

CS FOR HOUSE BILL NO. 482(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 4/15/96
Referred: Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state procurement practices and procedures; and providing
2 for an effective date."

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

4 * **Section 1.** AS 36.30.040(b)(4) is amended to read:

5 (4) conditions and procedures for the use of source selection methods
6 authorized by this chapter, including single [SOLE] source procurements, emergency
7 procurements, and small procurements;

8 * **Sec. 2.** AS 36.30.040(b)(15) is amended to read:

9 (15) a bidder's or offeror's duties under this chapter [AS 36.30.115
10 AND 36.30.210]; and

11 * **Sec. 3.** AS 36.30.050(a) is amended to read:

12 (a) Except for persons debarred or suspended under AS 36.30.635 -
13 36.30.655, the [THE] commissioner shall establish and maintain current lists of
14 persons who desire to provide supplies, services, professional services, or construction

1 services to the state.

2 * **Sec. 4.** AS 36.30.080 is amended by adding a new subsection to read:

3 (f) When the department is acquiring leased space of 3,000 square feet or less,
4 the department may procure the leased space using the procedures for small
5 procurements under AS 36.30.320, providing public notice is given to prospective
6 offerors in the market area.

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

8 Sec. 36.30.083. LEASE EXTENSIONS AUTHORIZED. (a) Notwithstanding
9 any other provision of this chapter, the department, the Board of Regents of the
10 University of Alaska, the legislative council, or the court system may extend, for up
11 to a maximum extension of 10 years, a real property lease that is entered into under
12 this chapter including procedures and regulations adopted under AS 36.30.005(c),
13 36.30.020, and 36.30.030 and has at least six months remaining under the lease term,
14 if a minimum cost savings of

15 (1) 15 percent can be achieved on the rent due under the lease; or

16 (2) 10 percent can be achieved on the rent due under the lease and the
17 lessor agrees to make modifications of the leased real property to bring the real
18 property into compliance with the requirements of 42 U.S.C. 12101 - 12213
19 (Americans with Disabilities Act of 1990).

20 (b) The cost savings under (a) of this section shall be calculated on the
21 remaining term of the lease and any renewals, including extensions allowed under (a)
22 of this section.

23 (c) The department, the University of Alaska, the court system, and the
24 Legislative Affairs Agency shall submit individually an annual report to the Legislative
25 Budget and Audit Committee detailing the leases extended and the cost savings
26 achieved by that entity under (a) or (b) of this section. Reports are due August 31 of
27 each year.

28 * **Sec. 6.** AS 36.30.085(d) is amended to read:

29 (d) If the department, Board of Regents, legislative council, or supreme court
30 intends to enter into or renew a lease-purchase agreement for real property **with an**
31 **annual rent to the department, University of Alaska, legislative council, or**

1 supreme court that is anticipated to exceed \$500,000, or with total lease payments
2 that exceed \$2,500,000 for the full term of the lease-purchase agreement, the

3 department, Board of Regents, legislative council, or supreme court shall provide
4 notice to the legislature. The notice must include the

5 (1) anticipated total construction, acquisition, or other costs of the
6 project;

7 (2) anticipated annual amount of the rental obligation; and

8 (3) total lease payments for the full term of the lease-purchase
9 agreement.

10 * **Sec. 7.** AS 36.30.085(e) is amended to read:

11 (e) The department, the Board of Regents, the legislative council, or the
12 supreme court may not enter into a lease-purchase agreement to acquire or improve
13 real property with an annual rent to the department, University of Alaska,
14 legislative council, or supreme court that is anticipated to exceed \$500,000, or with
15 total lease payments that exceed \$2,500,000 for the full term of the lease-purchase
16 agreement, unless the agreement has been approved by the legislature by law.

