

Original sponsor: State Affairs Committee  
by request

Offered: 3/5/82  
Referred: Judiciary

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 546 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND 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 19.10.170(a) is amended to read:

12 (a) Except as provided in AS 36.98 and AS 44.33.300, it shall be  
13 the general policy of the department to require the construction of all  
14 highways under bid contract. However, subject to the provisions of (b)  
15 of this section, when the estimated cost of a construction project is  
16 less than \$100,000 or when it appears to be in the best interests of the  
17 state, the department may perform the work notwithstanding any other  
18 provisions of law.

19 \* Sec. 2. AS 35.15.010(a) is amended to read:

20 (a) Except as provided in AS 36.98 and AS 44.33.300, it shall be  
21 the general policy of the department to require the construction of all  
22 public works under bid contract. However, when the estimated cost of a  
23 construction project is less than \$100,000, or when it appears to be in  
24 the best interests of the state, the department may perform the work,  
25 notwithstanding any other provisions of law. A complete record shall be  
26 kept by the commissioner or his designee of all transactions entered  
27 into under this section including names of employees involved in the  
28 transactions.

29 \* Sec. 3. AS 36 is amended by adding a new chapter to read:

CHAPTER 98. PROFESSIONAL SERVICES CONTRACTS.

Sec. 36.98.010. APPLICATION. (a) Except as provided in AS 36.98.-080, this chapter applies to contracts for professional services provided to a state agency unless

(1) the total amount of a contract does not exceed \$25,000;

(2) the contract is an employment contract for services to be performed under direct supervision regardless of the existence of an employer-employee relationship and a written justification signed by the person responsible for awarding the contract is filed with the commissioner;

(3) the contract is for construction, repair, or maintenance of a public work and the total amount of a contract does not exceed \$50,000;

(4) the contract is awarded based on competitive bids obtained under the procedure provided in AS 37.05.230.

(b) The commissioner may by regulation adjust the dollar limitations set out in (a) of this section to reflect changes in the consumer price index for Anchorage since July 1, 1982. However, the commissioner may not make this adjustment more frequently than every other year.

Sec. 36.98.020. PROFESSIONAL SERVICES CONTRACTORS REGISTER. (a) A person or firm who desires to provide professional services to a state agency shall submit to the commissioner a statement of qualifications and performance data, and any other information that the commissioner, by regulation, may require.

(b) The commissioner may at any time require the person or firm to revise the statement of qualifications and performance data or any other information submitted by the person or firm if the commissioner believes that the credentials or record of experience of the person have materially changed since the last filing by the person or firm.

1           Sec. 36.98.030. SOLICITATION OF SERVICES. (a) When a state  
2 agency proposes to enter into a contract for professional services, the  
3 agency shall give public notice soliciting proposals for the profes-  
4 sional services contract by publication at least three times in one or  
5 more newspapers in general circulation in the state. The first notice  
6 shall be published not less than 30 days before the date on which the  
7 agency expects to enter into the contract and each subsequent notice  
8 shall be published at intervals of no more than three days thereafter.  
9 The notice shall include

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

12                   (2) the procedure by which a person or firm interested in the  
13 professional services contract may make its proposal to the agency for  
14 consideration for the contract.

15           (b) In addition to complying with the publication requirements of  
16 (a) of this section, when a state agency proposes to enter into a con-  
17 tract for professional services it shall

18                   (1) review the register of professional services contractors  
19 maintained by the commissioner under AS 36.98.020; and

20                   (2) provide a request for proposals for the proposed profes-  
21 sional services contract to each prospective contractor who, after  
22 review of the register of professional services contractors under (1) of  
23 this subsection, the agency finds is qualified for consideration for the  
24 contract.

