

CS FOR SENATE BILL NO. 275(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 4/2/96

Referred: JUD, FIN

Sponsor(s): SENATE 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 24.55.275 is amended to read:

5 Sec. 24.55.275. CONTRACT PROCEDURES. The ombudsman shall adopt
6 by regulation procedures consistent with AS 36.30 to be followed by the office of the
7 ombudsman in contracting for services. However, the procedure for requests for
8 proposals does not apply to contracts for investigations under AS 24.55.100, and the
9 office of the ombudsman shall comply with AS 36.30.170(b).

10 * **Sec. 2.** AS 36.30.015(e) is amended to read:

11 (e) The board of directors of the Alaska Railroad Corporation and the board
12 of directors of the Alaska Aerospace Development Corporation shall adopt procedures
13 to govern the procurement of supplies, services, professional services, and construction.
14 The procedures must be substantially equivalent to the procedures prescribed in this

1 chapter and in regulations adopted under this chapter. **Notwithstanding the other**
2 **provisions of this subsection, the Alaska Railroad Corporation and the Alaska**
3 **Aerospace Development Corporation shall comply with AS 36.30.170(b).**

4 * **Sec. 3.** AS 36.30.015(f) is amended to read:

5 (f) The board of directors of the Alaska Housing Finance Corporation,
6 notwithstanding AS 18.56.088, shall adopt regulations under AS 44.62 (Administrative
7 Procedure Act) and the board of trustees of the Alaska State Pension Investment Board
8 shall adopt regulations under AS 37.10.240 to govern the procurement of supplies,
9 services, professional services, and construction for the respective public corporation
10 and board. The regulations must [(1)] reflect competitive bidding principles and
11 provide vendors reasonable and equitable opportunities to participate in the
12 procurement process [;] and **must** [(2)] include procurement methods to meet
13 emergency and extraordinary circumstances. **Notwithstanding the other provisions**
14 **of this subsection, the Alaska Housing Finance Corporation and the Alaska State**
15 **Pension Investment Board shall comply with AS 36.30.170(b).**

16 * **Sec. 4.** AS 36.30.015(h) is amended to read:

17 (h) The board of directors of the Alaska Seafood Marketing Institute shall
18 adopt procedures to govern the procurement of supplies, services, and professional
19 services. The procedures must be similar to the procedures prescribed in this chapter
20 and in regulations adopted under this chapter, **except that the Alaska Seafood**
21 **Marketing Institute shall comply with AS 36.30.170(b).**

22 * **Sec. 5.** AS 36.30.020 is amended to read:

23 Sec. 36.30.020. LEGISLATURE. The Legislative Council shall adopt and
24 publish procedures to govern the procurement of supplies, services, professional
25 services, and construction by the legislative branch. The procedures must be based on
26 the competitive principles consistent with this chapter and must be adapted to the
27 special needs of the legislative branch as determined by the Legislative Council. The
28 procedures must be consistent with the provisions of AS 36.30.080(c) - (e) and
29 36.30.085. **Notwithstanding the other provisions of this section, the legislative**
30 **agencies subject to the legislative council's regulations shall comply with**
31 **AS 36.30.170(b).**

1 * **Sec. 6.** AS 36.30.030 is amended to read:

2 Sec. 36.30.030. COURT SYSTEM. The administrative director of courts shall
3 adopt and publish procedures to govern the procurement of supplies, services,
4 professional services, and construction by the judicial branch. The procedures must
5 be based on the competitive principles consistent with this chapter and must be adapted
6 to the special needs of the judicial branch as determined by the administrative director
7 of courts. The procedures must be consistent with the provisions of AS 36.30.080(c) -
8 (e) and 36.30.085. **Notwithstanding the other provisions of this section, the judicial**
9 **branch shall comply with AS 36.30.170(b).**

10 * **Sec. 7.** AS 36.30.040(b)(4) is amended to read:

11 (4) conditions and procedures for the use of source selection methods
12 authorized by this chapter, including **single** [SOLE] source procurements, emergency
13 procurements, and small procurements;

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

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

17 * **Sec. 9.** AS 36.30.050(a) is amended to read:

18 (a) **Except for persons debarred or suspended under AS 36.30.635 -**
19 **36.30.655, the** [THE] commissioner shall establish and maintain **current** lists of
20 persons who desire to provide supplies, services, professional services, or construction
21 services to the state.