17 * **Sec. 8.** AS 36.30.115 is amended to read:

18 Sec. 36.30.115. SUBCONTRACTORS FOR CONSTRUCTION
19 CONTRACTS. (a) Within five working days after the identification of the apparent
20 low bidder for a construction contract, the apparent low bidder shall submit a list of
21 the subcontractors the bidder proposes to use in the performance of the construction
22 contract. The list must include the name and location of the place of business for each
23 subcontractor, [AND] evidence of each [THE] subcontractor's valid Alaska business
24 license, and [. A BIDDER FOR A CONSTRUCTION CONTRACT SHALL ALSO
25 SUBMIT] evidence of each subcontractor's registration under AS 08.18. If a
26 subcontractor on the list did not have a valid Alaska business license and a valid
27 certificate of registration under AS 08.18 at the time the bid was opened, the bidder
28 may not use the subcontractor in the performance of the contract, and shall replace the
29 subcontractor with a subcontractor who had a valid Alaska business license and a valid
30 certificate of registration under AS 08.18 at the time the bid was opened.

31 (b) The apparent low [A] bidder for a construction contract may replace

1 a listed subcontractor if the subcontractor

2 (1) fails to comply with AS 08.18;

3 (2) files for bankruptcy or becomes insolvent;

4 (3) fails to execute a contract with the bidder involving performance
5 of the work for which the subcontractor was listed and the bidder acted in good faith;

6 (4) fails to obtain bonding;

7 (5) fails to obtain insurance acceptable to the state;

8 (6) fails to perform the contract with the bidder involving work for
9 which the subcontractor was listed;

10 (7) must be substituted in order for the prime contractor to satisfy
11 required state and federal affirmative action requirements;

12 (8) refuses to agree or abide with the bidder's labor agreement; or

13 (9) is determined by the procurement officer not to be a responsible
14 subcontractor.

15 (c) If a bidder **for a construction contract** fails to list a subcontractor or lists
16 more than one subcontractor for the same portion of work and the value of that work
17 is in excess of half of one percent of the total bid, the bidder shall be considered to
18 have agreed to perform that portion of work without the use of a subcontractor and to
19 have represented the bidder to be qualified to perform that work.

20 (d) A bidder **for a construction contract** who attempts to circumvent the
21 requirements of this section by listing as a subcontractor another contractor who, in
22 turn, sublets the majority of the work required under the contract violates this section.

23 (e) If a **construction** contract is awarded to a bidder who violates this section,
24 the **procurement** [PURCHASING] officer may

25 (1) cancel the contract; or

26 (2) after notice and a hearing, assess a penalty on the bidder in an
27 amount that does not exceed 10 percent of the value of the subcontract at issue.

28 * **Sec. 9.** AS 36.30.130(a) is amended to read:

29 (a) The procurement officer shall give adequate public notice of the invitation
30 to bid at least 21 days before the date for the opening of bids. If **the procurement**
31 **officer determines** [A DETERMINATION IS MADE] in writing that a shorter notice

1 period is advantageous [NECESSARY] for a particular bid and adequate
2 competition is anticipated, the 21-day period may be shortened. [THE
3 DETERMINATION SHALL BE MADE BY THE CHIEF PROCUREMENT OFFICER
4 FOR BIDS FOR SUPPLIES, SERVICES, OR PROFESSIONAL SERVICES. THE
5 DETERMINATION SHALL BE MADE BY THE COMMISSIONER OF
6 TRANSPORTATION AND PUBLIC FACILITIES FOR BIDS FOR
7 CONSTRUCTION OR ACQUISITION OF PROPERTY FOR THE STATE
8 EQUIPMENT FLEET.] Notice shall be published in the Alaska Administrative
9 Journal. The time and manner of notice must be in accordance with regulations
10 adopted by the commissioner of administration. When practicable, notice may include

11 (1) publication in a newspaper calculated to reach prospective bidders
12 located in the state;

13 (2) notices posted in public places within the area where the work is
14 to be performed or the material furnished; and

15 (3) notices mailed to all active prospective contractors on the
16 appropriate list maintained under AS 36.30.050

17 (A) if the contractors are located in the state;

18 (B) upon request, if the contractors are not located in the state.

