

Offered: 3/19/86  
Referred: Finance

Original sponsor: Rules Committee  
By Request

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 341 (Judiciary) am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state procurement practices and  
7 procedures; and providing for an effective date."

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

9 \* Section 1. PURPOSE. This Act shall be construed and applied to  
10 promote its underlying purposes and policies. The underlying purposes and  
11 policies of this Act are to

12 (1) simplify, clarify, and modernize the law governing pro-  
13 curement by the state;

14 (2) establish consistent procurement principles for all branches  
15 of state government;

16 (3) provide for increased public confidence in the procedures  
17 followed in state procurement;

18 (4) ensure the fair and equitable treatment of all persons who  
19 deal with the procurement system of the state;

20 (5) provide increased economy in state procurement activities  
21 and maximize to the fullest extent practicable the purchasing value of  
22 state funds;

23 (6) foster effective broad-based competition within the free  
24 enterprise system;

25 (7) provide safeguards for the maintenance of a procurement  
26 system of quality and integrity;

27 (8) permit the continued development of state procurement prac-  
28 tices and policies; and

29 (9) eliminate and prevent discrimination in state contracting

1 because of race, religion, color, national origin, sex, age, marital sta-  
2 tus, pregnancy, parenthood, handicap, or political affiliation.

3 \* Sec. 2. AS 36 is amended by adding a new chapter to read:

4 CHAPTER 30. STATE PROCUREMENT CODE.

5 ARTICLE 1. ORGANIZATION OF STATE PROCUREMENT.

6 Sec. 36.30.005. CENTRALIZATION OF PROCUREMENT AUTHORITY. (a)

7 Except as otherwise provided, all rights, powers, duties, and author-  
8 ity relating to the procurement of supplies, services, and profes-  
9 sional services, and the control over supplies, services, and profes-  
10 sional services vested in or exercised by an agency on January 1,  
11 1987, are transferred to the commissioner of administration and to the  
12 chief procurement officer. Authority granted under this subsection  
13 shall be exercised in accordance with this chapter.

14 (b) Except as otherwise provided, all rights, powers, duties,  
15 and authority relating to the procurement of construction and procure-  
16 ments of equipment or services for the state equipment fleet and the  
17 control over construction of state facilities and the state equipment  
18 fleet vested in or exercised by an agency on January 1, 1987, are  
19 transferred to the commissioner of transportation and public  
20 facilities, subject to regulations adopted by the commissioner of  
21 administration. Notwithstanding AS 44.71.010, authority relating to  
22 disposals from the state equipment fleet is vested in the the  
23 commissioner of transportation and public facilities, subject to  
24 regulations adopted by the commissioner of administration. Authority  
25 granted under this subsection shall be exercised in accordance with  
26 this chapter.

27 (c) Notwithstanding other provisions of law, all rights, powers,  
28 duties, and authority relating to the procurement of supplies, servi-  
29 ces, professional services, and construction and the disposal of

1 supplies for the University of Alaska are transferred to the Board of  
2 Regents. To the maximum extent possible, authority granted under this  
3 subsection shall be exercised in accordance with this chapter. The  
4 Board of Regents shall adopt regulations under this subsection that  
5 are substantially equivalent to the regulations adopted by the commis-  
6 sioner of administration to implement this chapter. For the purposes  
7 of this subsection, unless the context otherwise requires, in this  
8 chapter

9 (1) "agency" means a subunit of the University of Alaska;

10 (2) "commissioner," "commissioner of administration," or  
11 "commissioner of transportation and public facilities" means the Board  
12 of Regents; and

13 (3) "chief procurement officer" or "attorney general" means  
14 the president of the University of Alaska.

15 Sec. 36.30.010. CHIEF PROCUREMENT OFFICER. (a) The commis-  
16 sioner shall appoint to the partially exempt service the chief pro-  
17 curement officer of the state. The chief procurement officer must  
18 have at least five years of prior experience in public procurement,  
19 including large scale procurement of supplies, services, or profes-  
20 sional services, and must be a person with demonstrated executive and  
21 organizational ability. The chief procurement officer may be removed  
22 by the commissioner only for cause. The term of office of the chief  
23 procurement officer is four years.

