

Original sponsors: Fischer and Stimson

Offered: 4/2/82
Referred: Transportation and
Finance

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 415 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH SESSION - SECOND SESSION

5 ABILL

6 For an Act entitled: "An Act relating to contracting and procurement proce-
7 dures, and to bidders preferences for Alaska businesses
8 and businesses of minorities, women, and Viet Nam
9 veterans; and providing for an effective date."

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

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

12 Sec. 19.10.190. ADVERTISEMENT, BIDS, CONTRACTS, AND INFORMAL
13 BIDS. (a) When [EXCEPT AS PROVIDED IN AS 44.33.300, WHEN] the esti-
14 mated cost of any construction is \$50,000 or more [EXCEEDS \$100,000],
15 the department shall, except as provided in AS 19.10.170(a), proceed to
16 advertise, request bids, and award the contract in the manner provided
17 in AS 19.10.200 and 19.10.210. Whenever any proposed construction
18 contract is for a sum less than \$50,000 [\$100,000], it shall be discre-
19 tionary with the department whether the contract shall be advertised
20 and awarded in accordance with AS 19.10.200 and 19.10.210. In all
21 events the department shall request informal bids from as many contrac-
22 tors as can be requested conveniently.

23 * Sec. 2. AS 19.10.190 is amended by adding new subsections to read:

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

1 accordance with AS 19.10.200 and 19.10.210. In all events the depart-
2 ment shall request informal bids from as many contractors as can be
3 requested conveniently.

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

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

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

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

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

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

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

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

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

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

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

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

1 be requested conveniently. A complete record shall be kept by the
2 commissioner or the commissioner's designee of all transactions entered
3 into under this section including names of employees involved in the
4 transactions.

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

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

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

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

20 (g) A contract entered into by a municipality or regional educa-
21 tional attendance area for the construction of a public works project
22 under this section shall be awarded in accordance with AS 37.05.230(1)
23 if the amount of state money to be used to finance the contract is
24 \$50,000 or more.

25 * Sec. 10. AS 37.05.230(1)(B) is amended to read:

26 (B) subject to (D), (E), (F), and (G) of this paragraph,
27 a bid shall be awarded to an Alaska bidder if the Alaska bidder's
28 [HIS] bid is not more than 10 [FIVE] percent higher than the bid
29 of the lowest nonresident bidder, the Alaska bidder is on the cer-

1 tified Alaska bidders list, and the bidder agrees not to sublet
2 more than 50 percent of the value of the contract to subcontractors
3 whose primary business location is outside the state; [BIDDER'S;
4 AND]

5 * Sec. 11. AS 37.05.230(1)(C) is amended to read:

6 (C) competitive bids are [NEED] not [BE] required

7 (i) for contractual services where no known compe-
8 tition exists;

9 [(ii) FOR SALES INVOLVING FAIR TRADE ITEMS;

10 (iii) WHEN, IN THE JUDGMENT OF THE PURCHASING AGENT,
11 FOOD, CLOTHING, OR MEDICAL SUPPLIES, OR MATERIALS FOR USE IN
12 LABORATORY AND EXPERIMENTAL STUDIES MAY BE PURCHASED OTHERWISE
13 TO THE BEST ADVANTAGE OF THE STATE;]

14 (iv) where rates are fixed by law or ordinance;

15 (v) for items traded in on like items; or

16 (vi) for professional services;

17 * Sec. 12. AS 37.05.230(1) is amended by adding new subparagraphs to
18 read:

19 (D) a contract shall be awarded to a bidder on the
20 certified minority bidders list if

21 (i) the bidder submits a bid for goods or services
22 under the name appearing on the bidder's current Alaska
23 business license;

24 (ii) the value of all contracts of \$1,000,000 or
25 less awarded during the prior fiscal year to bidders on the
26 certified minority bidders list as a percent of the total
27 value of all contracts of \$1,000,000 or less awarded during
28 the prior fiscal year is less than the number of minority
29 persons in the state who are at least 16 years of age but not

1 more than 65 years of age as a percent of the total number of
2 people in the state who are at least 16 years of age but not
3 more than 65 years of age;

4 (iii) the bid is not more than 15 percent higher
5 than the bid of the lowest bidder;

6 (iv) the bidder agrees to either lower the bid by
7 five percent or to match the lowest bid; and