19 * **Sec. 10.** AS 36.30.170(b) is amended to read:

20 (b) The procurement officer shall award a contract based on solicited bids to
21 the lowest responsive and responsible bidder after an Alaska bidder preference of five
22 percent, an Alaska products preference as described in AS 36.30.322 - 36.30.338, and
23 a recycled products preference under AS 36.30.339 have been applied. In this
24 subsection, "Alaska bidder" means a person who

25 (1) holds a current Alaska business license;

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

28 (3) has maintained, for a period of six months immediately before
29 the date of the bid, a place of business within the state that regularly provides in
30 the normal course of business the supplies, services, or construction of the general
31 nature solicited by the agency and that is staffed by the bidder or an employee of

1 the bidder [FOR A PERIOD OF SIX MONTHS IMMEDIATELY PRECEDING THE
2 DATE OF THE BID];

3 (4) is incorporated or qualified to do business under the laws of the
4 state, is a sole proprietorship and the proprietor is a resident of the state, or is a
5 partnership and all partners are residents of the state; and

6 (5) if a joint venture, is composed entirely of ventures that qualify
7 under (1) - (4) of this subsection.

8 * **Sec. 11.** AS 36.30.200 is amended to read:

9 Sec. 36.30.200. CONDITIONS FOR USE. (a) Except as otherwise provided
10 in this chapter, or unless specifically exempted by law, an agency contract shall be
11 awarded by competitive sealed proposals if it is not awarded by competitive sealed
12 bidding. [CONSTRUCTION MAY ONLY BE PROCURED BY COMPETITIVE
13 SEALED PROPOSALS IF THE CONDITIONS UNDER (c) OF THIS SECTION ARE
14 MET.]

15 (b) The commissioner may provide by regulation that it is either not
16 practicable or not advantageous to the state to procure specified types of supplies,
17 services, or construction by competitive sealed bidding that would otherwise be
18 procured by that method. When the [CHIEF] procurement officer [, OR FOR
19 CONSTRUCTION CONTRACTS OR PROCUREMENTS FOR THE STATE
20 EQUIPMENT FLEET, THE COMMISSIONER OF TRANSPORTATION AND
21 PUBLIC FACILITIES,] determines in writing with particularity that the use of
22 competitive sealed proposals is more [BIDDING IS EITHER NOT PRACTICABLE
23 OR NOT] advantageous to the state than competitive sealed bidding, a contract may
24 be entered into by competitive sealed proposals [IN ACCORDANCE WITH THE
25 REGULATIONS. WHEN IT IS DETERMINED THAT IT IS PRACTICABLE BUT
26 NOT ADVANTAGEOUS TO USE COMPETITIVE SEALED BIDDING, THE CHIEF
27 PROCUREMENT OFFICER OR COMMISSIONER OF TRANSPORTATION AND
28 PUBLIC FACILITIES SHALL SPECIFY WITH PARTICULARITY THE BASIS FOR
29 THE DETERMINATION].

30 (c) When the commissioner of transportation and public facilities [CHIEF
31 PROCUREMENT OFFICER] determines that it is advantageous to the state, a

1 procurement officer may issue a request for proposals requesting the submission of
2 offers to provide construction in accordance with a design provided by the offeror.
3 The request for proposals shall require that each proposal submitted contain a single
4 price that includes the design/build.

5 * **Sec. 12.** AS 36.30.210 is repealed and reenacted to read:

6 Sec. 36.30.210. REQUEST FOR PROPOSALS. (a) A request for competitive
7 sealed proposals must contain the date, time, and place for delivering proposals, a
8 specific description of the supplies, construction, services, or professional services to
9 be provided under the contract, and the terms under which the supplies, construction,
10 services, or professional services are to be provided.

11 (b) An offeror for a construction contract shall submit evidence of the offeror's
12 registration under AS 08.18. A request for sealed proposals for a construction contract
13 must require the offeror, no later than five working days after the proposal that is the
14 most advantageous to the state is identified, to list subcontractors the offeror proposes
15 to use in the performance of the construction contract. The list must include the
16 information required under AS 36.30.115(a). The provisions of AS 36.30.115(b) - (e)
17 apply to competitive sealed proposals for construction contracts.

18 (c) A request for proposals must contain that information necessary for an
19 offeror to submit a proposal or contain references to any information that cannot
20 reasonably be included with the request. The request must provide a description of the
21 factors that will be considered by the procurement officer when evaluating the
22 proposals received, including the relative importance of price and other evaluation
23 factors.