22 * **Sec. 10.** AS. 36.30.080 is amended by adding a new subsection to read:

23 (f) When the department is acquiring leased space of 3,000 square feet or less,
24 the department may procure the leased space using the procedures for small
25 procurements under AS 36.30.320.

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

27 Sec. 36.30.083. LEASE EXTENSIONS AUTHORIZED. (a) Notwithstanding
28 any other provision of this chapter, the department, the legislative council, or the court
29 system may extend, for up to a maximum extension of 10 years, a real property lease
30 that is entered into under this chapter, including procedures and regulations adopted
31 under AS 36.30.020 and 36.30.030, if a minimum cost savings of

1 (1) 10 percent can be achieved on the rent due under the lease; or
2 (2) five percent can be achieved on the rent due under the lease and the
3 lessor agrees to make modifications of the leased real property to bring the real
4 property into compliance with the requirements of 42 U.S.C. 12101 - 12213
5 (Americans with Disabilities Act of 1990).

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

9 (c) The department, the court system, and the Legislative Affairs Agency shall
10 submit individually an annual report to the Legislative Budget and Audit Committee
11 detailing the leases extended and the cost savings achieved by the entity under (a) or
12 (b) of this section during the previous fiscal year. The report is due August 31 of each
13 year.

14 * **Sec. 12.** AS 36.30.115 is amended to read:

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

28 (b) **The apparent low** [A] bidder **for a construction contract** may replace
29 a listed subcontractor if the subcontractor

30 (1) fails to comply with AS 08.18;

31 (2) files for bankruptcy or becomes insolvent;

- 1 (3) fails to execute a contract with the bidder involving performance
2 of the work for which the subcontractor was listed and the bidder acted in good faith;
3 (4) fails to obtain bonding;
4 (5) fails to obtain insurance acceptable to the state;
5 (6) fails to perform the contract with the bidder involving work for
6 which the subcontractor was listed;
7 (7) must be substituted in order for the prime contractor to satisfy
8 required state and federal affirmative action requirements;
9 (8) refuses to agree or abide with the bidder's labor agreement; or
10 (9) is determined by the procurement officer not to be a responsible
11 subcontractor.

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

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

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

- 22 (1) cancel the contract; or
23 (2) after notice and a hearing, assess a penalty on the bidder in an
24 amount that does not exceed 10 percent of the value of the subcontract at issue.

25 * **Sec. 13.** AS 36.30.130(a) is amended to read:

26 (a) The procurement officer shall give adequate public notice of the invitation
27 to bid at least 21 days before the date for the opening of bids. If **the procurement**
28 **officer determines** [A DETERMINATION IS MADE] in writing that a shorter notice
29 period is **advantageous** [NECESSARY] for a particular bid **and adequate**
30 **competition is anticipated**, the 21-day period may be shortened. [THE
31 DETERMINATION SHALL BE MADE BY THE CHIEF PROCUREMENT OFFICER

1 FOR BIDS FOR SUPPLIES, SERVICES, OR PROFESSIONAL SERVICES. THE
2 DETERMINATION SHALL BE MADE BY THE COMMISSIONER OF
3 TRANSPORTATION AND PUBLIC FACILITIES FOR BIDS FOR
4 CONSTRUCTION OR ACQUISITION OF PROPERTY FOR THE STATE
5 EQUIPMENT FLEET.] Notice shall be published in the Alaska Administrative
6 Journal. The time and manner of notice must be in accordance with regulations
7 adopted by the commissioner of administration. When practicable, notice may include

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

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

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

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

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

16 * **Sec. 14.** AS 36.30.170 is amended by adding a new subsection to read:

17 (k) In order to qualify for a preference under (c), (e), or (f) of this section, a
18 bidder must add value by actually performing, controlling, managing, and supervising
19 the services provided, or a bidder must have sold supplies of the general nature
20 solicited to state agencies, other governments, or to the general public.