8 (v) the value of the contract is \$1,000,000 or
9 less;

10 (E) a contract shall be awarded to a bidder on the
11 certified women bidders list if

12 (i) the bidder submits a bid for goods or services
13 under the name appearing on the bidder's current Alaska
14 business license;

15 (ii) the value of all contracts of \$1,000,000 or
16 less awarded during the prior fiscal year to bidders on the
17 certified women bidders list is less than 10 percent of the
18 total value of all contracts of \$1,000,000 or less awarded
19 during the prior fiscal year;

20 (iii) the bid is not more than 15 percent higher
21 than the bid of the lowest bidder;

22 (iv) the bidder agrees to either lower the bid by
23 five percent or to match the lowest bid; and

24 (v) the value of the contract is \$1,000,000 or
25 less;

26 (F) a contract shall be awarded to a bidder on the
27 certified Viet Nam veterans list if

28 (i) the bidder submits a bid for goods or services
29 under the name appearing on the bidder's current Alaska

1 business license;

2 (ii) the value of all contracts of \$1,000,000 or
3 less awarded during the prior fiscal year to bidders on the
4 certified Viet Nam veterans list is less than five percent of
5 the total value of all contracts of \$1,000,000 or less awarded
6 during the prior fiscal year;

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

9 (iv) the bidder agrees to either lower the bid by
10 five percent or to match the lowest bid; and

11 (v) the value of the contract is \$1,000,000 or
12 less; *

13 (G) if two or more bidders qualify under (D), (E), or
14 (F) of this paragraph for the award of the same contract, the
15 contract shall be awarded to the lowest of those bidders;

16 * Sec. 13. AS 37.05.230(2) is amended to read:

17 (2) if the amount of the contractual services, purchase, or
18 sale is estimated to exceed \$2,500 sealed bids shall be solicited, when
19 practicable, by publication in a newspaper calculated to reach pro-
20 spective bidders and by posting notices in public places within the
21 area where the work is to be performed or material furnished and in
22 addition the Department of Administration [DEPARTMENT] may [ALSO]
23 designate a trade journal for publication; the department shall [ALSO]
24 solicit bids by sending notices by mail to all [ACTIVE PROSPECTIVE]
25 bidders on the certified Alaska bidders list; [KNOWN TO IT AND] all
26 bids shall be sealed when received, and shall be opened in public at
27 the hour stated in the notice; the department may limit solicitation of
28 bids or negotiate directly if it finds that it is in the best interest
29 of the state;

1 * Sec. 14. AS 37.05.230(4) is amended to read:

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

9 * Sec. 15. AS 37.05.230(5) is amended to read:

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

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

13 (B) submits a bid for goods or services under the name
14 as appearing on the bidder's [HIS] current Alaska business license;
15 [,]

16 (C) if an individual has derived at least fifty percent
17 of the bidder's earned income in [MAINTAINED A PLACE OF BUSINESS
18 WITHIN] the state for a period of six months immediately preceding
19 the date of the bidder's [HIS] bid;

20 (D) provided sufficient proof that the bidder has been
21 actively engaged in the state during the previous six months in
22 providing the type of goods or services for which the bid is sub-
23 mitted;

24 (E) is not delinquent in the payment of state taxes; and

25 (F) maintains inventories or facilities in support of
26 business activities in the state;

27 (G) employs at least 10 state residents or at least
28 50 percent state residents compared to the total number of the
29 bidder's employees; [.]

1 * Sec. 16. AS 37.05.230(7) is amended to read:

2 (7) the provisions of (1) of this section [RELATIVE TO AN
3 "ALASKA BIDDER"] do not apply to contracts estimated to be less than
4 \$50,000 [EXCEED \$5,000,] of [EITHER] the Department of Transportation
5 and Public Facilities, that [WHICH] are authorized under AS 35.15 [,]
6 or [THE DEPARTMENT OF HIGHWAYS, WHICH ARE AUTHORIZED] under AS 19.10;
7 [.]

8 * Sec. 17. AS 37.05.230(8) is amended to read:

9 (8) except for a contract of \$50,000 or more, the provisions
10 of this section relative to competitive bids do not apply to the pur-
11 chase of products or services manufactured or provided by a sheltered
12 workshop operating in the state; [.]