24 (d) Notice of a request for proposals shall be given in accordance with
25 procedures under AS 36.30.130. The procurement officer may use additional means
26 considered appropriate to notify prospective offerors of the intent to enter into a
27 contract through competitive sealed proposals.

28 (e) The offeror must have a valid Alaska business license at the time
29 designated, in the request for proposals, for opening of the proposals.

30 * **Sec. 13.** AS 36.30.230 is amended to read:

31 Sec. 36.30.230. DISCLOSURE OF PROPOSALS. The procurement officer

1 shall open proposals so as to avoid disclosure of contents to competing offerors **before**
2 **notice of intent to award a contract is issued** [DURING THE PROCESS OF
3 NEGOTIATION]. A register of proposals containing the name and address of each
4 offeror shall be prepared in accordance with regulations adopted by the commissioner.
5 The register and the proposals are open for public inspection after the notice of intent
6 to award a contract is issued under AS 36.30.365. To the extent that the offeror
7 designates and the procurement officer concurs, trade secrets and other proprietary data
8 contained in the proposal documents are confidential.

9 * **Sec. 14.** AS 36.30.230 is amended by adding a new subsection to read:

10 (b) If a solicitation is cancelled under AS 36.30.350 after proposals are
11 received but before a notice of intent to award a contract has been issued under
12 AS 36.30.365, a protest of the solicitation or of the cancellation of the solicitation has
13 not been filed by an interested party under AS 36.30.560, and the time specified in
14 AS 36.30.565(a) for filing such a protest has expired, the procurement officer may
15 return a proposal to the offeror that made the proposal. The procurement officer shall
16 keep a list of returned proposals in the file for the solicitation.

17 * **Sec. 15.** AS 36.30.260 is amended to read:

18 Sec. 36.30.260. **CONTRACT EXECUTION.** A contract awarded under
19 competitive sealed proposals must contain

20 (1) **a statement of** the amount of the contract [STATED ON ITS
21 FIRST PAGE];

22 (2) the date for the supplies to be delivered or the dates for
23 construction, services, or professional services to begin and be completed;

24 (3) a description of the supplies, construction, services, or professional
25 services to be provided; and

26 (4) certification by the project director for the contracting agency, the
27 head of the contracting agency, or a designee that sufficient **money is** [FUNDS ARE]
28 available in an appropriation to be encumbered for the amount of the contract.

29 * **Sec. 16.** AS 36.30.300 is repealed and reenacted to read:

30 Sec. 36.30.300. **SINGLE SOURCE PROCUREMENTS.** (a) A contract may
31 be awarded for supplies, services, professional services, or construction without

1 competitive sealed bidding, competitive sealed proposals, or other competition in
2 accordance with regulations adopted by the commissioner. A contract may be awarded
3 under this section only when the chief procurement officer or, for construction
4 contracts or procurements for the state equipment fleet, the commissioner of
5 transportation and public facilities determines in writing that

6 (1) it is not practicable to award a contract by competitive sealed
7 bidding under AS 36.30.100, competitive sealed proposals under AS 36.30.200, or
8 limited competition under AS 36.30.305; and

9 (2) award of the contract under this section is in the state's best interest.

10 (b) The using agency shall submit written evidence to support a request for a
11 single source procurement. The commissioner of administration or the commissioner
12 of transportation and public facilities, as appropriate, may also require the submission
13 of cost or pricing data in connection with an award under this section.

14 (c) To the extent practicable, the procurement officer shall negotiate with the
15 single source to obtain contract terms advantageous to the state.

16 (d) Procurement requirements may not be aggregated or structured so as to
17 constitute a purchase under this section or to circumvent the source selection
18 procedures required by AS 36.30.100 - 36.30.270.

19 (e) Except for procurements of supplies, services, professional services, or
20 construction that do not exceed the amount for small procurements under
21 AS 36.30.320(a) as applicable, the authority to make a determination required by this
22 section may not be delegated, even if the authority to contract is delegated under
23 AS 36.30.015(a) and (b).