21 * **Sec. 15.** AS 36.30.200 is amended to read:

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

28 (b) The commissioner may provide by regulation that it is either not
29 practicable or not advantageous to the state to procure specified types of supplies,
30 services, or construction by competitive sealed bidding that would otherwise be
31 procured by that method. When the [CHIEF] procurement officer [, OR FOR

1 CONSTRUCTION CONTRACTS OR PROCUREMENTS FOR THE STATE
2 EQUIPMENT FLEET, THE COMMISSIONER OF TRANSPORTATION AND
3 PUBLIC FACILITIES,] determines in writing with particularity that the use of
4 competitive sealed proposals is more [BIDDING IS EITHER NOT PRACTICABLE
5 OR NOT] advantageous to the state than competitive sealed bidding, a contract may
6 be entered into by competitive sealed proposals [IN ACCORDANCE WITH THE
7 REGULATIONS. WHEN IT IS DETERMINED THAT IT IS PRACTICABLE BUT
8 NOT ADVANTAGEOUS TO USE COMPETITIVE SEALED BIDDING, THE CHIEF
9 PROCUREMENT OFFICER OR COMMISSIONER OF TRANSPORTATION AND
10 PUBLIC FACILITIES SHALL SPECIFY WITH PARTICULARITY THE BASIS FOR
11 THE DETERMINATION].

12 (c) When the commissioner of transportation and public facilities [CHIEF
13 PROCUREMENT OFFICER] determines that it is advantageous to the state, a
14 procurement officer may issue a request for proposals requesting the submission of
15 offers to provide construction in accordance with a design provided by the offeror.
16 The request for proposals shall require that each proposal submitted contain a single
17 price that includes the design/build.

18 * **Sec. 16.** AS 36.30.210 is repealed and reenacted to read:

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

24 (b) An offeror for a construction contract shall submit evidence of the offeror's
25 registration under AS 08.18. A request for sealed proposals for a construction contract
26 must require the offeror, no later than five working days after the proposal that is the
27 most advantageous to the state is identified, to list subcontractors the offeror proposes
28 to use in the performance of the construction contract. The list must include the
29 information required under AS 36.30.115(a), and the provisions of AS 36.30.115(b) -
30 (e) apply to competitive sealed proposals for construction contracts; in this sentence,
31 "bidder" in AS 36.30.115(a) - (e) is read as "offeror."

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

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

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

13 * **Sec. 17.** AS 36.30.230 is amended to read:

14 Sec. 36.30.230. DISCLOSURE OF PROPOSALS. The procurement officer
15 shall open proposals so as to avoid disclosure of contents to competing offerors **before**
16 **notice of intent to award a contract is issued** [DURING THE PROCESS OF
17 NEGOTIATION]. A register of proposals containing the name and address of each
18 offeror shall be prepared in accordance with regulations adopted by the commissioner.
19 The register and the proposals are open for public inspection after the notice of intent
20 to award a contract is issued under AS 36.30.365. To the extent that the offeror
21 designates and the procurement officer concurs, trade secrets and other proprietary data
22 contained in the proposal documents are confidential.

23 * **Sec. 18.** AS 36.30.230 is amended by adding a new subsection to read:

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

31 * **Sec. 19.** AS 36.30.260 is amended to read:

1 Sec. 36.30.260. CONTRACT EXECUTION. A contract awarded under
2 competitive sealed proposals must contain

3 (1) a statement of the amount of the contract [STATED ON ITS
4 FIRST PAGE];

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

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

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

12 * **Sec. 20.** AS 36.30.300 is repealed and reenacted to read:

13 Sec. 36.30.300 SINGLE SOURCE PROCUREMENTS. (a) A contract may
14 be awarded for supplies, services, professional services, or construction without
15 competitive sealed bidding, competitive sealed proposals, or other competition in
16 accordance with regulations adopted by the commissioner. A contract may be awarded
17 under this section only when the chief procurement officer or, for construction
18 contracts or procurements for the state equipment fleet, the commissioner of
19 transportation and public facilities determines in writing that

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

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

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

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

31 (d) Procurement requirements may not be aggregated or structured so as to

1 constitute a purchase under this section or to circumvent the source selection
2 procedures required by AS 36.30.100 - 36.30.270.

3 (e) Except for procurements of supplies, services, professional services, or
4 construction that do not exceed the amount for small procurements under
5 AS 36.30.320(a) as applicable, the authority to make a determination required by this
6 section may not be delegated, even if the authority to contract is delegated under
7 AS 36.30.015(a) - (b).

