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Referred: State Affairs

1 IN THE HOUSE

BY THE STATE AFFAIRS  
COMMITTEE BY REQUEST

2 HOUSE BILL NO. 546

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state contracts for professional  
7 services and establishing a penalty for violation of  
8 provisions of law relating to professional service  
9 contracts; and providing for an effective date."

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

11 \* Section 1. AS 36 is amended by adding a new chapter to read:

12 CHAPTER 98. PROFESSIONAL SERVICES CONTRACTS.

13 ARTICLE 1. CONTRACTORS' REGISTER.

14 Sec. 36.98.010. PROFESSIONAL SERVICES CONTRACTORS REGISTER. (a)

15 A person who desires to provide professional services to a state  
16 agency, the judicial branch of state government, or the University of  
17 Alaska shall annually, by a date determined by the commissioner of  
18 administration by regulation, submit to the commissioner a statement of  
19 qualifications and performance data, and any other information which  
20 the commissioner, by regulation, may require.

21 (b) The commissioner may at any time require the person to revise  
22 the statement of qualifications and performance data, or any other  
23 information, submitted by the person before the annual filing date  
24 established by the commissioner under (a) of this section if the com-  
25 missioner believes that the credentials or record of experience of the  
26 person have materially changed since the last filing by the person.

27 ARTICLE 2. STATE AGENCY CONTRACTS.

28 Sec. 36.98.100. PRELIMINARY REQUIREMENTS. (a) When a state  
29 agency proposes to enter into a contract for professional services, the

1 agency shall give public notice of the professional services contract.  
2 At least 30 days before the date on which the agency expects to enter  
3 into the contract for professional services it shall give notice by  
4 publication at least three times in one or more newspapers in general  
5 circulation in the state of

6 (1) a general description of the proposed project for which  
7 the agency is seeking professional services; and

8 (2) the procedure by which a person interested in the pro-  
9 fessional services contract may apply to the agency for consideration  
10 for the contract.

11 (b) In addition to complying with the publication requirements of  
12 (a) of this section, when a state agency proposes to enter into a  
13 contract for professional services it shall

14 (1) review the register of professional services contractors  
15 maintained by the commissioner under AS 36.98.010; and

16 (2) provide a request for proposals for the proposed pro-  
17 fessional services contract to each prospective contractor which, after  
18 review of the register of professional services contractors under (1)  
19 of this subsection, the agency finds is qualified for consideration for  
20 the contract.

21 Sec. 36.98.110. DUTIES OF STATE AGENCY. A state agency may not  
22 enter into a contract for professional services unless the head of the  
23 agency or a certifying officer of the agency certifies to the commis-  
24 sioner that

25 (1) there are no state employees who are competent or avail-  
26 able to perform the services required by the contract;

27 (2) competitive bid provisions are not adequate to secure  
28 the professional services needed to perform the services required by  
29 the contract;

1 (3) the professional services required by the contract are  
2 original in character and not available as a product of a prior con-  
3 sultant;

4 (4) the agency has complied with the provisions of AS 36.98.-  
5 100;

6 (5) the agency has received, reviewed, and accepted a de-  
7 tailed work plan from the contractor for performance of professional  
8 services by the contractor; and

9 (6) the agency has developed and will implement a written  
10 plan by which the agency will

11 (A) assign personnel of the agency to monitor the  
12 performance of the contract;

13 (B) periodically review and make written reports on  
14 partial performance of the contract by the contractor; and

15 (C) use the final product of the contract for profes-  
16 sional services.

17 Sec. 36.98.120. DUTIES OF THE COMMISSIONER. (a) The commis-  
18 sioner shall provide all contract management and review functions for  
19 state agency professional services contracts except those management  
20 and review functions which are assigned by AS 36.98.100 - 36.98.110 to  
21 the state agency. A state agency may not enter into a professional  
22 services contract unless the contract has been approved in writing by  
23 the commissioner.