24 * **Sec. 17.** AS 36.30.305(a) is amended to read:

25 (a) A contract for supplies, services, professional services, or a construction
26 contract under \$100,000, may be awarded without competitive sealed bidding or
27 competitive sealed proposals, in accordance with regulations adopted by the
28 commissioner. A contract may be awarded under this section only when the chief
29 procurement officer, or, for construction contracts under \$100,000 or procurements for
30 the state equipment fleet, the commissioner of transportation and public facilities, **or,**
31 **for services of legal counsel, the attorney general,** determines in writing that a

1 situation exists that makes competitive sealed bidding or competitive sealed proposals
2 impractical or contrary to the public interest. Procurements under this section shall be
3 made with competition that is practicable under the circumstances
4 [CIRCUMSTANCE. EXCEPT FOR PROCUREMENTS OF SUPPLIES, SERVICES,
5 PROFESSIONAL SERVICES, OR CONSTRUCTION THAT DO NOT EXCEED THE
6 AMOUNT FOR SMALL PROCUREMENTS UNDER AS 36.30.320(a) OR (b),
7 AS APPLICABLE, THE AUTHORITY TO MAKE A DETERMINATION
8 REQUIRED BY THIS SECTION MAY NOT BE DELEGATED].

9 * **Sec. 18.** AS 36.30.305(d) is amended to read:

10 (d) Single [SOLE] source procurements may not be made under this section.

11 * **Sec. 19.** AS 36.30 is amended by adding a new section to read:

12 Sec. 36.30.308. INNOVATIVE PROCUREMENTS. (a) A contract may be
13 awarded for supplies, services, professional services, or construction using an
14 innovative procurement process, with or without competitive sealed bidding or
15 competitive sealed proposals, in accordance with regulations adopted by the
16 commissioner. A contract may be awarded under this section only when the chief
17 procurement officer, or, for construction contracts or procurements of the state
18 equipment fleet, the commissioner of transportation and public facilities, determines
19 in writing that it is advantageous to the state to use an innovative competitive
20 procurement process in the procurement of new or unique requirements of the state,
21 new technologies, or to achieve best value.

22 (b) The procurement officer shall submit a procurement plan to the Department
23 of Law for review and approval as to form before issuing the notice required by (c)
24 of this section.

25 (c) A procurement under this section is subject to the requirements of
26 AS 36.30.130.

27 (d) Nothing in this section precludes the adoption of regulations providing for
28 the use of bonuses instead of preferences in a procurement of construction.

29 * **Sec. 20.** AS 36.30 is amended by adding new sections to read:

30 Sec. 36.30.311. EMPLOYMENT PROGRAM PROCUREMENTS. A
31 procurement of products manufactured or services provided by an employment

1 program of the state may be made without competitive sealed bidding or competitive
2 sealed proposals, in accordance with regulations adopted by the commissioner.

3 Sec. 36.30.313. CORRECTIONAL INDUSTRIES PROCUREMENTS. A
4 procurement of products or services provided by the correctional industries program
5 established under AS 33.32 may be made without competitive sealed bidding or
6 competitive sealed proposals, in accordance with regulations adopted by the
7 commissioner.

8 * **Sec. 21.** AS 36.30.315 is amended to read:

9 Sec. 36.30.315. FALSE STATEMENTS IN DETERMINATIONS [BY
10 CHIEF PROCUREMENT OFFICER]; CRIMINAL PENALTY. (a) In a determination
11 made by a state official [THE CHIEF PROCUREMENT OFFICER] under
12 AS 36.30.300 - 36.30.310, the state official making the determination [CHIEF
13 PROCUREMENT OFFICER] shall independently examine the material facts of the
14 procurement and independently determine whether the procurement is eligible for the
15 procurement method requested.

16 (b) If a state official [THE CHIEF PROCUREMENT OFFICER] knowingly
17 makes a false statement in a determination made [BY THE CHIEF PROCUREMENT
18 OFFICER] under AS 36.30.300 - 36.30.310, the state official [CHIEF
19 PROCUREMENT OFFICER] is guilty of a class A misdemeanor.