8 * **Sec. 21.** AS 36.30.305(a) is amended to read:

9 (a) A **construction contract under \$100,000, or a** contract for supplies,
10 services, **or** professional services, [OR A CONSTRUCTION CONTRACT UNDER
11 \$100,000,] may be awarded without competitive sealed bidding or competitive sealed
12 proposals, in accordance with regulations adopted by the commissioner. A contract
13 may be awarded under this section only when the chief procurement officer [, OR,
14 FOR CONSTRUCTION CONTRACTS UNDER \$100,000 OR PROCUREMENTS
15 FOR THE STATE EQUIPMENT FLEET, THE COMMISSIONER OF
16 TRANSPORTATION AND PUBLIC FACILITIES,] determines in writing that a
17 situation exists that makes competitive sealed bidding or competitive sealed proposals
18 impractical or contrary to the public interest, **except that the attorney general may**
19 **make the determination for services of legal counsel, and the commissioner of**
20 **transportation and public facilities may make the determination for construction**
21 **contracts under \$100,000 or procurements for the state equipment fleet.**

22 Procurements under this section shall be made with competition that is practicable
23 under the circumstance. Except for procurements of supplies, services, professional
24 services, or construction that do not exceed the amount for small procurements under
25 AS 36.30.320(a) [OR (b)], as applicable, the authority to make a determination
26 required by this section may not be delegated.

27 * **Sec. 22.** AS 36.30.305(d) is amended to read:

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

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

30 Sec. 36.30.308. INNOVATIVE COMPETITIVE PROCUREMENTS. (a) A
31 contract may be awarded for supplies, services, professional services, or construction

1 using an innovative procurement process, with or without competitive sealed bidding
2 or competitive sealed proposals, in accordance with regulations adopted by the
3 commissioner. A contract may be awarded under this section only when the chief
4 procurement officer, or, for construction contracts or procurements of the state
5 equipment fleet, the commissioner of transportation and public facilities, determines
6 in writing that it is advantageous to the state to use an innovative competitive
7 procurement process in the procurement of new or unique requirements of the state,
8 new technologies, or to achieve best value.

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

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

14 (d) This section does not preclude the adoption of regulations providing for the
15 use of bonuses instead of preferences in a procurement of construction.

16 * **Sec. 24.** AS 36.30 is amended by adding new sections to read:

17 Sec. 36.30.311. EMPLOYMENT PROGRAM PROCUREMENTS. A
18 procurement of products manufactured or services provided by an employment
19 program of the state may be made without competitive sealed bidding or competitive
20 sealed proposals, in accordance with regulations adopted by the commissioner.

21 Sec. 36.30.313. CORRECTIONAL INDUSTRIES PROCUREMENTS. A
22 procurement of products or services provided by the correctional industries program
23 established under AS 33.32 may be made without competitive sealed bidding or
24 competitive sealed proposals, in accordance with regulations adopted by the
25 commissioner.

26 * **Sec. 25.** AS 36.30.315 is repealed and reenacted to read:

27 Sec. 36.30.315. FALSE STATEMENTS IN DETERMINATIONS;
28 CRIMINAL PENALTY. If a state official knowingly makes a false statement in a
29 determination under this chapter, the state official is guilty of a class A misdemeanor.

30 * **Sec. 26.** AS 36.30.320(a) is amended to read:

31 (a) A procurement for supplies, services, or professional services

1 [CONSTRUCTION] that does not exceed an aggregate dollar amount of \$50,000, for
2 construction that does not exceed an aggregate dollar amount of \$100,000, or for
3 lease of space that does not exceed 3,000 square feet [\$25,000] may be made in
4 accordance with regulations adopted by the commissioner for small procurements.

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

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

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

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

18 * **Sec. 29.** AS 36.30 is amended by adding a new section to read:

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

23 * **Sec. 30.** AS 36.30.520 is amended to read:

24 Sec. 36.30.520. RECORDS OF SINGLE [SOLE] SOURCE AND
25 EMERGENCY PROCUREMENTS. (a) The commissioner shall maintain for a
26 minimum of five years a record listing all single [SOLE] source procurement contracts
27 made under AS 36.30.300 and emergency procurements made under AS 36.30.310.
28 The record must contain

- 29 (1) each contractor's name;
30 (2) the amount and type of each contract; and
31 (3) a listing of the supplies, services, professional services, or

1 construction procured under each contract.

