

Introduced: 4/10/81
Referred: State Affairs, Transportation and Finance

1 IN THE SENATE

BY FISCHER AND STIMSON

2 SENATE BILL NO. 415

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 contracting and procurement procedures, and competitive bidding under the Fiscal Procedures Act."
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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 19.10.190 is amended to read:

11 Sec. 19.10.190. ADVERTISEMENT, BIDS, CONTRACTS, AND INFORMAL
12 BIDS. (a) When [EXCEPT AS PROVIDED IN AS 44.33.300, WHEN] the estimated cost of any construction is \$50,000 or more [EXCEEDS \$100,000],
13 the department shall, except as provided in AS 19.10.170(a), proceed to
14 advertise, request bids, and award the contract in the manner provided
15 in AS 19.10.200 and 19.10.210. Whenever any proposed construction
16 contract is for a sum less than \$50,000 [\$100,000], it shall be discretionary with the department whether the contract shall be advertised
17 and awarded in accordance with AS 19.10.200 and 19.10.210. In all
18 events the department shall request informal bids from as many contractors as can be requested conveniently.
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22 * Sec. 2. AS 19.10.190 is amended by adding new subsections to read:

23 (b) Except as provided in AS 44.33.300, when the estimated cost
24 of any maintenance is \$25,000 or more, the department shall proceed to
25 advertise, request bids, and award the contract in the manner provided
26 in AS 19.10.200 and 19.10.210. When any proposed maintenance contract
27 is for a sum less than \$25,000, it shall be discretionary with the
28 department whether the contract shall be advertised and awarded in
29 accordance with AS 19.10.200 and 19.10.210. In all events the depart-

1 ment shall request informal bids from as many contractors as can be
2 requested conveniently.

3 (c) The department may not award construction contracts in in-
4 crements of less than \$50,000 or maintenance contracts in increments of
5 less than \$25,000 to the same contractor for the same project so as to
6 circumvent the bid procedure required in (a) and (b) of this section.

7 * Sec. 3. AS 19.10.210 is amended to read:

8 Sec. 19.10.210. AWARD OF CONTRACTS [TO LOWEST RESPONSIBLE BID-
9 DER]. The department shall award the contract in accordance with
10 AS 37.05.230(1) [TO THE LOWEST RESPONSIBLE BIDDER], or it may reject
11 all bids. If no satisfactory bid is received, the department may
12 readvertise the project. All awards shall be made in compliance with
13 applicable federal law and [THE] regulations [PROMULGATED THEREUNDER],
14 with AS 19.05 - AS 19.25, and with AS 37.05 [,] and the [RULES AND]
15 regulations [WHICH ARE] adopted under it [PROMULGATED THEREUNDER],
16 where not in conflict with AS 19.05 - AS 19.25.

17 * Sec. 4. AS 19.30.191(b) is amended to read:

18 (b) Contracts entered into by a local government that has assumed
19 local road powers for the construction of each project shall be awarded
20 only on the basis of the lowest responsible bid submitted by a bidder
21 meeting established criteria of responsibility, except that if the
22 amount of state money to be used on the project is \$50,000 or more the
23 contract shall be awarded in accordance with AS 37.05.230(1).

24 * Sec. 5. AS 19.30.211(a) is amended to read:

25 (a) The department shall maintain, or cause to be maintained, any
26 project constructed by the department under the provisions of AS 19.30.-
27 111 - 19.30.241, except that upon mutual agreement of the commissioner
28 and the local government the responsibility for maintenance may be
29 transferred to the local government if it is authorized to assume road

1 maintenance powers. If a maintenance contract entered into by the state
2 is for \$25,000 or more or if the amount of state money to be used in a
3 maintenance contract awarded by a local government is for \$25,000 or
4 more, the contract shall be awarded in accordance with AS 37.05.230(1).

5 * Sec. 6. AS 35.15.030 is amended to read:

6 Sec. 35.15.030. ADVERTISEMENT, BIDS, CONTRACTS, AND INFORMAL
7 BIDS. (a) When the estimated cost of any construction under this
8 chapter is \$50,000 or more [EXCEEDS \$100,000], the department shall,
9 except as provided in AS 35.15.010 [AND IN AS 44.33.300], proceed to
10 advertise, request bids, and award the contract in the manner provided
11 in AS 35.15.040 and 35.15.050. When any proposed construction contract
12 is for a sum less than \$50,000 [\$100,000], it is discretionary with the
13 department whether the contract is advertised and awarded in accordance
14 with AS 35.15.040 and 35.15.050. In all events the department shall
15 request informal bids from as many contractors as can be requested
16 conveniently. A complete record shall be kept by the commissioner or
17 his designee of all transactions entered into under this section includ-
18 ing names of employees involved in the transactions.

