement
 31 from a person that conducts business in but does not have headquarters in a country

1 listed in Tier 3 of the most recent Trafficking in Persons Report published by the
2 United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). The procedures must
3 be consistent with the provisions of AS 36.30.080(c) - (e) and 36.30.085.
4 Notwithstanding the other provisions of this section, the judicial branch shall comply
5 with the five percent preference for bidders under AS 36.30.321(a)
6 [AS 36.30.170(b)].

7 * **Sec. 10.** AS 36.30.080(f) is amended to read:

8 (f) When the department is acquiring leased space of 7,000 [3,000] square feet
9 or less, the department may procure the leased space using the procedures for small
10 procurements under AS 36.30.320, providing public notice is given to prospective
11 offerors in the market area.

12 * **Sec. 11.** AS 36.30.110(b) is amended to read:

13 (b) The bidder shall [MUST] have a valid Alaska business license at the time
14 designated in the invitation to bid for bid opening in order to qualify as an Alaska
15 bidder and to receive a preference under AS 36.30.321. If a bidder does not have
16 a valid Alaska business license at the time designated in the invitation to bid for
17 bid opening, the bidder shall provide proof that the bidder has a valid Alaska
18 business license before the contract may be awarded, but does not qualify for a
19 preference under AS 36.30.321. A bidder for a construction contract shall also
20 submit proof [EVIDENCE] of the bidder's registration under AS 08.18 before the
21 contract may be awarded.

22 * **Sec. 12.** AS 36.30.130(a) is amended to read:

23 (a) The procurement officer shall give adequate public notice of the invitation
24 to bid at least 21 days before the date for the opening of bids. If the procurement
25 officer determines in writing that a shorter notice period is advantageous for a
26 particular bid and adequate competition is anticipated, the 21-day period may be
27 shortened. Notice shall be posted on the Alaska Online Public Notice System
28 (AS 44.62.175). The time and manner of notice must be in accordance with
29 regulations adopted by the commissioner of administration. When practicable, notice
30 may include

31 (1) publication in a newspaper calculated to reach prospective bidders;

1 **and**

2 (2) notices posted in public places within the area where the work is to
3 be performed or the material furnished [; AND

4 (3) NOTICES MAILED TO ALL ACTIVE PROSPECTIVE
5 CONTRACTORS ON THE APPROPRIATE LIST MAINTAINED UNDER
6 AS 36.30.050].

7 * **Sec. 13.** AS 36.30.170 is repealed and reenacted to read:

8 **Sec. 36.30.170. Contract award after bids.** After applying any preferences
9 that apply under AS 36.15.050 and AS 36.30.321 - 36.30.338, a procurement officer
10 shall award a contract based on the solicited bids with reasonable promptness by
11 written notice to the lowest responsible and responsive bidder whose bid conforms in
12 all material respects to the requirements and criteria set out in the invitation to bid.

13 * **Sec. 14.** AS 36.30 is amended by adding a new section to article 2 to read:

14 **Sec. 36.30.195. Multi-step revised sealed bidding.** (a) As provided in an
15 invitation to bid and as conducted by a procurement officer under regulations adopted
16 by the commissioner, a multi-step process that begins with an initial round of
17 competitive sealed bidding may, when approved by the chief procurement officer,
18 include successive steps of sealed bidding to obtain the best and final bid price from
19 responsible bidders for the purpose of award.

20 (b) The provisions of (a) of this section do not apply to a procurement for a
21 construction contract.

22 * **Sec. 15.** AS 36.30.200(b) is amended to read:

23 (b) The commissioner may provide by regulation that it is either not
24 practicable or not advantageous to the state to procure [SPECIFIED TYPES OF]
25 supplies, services, or construction by competitive sealed bidding that would otherwise
26 be procured by that method. When the procurement officer determines in writing with
27 particularity that the use of competitive sealed proposals is more advantageous to the
28 state than competitive sealed bidding, a contract may be entered into by competitive
29 sealed proposals.