2 (b) The Department of Transportation and Public Facilities and any agency to
3 whom the commissioner of administration or the commissioner of transportation and
4 public facilities has delegated procurement authority under AS 36.30.015 shall, by
5 October 1 of each year, submit to the commissioner of administration records of the
6 type specified in (a) of this section **for emergency procurements made under**
7 **AS 36.30.310. The Department of Transportation and Public Facilities shall, even**
8 **if procurement authority has been delegated under AS 36.30.015 to another**
9 **agency, by October 1 of each year, submit to the commissioner of administration**
10 **records of the type specified in (a) of this section for single source procurement**
11 **contracts made under AS 36.30.300.** The commissioner of administration shall
12 maintain these records as required by (a) of this section.

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

14 Sec. 36.30.522. RECORDS OF INNOVATIVE PROCUREMENTS. The
15 commissioner and the contracting agency shall keep a file for each contract awarded
16 under an innovative procurement process under AS 36.30.308. The file is subject to
17 inspection under the same standards as described in AS 36.30.140(b) and 36.30.230.
18 The file kept by the commissioner must contain a summary of the information in the
19 file of the contracting agency. The file kept by the contracting agency must contain

- 20 (1) a copy of the contract;
21 (2) the written determination under AS 36.30.308(a);
22 (3) the procurement plan as approved as to form by the Department of
23 Law;
24 (4) the record of notice under AS 36.30.130; and
25 (5) the record of respondents to the solicitation.

26 * **Sec. 32.** AS 36.30 is amended by adding a new section to article 9 to read:

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

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

3 * **Sec. 33.** AS 36.30.565(a) is repealed and reenacted to read:

4 (a) A protest based on alleged improprieties or ambiguities in a solicitation
5 must be filed at least 10 days before the due date of the bid or proposal, unless a later
6 protest due date is specifically allowed in the solicitation. If a solicitation is made
7 with a shortened public notice period and the protest is based on alleged improprieties
8 or ambiguities in the solicitation, the protest must be filed before the due date of the
9 bid or proposal. Notwithstanding the other provisions in this subsection, the protest
10 of an invitation to bid or a request for proposals in which a pre-bid or pre-proposal
11 conference is held within 12 days of the due date must be filed before the due date of
12 the bid or proposal if the protest is based on alleged improprieties or ambiguities in
13 the solicitation. A protest based upon alleged improprieties in an award of a contract
14 or a proposed award of a contract must be filed within 10 days after a notice of intent
15 to award the contract is issued by the procurement officer.

16 * **Sec. 34.** AS 36.30.580(a) is amended to read:

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

21 * **Sec. 35.** AS 36.30.580(b) is amended to read:

22 (b) The time for a decision may be extended up to 30 [26] days for good cause
23 by the commissioner of administration, or, for protests involving construction or
24 procurements for the state equipment fleet, the commissioner of transportation and
25 public facilities. If an extension is granted, the procurement officer shall notify the
26 protester in writing of the date that [OF] the decision is due.

27 * **Sec. 36.** AS 36.30.585 is amended by adding a new subsection to read:

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

31 * **Sec. 37.** AS 36.30.605(a) is amended to read:

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

7 * **Sec. 38.** AS 36.30.605(c) is amended to read:

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

13 * **Sec. 39.** AS 36.30.620(a) is amended to read:

14 (a) A contractor shall file a claim concerning a contract awarded under this
15 chapter with the procurement officer. The contractor shall certify that the claim is
16 made in good faith, that the supporting data are accurate and complete to the best of
17 the contractor's knowledge and belief, and that the amount requested accurately
18 reflects the contract adjustment for which the contractor believes the state is liable.
19 **A claim under this section must be filed within 90 days after the contractor**
20 **becomes aware of the basis of the claim or should have known the basis of the**
21 **claim, whichever is earlier.**

22 * **Sec. 40.** AS 36.30.620 is amended by adding a new subsection to read:

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

25 * **Sec. 41.** AS 36.30.655 is amended to read:

26 Sec. 36.30.655. LIST OF PERSONS DEBARRED OR SUSPENDED. The
27 commissioner shall maintain a list of all persons debarred or suspended from
28 consideration for award of contracts. **The commissioner shall remove a person**
29 **debarred or suspended from the lists of contractors under AS 36.30.050 for the**
30 **period of debarment or suspension.**

31 * **Sec. 42.** AS 36.30.850(b)(23) is amended to read:

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

4 * **Sec. 43.** AS 36.30.850(b) is amended by adding new paragraphs to read:

5 (34) procurements of contracts with the media for advertising;

6 (35) purchases of livestock by a correctional industries program
7 established under AS 33.32.