19 * Sec. 7. AS 35.15.030 is amended by adding new subsections to read:

20 (b) When the estimated cost of any maintenance under this chapter
21 is \$25,000 or more, the department shall, except as provided in AS 44.-
22 33.300, proceed to advertise, request bids, and award the contract in
23 the manner provided in AS 35.15.040 and 35.15.050. When any proposed
24 construction contract is for a sum less than \$25,000, it is discretion-
25 ary with the department whether the contract is advertised and awarded
26 in accordance with AS 35.15.040 and 35.15.050. In all events the
27 department shall request informal bids from as many contractors as can
28 be requested conveniently. A complete record shall be kept by the
29 commissioner or his designee of all transactions entered into under

1 this section including names of employees involved in the transactions.

2 (c) The department may not award construction contracts in in-
3 crements of less than \$50,000 or maintenance contracts in increments of
4 less than \$25,000 to the same contractor for the same project so as to
5 circumvent the bid procedure required in (a) and (b) of this section.

6 * Sec. 8. AS 35.15.050 is amended to read:

7 Sec. 35.15.050. AWARD OF CONTRACTS. The department shall award
8 the contract in accordance with AS 37.05.230(1) [TO THE LOWEST RESPON-
9 SIBLE BIDDER], or it may reject all bids. If no satisfactory bid is
10 received, the department may readvertise the project. The department
11 shall make the award in compliance with applicable federal law and
12 [THE] regulations [PROMULGATED UNDER IT], with this title, and in
13 compliance with AS 37.05 [,] and the [RULES AND] regulations adopted
14 [PROMULGATED] under it, where they are not in conflict with this title
15 and federal law.

16 * Sec. 9. AS 35.15.080 is amended by adding a new subsection to read:

17 (g) A contract entered into by a municipality or regional educa-
18 tional attendance area for the construction of a public works project
19 under this section shall be awarded in accordance with AS 37.05.230(1)
20 if the amount of state money to be used to finance the contract is
21 \$50,000 or more.

22 * Sec. 10. AS 37.05.230(1) is repealed and reenacted to read:

23 (1) a contract for construction and repairs, or a purchase
24 of and contract for supplies, materials, equipment, and contractual
25 services must be based on competitive bids; an award shall be made to
26 the lowest responsible bidder after advertising for bids, except that

27 (A) a bid shall be awarded to a bidder on the certified
28 minority bidders list if

29 (i) he submits a bid for goods or services under

1 the name appearing on his current Alaska business license;

2 (ii) the value of contracts awarded during the
3 fiscal year to bidders on the certified minority bidders list
4 is less than 20 percent of the total value of contracts to be
5 awarded during the fiscal year;

6 (iii) the bid is not more than 15 percent higher
7 than the bid of the lowest bidder; and

8 (iv) the bidder agrees to lower his bid by five
9 percent;

10 (B) subject to (1)(A) of this section, a bid shall be
11 awarded to an Alaska bidder if he is on the certified Alaska
12 bidders list and his bid is not more than 10 percent higher than
13 the bid of the lowest nonresident bidder; and

14 (C) competitive bids are not required

15 (1) for contractual services when no known compe-
16 tition exists;

17 (ii) when rates are fixed by law or ordinance;

18 (iii) for items traded in on like items; or

19 (iv) for professional services;

20 * Sec. 11. AS 37.05.230(2) is amended to read:

21 (2) if the amount of the contractual services, purchase, or
22 sale is estimated to exceed \$2,500 sealed bids shall be solicited, when
23 practicable, by publication in a newspaper calculated to reach pro-
24 spective bidders and by posting notices in public places within the
25 area where the work is to be performed or material furnished and in
26 addition the department may also designate a trade journal for publica-
27 tion; the department shall also solicit bids by sending notices by mail
28 to all [ACTIVE PROSPECTIVE] bidders on the certified Alaska bidders
29 list; [KNOWN TO IT AND] all bids shall be sealed when received, and

1 shall be opened in public at the hour stated in the notice; the depart-
2 ment may limit solicitation of bids or negotiate directly if it finds
3 that it is in the best interest of the state;

4 * Sec. 12. AS 37.05.230(4) is amended to read:

5 (4) unless a contract is \$50,000 or more, the provisions of
6 this section relative to competitive bids do not apply to contracts for
7 the operation of transportation systems for students to and from the
8 schools within the state, as are authorized under AS 14.09.010; and
9 these contracts may be awarded by bid or negotiation and, at the dis-
10 cretion of the Board of Education, may be awarded for periods of three
11 years or less;