30 * **Sec. 16.** AS 36.30.210(b) is amended to read:

31 (b) An offeror for a construction contract shall submit **proof** [EVIDENCE] of

1 the offeror's registration as a contractor under AS 08.18 **before the contract may be**
2 **awarded**. A request for sealed proposals for a construction contract, except a design-
3 build construction contract, must require the offeror, no later than five working days
4 after the proposal that is the most advantageous to the state is identified, to list
5 subcontractors the offeror proposes to use in the performance of the construction
6 contract. The list must include the information required under AS 36.30.115(a). The
7 provisions of AS 36.30.115(b) - (g) that apply to a construction contractor or an
8 apparent low bidder apply to offerors submitting competitive sealed proposals for
9 construction contracts, except design-build construction contracts.

10 * **Sec. 17.** AS 36.30.210(e) is amended to read:

11 (e) The offeror **shall** [MUST] have a valid Alaska business license at the time
12 designated[,] in the request for proposals[,] for opening of the proposals **in order to**
13 **qualify as an Alaska bidder and to receive a preference under AS 36.30.321. If an**
14 **offeror does not have a valid Alaska business license at the time designated in the**
15 **request for proposals for proposal opening, the offeror shall provide proof that**
16 **the offeror has a valid Alaska business license before the contract may be**
17 **awarded, but does not qualify for a preference under AS 36.30.321.**

18 * **Sec. 18.** AS 36.30 is amended by adding a new section to read:

19 **Sec. 36.30.245. Multiple submissions and negotiations.** (a) In a procurement
20 that uses competitive sealed proposals, in order to obtain the best proposal for
21 purposes of award, an agency may require more than one submission of proposals and
22 may negotiate after each submission with the offerors whose proposals from that
23 submission are reasonably susceptible of being selected for award. The negotiations
24 conducted under this section may cover price, specifications, terms, or conditions or a
25 combination of these items, and these items may be negotiated separately or in any
26 combination. The submissions and negotiations allowed under this section are in
27 addition to any discussions and revisions allowed under AS 36.30.240. The
28 requirements for submissions and negotiations under this section shall be established
29 by the department by regulation and in the request for proposals.

30 (b) The provisions of (a) of this section do not apply to a procurement for a
31 construction contract.

1 * **Sec. 19.** AS 36.30.250(a) is amended to read:

2 (a) The procurement officer shall award a contract under competitive sealed
3 proposals to the responsible and responsive offeror whose proposal is determined in
4 writing to be the most advantageous to the state taking into consideration price and the
5 evaluation factors set out in the request for proposals. **Except as provided by**
6 **AS 36.30.255 and 36.30.336, other** [OTHER] factors and criteria may not be used in
7 the evaluation. The contract file must contain the basis on which the award is made.

8 * **Sec. 20.** AS 36.30 is amended by adding a new section to read:

9 **Sec. 36.30.255. Preferences applied to competitive sealed proposals.** When
10 determining which proposal is most advantageous to the state under a competitive
11 sealed proposal solicitation, the procurement officer shall apply the preferences
12 provided in AS 36.15.050 and AS 36.30.321 - 36.30.338, but may not apply other
13 preferences. The preferences shall be applied only to the price portion of a proposal.

14 * **Sec. 21.** AS 36.30 is amended by adding a new section to article 4 to read:

15 **Sec. 36.30.290. Electronic bids.** An agency may allow bids or proposals to be
16 submitted in electronic form under AS 09.80.010 - 09.80.195 (Uniform Electronic
17 Transactions Act).

