

Original sponsor: State Affairs Committee  
by request

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Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 546 (Judiciary)

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 providing for an effective date."

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

9 \* Section 1. AS 19.10.170(a) is amended to read:

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

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

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

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

28 CHAPTER 98. PROFESSIONAL SERVICES CONTRACTS.

29 Sec. 36.98.010. APPLICATION. Except as provided in AS 36.98.080,

1 this chapter applies to contracts for professional services provided to  
2 a state agency unless

3 (1) the total amount of a contract does not exceed \$5,000;

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

9 (3) the contract is for construction, repair, or maintenance  
10 of a public work and the total amount of a contract does not exceed  
11 \$100,000;

12 (4) the contract is awarded based on competitive bids ob-  
13 tained under the procedure provided in AS 37.05.230.

14 Sec. 36.98.020. PROFESSIONAL SERVICES CONTRACTORS REGISTER. The  
15 commissioner shall establish and maintain a register of all persons or  
16 firms interested in providing professional services to the state.

17 Sec. 36.98.030. SOLICITATION OF SERVICES. (a) When a state  
18 agency proposes to enter into a contract for professional services, the  
19 agency shall give public notice soliciting proposals for the profes-  
20 sional services contract by publication at least three times in one or  
21 more newspapers in general circulation in the state. The first notice  
22 shall be published not less than 30 days before the date on which the  
23 agency expects to enter into the contract and each subsequent notice  
24 shall be published at intervals of no more than three days thereafter.  
25 The notice shall include

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

28 (2) the procedure by which a person or firm interested in the  
29 professional services contract may make its proposal to the agency for

1 consideration for the contract.

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

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

7 (2) provide a request for proposals for the proposed profes-  
8 sional services contract to each prospective contractor who, after  
9 review of the register of professional services contractors under (1) of  
10 this subsection, the agency finds is qualified for consideration for the  
11 contract.

12 (c) A request for proposals must be extended to a sufficient  
13 number of prospective providers of the required services to assure that  
14 public interest in competition is adequately served. Proposals from at  
15 least six persons or firms shall be solicited for contracts equal to or  
16 greater than \$100,000 if the expertise required is available. Proposals  
17 from at least three persons or firms shall be solicited for contracts of  
18 less than \$100,000 if the expertise required is available. If the  
19 expertise required is not available to enable an agency to solicit the  
20 number of proposals otherwise required under this subsection, the agency  
21 shall

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

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

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

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

1 (1) the contracting agency demonstrates that there is a  
2 single source of the expertise or knowledge required or that one person  
3 or firm can clearly perform the required tasks more satisfactorily  
4 because of the person's or firm's prior work and the head of the state  
5 agency submits a written request to the commissioner of administration  
6 detailing the reasons for an exemption and the commissioner of adminis-  
7 tration or his designee authorizes the state agency to enter contract  
8 negotiations with the single source;

9 (2) the commissioner determines that public necessity will  
10 not permit delay incident to the procedures otherwise required by this  
11 chapter; or

12 (3) the service is to be provided by another state agency, a  
13 federal agency, or a political subdivision of the state.

14 (e) A request for proposals must contain a description of the work  
15 to be performed under the contract and the terms under which the work is  
16 to be performed. A request for proposals must contain that information  
17 necessary for a prospective contractor to submit a response or contain  
18 references to any information that cannot reasonably be included with  
19 the request. The request for proposals must provide a description of  
20 the factors that will be considered by the state agency when it evalu-  
21 ates the proposals received.

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

26 Sec. 36.98.040. AWARD OF CONTRACT. (a) After the responses are  
27 submitted, the state agency shall evaluate them. The evaluation shall  
28 consist of assigning point values to factors considered by the agency in  
29 evaluating each proposal. All proposals received must be evaluated

1 using the same factors as those set out in the request for proposal.

2 (b) The contract must be executed by the contractor and the pro-  
3 ject director for the contracting agency and be approved by the head of  
4 the contracting agency or his designee. If a contract is made by a  
5 board or commission, execution of the contract on behalf of the board or  
6 commission must be authorized by the board or commission.

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

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

14 (1) the amount of the contract stated on its first page;

15 (2) the date for the work to begin;

16 (3) the date by which the work must be completed; and

17 (4) a certification under penalty of perjury by the project  
18 director for the contracting agency, the head of the contracting agency,  
19 or his designee that sufficient funds are available in an appropriation  
20 to be encumbered for the amount of the contract.