20 * **Sec. 22.** AS 36.30.320(a) is amended to read:

21 (a) A procurement for supplies, services, or professional services
22 [CONSTRUCTION] that does not exceed an aggregate dollar amount of \$50,000,
23 construction that does not exceed an aggregate dollar amount of \$100,000, or lease
24 of space that does not exceed 3,000 square feet [\$25,000] may be made in
25 accordance with regulations adopted by the commissioner for small procurements.

26 * **Sec. 23.** AS 36.30 is amended by adding a new section to read:

27 Sec. 36.30.331. DELIVERY OF SUPPLIES. Supplies purchased under this
28 chapter shall be delivered at a location within the state unless the department
29 determines that a point of delivery outside the state would be in the best interest of the
30 state. A bid or proposal involving the procurement of supplies must specify the
31 delivery location and must state that the price is the delivered price at that location.

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

2 Sec. 36.30.333. **PROCUREMENT OF PAPER.** Except as otherwise required
3 under AS 36.15.050, AS 36.30.322 - 36.30.332, and 36.30.334 - 36.30.338, when a
4 state agency purchases paper, at least 25 percent of the quantity purchased must be
5 recycled paper unless recycled paper is not available for the purchase or unless, after
6 application of the procurement preference under AS 36.30.339, the recycled paper is
7 more expensive than the nonrecycled paper.

8 * **Sec. 25.** AS 36.30 is amended by adding a new section to read:

9 Sec. 36.30.335. **PRODUCT PREFERENCES.** This chapter does not modify
10 AS 36.15.010 and 36.15.020 regarding preference for Alaska forest products, or
11 AS 36.15.050 and 36.15.060 regarding preference for Alaska agricultural and fisheries
12 products, except as provided in AS 36.30.170(b), (c), (e) - (h), and 36.30.339.

13 * **Sec. 26.** AS 36.30.520(a) is amended to read:

14 (a) The commissioner shall maintain for a minimum of five years a record
15 listing all single [SOLE] source procurement contracts made under AS 36.30.300 and
16 emergency procurements made under AS 36.30.310. The record must contain

- 17 (1) each contractor's name;
18 (2) the amount and type of each contract; and
19 (3) a listing of the supplies, services, professional services, or
20 construction procured under each contract.

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

22 Sec. 36.30.522. **RECORDS OF INNOVATIVE PROCUREMENTS.** The
23 commissioner and the contracting agency shall keep a file for each contract awarded
24 under an innovative procurement process under AS 36.30.308. The file is subject to
25 inspection under the same standards as described in AS 36.30.140(b) and 36.30.230.
26 The file kept by the commissioner must contain a summary of the information in the
27 file of the contracting agency. The file kept by the contracting agency must contain

- 28 (1) a copy of the contract;
29 (2) the written determination under AS 36.30.308(a);
30 (3) the procurement plan as approved as to form by the Department of
31 Law;

- 1 (4) the record of notice under AS 36.30.130; and
2 (5) the record of respondents to solicitation.

3 * **Sec. 28.** AS 36.30 is amended by adding a new section to article 9 to read:

4 Sec. 36.30.550. APPLICABILITY OF PROTEST AND APPEAL
5 PROCEDURES. (a) Except for small procurements made under AS 36.30.320, the
6 provisions of AS 36.30.560 - 36.30.615 apply to a solicitation, a proposed contract
7 award, and a contract for supplies, services, professional services, or construction.

8 (b) The commissioner shall adopt regulations providing for protest and appeal
9 procedures of small procurements made under AS 36.30.320.

10 * **Sec. 29.** AS 36.30.565(a) is amended to read:

11 (a) **A protest based upon alleged improprieties or ambiguities in a**
12 **solicitation must be filed at least 10 days before the due date of the bid or**
13 **proposal, unless a later protest deadline is specifically allowed in the solicitation.**
14 **A protest of a bid or proposal with a shortened public notice, which is based upon**
15 **alleged improprieties or ambiguities in the solicitation, must be filed prior to the**
16 **due date of the bid or proposal. Notwithstanding the other provisions in this**
17 **subsection, a protest of a bid or proposal in which a pre-bid or pre-proposal**
18 **conference is held within 12 days of the due date, which is based upon alleged**
19 **improprieties or ambiguities in the solicitation, must be filed prior to the due date**
20 **of the bid or proposal.** A protest based upon alleged improprieties in an award of
21 a contract or a proposed award of a contract must be filed within 10 days after a notice
22 of intent to award the contract is issued by the procurement officer.