25           (c) A request for proposals must be extended to a sufficient  
26 number of prospective providers of the required services to assure that  
27 public interest in competition is adequately served. Proposals from at  
28 least six persons or firms shall be solicited for contracts equal to or  
29 greater than \$100,000 if the expertise required is available. Proposals

1 from at least three persons or firms shall be solicited for contracts of  
2 less than \$100,000 if the expertise required is available. If the exper-  
3 tise required is not available to enable an agency to solicit the number  
4 of proposals otherwise required under this subsection, the agency shall

5 (1) solicit proposals from each person or firm listed on the  
6 professional services contractors register maintained under AS 36.98.020  
7 who appears to possess the required expertise;

8 (2) publish notice soliciting proposals as required under (a)  
9 of this section; and

10 (3) solicit proposals from each other person or firm possess-  
11 ing the required expertise of which the agency is aware.

12 (d) The provisions of this section do not apply if

13 (1) the contracting agency demonstrates that there is a  
14 single source of the expertise or knowledge required or that one person  
15 or firm can clearly perform the required tasks more satisfactorily  
16 because of the person's or firm's prior work; however, this exemption  
17 applies only when the head of the state agency has submitted a written  
18 request to the commissioner that details the reasons for the exemption  
19 and the commissioner or his designee has authorized the state agency to  
20 enter contract negotiations with the single source;

21 (2) the commissioner determines that public necessity will  
22 not permit delay incident to the procedures otherwise required by this  
23 chapter; or

24 (3) the service is to be provided by another state agency, a  
25 federal agency, the University of Alaska, or a political subdivision of  
26 the state.

27 (e) A request for proposals must contain a description of the work  
28 to be performed under the contract and the terms under which the work is  
29 to be performed. A request for proposals must contain that information

1 necessary for a prospective contractor to submit a response or contain  
2 references to any information that cannot reasonably be included with  
3 the request. The request for proposals must provide a description of  
4 the factors that will be considered by the state agency when it evaluates  
5 the proposals received.

6 (f) Nothing in this section limits the authority of an agency to  
7 use additional means that it may consider appropriate to notify prospec-  
8 tive contractors that it proposes to enter into a contract for profes-  
9 sional services.

10 Sec. 36.98.040. AWARD OF CONTRACT. (a) After the responses are  
11 submitted, the state agency shall evaluate them. The evaluation shall  
12 consist of assigning point values to factors considered by the agency in  
13 evaluating each proposal. All proposals received must be evaluated  
14 using the same factors as those set out in the request for proposal.

15 (b) The contract must be executed by the contractor and the pro-  
16 ject director for the contracting agency and be approved by the head of  
17 the contracting agency or his designee. If a contract is made by a  
18 board or commission, execution of the contract on behalf of the board or  
19 commission must be authorized by the board or commission.

20 (c) A contract subject to this chapter must be submitted to the  
21 commissioner for review and approval and, if approved, is effective from  
22 the date of the approval. A state agency must clearly provide in the  
23 request for proposal that the state is not obligated to perform under  
24 the contract until the approval required by this subsection is granted.

25 (d) A contract awarded under this chapter shall contain:

- 26 (1) the amount of the contract stated on its first page;  
27 (2) the date for the work to begin;  
28 (3) the date by which the work must be completed; and  
29 (4) a certification under penalty of perjury by the project

1 director for the contracting agency, the head of the contracting agency,  
2 or his designee that sufficient funds are available in an appropriation  
3 to be encumbered for the amount of the contract.

4 (e) If the contract contains terms that are not provided in a  
5 state standard form contract or if the standard terms are deleted or  
6 modified by other terms that are not standard, the contract must be  
7 reviewed by the Department of Law and approved as to form. The review  
8 and approval required by this subsection must be completed before award  
9 of the contract to the successful contractor.

10 Sec. 36.98.050. CONTRACT ADMINISTRATION. (a) When a state agency  
11 has entered into a professional services contract, the agency is respon-  
12 sible for the diligent administration and monitoring of the performance  
13 of the provisions of the contract.