8 * **Sec. 44.** AS 36.30.910 is amended to read:

9 Sec. 36.30.910. PURCHASES THROUGH GENERAL SERVICES
10 ADMINISTRATION. **Notwithstanding any other provision of this chapter,** [THIS
11 CHAPTER DOES NOT PREVENT] purchasing through the general services
12 administration **or from federal supply schedules of the general services**
13 **administration may be made without competitive sealed bidding, competitive**
14 **sealed proposals, or other competition, so long as the purchasing is made from**
15 **persons located in the state in accordance with regulations adopted by the**
16 **commissioner for purchases under this section and** as provided **under 41 U.S.C.**
17 **251 - 266** [BY LAW].

18 * **Sec. 45.** AS 36.30.990 is amended by adding a new paragraph to read:

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

21 * **Sec. 46.** Section 3, ch. 59, SLA 1994, is amended to read:

22 Sec. 3. AS 36.30.130(a) is repealed and reenacted 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** [A DETERMINATION IS MADE] in writing that a shorter notice
26 period is **advantageous** [NECESSARY] for a particular bid **and adequate**
27 **competition is anticipated,** the 21-day period may be shortened. [THE
28 DETERMINATION SHALL BE MADE BY THE CHIEF PROCUREMENT OFFICER
29 FOR BIDS FOR SUPPLIES, SERVICES, OR PROFESSIONAL SERVICES. THE
30 DETERMINATION SHALL BE MADE BY THE COMMISSIONER OF
31 TRANSPORTATION AND PUBLIC FACILITIES FOR BIDS FOR

1 CONSTRUCTION OR ACQUISITION OF PROPERTY FOR THE STATE
2 EQUIPMENT FLEET.] Notice shall be published in the Alaska Administrative

3 Journal. The time and manner of notice must be in accordance with regulations
4 adopted by the commissioner of administration. When practicable, notice may include

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

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

8 (3) notices mailed to all active prospective contractors on the
9 appropriate list maintained under AS 36.30.050.

10 * **Sec. 47.** (a) AS 36.30.015(c), 36.30.090, 36.30.095, 36.30.100(b), 36.30.850(b)(14),
11 and 36.30.900 are repealed.

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

13 * **Sec. 48.** REVISOR'S CHANGES. The revisor of statutes is requested to change the
14 heading of art. 5 of AS 36.30 from "Article 5. Preference for Alaska Products." to "Article 5.
15 Preferences." Additionally, the revisor of statutes is requested to renumber AS 36.30.339 as
16 AS 36.30.337, to place that section in art. 5 of AS 36.30.

17 * **Sec. 49.** TRANSITION: REGULATIONS. Notwithstanding secs. 53 - 55 of this Act,
18 the commissioner of administration and the commissioner of transportation and public facilities
19 may proceed to adopt regulations necessary to implement respective changes in law enacted
20 by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but
21 not before the effective date of the change in law in this Act.

22 * **Sec. 50.** APPLICABILITY. Notwithstanding the changes in law made by this Act, the
23 state agencies may continue to act on or consider a provision of a solicitation, notice of intent
24 to award, or response to solicitation made before the effective date of the relevant change in
25 law enacted by this Act, to the extent that the provision is not inconsistent with a provision
26 of this Act.

27 * **Sec. 51.** FIRST LEASE EXTENSION REPORT. Notwithstanding AS 36.30.083(c),
28 enacted by sec. 11 of this Act, the first lease extension report under AS 36.30.083(c) is due
29 August 31, 1997, and must cover fiscal year 1997.

30 * **Sec. 52.** Sections 8 - 13, 15, 19, 24 - 25, 27 - 29, 41 - 43, 45, 47(a), and 48 - 51 of this
31 Act take effect immediately under AS 01.10.070(c).

- 1 * **Sec. 53.** Sections 1 - 7, 14, 16 - 18, 20 - 23, 26, 30, 31, 33 - 40, 44, and 47(b) of this
2 Act take effect September 30, 1996.
- 3 * **Sec. 54.** Section 32 of this Act takes effect January 1, 1997.
- 4 * **Sec. 55.** Section 46 of this Act takes effect August 22, 1998.