23 * **Sec. 30.** AS 36.30.580(a) is amended to read:

24 (a) The procurement officer of the contracting agency shall issue a written
25 decision containing the basis of the decision within **15** [14] days after a protest has
26 been filed. A copy of the decision shall be furnished to the protester by certified mail
27 or other method that provides evidence of receipt.

28 * **Sec. 31.** AS 36.30.580(b) is amended to read:

29 (b) The time for a decision may be extended up to **30** [26] days for good cause
30 by the commissioner of administration, or, for protests involving construction or
31 procurements for the state equipment fleet, the commissioner of transportation and

1 public facilities. If an extension is granted, the procurement officer shall notify the
2 protester in writing of the date **that** [OF] the decision is due.

3 * **Sec. 32.** AS 36.30.585 is amended by adding a new subsection to read:

4 (c) Notwithstanding (a) and (b) of this section, if a protest is sustained in
5 whole or part, the protester's damages are limited to reasonable bid or proposal
6 preparation costs.

7 * **Sec. 33.** AS 36.30.605(a) is amended to read:

8 (a) The procurement officer of the contracting agency shall file a complete
9 report on the protest and decision with the commissioner of administration or the
10 commissioner of transportation and public facilities, as appropriate, within **10** [SEVEN]
11 days after a protest appeal is filed. The procurement officer shall furnish a copy of
12 the report to the protester and to interested parties that have requested a copy of the
13 appeal under AS 36.30.595(b).

14 * **Sec. 34.** AS 36.30.605(c) is amended to read:

15 (c) The protester may file comments on the protest report with the
16 commissioner of administration or the commissioner of transportation and public
17 facilities, as appropriate, within **10** [SEVEN] days after the report is received. The
18 protester shall provide copies of the comments to the procurement officer and to
19 interested parties that have requested a copy of the appeal under AS 36.30.595(b).

20 * **Sec. 35.** AS 36.30.620(a) is amended to read:

21 (a) A contractor shall file a claim concerning a contract awarded under this
22 chapter with the procurement officer. The contractor shall certify that the claim is
23 made in good faith, that the supporting data are accurate and complete to the best of
24 the contractor's knowledge and belief, and that the amount requested accurately
25 reflects the contract adjustment for which the contractor believes the state is liable.
26 **Except for a lease rate adjustment called for in the lease, a claim under this**
27 **section must be filed within 90 days after the contractor becomes aware of the**
28 **basis of the claim or should have known the basis of the claim, whichever is**
29 **earlier. A lease rate adjustment called for in the lease must be filed prior to the**
30 **expiration date of the lease.**

31 * **Sec. 36.** AS 36.30.620 is amended by adding a new subsection to read:

1 (g) This section does not apply to payment disputes governed by
2 AS 37.05.285.

3 * **Sec. 37.** AS 36.30.655 is amended to read:

4 Sec. 36.30.655. LIST OF PERSONS DEBARRED OR SUSPENDED. The
5 commissioner shall maintain a list of all persons debarred or suspended from
6 consideration for award of contracts. **The commissioner shall remove a person**
7 **debarred or suspended from the lists of contractors under AS 36.30.050 for the**
8 **period of debarment or suspension.**

9 * **Sec. 38.** AS 36.30.850(b)(23) is amended to read:

10 (23) **operation and protection of assets or** disposals of **equipment**
11 **and** supplies acquired through foreclosure **or other legal proceedings relating to** [OF]
12 loans issued under AS 03.10;

13 * **Sec. 39.** AS 36.30.850(b) is amended by adding a new paragraph to read:

14 (34) purchases of livestock by a correctional industries program
15 established under AS 33.32.

16 * **Sec. 40.** AS 36.30.910 is amended to read:

17 Sec. 36.30.910. PURCHASES THROUGH GENERAL SERVICES
18 ADMINISTRATION. **Notwithstanding any other provision of this chapter,** [THIS
19 CHAPTER DOES NOT PREVENT] purchasing through the general services
20 administration **or from federal supply schedules of the general services**
21 **administration may be made without competitive sealed bidding, competitive**
22 **sealed proposals, or other competition, so long as the purchasing is made in**
23 **accordance with regulations adopted by the commissioner for purchases under**
24 **this section and** as provided by **federal** law.