18 * **Sec. 22.** AS 36.30.310 is amended to read:

19 **Sec. 36.30.310. Emergency procurements.** Procurements may be made under
20 emergency conditions as defined in regulations adopted by the commissioner **of**
21 **administration** when there exists a threat to public health, welfare, or safety, when a
22 situation exists that makes a procurement through competitive sealed bidding or
23 competitive sealed proposals impracticable or contrary to the public interest, or to
24 protect public or private property. An emergency procurement need not be made
25 through competitive sealed bidding or competitive sealed proposals but shall be made
26 with competition that is practicable under the circumstances. A written determination
27 by the chief procurement officer **or, for construction contracts or procurements of**
28 **the state equipment fleet, the commissioner of transportation and public facilities**
29 of the basis for the emergency and for the selection of the particular contractor shall be
30 included in the contract file. The written determination must include findings of fact
31 that support the determination. Except when there is insufficient time for the chief

1 procurement officer or the commissioner of transportation and public facilities, as
2 appropriate, to make the written determination required by this section, the authority
3 to make the determination [CHIEF PROCUREMENT OFFICER] may not be
4 delegated [DELEGATE THE AUTHORITY TO MAKE THE DETERMINATION].

5 * **Sec. 23.** AS 36.30.320(a) is amended to read:

6 (a) A procurement for supplies, services, or professional services that does not
7 exceed an aggregate dollar amount of \$100,000 [\$50,000], construction that does not
8 exceed an aggregate dollar amount of \$200,000 [\$100,000], or lease of space that does
9 not exceed 7,000 [3,000] square feet shall [MAY] be made under [IN
10 ACCORDANCE WITH] regulations adopted by the commissioner for small
11 procurements.

12 * **Sec. 24.** AS 36.30 is amended by adding a new section to article 5 to read:

13 **Sec. 36.30.321. Alaska bidder and related preferences.** (a) If the bidder or
14 offeror is an Alaska bidder, a preference of five percent shall be applied to the price in
15 the bid or proposal.

16 (b) Except as otherwise provided under (d), (e), or (g) of this section, if a
17 bidder or offeror qualifies as an Alaska bidder and is offering services through an
18 employment program, a 15 percent preference shall be applied to the price in the bid
19 or proposal.

20 (c) If a bidder or offeror qualifies as an Alaska bidder and is an Alaska
21 domestic insurer, and if the procurement is for an insurance-related contract, a five
22 percent preference shall be applied to the price in the bid or proposal.

23 (d) A 10 percent preference shall be applied to a price in a bid or proposal if
24 the bidder or offeror qualifies as an Alaska bidder and is a

25 (1) sole proprietorship owned by a person with a disability;

26 (2) partnership under AS 32.06, or AS 32.11 if each of the partners is a
27 person with a disability;

28 (3) limited liability company organized under AS 10.50 if each of the
29 members is a person with a disability;

30 (4) corporation that is wholly owned by individuals and each of the
31 individuals is a person with a disability; or

1 (5) a joint venture that is composed of ventures that qualify under (1) -
2 (4) of this subsection.

3 (e) The division of vocational rehabilitation in the Department of Labor and
4 Workforce Development shall add to its current list of qualified employment programs
5 a list of individuals who qualify as persons with a disability under (d) of this section.
6 A person must be on this list at the time the bid or proposal is opened in order to
7 qualify for a preference under (d) of this section.

8 (f) If a bidder or offeror qualifies as an Alaska bidder and is a qualifying
9 entity, a five percent preference shall be applied to the price in the bid or proposal.
10 The preference may not exceed \$5,000. In this subsection,

11 (1) "Alaska veteran" means an individual who is both a resident of the
12 state and a veteran;

13 (2) "qualifying entity" means a

14 (A) sole proprietorship owned by an Alaska veteran;

15 (B) partnership under AS 32.06 or AS 32.11 if a majority of the
16 partners are Alaska veterans;

17 (C) limited liability company organized under AS 10.50 if a
18 majority of the members are Alaska veterans; or

19 (D) corporation that is wholly owned by individuals and a
20 majority of the individuals are Alaska veterans;

21 (3) "veteran" means an individual who

22 (A) served in the

23 (i) armed forces of the United States, including a
24 reserve unit of the United States armed forces; or

25 (ii) Alaska Territorial Guard, the Alaska Army National
26 Guard, the Alaska Air National Guard, or the Alaska Naval Militia; and

27 (B) was separated from service under a condition that was not
28 dishonorable.