24 (b) Except as otherwise specifically provided in this chapter,  
25 the chief procurement officer shall

26 (1) procure or supervise the procurement of all supplies,  
27 services, and professional services needed by an agency;

28 (2) exercise general supervision and control over all  
29 inventories of supplies belonging to an agency and prescribe the

1 manner in which supplies shall be purchased, delivered, stored, and  
2 distributed;

3 (3) prescribe the time, manner, authentication, and form of  
4 making requisitions for supplies and services;

5 (4) sell, trade, transfer between agencies, or otherwise  
6 dispose of surplus, obsolete, or unused supplies and make proper  
7 adjustments in the accounts of agencies concerned;

8 (5) establish and maintain programs for the inspection,  
9 testing, and acceptance of supplies and services and the testing of  
10 samples submitted with bids;

11 (6) prescribe standard forms for bids and contracts; and

12 (7) provide for other matters that may be necessary to  
13 carry out the provisions of this chapter and the regulations adopted  
14 under this chapter.

15 Sec. 36.30.015. EXECUTIVE BRANCH AGENCIES. (a) The commis-  
16 sioner of transportation and public facilities may delegate to another  
17 agency the authority to contract for construction. Before delegating  
18 authority to an agency under this subsection, the commissioner of  
19 transportation and public facilities shall make a written determina-  
20 tion that the agency is capable of implementing the delegated author-  
21 ity. Notwithstanding delegation of authority under this subsection,  
22 contracts for construction are governed by this chapter and regula-  
23 tions adopted by the commissioner of administration under this chap-  
24 ter.

25 (b) The commissioner of administration may delegate to an agency  
26 the authority to contract for and manage services, professional servi-  
27 ces, and supplies. Notwithstanding delegation of authority under this  
28 subsection, an agency's exercise of the authority is governed by this  
29 chapter and regulations adopted by the commissioner under this

1 chapter. Before delegating authority to an agency under this sub-  
2 section, the commissioner shall make a written determination that the  
3 agency is capable of implementing the delegated authority.

4 (c) The commissioner of administration may not delegate the  
5 authority to dispose of supplies or the authority to adopt regulations  
6 under this chapter.

7 (d) An agency may not contract for the services of legal counsel  
8 without the approval of the attorney general.

9 (e) The boards of directors of the Alaska Railroad Corporation  
10 and the Alaska State Housing Authority shall adopt procedures to  
11 govern the procurement of supplies, services, professional services,  
12 and construction by the corporation. The procedures must be  
13 substantially equivalent to the procedures prescribed in this chapter  
14 and in regulations adopted under this chapter.

15 Sec. 36.30.020. LEGISLATURE. The Legislative Council shall  
16 adopt procedures to govern the procurement of supplies, services,  
17 professional services, and construction by the legislature, legisla-  
18 tors, and legislative agencies and committees. The procedures must be  
19 substantially equivalent to the procedures prescribed in this chapter.

20 Sec. 36.30.030. COURT SYSTEM. The administrative director of  
21 courts shall adopt procedures to govern the procurement of supplies,  
22 services, professional services, and construction by the judicial  
23 branch. The procedures must be based on the competitive principles  
24 established under this chapter and must be adapted to the special  
25 needs of the judicial branch as determined by the administrator of  
26 courts.

27 Sec. 36.30.040. PROCUREMENT REGULATIONS. (a) The commissioner  
28 shall adopt regulations governing the procurement, management, and  
29 control of supplies, services, professional services and construction

1 by agencies. The commissioner may audit and monitor the implementa-  
2 tion of the regulations and the requirements of this chapter with  
3 respect to using agencies.