13 * Sec. 18. AS 37.05.230 is amended by adding new paragraphs to read:

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

18 (10) the Department of Administration shall compile and
19 update annually a certified minority bidders list containing the names
20 of persons who are on the certified Alaska bidders list, and have a
21 business with at least 85 percent of its interest beneficially owned by
22 members of minority groups or at least 85 percent of its voting interest
23 owned by members of minority groups, and whose management and daily
24 operations are controlled by one or more members of minority groups;
25 for the purpose of this paragraph minority group members are United
26 States citizens who are Alaskan Indian, Eskimo, Aleut, Black, American
27 Indian, Hispanic, Asian, or Pacific Islander;

28 (11) the Department of Administration shall compile and
29 update annually a certified women bidders list containing the names of

1 persons who are on the certified Alaska bidders list, have a business
2 with at least 85 percent of its interest beneficially owned by women or
3 at least 85 percent of its voting interest owned by women and whose
4 management and daily operations are controlled by one or more women;

5 (12) the Department of Administration shall compile and
6 update annually a certified Viet Nam veterans bidders list containing
7 the names of persons who are on the certified Alaska bidders list, have
8 a business with at least 85 percent of its interest beneficially owned
9 by Viet Nam veterans or at least 85 percent of its voting interest owned
10 by Viet Nam veterans, and whose management and daily operations are
11 controlled by one or more Viet Nam veterans; for the purpose of this
12 paragraph a Viet Nam veteran is a person who served on active duty some
13 time during the period from August 5, 1964 to May 7, 1975 and who was
14 released from the military with other than a dishonorable discharge;

15 (13) for purposes of (1)(D)(ii) of this section, population
16 determinations shall be based on the latest figures of the United States
17 Bureau of the Census excluding

18 (A) persons serving on active duty in the military,
19 their spouses, and their dependants if that data is available; or

20 (B) persons living on military reservations if data
21 necessary for a determination under (A) of this paragraph is not
22 available;

23 (14) the provisions of (1)(B), (D), (E), (F), and (G) of this
24 section do not apply to purchases and contracts involving federal money
25 received by the state if the application of a bidding preference would
26 violate federal law or program guidelines.

27 * Sec. 19. AS 37.05.240 is amended to read:

28 Sec. 37.05.240. BID REQUIREMENTS; AWARD OF CONTRACTS AND PUR-
29 CHASES. (a) Except as provided in AS 37.05.230, a [A] contract or

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

25 * Sec. 20. AS 37.05.240 is amended by adding new subsections to read:

26 (b) When submitting a bid under this chapter, a prime contractor
27 shall name the principal subcontractors he intends to use. After a bid
28 is awarded, a prime contractor may change principal subcontractors only
29 for cause. For purposes of this section "principal subcontractor"

1 means a subcontractor who, in the performance of a contract awarded to
2 the prime contractor, supplies materials and services with a value
3 equal to or greater than 20 percent of the total value of the contract.

4 (c) At least 20 percent of the money under a contract awarded
5 under this chapter that is paid to subcontractors shall be paid to
6 subcontractors on a list compiled under AS 37.05.230(10), (11), or (12)
7 unless no subcontractors on those lists are available to perform the
8 work. When submitting a bid, a prime contractor shall name the sub-
9 contractors the contractor intends to use who are on the certified
10 minority bidders list, certified women bidders list, or certified Viet
11 Nam veterans bidders list, together with the total amount of money the
12 prime contractor intends to pay to subcontractors on those lists. If
13 no subcontractors on the certified minority bidders list, certified
14 women bidders list, or certified Viet Nam veterans bidders list are
15 available, the prime contractor shall so state in writing when submit-
16 ting a bid.

17 (d) If a bid is awarded under this chapter, a proposed substitu-
18 tion for a subcontractor named in the bid shall be submitted to the
19 department for approval together with reasons for the proposed sub-
20 stitution.