29 (g) A bidder or offeror may not receive a preference under both (b) and (d) of
30 this section for the same contract.

31 (h) Except as provided by (j) of this section, this section applies to all

1 insurance contracts involving state money. In this subsection, "state money" has the
2 meaning given in AS 36.30.990, but also includes state grants and reimbursements to
3 municipalities, school districts, and other entities.

4 (i) In order to qualify for a preference under (b), (d), or (f) of this section, a
5 bidder or offeror must add value by actually performing, controlling, managing, and
6 supervising the services provided, or the bidder or offeror must have sold supplies of
7 the general nature solicited to other state agencies, governments, or the general public.

8 (j) This section does not apply to solicitations or contracts for lease space
9 under AS 36.30.080, to procurements under AS 36.30.305 - 36.30.310, or, except as
10 provided otherwise by regulation under AS 36.30.320, to small procurements under
11 AS 36.30.320.

12 (k) In this section, "person with a disability" means an individual who

13 (1) has been determined to be permanently disabled by the

14 (A) United States Social Security Administration under 42
15 U.S.C. 1381 - 1385 (Social Security Act) or 42 U.S.C. 423 (Social Security
16 Act);

17 (B) the teachers' retirement system under AS 14.25, the judicial
18 retirement system under AS 22.25, the public employees' retirement system
19 under AS 39.35, or the elected public officers' retirement system under former
20 AS 39.37;

21 (C) federal civil service retirement system under 5 U.S.C.
22 2107, 3323, and 8331 - 8351;

23 (D) federal employees' retirement system under 5 U.S.C. 8401
24 - 8479; or

25 (E) division of vocational rehabilitation in the Department of
26 Labor and Workforce Development using disability standards under 42 U.S.C.
27 1381 - 1385 (Social Security Act) for eligibility for certain state disability
28 program purposes;

29 (2) is receiving permanent total disability under AS 23.30 (Alaska
30 Workers' Compensation Act);

31 (3) has been discharged from military service under honorable

1 conditions and is certified by the United States Department of Veterans Affairs as
2 having incurred a 50 percent or greater disability during military service; or

3 (4) has served in the Alaska Territorial Guard and incurred a 50
4 percent or greater disability while serving in the Alaska Territorial Guard.

5 * **Sec. 25.** AS 36.30.322(a) is amended to read:

6 (a) Only timber, lumber, and manufactured lumber products originating in this
7 state from Alaska forests may be procured by an agency or used in construction
8 projects of an agency unless the manufacturers and suppliers who have notified the
9 commissioner of commerce, community, and economic development of their
10 willingness to manufacture or supply Alaska forest products

11 (1) have been given reasonable notice of the forest product needs of
12 the procurement or project; and

13 (2) **are not the low bidder after all applicable preferences have**
14 **been applied to the price of the qualifying forest product under AS 36.30.336**
15 [ARE UNABLE TO SUPPLY THE PRODUCTS AT A COST THAT IS WITHIN
16 SEVEN PERCENT OF THE PRICE OFFERED BY A MANUFACTURER OR
17 SUPPLIER OF NON-ALASKA FOREST PRODUCTS].

18 * **Sec. 26.** AS 36.30.336 is repealed and reenacted to read:

19 **Sec. 36.30.336. Application of preferences.** (a) Except as provided in
20 AS 36.15.050(h) and AS 36.30.321(g), the preferences provided in AS 36.15.050 and
21 AS 36.30.321 - 36.30.338 are cumulative. A bidder who would otherwise qualify for
22 preferences under AS 36.30.321 may not be given a preference over another bidder
23 who qualifies for the same preferences.

