

Introduced: 4/10/78
Referred: Commerce

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 HOUSE BILL NO. 922

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the subletting and subcontracting
7 of public construction contracts."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 35 is amended by adding a new chapter to read:

10 CHAPTER 21. SUBLETTING AND SUBCONTRACTING

11 FAIR PRACTICES.

12 Sec. 35.21.010. INTENT. The legislature finds that the practices
13 of bid shopping and bid peddling in connection with construction of
14 public works or public buildings often results in poor quality of
15 material and workmanship to the detriment of the public, deprives the
16 public of the full benefit or fair competition among general contractors
17 and subcontractors, and leads to insolvencies, loss of wages to em-
18 ployers and other evils.

19 Sec. 35.21.020. STATEMENTS IN CONTRACT BIDS. (a) No contract for
20 the construction of a public work or public building may be awarded to a
21 general contractor unless the bid accepted sets out

22 (1) the name and location of the place of business of each
23 subcontractor who will perform work under subcontract to the general
24 contractor in or about the public work or public building under construc-
25 tion for consideration amounting to more than one-half of one per cent
26 of the general contractor's total bid price;

27 (2) the portion of the work, in terms of the percentage of
28 the total bid amount, which will be performed by each individual sub-
29 contractor listed under (1) of this subsection, enumerated so that no

1 portion of the work is attributed to more than one subcontractor.

2 (b) The prohibition of (a) of this section is violated if a sub-
3 contractor listed under (a)(1) of this section sublets to other subcon-
4 tractors work attributed to that subcontractor under (a)(2) of this sec-
5 tion for consideration amounting to more than 50 per cent of the general
6 contractor's total bid price.

7 Sec. 35.21.030. FAILURE TO SPECIFY CONTRACTOR. If no subcontrac-
8 tor is listed for a portion of the work, or if more than one subcon-
9 tractor is listed for a portion of the work in violation of sec. 20(a)-
10 (2) of this chapter, then the general contractor shall perform that
11 portion of the work himself.

12 Sec. 35.21.040. SUBSTITUTION, ASSIGNMENT, SUBLETTING. No general
13 contractor who is awarded a contract may substitute any person as sub-
14 contractor in place of a subcontractor listed in the original bid,
15 except that the department may, except as otherwise provided in sec. 60
16 of this chapter, consent to the substitution of another person as sub-
17 contractor if

18 (1) the subcontractor listed in the bid fails or refuses to
19 execute a written contract, after the general contractor has tendered to
20 the subcontractor a written contract incorporating the general terms,
21 conditions, plans, and specifications for the project involved or the
22 terms of the subcontractor's written bid, and has afforded the subcon-
23 tractor a reasonable opportunity to execute it;

24 (2) the listed subcontractor fails or refuses to perform his
25 subcontract;

26 (3) the listed subcontractor becomes bankrupt or insolvent;

27 (4) the listed subcontractor fails or refuses to meet the
28 bond requirements established by the general contractor in accordance
29 with sec. 80 of this chapter;

1 (5) the general contractor demonstrates to the department, in
2 accordance with the provisions of sec. 60 of this chapter that the name
3 of the subcontractor was listed as the result of an inadvertent clerical
4 error; however, the subcontractor to be substituted must have bid to the
5 general contractor before the date of the contract award;

6 (6) the listed subcontractor is not registered under AS
7 08.18;

8 (7) the department determines that the work performed by the
9 listed subcontractor is not in substantial accordance with the plans and
10 specifications, or that the subcontractor is substantially delaying or
11 disrupting the progress of the work.

12 Sec. 35.21.050. SUBSTITUTION: PROCEDURE FOR ASSERTING LACK OF
13 SUBSTANTIAL COMPLIANCE WITH SUBCONTRACT. Before approving a general
14 contractor's request for a substitution of subcontractor under authority
15 of sec. 40(7) of this chapter, the department shall give notice in
16 writing to the listed subcontractor of the general contractor's request
17 to substitute and the reasons submitted in support of the request. The
18 notice shall be served by certified or registered mail to the last known
19 address of the subcontractor. The listed subcontractor who has been so
20 notified shall have five working days within which to submit written
21 objections to the substitution to the department. Failure to file such
22 written objections shall constitute the listed subcontractor's consent
23 to the substitution. If written objections are filed, the department
24 shall conduct, after notice in writing of at least five working days has
25 been afforded to the listed subcontractor, a hearing by the department
26 on the general contractor's request for substitution.

27 Sec. 35.21.060. SUBSTITUTION: PROCEDURE FOR ASSERTING INADVERTENT
28 CLERICAL ERROR. (a) A general contractor asserting a claim of inad-
29 vertent clerical error in the listing of a subcontractor under sec.

1 40(5) of this chapter shall within two working days after the date of
2 the contract award give written notice of his claim to the department
3 and to both the subcontractor he claims to have listed in error and the
4 subcontractor intended to have been listed.