14 (b) When a professional services contract has been completed, the  
15 state agency shall evaluate the performance of the contractor under the  
16 contract and shall report on and evaluate the use of the final product  
17 of the professional services contract. A copy of the report and evalua-  
18 tion prepared under this subsection shall be transmitted to the commis-  
19 sioner and shall be retained by the commissioner for as long as he is  
20 required to maintain copies of completed contracts.

21 Sec. 36.98.060. FILING. A copy of each contract and the response  
22 to the request for proposal upon which the contract was awarded must be  
23 filed with both the Department of Administration and the contracting  
24 agency and is open for public inspection. The request for proposal and  
25 the name and address of each person who submitted a response to it must  
26 also accompany the filed copies.

27 Sec. 36.98.070. CONTRACT PROCEDURES. The commissioner shall, by  
28 regulation adopted in accordance with the Administrative Procedure Act  
29 (AS 44.62), establish the manner and form by which state professional

1 services contracts shall be prepared and processed, including, but not  
2 limited to, a review process for persons aggrieved under this chapter.

3 Sec. 36.98.080. CONTRACTS FOR ARCHITECTURAL, ENGINEERING, AND LAND  
4 SURVEYING SERVICES. (a) The state shall select persons or firms and  
5 award contracts for the performance of architectural, engineering, or  
6 land surveying services on the basis of competence and qualification for  
7 the type of professional services required. The amount of the contract  
8 shall be determined by negotiation for those services at fair and rea-  
9 sonable prices or by the competitive bidding procedures provided under  
10 AS 37.05.230. Before negotiations or competitive bidding procedures  
11 under this section, the state may not request or consider any statement,  
12 bid or estimate of fees or charges for architectural, engineering, or  
13 land surveying services for the proposed project or request any other  
14 submission or action that would violate AS 08.48 or a regulation adopted  
15 under AS 08.48.

16 (b) In awarding a contract by negotiation for the services of an  
17 architect, engineer, or land surveyor registered under AS 08.48, the  
18 state shall negotiate with the three best qualified persons or firms to  
19 perform the desired work on the basis of competence and professional  
20 qualifications. The state may reject all or part of a proposal.

21 (c) The provisions of AS 36.98.040(a) do not apply to contracts  
22 awarded under this section.

23 (d) This section does not apply to a contract for the performance  
24 of architectural, engineering, or land surveying services if the commis-  
25 sioner determines that public necessity will not permit delay incident  
26 to the procedures otherwise required by this section.

27 Sec. 36.98.090. DEFINITIONS. In this chapter

28 (1) "commissioner" means the commissioner of administration;  
29 however, in the case of contracts issued by the Department of Transpor-

1           tation and Public Facilities, it means the commissioner of transporta-  
2           tion and public facilities;

3           (2) "professional services contract" means a contract for  
4           professional, technical, or consultant's services that are predominantly  
5           intellectual in character and that

6                   (A) include analysis, evaluation, prediction, planning,  
7                   or recommendation; and

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

10          (3) "public necessity" means an urgent public need that could  
11          not have been anticipated or foreseen; the term also includes emergency  
12          situations when work is necessary to protect life or property;

13          (4) "request for proposals" means a written solicitation for  
14          contract proposals by prospective contractors that sets out the nature  
15          of the services to be performed or product to be secured with sufficient  
16          information for a qualified prospective contractor to prepare a contract  
17          proposal for consideration and evaluation by the state agency;

18          (5) "state agency" means a department, institution, board,  
19          commission, division, or other administrative unit of the executive  
20          branch of state government, and the University of Alaska.

21          \* Sec. 4. AS 37.05.230 is amended by adding a new paragraph to read:

22                   (9) requests for and acceptance of bids or other proposals  
23                   for professional services shall comply with AS 36.98.

24          \* Sec. 5. AS 37.05.240 is amended by adding a new subsection to read:

25                   (b) A contract for professional services shall be awarded in  
26                   accordance with AS 36.98.

27          \* Sec. 6. This Act applies to requests for bids or proposals for profes-  
28          sional services issued after the effective date of this Act.

29          \* Sec. 7. This Act takes effect July 1, 1982.