21 * Sec. 21. AS 37.05 is amended by adding a new section to read:

22 Sec. 37.05.245. REPORTS ON BID PREFERENCES. The Department of
23 Administration shall prepare a report on contracts awarded under AS 37.-
24 05.230(1)(D), (E), and (F) by state agencies, the University of Alaska,
25 municipalities, and other entities. The report shall be submitted to
26 the Senate State Affairs Committee and the House State Affairs Commit-
27 tee within the first 60 days of each regular legislative session. The
28 report shall include

29 (1) statistics on the number and value of contracts awarded

1 under AS 37.05.230(1)(D), (E), and (F) during the preceding fiscal
2 year;

3 (2) the percentage of contracts awarded under AS 37.05.230(1)-
4 (D), (E), and (F) compared to the total number of contracts awarded
5 during the preceding fiscal year;

6 (3) the names of bidders who were awarded contracts during
7 the preceding fiscal year under AS 37.05.230(1)(D), (E), and (F).

8 * Sec. 22. AS 37.05.305 is amended by adding a new subsection to read:

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

12 * Sec. 23. AS 37.05 is amended by adding a new section to read:

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

17 * Sec. 24. AS 37.05.315(a) is amended to read:

18 (a) When an amount is appropriated or allocated as a grant to a
19 municipality, the Department of Administration shall promptly notify
20 the municipality of the availability of the grant. When the Department
21 of Administration receives an agreement executed by the municipality
22 that [WHICH] provides that the municipality (1) will spend the grant
23 for the purposes specified in the appropriation or allocation; (2) will
24 allow, on request, an audit by the state of the uses made of the grant;
25 [AND] (3) assures that, to the extent consistent with the purpose of
26 the appropriation or allocation, the facilities and services provided
27 with the grant will be available for the use of the general public,
28 and (4) will comply with AS 37.05.230(1) in the award of a contract
29 if \$50,000 or more of the contract is financed with the grant or with

1 the grant and other state money, the Department of Administration shall
2 pay the grant directly to the municipality. The agreement executed by a
3 municipality under this section shall be on a form furnished by the
4 Department of Administration and shall be executed within 60 days after
5 the effective date of the appropriation or allocation.

6 * Sec. 25. AS 37.05.316 is amended to read:

7 Sec. 37.05.316. GRANTS TO NAMED RECIPIENTS. When an amount is
8 appropriated or allocated to a department as a grant for a named recip-
9 ient that [WHICH] is not a municipality, the department to which the
10 appropriation or allocation is made shall promptly notify the named
11 recipient of the availability of the grant and request the named recip-
12 ient to submit a proposal to provide the goods or services specified in
13 the appropriation act, or both, for which the appropriation or alloca-
14 tion is made. At the same time, the department may issue a request for
15 proposals from other qualified persons to provide the same goods or
16 services, or both, in the same area. The department shall award the
17 grant to [CONTRACT WITH] the named recipient unless the Office of the
18 Governor, with due regard for any local expertise or experience among
19 those making proposals, determines that an award [OF THE CONTRACT] to a
20 different party would better serve the public interest. If the grant
21 [CONTRACT] is awarded to another party than that named by the legisla-
22 ture, the basis of that action shall be stated in writing at the time
23 the grant is issued and a copy of the written statement shall be sent
24 to the Legislative Budget and Audit Committee. A contract shall be
25 executed within 60 days after the effective date of the appropriation
26 or allocation. If the recipient of the grant enters into a contract
27 for the [THE] purchase of [THE] goods or services, and at least \$50,000
28 of the purchase price is financed by the grant, the purchase shall be
29 in accordance with AS 37.05.230(1) [OR BOTH, SHALL BE IN ACCORDANCE

1 WITH AS 37.05.230(1)(C)].

2 * Sec. 26. AS 37.05.317(2) is amended to read:

3 (2) The Department of Community and Regional Affairs shall
4 determine if there is a qualified incorporated entity in the community
5 area that will agree to receive the grant and administer it, subject to
6 terms generally applicable to private grantees, and, if the grant is to
7 be used to finance a contract of \$50,000 or more, subject to AS 37.05.-
8 230(1). If there is more than one such entity, the Department of
9 Community and Regional Affairs shall select the most qualified and the
10 grant shall be awarded to that incorporated entity for the purposes
11 specified in the appropriation act. However, the Department of Commu-
12 nity and Regional Affairs shall give preference to a nonprofit corpora-
13 tion organized by a community for receipt of the grant.

14 * Sec. 27. AS 44.33.300(2) is amended to read:

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

21 * Sec. 28. This Act takes effect July 1, 1982.
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