12 * Sec. 13. AS 37.05.230(5) is amended to read:

13 (5) an "Alaska bidder," for the purpose [OF BID AWARDS UNDER
14 (1)(B)] of this section, is a person who

15 (A) holds a current Alaska business license; [,]

16 (B) submits a bid for goods or services under the name
17 as appearing on his current Alaska business license; [,]

18 (C) has maintained a place of business within the state
19 for a period of six months immediately preceding the date of his
20 bid;

21 (D) is not delinquent in the payment of state taxes;

22 and

23 (E) maintains inventories or facilities in support of
24 business activities in the state; [.]

25 * Sec. 14. AS 37.05.230(7) is amended to read:

26 (7) the provisions of (1)(A) and (1)(B) of this section
27 [RELATIVE TO AN "ALASKA BIDDER"] do not apply to contracts estimated to
28 be less than \$50,000 [EXCEED \$5,000,] of [EITHER] the Department of
29 Transportation and Public Facilities, which are authorized under AS 35.-

1 15 [,] or [THE DEPARTMENT OF HIGHWAYS, WHICH ARE AUTHORIZED] under
2 AS 19.10₁ [.]

3 * Sec. 15. AS 37.05.230(8) is amended to read:

4 (8) the provisions of this section relative to competitive
5 bids do not apply to the purchase of products or services manufactured
6 or provided by a sheltered workshop, unless the contract is for \$50,000
7 or more.

8 * Sec. 16. AS 37.05.230 is amended by adding new paragraphs to read:

9 (9) the Department of Administration shall compile and
10 update annually a certified Alaska bidders list containing the names of
11 persons who meet the requirements of (5)(A), (C), (D), and (E) of this
12 section;

13 (10) the Department of Administration shall compile and
14 update annually a certified minority bidders list containing the names
15 of persons who are on the certified Alaska bidders list, and have a
16 business whose majority interest is beneficially owned by members of
17 minority groups or have a business whose majority voting interest is
18 owned by members of minority groups; for the purpose of this paragraph
19 minority group members are citizens of the United States who are
20 Negroes, Hispanics, Orientals, American Indians, Eskimos, or Aleuts;

21 (11) the provisions of (1)(A) and (1)(B) of this section do
22 not apply to purchases and contracts involving federal money received
23 by the state if the application of a bidding preference would violate
24 federal law or program guidelines.

25 * Sec. 17. AS 37.05.240 is amended to read:

26 Sec. 37.05.240. BID REQUIREMENTS, AWARD OF CONTRACTS AND PUR-
27 CHASES. (a) Except as provided in AS 37.05.230, a [A] contract or
28 purchase made by or under the supervision of the department for which
29 competitive bids are required shall be awarded to the lowest responsible

1 bidder, taking into consideration conformity with the specifications,
2 terms of delivery, and other conditions imposed in the call for bids.
3 Bids may be rejected, and a bid shall be rejected if it contains a
4 material alteration or erasure which is not initialed by the signer of
5 the bid. The department may reject the bid of a bidder who is in
6 arrears on taxes due the state or who failed to perform on a previous
7 contract with the state. Where competitive bids are required and where
8 all bids are rejected, new bids shall be called for as in the first
9 instance. Before the awarding of a contract for a building or the
10 making of repairs upon a building, the department shall see that the
11 bids conform with plans and specifications approved by the Department
12 of Transportation and Public Facilities. All bids with the names of
13 the bidders and the amounts of the bids, together with all documents
14 pertaining to the award of a contract, shall be made a part of a file
15 or record and retained by the department for three years, unless repro-
16 duced by microfilming and these files or records are open to public
17 inspection at all reasonable times. An aggrieved bidder may within
18 five days after an award of contract appeal to the department for
19 hearing, with notice to interested parties, for redetermination and
20 final award in accordance with law.

21 (b) When submitting a bid under this chapter, a prime contractor
22 shall name the principal subcontractors he intends to use. After a bid
23 is awarded, a prime contractor may change principal subcontractors only
24 for cause. For purposes of this section "principal subcontractor"
25 means a subcontractor who, in the performance of a contract awarded to
26 the prime contractor, supplies materials and services with a value
27 equal to or greater than 20 percent of the total value of the contract.