24 (b) Notwithstanding the other provisions of this chapter, AS 36.30.321 -
25 36.30.338 apply to all procurements subject to this chapter, except as provided in
26 AS 36.15.050 and AS 36.30.322(b).

27 * **Sec. 27.** AS 36.30 is amended by adding a new section to read:

28 **Sec. 36.30.364. Renegotiation.** (a) The chief procurement officer may
29 renegotiate the terms and conditions, including the contract period of performance and
30 price, of a contract without using an additional competitive process, and may amend
31 the contract if the procurement officer determines that

- 1 (1) the amendment is in the best interest of the state;
- 2 (2) the renegotiated contract is at least as favorable to the state as the
- 3 original contract; and
- 4 (3) the additional period of performance of the renegotiated contract
- 5 does not exceed five years, or, if an innovative procurement process under
- 6 AS 36.30.308 was used to procure the original contract, does not exceed the approval
- 7 under AS 36.30.308(b).

8 (b) The chief procurement officer, under regulations adopted by the

9 commissioner, may delegate the authority to make the determination under (a) of this

10 section to a state procurement officer.

11 (c) This section does not apply to lease extensions under AS 36.30.083.

12 * **Sec. 28.** AS 36.30.560 is amended to read:

13 **Sec. 36.30.560. Filing of a protest.** An interested party may protest the award

14 of a contract, the proposed award of a contract, or a solicitation for supplies, services,

15 professional services, or construction by an agency. The protest shall be filed with the

16 procurement officer of the contracting agency in writing **within the time period**

17 **provided in AS 36.30.565**, and include the following information:

- 18 (1) the name, address, and telephone number of the protester;
- 19 (2) the signature of the protester or the protester's representative;
- 20 (3) identification of the contracting agency and the solicitation or
- 21 contract at issue;
- 22 (4) a detailed statement of the legal and factual grounds of the protest,
- 23 including copies of relevant documents; [AND]
- 24 (5) the form of relief requested; **and**
- 25 **(6) the protest filing fee required under AS 36.30.567.**

26 * **Sec. 29.** AS 36.30.565(b) is amended to read:

27 (b) If the protester shows good cause **why the protestor did not file a protest**

28 **by the deadline established under (a) of this section**, the procurement officer of the

29 contracting agency may consider a filed protest that is not timely.

30 * **Sec. 30.** AS 36.30 is amended by adding a new section to read:

31 **Sec. 36.30.567. Protest filing fee.** To file a protest under AS 36.30.560, the

1 protester shall pay a \$250 filing fee to the agency that conducted the procurement. The
2 filing fee shall be refunded if the protest is sustained by the procurement officer under
3 AS 36.30.585 or if the protest is withdrawn by the protester before an appeal is filed
4 under AS 36.30.590.

5 * **Sec. 31.** AS 36.30 is amended by adding a new section to read:

6 **Sec. 36.30.572. Temporary delay of award.** (a) If a protest of a proposed
7 award of a contract is filed timely under AS 36.30.565, the procurement officer may
8 temporarily delay the award of the contract in order to make a decision under
9 AS 36.30.580, extend the time for making the decision under AS 36.30.580, or address
10 other circumstances that warrant temporarily delaying the award.

11 (b) Notice of a temporary delay of a contract award under (a) of this section
12 shall be provided in writing to the protester and all other interested parties. The written
13 notice must indicate when the temporary delay of the award will expire.

14 (c) A temporary delay of a contract award under this section does not
15 constitute a stay of award under AS 36.30.575.

16 * **Sec. 32.** AS 36.30.655 is amended to read:

17 **Sec. 36.30.655. List of persons debarred or suspended; removal from**
18 **contractor lists.** The commissioner shall maintain a list of all persons debarred or
19 suspended from consideration for the award of contracts. [THE COMMISSIONER
20 SHALL REMOVE A PERSON DEBARRED OR SUSPENDED FROM THE LISTS
21 OF CONTRACTORS UNDER AS 36.30.050 FOR THE PERIOD OF DEBARMENT
22 OR SUSPENSION.]