24 (b) The commissioner shall, by regulation adopted in accordance  
25 with the Administrative Procedure Act (AS 44.62), establish the manner  
26 and form by which state professional services contracts shall be pre-  
27 pared and processed, and shall examine and approve or disapprove pro-  
28 posed professional services contracts based on review of the purpose  
29 and content, propriety, and financial effect of the proposed contract.

1 (c) The commissioner may not approve a proposed professional  
2 services contract unless he first finds that

3 (1) all provisions of AS 36.98.110 have been verified or  
4 complied with by the state agency and that the plan developed by the  
5 agency under AS 36.98.110(6) is satisfactory;

6 (2) the work to be performed under the contract is necessary  
7 for the agency to fulfill a responsibility assigned to it by statute;

8 (3) there is authority in statute for the agency to enter  
9 into the contract;

10 (4) the contract will not establish an employer-employee  
11 relationship between the agency and the contractor or any persons per-  
12 forming under the proposed contract;

13 (5) a state employee will not perform the contract or any  
14 portion of it; and

15 (6) a state agency has not previously performed or con-  
16 tracted for the performance of tasks which would be substantially  
17 duplicated under the proposed professional services contract.

18 Sec. 36.98.130. CONTRACT TERMS AND CONDITIONS. A professional  
19 services contract with a state agency is not valid unless

20 (1) the contract includes a provision by which the agency  
21 may unilaterally terminate the contract, upon payment of just compensa-  
22 tion for professional services rendered under the contract, if the  
23 agency determines that further performance under the contract would not  
24 serve the purposes of the agency or the best interests of the state;

25 (2) the contract contains a termination date; and

26 (3) the contract is executed by the state by

27 (A) the head of the agency which is a party to the  
28 contract; and

29 (B) the commissioner or his designee.

1           Sec. 36.98.140. CONTRACT ADMINISTRATION. (a) When a state  
2 agency has entered into a professional services contract, the agency is  
3 responsible for the diligent administration and monitoring of the  
4 performance of the provisions of the contract.

5           (b) The commissioner may require a state agency to report to him  
6 at any time on the current status of a professional services contract  
7 to which the agency is a party.

8           (c) When a professional services contract has been completed, the  
9 state agency shall evaluate the performance of the contractor under the  
10 contract and shall report on and evaluate the use of the final product  
11 of the professional services contract. A copy of the report and  
12 evaluations prepared under this subsection shall be transmitted to the  
13 commissioner, and shall be retained by the commissioner for as long as  
14 he is required to maintain copies of completed contracts.

15           Sec. 36.98.150. EXCEPTIONS. The provisions of AS 36.98.100 -  
16 36.98.150 do not apply to a professional services contract for which  
17 the estimated cost of the professional services to be provided is  
18 \$2,500 or less.

19                           ARTICLE 3. GENERAL PROVISIONS.

20           Sec. 36.98.200. DEFINITIONS. In this chapter

21           (1) "commissioner" means the commissioner of administration;

22           (2) "professional services contract" means a contract for  
23 professional, technical, or consultant's services which are predomi-  
24 nantly intellectual in character and which

25                           (A) include analysis, evaluation, prediction, planning  
26 or recommendation; and

27                           (B) result in the production of a report or the comple-  
28 tion of a task;

29           (3) "state agency" means a department, institution, board,

1 commission, division, or other administrative unit of the executive  
2 branch of state government; the term does not include the University of  
3 Alaska.

4 \* Sec. 2. AS 14.40 is amended by adding a new section to article 3 to  
5 read:

6 Sec. 14.40.455. PROFESSIONAL SERVICES CONTRACTS. (a) When the  
7 University of Alaska proposes to enter into a contract for professional  
8 services, it shall give public notice of the professional services  
9 contract. At least 30 days before the date on which the University of  
10 Alaska expects to enter into the contract for professional services it  
11 shall give notice by publication at least three times in one or more  
12 newspapers in general circulation in the state of

13 (1) a general description of the proposed project for which  
14 the University of Alaska is seeking professional services; and

15 (2) the procedure by which a person interested in the pro-  
16 fessional services contract may apply to the University of Alaska for  
17 consideration for the contract.