21 (e) If the contract contains terms that are not provided in a  
22 state standard form contract or if the standard terms are deleted or  
23 modified by other terms that are not standard, the contract must be  
24 reviewed by the Department of Law and approved as to form. The review  
25 and approval required by this subsection must be completed before award  
26 of the contract to the successful contractor.

27 Sec. 36.98.050. CONTRACT ADMINISTRATION. (a) When a state agency  
28 has entered into a professional services contract, the agency is respon-  
29 sible for the diligent administration and monitoring of the performance

1 of the provisions of the contract.

2 (b) When a professional services contract has been completed, the  
3 state agency shall evaluate the performance of the contractor under the  
4 contract and shall report on and evaluate the use of the final product  
5 of the professional services contract. A copy of the report and evalua-  
6 tion prepared under this subsection shall be transmitted to the commis-  
7 sioner and shall be retained by the commissioner for as long as he is  
8 required to maintain copies of completed contracts.

9 Sec. 36.98.060. FILING. A copy of each contract and the response  
10 to the request for proposal upon which the contract was awarded must be  
11 filed with both the Department of Administration and the contracting  
12 agency and is open for public inspection. The request for proposal and  
13 the name and address of each person who submitted a response to it must  
14 also accompany the filed copies.

15 Sec. 36.98.070. CONTRACT PROCEDURES. The commissioner shall, by  
16 regulation adopted in accordance with the Administrative Procedure Act  
17 (AS 44.62), establish the manner and form by which state professional  
18 services contracts shall be prepared and processed, including, but not  
19 limited to, a review process for persons aggrieved under this chapter.

20 Sec. 36.98.080. CONTRACTS FOR ARCHITECTURAL, ENGINEERING, AND LAND  
21 SURVEYING SERVICES. (a) A state agency shall select persons or firms  
22 for the performance of architectural, engineering, or land surveying  
23 services and award contracts for those services on the basis of compe-  
24 tence and qualification for the type of professional services required.

25 (b) The state agency shall attempt to negotiate a contract for the  
26 services with the best qualified person or firm at a price that is fair  
27 and reasonable.

28 (c) Before selection of and negotiation with the best qualified  
29 person or firm, a state agency may not request or consider a statement,

1 bid, or estimate of fees, hourly charges, estimated hours of professional  
2 time, or other estimate of charges for architectural, engineering, or  
3 land surveying services for the proposed project or request any other  
4 submission or action that would constitute a violation of AS 08.48 or a  
5 regulation adopted under AS 08.48. A request for proposals or other  
6 solicitation for services of an architect, engineer, or land surveyor  
7 issued by a state agency may not contain a requirement or request for a  
8 statement, bid, estimate, or other information concerning fees or charges  
9 prohibited under this section.

10 (d) This section does not require a particular procedure for the  
11 selection of architects, engineers, or land surveyors or for the award  
12 of contracts except as provided in (b) and (c) of this section. A state  
13 agency may rank proposals or offers received.

14 (e) The provisions of AS 36.98.040(a) do not apply to contracts  
15 awarded under this section.

16 (f) This section does not apply to a contract for the performance  
17 of architectural, engineering, or land surveying services if the commis-  
18 sioner determines that public necessity will not permit delay incident  
19 to the procedures otherwise required by this section.

20 Sec. 36.98.090. DEFINITIONS. In this chapter

21 (1) "architectural, engineering, or land surveying services"  
22 means professional services involving the practice of architecture,  
23 engineering, or land surveying as defined under AS 08.48.341;

24 (2) "commissioner" means the commissioner of administration;  
25 however, in the case of contracts issued by the Department of Transpor-  
26 tation and Public Facilities, it means the commissioner of transporta-  
27 tion and public facilities;

28 (3) "professional services contract" means a contract for  
29 professional, technical, or consultant's services that are predominantly

1 intellectual in character and that

2 (A) include analysis, evaluation, prediction, planning,  
3 or recommendation; and

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

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

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

14 (6) "state agency" means a department, institution, board,  
15 commission, division, or other administrative unit of the executive or  
16 judicial branch of state government, and the University of Alaska.

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

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

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

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

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

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