5 (b) The department shall consent to the substitution of the in-
6 tended subcontractor if

7 (1) the general contractor and the intended subcontractor
8 submit affidavits to the department within eight days of the contract
9 award stating that an inadvertent clerical error was made; and

10 (2) the subcontractor listed in error

11 (A) within the eight-day period submits an affidavit to
12 the department, stating that an inadvertent clerical error was in
13 fact made;

14 (B) fails to submit to the department and the general
15 contractor within six working days of the date of the contract
16 award, written objection to the general contractor's claim of inad-
17 vertent clerical error; or

18 (C) has, within six working days from the date of the
19 contract award, submitted to the department and the general con-
20 tractor written objections to the general contractor's claim of
21 inadvertent clerical error, but the department, after investigation
22 of the parties' claim, has found that an inadvertent clerical error
23 was in fact made, based on facts contained in declarations sub-
24 mitted under penalty of perjury by all three parties and supported
25 by testimony under oath subject to cross-examination, and further
26 based on testimony, admitted on its own motion or that of another
27 party, of other contractors, any bid registeries or depositories,
28 or any other party in possession of facts which may have a bearing
29 on the decision of the department.

1 Sec. 35.21.070. OBLIGATION OF THE GENERAL CONTRACTOR. No general
2 contractor who is awarded a contract shall

3 (1) permit any subcontract to be voluntarily assigned or
4 transferred or allow it to be performed by anyone other than the sub-
5 contractor listed in the original bid, without the consent of the depart-
6 ment;

7 (2) sublet or subcontract any portion of the work in excess
8 of one-half of one per cent of the general contractor's total bid as to
9 which his original bid did not designate a subcontractor, other than the
10 performance of "change orders" causing changes or deviations from the
11 original contract.

12 Sec. 35.21.080. BONDING REQUIREMENTS. (a) Each subcontractor
13 submitting bids to a general contractor may be required to submit a
14 faithful performance and payment bond if so requested by the general
15 contractor.

16 (b) If a subcontractor submitting a bid to a general contractor
17 does not, upon the request of and at the expense of the general contrac-
18 tor at the established charge or premium, furnish to the general con-
19 tractor a bond issued by an admitted surety in which the general con-
20 tractor is named the obligee, guaranteeing prompt and faithful perfor-
21 mance of the subcontract and the payment of all claims for labor and
22 materials furnished or used in and about the work to be done and per-
23 formed under the subcontract, the general contractor may reject the bid
24 and make a substitution of another subcontractor under sec. 40(4) of
25 this chapter. The bond may be required at the expense of the subcon-
26 tractor only if the prime contractor in his written or published request
27 for subbids (1) specifies that the expense for the bond shall be borne
28 by the subcontractor; and (2) clearly specifies the amount and require-
29 ments of the bond.

1 Sec. 35.21.090. SUBLETTING OR SUBCONTRACTING IN PUBLIC EMERGEN-
2 CIES. Subletting or subcontracting of any portion of the work in excess
3 of one-half of one per cent of the general contractor's total bid as to
4 which no subcontractor was designated in the original bid is only per-
5 mitted in cases of public emergency or necessity, and only after the
6 department makes a written finding setting out the facts constituting
7 the emergency or necessity.

8 Sec. 35.21.100. PENALTIES FOR NONCOMPLIANCE. (a) A general con-
9 tractor violating any of the provisions of this chapter is in breach of
10 his contract and the department may, in its discretion, either (1)
11 cancel his contract or (2) assess the general contractor a penalty in an
12 amount of not more than 10 per cent of the amount of the subcontract
13 involved. In any proceedings under this section the general contractor
14 is entitled to a public hearing and five days notice of the time and
15 place of the hearing.

16 (b) Violation of this chapter by a contractor or subcontractor
17 constitutes grounds for suspension or revocation of the registration of
18 the contractor under AS 08.18.121, in addition to the penalties pre-
19 scribed in (a) of this section.

20 Sec. 35.21.110. NONCOMPLIANCE BY A CONTRACTOR NO DEFENSE IN ACTION
21 BY SUBCONTRACTOR. The failure on the part of a contractor to comply
22 with any provision of this chapter does not constitute a defense to the
23 contractor in any action brought against him by a subcontractor.

24 Sec. 35.21.120. RIGHTS AND REMEDIES NOT DIMINISHED. Nothing in
25 this chapter limits or diminishes any rights or remedies, either legal
26 or equitable, which

27 (1) an original or substituted subcontractor may have against
28 the general contractor, his successors or assigns;

29 (2) the state or any municipality may have against the

1 general contractor, his successors or assigns, including the right to
2 take over and complete the contract.

3 * Sec. 2. AS 08.18.121 is amended by adding a new subsection to read:

4 (h) Violation of AS 35.21 is grounds for suspension or revocation
5 of the registration of a contractor.

6 * Sec. 3. AS 35.25.020 is amended by adding new paragraphs to read:

7 (7) "general contractor" is as defined in AS 08.18.171(2);

8 (8) "subcontractor" means a contractor not a general con-
9 tractor who contracts directly with a general contractor.

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