18 (b) In addition to complying with the publication requirements of  
19 (a) of this section, when the University of Alaska proposes to enter  
20 into a contract for professional services it shall

21 (1) review the register of professional services contractors  
22 maintained by the commissioner of administration under AS 36.98.010;  
23 and

24 (2) provide a request for proposals for the proposed pro-  
25 fessional services contract to each prospective contractor which, after  
26 review of the register of professional services contractors under (1)  
27 of this subsection, the University of Alaska finds is qualified for  
28 consideration for the contract.

29 (c) A member of the Board of Regents, or an officer or employee

1 of the University of Alaska may not enter into a professional services  
2 contract on behalf of the University of Alaska in violation of the  
3 provisions of this section. A person who wilfully violates a provision  
4 of this section is guilty of a misdemeanor. A person who is convicted  
5 of a misdemeanor under this section immediately forfeits his office or  
6 position.

7 (d) In this section, "professional services contract" means a  
8 contract for professional, technical, or consultant's services which  
9 are predominantly intellectual in character and which

10 (1) include analysis, evaluation, prediction, planning or  
11 recommendation; and

12 (2) result in the production of a report or the completion  
13 of a task.

14 \* Sec. 3. AS 22.20 is amended by adding a new section to read:

15 ARTICLE 4. PROFESSIONAL SERVICES CONTRACTS.

16 Sec. 22.20.200. PROFESSIONAL SERVICES CONTRACTS. (a) When a  
17 judicial officer or an employee of the judicial system proposes to  
18 enter into a contract for professional services, the judicial officer  
19 or the employee shall give public notice of the professional services  
20 contract. At least 30 days before the date on which the judicial  
21 officer or the employee expects to enter into the contract for profes-  
22 sional services, the judicial officer or the employee shall give notice  
23 by publication at least three times in one or more newspapers in general  
24 circulation in the state of

25 (1) a general description of the proposed project for which  
26 the judicial officer or the employee is seeking professional services;  
27 and

28 (2) the procedure by which a person interested in the pro-  
29 fessional services contract may apply to the judicial officer or the

1 employee for consideration for the contract.

2 (b) In addition to complying with the publication requirements of  
3 (a) of this section, when a judicial officer or an employee proposes to  
4 enter into a contract for professional services, the judicial officer  
5 or the employee shall

6 (1) review the register of professional services contractors  
7 maintained by the commissioner of administration under AS 36.98.010;  
8 and

9 (2) provide a request for proposals for the proposed pro-  
10 fessional services contract to each prospective contractor which, after  
11 review of the register of professional services contractors under (1)  
12 of this subsection, the judicial officer or the employee finds is  
13 qualified for consideration for the contract.

14 (c) A judicial officer or an employee of the judicial system may  
15 not enter into a professional services contract on behalf of the judi-  
16 cial system in violation of the provisions of this section. A judicial  
17 officer or an employee who wilfully violates a provision of this section  
18 is guilty of a misdemeanor. An employee who is convicted of a mis-  
19 demeanor under this section immediately forfeits his position.

20 (d) In this section,

21 (1) "employee" means an employee of the judicial system who  
22 is not a judicial officer;

23 (2) "professional services contract" means a contract for  
24 professional, technical, or consultant's services which are predomi-  
25 nantly intellectual in character and which

26 (A) include analysis, evaluation, prediction, planning  
27 or recommendation; and

28 (B) result in the production of a report or the comple-  
29 tion of a task.

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\* Sec. 4. AS 39.25.160 is amended by adding a new subsection to read:

(1) A person may not enter into a professional services contract on behalf of a state agency in violation of the provisions of AS 36.98.

\* Sec. 5. This Act takes effect July 1, 1981.