28 (c) At least 20 percent of the money from a contract awarded
29 under this chapter which is paid to subcontractors shall be paid to

1 subcontractors on the certified minority bidders list, unless no sub-
2 contractors on the minority bidders list are available to perform the
3 work. When submitting a bid, a prime contractor shall name the sub-
4 contractors he intends to use who are on the minority bidders list
5 together with the total amount of money he intends to pay to subcon-
6 tractors on the minority bidders list. If no subcontractors on the
7 minority bidders list are available, the prime contractor shall so
8 state in writing when submitting a bid.

9 (d) If a bid is awarded under this chapter, a proposed substitu-
10 tion for a subcontractor named in the bid under (b) or (c) of this
11 section shall be submitted to the department for approval together
12 with reasons for the proposed substitution.

13 * Sec. 18. AS 37.05.305 is amended by adding a new subsection to read:

14 (b) If the amount of state money to be used to finance a contract
15 awarded by the University of Alaska is \$50,000 or more, the contract
16 shall be awarded in accordance with AS 37.05.230(1).

17 * Sec. 19. AS 37.05 is amended by adding a new section to read:

18 Sec. 37.05.306. APPLICABILITY TO NONPROFIT CORPORATIONS. If the
19 amount of state money to be used to finance a contract awarded by a
20 nonprofit corporation is \$50,000 or more, the contract shall be awarded
21 in accordance with AS 37.05.230(1).

22 * Sec. 20. AS 37.05.315(a) is amended to read:

23 (a) When an appropriation is made as a grant to a municipality,
24 the Department of Administration shall promptly notify the municipality
25 of the availability of the grant. When the Department of Administration
26 receives an agreement executed by the municipality which provides that
27 the municipality (1) will spend the grant for the purposes specified in
28 the appropriation; (2) will allow, on request, an audit by the state
29 of the uses made of the grant; [AND] (3) assures that, to the extent

1 consistent with the purpose of the appropriation, the facilities and
2 services provided with the grant will be available for the use of the
3 general public, and (4) will comply with AS 37.05.230(1) in the award
4 of a contract if \$50,000 or more of the contract is financed with the
5 grant or other state money, the Department of Administration shall pay
6 the grant directly to the municipality. The agreement executed by a
7 municipality under this section shall be on a form furnished by the
8 Department of Administration.

9 * Sec. 21. AS 37.05.315(d) is amended to read:

10 (d) When an appropriation is made to a department as a grant for
11 a named recipient which is not a municipality, the department to which
12 the appropriation is made shall promptly notify the named recipient of
13 the availability of the grant and request the named recipient to submit
14 a proposal to provide the goods or services, or both, for which the
15 appropriation is made. At the same time, the department shall issue a
16 request for proposals from other qualified persons to provide the same
17 goods or services, or both, in the same area. The department shall
18 contract with the named recipient unless the Office of the Governor,
19 with due regard for any local expertise or experience among those
20 making proposals, determines that an award of the contract to a differ-
21 ent party would better serve the public interest. If the contract is
22 awarded to another party than that named by the legislature, the basis
23 of that action shall be stated in writing at the time the grant is
24 issued. The purchase of the goods or services, or both, shall be in
25 accordance with AS 37.05.230(1)(C) and, if the purchase is for a sum of
26 \$50,000 or more, shall be in accordance with AS 37.05.230(1)(A) and
27 (1)(B).

28 * Sec. 22. AS 37.05.315(f)(2) is amended to read:

29 (2) The Department of Community and Regional Affairs shall

1 determine whether there is a qualified incorporated entity in the
2 community area which will agree to receive the grant and administer it,
3 subject to terms generally applicable to private grantees, and, if the
4 grant is to be used to finance a contract of \$50,000 or more, subject
5 to AS 37.05.230(1). If there is more than one such entity, the Depart-
6 ment of Community and Regional Affairs shall select the most qualified
7 and the grant shall be awarded to that incorporated entity for the
8 purposes of the appropriation; however, the Department of Community and
9 Regional Affairs shall give preference to a nonprofit corporation
10 organized by a community for receipt of the grant.

11 * Sec. 23. AS 37.05.320 is amended by adding a new paragraph to read:

12 (5) "department" means the Department of Administration.

13 * Sec. 24. AS 44.33.300(2) is amended to read:

14 (2) the public bid requirements [AS] contained in AS 19.10.-
15 170, 19.10.190(b) [19.10.190], AS 19.30.191(b), AS 35.15.010 - 35.15.-
16 020, and 35.15.030(b) [AS 35.15.010 - 35.15.030] may be waived if the
17 contract is to be performed by a contractor whose principal office is
18 in the designated area and the contract amount is less than [DOES NOT
19 EXCEED] \$50,000;