25 * **Sec. 41.** AS 36.30.990 is amended by adding a new paragraph to read:

26 (22) "state official" means a public employee, public officer, or official
27 of an agency.

28 * **Sec. 42.** Section 3, ch. 59, SLA 1994, is amended to read:

29 Sec. 3. AS 36.30.130(a) is repealed and reenacted to read:

30 (a) The procurement officer shall give adequate public notice of the invitation
31 to bid at least 21 days before the date for the opening of bids. If **the procurement**

1 **officer determines** [A DETERMINATION IS MADE] in writing that a shorter notice
2 period is **advantageous** [NECESSARY] for a particular bid **and adequate**
3 **competition is anticipated**, the 21-day period may be shortened. [THE
4 DETERMINATION SHALL BE MADE BY THE CHIEF PROCUREMENT OFFICER
5 FOR BIDS FOR SUPPLIES, SERVICES, OR PROFESSIONAL SERVICES. THE
6 DETERMINATION SHALL BE MADE BY THE COMMISSIONER OF
7 TRANSPORTATION AND PUBLIC FACILITIES FOR BIDS FOR
8 CONSTRUCTION OR ACQUISITION OF PROPERTY FOR THE STATE
9 EQUIPMENT FLEET.] Notice shall be published in the Alaska Administrative
10 Journal. The time and manner of notice must be in accordance with regulations
11 adopted by the commissioner of administration. When practicable, notice may include

- 12 (1) publication in a newspaper calculated to reach prospective bidders;
13 (2) notices posted in public places within the area where the work is
14 to be performed or the material furnished; and
15 (3) notices mailed to all active prospective contractors on the
16 appropriate list maintained under AS 36.30.050.

17 * **Sec. 43.** (a) AS 36.30.015(c), 36.30.090, 36.30.095, 36.30.100(b), 36.30.850(b)(14),
18 and 36.30.900 are repealed.

19 (b) AS 36.30.320(b) is repealed.

20 * **Sec. 44.** REVISOR'S CHANGES. The revisor of statutes is requested to change the
21 heading of art. 5 of AS 36.30 from "Article 5. Preference for Alaska Products." to "Article 5.
22 Preferences." Additionally, the revisor of statutes is requested to renumber AS 36.30.339 to
23 AS 36.30.337, to place that section in art. 5 of AS 36.30.

24 * **Sec. 45.** TRANSITION: REGULATIONS. Notwithstanding secs. 49 - 51 of this Act,
25 the commissioner of administration and the commissioner of transportation and public facilities
26 may proceed to adopt regulations necessary to implement respective changes in law enacted
27 by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but
28 not before the effective date of the change in law in this Act.

29 * **Sec. 46.** APPLICABILITY. Notwithstanding the changes in law made by this Act, the
30 state agencies may continue to act on or consider a provision of a solicitation, notice of intent
31 to award, or response to solicitation made before the effective date of the relevant change in

1 law enacted by this Act, to the extent that the provision is not inconsistent with a provision
2 of this Act.

3 * **Sec. 47.** FIRST LEASE EXTENSION REPORT. Notwithstanding AS 36.30.083(c),
4 enacted by sec. 5 of this Act, the first lease extension report under AS 36.30.083(c) is due
5 August 31, 1997, and must cover fiscal year 1997.

6 * **Sec. 48.** Sections 2 - 9, 11, 15, 20, 21, 23 - 25, 37 - 39, 41, 43(a), and 44 - 47 of this
7 Act take effect immediately under AS 01.10.070(c).

8 * **Sec. 49.** Sections 1, 10, 12 - 14, 16 - 19, 22, 26, 27, 29 - 36, 40, and 43(b) of this Act
9 take effect September 30, 1996.

10 * **Sec. 50.** Section 28 of this Act takes effect January 1, 1997.

11 * **Sec. 51.** Section 42 of this Act takes effect August 22, 1998.