23 * **Sec. 33.** AS 36.30.700 is amended to read:

24 **Sec. 36.30.700. Cooperative purchasing authorized.** A public procurement
25 unit may [EITHER] participate in, sponsor, conduct, or administer a cooperative
26 purchasing agreement for the procurement of supplies, services, professional services,
27 or construction with one or more public procurement units or external procurement
28 activities in accordance with an agreement entered into between the participants.
29 Cooperative purchasing may include joint or multi-party contracts between public
30 procurement units and open-ended state public procurement units contracts that are
31 made available to local public procurement units. A state public procurement unit

1 may use or participate in a contract procured by another public procurement
2 unit or external procurement activity without being named in the solicitation for
3 the contract.

4 * **Sec. 34.** AS 36.30.700 is amended by adding a new subsection to read:

5 (b) When, under AS 36.30.700 - 36.30.790, a state public procurement unit
6 participates with a public procurement unit or external procurement activity in
7 cooperative purchasing or participates in a contract procured by an external
8 procurement activity, the state public procurement unit is considered to have complied
9 with AS 36.30.005 - 36.30.540, and AS 36.15 and AS 36.30.321 - 36.30.338 do not
10 apply.

11 * **Sec. 35.** AS 36.30.850(b) is amended by adding new paragraphs to read:

12 (48) contracts for lease space for an agency's offices that are located in
13 other states, the District of Columbia, or foreign countries;

14 (49) contracts for investigative services entered into by the department
15 for the state personnel board established under AS 39.25.030, the office of public
16 advocacy created under AS 44.21.400, or the Alaska Public Offices Commission
17 created under AS 15.13.020;

18 (50) purchases of commodities used in the manufacture of products
19 sold through an employment program of prison inmates subject to AS 23.15.580;

20 (51) contracts for training services provided by a professional
21 organization.

22 * **Sec. 36.** AS 36.30.990(1) is amended to read:

23 (1) "agency"

24 (A) means a department, institution, board, commission,
25 division, authority, public corporation, the Alaska Pioneers' Home, the Alaska
26 Veterans' Home, or other administrative unit of the executive branch of state
27 government;

28 (B) does not include

29 (i) the University of Alaska;

30 (ii) the Alaska Railroad Corporation;

31 (iii) the Alaska Housing Finance Corporation;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(iv) a regional Native housing authority created under AS 18.55.996 or a regional electrical authority created under AS 18.57.020;

(v) the Department of Transportation and Public Facilities, in regard to the repair, maintenance, and reconstruction of vessels, docking facilities, and passenger and vehicle transfer facilities of the Alaska marine highway system;

(vi) the Alaska Aerospace Corporation;

(vii) the Alaska Retirement Management Board;

(viii) the Alaska Seafood Marketing Institute;

(ix) the Alaska Industrial Development and Export

Authority:

(x) the Alaska Energy Authority;

* **Sec. 37.** AS 36.30.990 is amended by adding new paragraphs to read:

(25) "Alaska bidder" means a person who

(A) holds a current Alaska business license;

(B) submits a bid or proposal for goods, services, or construction under the name as appearing on the person's current Alaska business license;

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

(D) 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 under former AS 32.05, AS 32.06, or AS 32.11 and all partners are residents of the state; and

(E) if a joint venture, is composed entirely of ventures that qualify under (A) - (D) of this subsection;

(26) "in writing" has the meaning given to "written" in this section;

(27) "signature" means a manual identifier or electronic signature

1 attached to or logically associated with a record that is intended by the person using it
2 to have the same force and effect as a manual signature; in this paragraph, "electronic
3 signature" has the meaning given in AS 09.80.190;

4 (28) "written" means the product of forming characters on paper, other
5 materials, or viewable screens, that can be read, retrieved, and reproduced, including
6 information that is electronically transmitted and stored.

7 * **Sec. 38.** AS 36.90.049(a) is amended to read:

8 (a) A marine vessel owned by the state shall be maintained and repaired at a
9 shipyard facility located in the state unless the commissioner of the department that
10 operates the marine vessel determines in writing that there is no shipyard facility
11 located in the state that is equipped or qualified to perform the particular maintenance
12 or repair required, or, after taking into consideration the **five percent** Alaska bidder
13 preference **for bidders under AS 36.30.321(a)** [SET OUT IN AS 36.30.170] and the
14 interport differential, that the proposed cost of the maintenance or repair work is
15 unreasonable. A detailed list of the costs and factors considered in calculating the
16 interport differential must be provided to each person who expresses an interest in
17 submitting a bid to perform maintenance or repair work on a marine vessel owned by
18 the state.

19 * **Sec. 39.** AS 38.35.017(a) is amended to read:

20 (a) Consistent with and in furtherance of the statements of general state policy
21 guiding resource development set out in art. VIII, sec. 1, Constitution of the State of
22 Alaska, that the resources of the state be developed "by making them available for
23 maximum use consistent with the public interest" and in art. VIII, sec. 2, Constitution
24 of the State of Alaska, directing that provision shall be made by the legislature for "the
25 utilization, development, and conservation of all natural resources belonging to the
26 State . . . for the maximum benefit of its people," and consistent with and in
27 furtherance of the general legislative declaration of policy for this chapter set out in
28 AS 38.35.010, it is the policy of this state that the overall strategy for development,
29 use, and control of a pipeline or pipelines to develop the state's substantial North Slope
30 natural gas resources be directed

31 (1) to enhance the standard of living of state residents by

1 (A) ensuring that, in conjunction with out-of-state market
2 driven commercial demand for North Slope natural gas, state residents and
3 businesses will have access, directly or indirectly, to that portion of the gas that
4 will meet the reasonably foreseeable in-state demands for it, including
5 substitution of the North Slope natural gas for depleting gas reserves in
6 Southcentral Alaska in order to maintain a vital domestic and industrial energy
7 source, and ensuring that the pipeline or pipelines for the transportation of
8 North Slope natural gas will be designed and located to be responsive to these
9 requirements;

10 (B) making the maximum contribution to the development of
11 job opportunities in this state by

12 (i) providing direct short-term construction and long-
13 term operation- and maintenance-related employment on the pipeline or
14 pipelines, to the end that the resources be developed with qualified
15 contractors and firms in this state for work to be performed, including
16 the fabrication and installation of required facilities, and that state
17 residents be employed, consistent with law; for purposes of this sub-
18 subparagraph, a person is considered a resident if the person is
19 physically present in the state with the intent to remain in the state
20 indefinitely and has a home in the state, and a contractor or firm is
21 considered as qualified if the contractor or firm qualifies as an Alaska
22 bidder; **in this sub-subparagraph, "Alaska bidder" has the meaning**
23 **given in AS 36.30.990** [UNDER AS 36.30.170(b)]; and

24 (ii) providing necessary support services; and

25 (C) adding significant long-term property value to the tax base
26 of the state and local governments, thereby providing the means to support
27 public education, public health, transportation, and other essential state and
28 local government projects and services;

29 (2) to ensure that the design, location, and construction of a pipeline or
30 pipelines for delivery of North Slope natural gas to North American markets through
31 connection to the North American natural gas pipeline network enhance opportunities

1 for implementing gas deliveries using alternative technologies and the construction of
2 other pipelines to deliver North Slope natural gas to foreign and domestic markets; and

3 (3) to ensure construction of the pipeline or pipelines consistent with
4 careful protection of the state's natural environment, with minimum environmental
5 degradation, to the greatest extent possible, and with protection of fish, wildlife, and
6 biotic resources for the use of persons who depend upon them by using available
7 transportation infrastructure to initiate and complete project construction and
8 maintenance and by avoiding duplication of facilities.

9 * **Sec. 40.** AS 44.62.310(d) is amended to read:

10 (d) This section does not apply to

11 (1) a governmental body performing a judicial or quasi-judicial
12 function when holding a meeting solely to make a decision in an adjudicatory
13 proceeding;

14 (2) juries;

15 (3) parole or pardon boards;

16 (4) meetings of a hospital medical staff;

17 (5) meetings of the governmental body or any committee of a hospital
18 when holding a meeting solely to act upon matters of professional qualifications,
19 privileges, or discipline;

20 (6) staff meetings or other gatherings of the employees of a public
21 entity, including meetings of an employee group established by policy of the Board of
22 Regents of the University of Alaska or held while acting in an advisory capacity to the
23 Board of Regents;

24 (7) meetings held for the purpose of participating in or attending a
25 gathering of a national, state, or regional organization of which the public entity,
26 governmental body, or member of the governmental body is a member, but only if no
27 action is taken and no business of the governmental body is conducted at the meetings;

28 [OR]

29 (8) meetings of municipal service area boards established under
30 AS 29.35.450 - 29.35.490 when meeting solely to act on matters that are
31 administrative or managerial in nature; or

1 **(9) meetings with offerors in negotiations for state procurement**
2 **under AS 36.30.245, or meetings to renegotiate a contract under AS 36.30.364.**

3 * **Sec. 41.** AS 44.88.085(a) is amended to read:

4 (a) Except for AS 44.62.310 and 44.62.312 regarding public meetings **and**
5 **AS 36.30.015(f) regarding procurement**, the provisions of the Administrative
6 Procedure Act regarding the adoption of regulations (AS 44.62.040 - 44.62.320) do
7 not apply to the authority. The authority shall make available to members of the public
8 copies of the regulations adopted under this section. Within 45 days after adoption of a
9 regulation under this section, the **chair** [CHAIRMAN] of the authority shall submit
10 the regulation adopted to the **chair** [CHAIRMAN] of the Administrative Regulation
11 Review Committee under AS 24.20.400 - 24.20.460.

12 * **Sec. 42.** AS 36.30.050, 36.30.250(b), 36.30.335, 36.30.362, 36.30.850(b)(22), and
13 36.30.850(b)(34) are repealed.

14 * **Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 TRANSITION: PENDING SOLICITATIONS FOR PROCUREMENTS AND
17 CONTRACTS. (a) This Act does not apply to

18 (1) solicitations for procurement and the resulting contracts, if the solicitations
19 are pending on the effective date of this Act and if the invitation to bid or other solicitation
20 was issued before the effective date of this Act; and

21 (2) procurement contracts entered into before the effective date of this Act,
22 including extensions of those contracts.

23 (b) Notwithstanding (a) of this section, this Act applies to procurements or contracts
24 described in (a)(1) of this section if all parties to the procurement or contract agree in writing
25 that the applicable provisions of this Act apply to the solicitation or contract.

26 * **Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 TRANSITION: INFORMATION IN BIENNIAL REPORTS. In addition to the
29 information that must be included in the biennial report under AS 36.30.540, the Department
30 of Administration shall include in the two successive biennial reports that are prepared under
31 AS 36.30.540 after the effective date of this Act information on the savings that have been

1 achieved during the reporting period by using AS 36.30.195, enacted by sec. 14 of this Act,
2 and AS 36.30.364, enacted by sec. 27 of this Act.

3 * **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 REVISOR'S INSTRUCTION. The revisor of statutes shall change the catch line of
6 AS 36.30.360 from "Determination of responsibility" to "Determination of nonresponsibility."

7 * **Sec. 46.** This Act takes effect immediately under AS 01.10.070(c).