4 (b) The commissioner shall adopt regulations pertaining to the  
5 following:

6 (1) suspension, debarment, and reinstatement of prospective  
7 bidders and contractors;

8 (2) bid protests;

9 (3) conditions and procedures for the procurement of per-  
10 ishables and items for resale;

11 (4) conditions and procedures for the use of source selec-  
12 tion methods authorized by this chapter, including sole source pro-  
13 curements, emergency procurements, and small procurements;

14 (5) the opening or rejection of bids and offers, and waiver  
15 of informalities in bids and offers;

16 (6) confidentiality of technical data and trade secrets  
17 submitted by actual or prospective bidders or offerors;

18 (7) partial, progressive, and multiple awards;

19 (8) storerooms and inventories, including determination of  
20 appropriate stock levels and the management of agency supplies;

21 (9) transfer, sale or other disposal of supplies;

22 (10) definitions and classes of contractual services and  
23 procedures for acquiring them;

24 (11) providing for conducting price analysis;

25 (12) use of payment and performance bonds in connection with  
26 contracts for supplies, services, and construction;

27 (13) guidelines for use of cost principles in negotiations,  
28 adjustments, and settlements;

29 (14) conditions under which an agency may use the services

1 of an employment program as defined under AS 36.30.100(c);  
2 (15) a bidder's or offeror's duties under AS 36.30.115 and  
3 36.30.210; and

4 (16) the elimination and prevention of discrimination in  
5 state contracting because of race, religion, color, national origin,  
6 sex, age, marital status, pregnancy, parenthood, handicap, or politi-  
7 cal affiliation.

8 Sec. 36.30.050. LISTS OF CONTRACTORS. (a) The commissioner  
9 shall establish and maintain lists of persons who desire to provide  
10 supplies, services, professional services, or construction services to  
11 the state.

12 (b) A person who desires to be on a list shall submit to the  
13 commissioner evidence of a valid Alaska business license together with  
14 a biennial fee established by regulation in an amount reasonably  
15 calculated to pay the costs of administering this section. A con-  
16 struction contractor shall also submit a valid certificate of regis-  
17 tration issued under AS 08.18. The commissioner, by regulation, may  
18 require submission of additional information.

19 (c) The lists may be used by the chief procurement officer or an  
20 agency when issuing invitations to bid or requests for proposals under  
21 this chapter. The lists may be used by the Legislative Council, the  
22 court system, the Alaska State Housing Authority, and the Alaska  
23 Railroad Corporation.

24 (d) The lists shall be used in providing notice of intent to  
25 make a small procurement to Alaska bidders as defined under AS 36.30.-  
26 170(c). A procurement officer who intends to make a procurement under  
27 AS 36.30.320 shall request names from the appropriate list and the  
28 department shall furnish names of Alaska bidders on a rotating basis  
29 from the list in response to each request.

1           Sec. 36.30.060. SPECIFICATIONS. (a) The commissioner shall  
2 adopt regulations governing the preparation, revision, and content of  
3 specifications for supplies, services, professional services, and  
4 construction required by an agency. The commissioner shall monitor  
5 the use of these specifications.

6           (b) Specifications for construction of highways must conform as  
7 closely as practicable to those adopted by the American Association of  
8 State Highway and Transportation Officials.

9           (c) The commissioner may obtain expert advice and assistance  
10 from personnel of using agencies in the development of specifications.  
11 Specifications must promote overall economy for the purposes intended  
12 and encourage competition in satisfying the state's needs, and may not  
13 be unduly restrictive. The requirements of this subsection regarding  
14 the purposes and nonrestrictiveness of specifications apply to all  
15 specifications, including those prepared by architects, engineers,  
16 designers, and other professionals.

17           (d) In this section, "specification" means a description of the  
18 physical or functional characteristics, or of the nature of a supply,  
19 service, professional service, or construction project; it may include  
20 requirements for licensing, inspecting, testing, and delivery.

21           Sec. 36.30.070. SUPPLY MANAGEMENT. The commissioner shall adopt  
22 regulations governing the

- 23                   (1) management of supplies during their entire life cycle;  
24                   (2) sale, lease, or disposal of surplus supplies by public  
25 auction, competitive sealed bidding, or other appropriate method;  
26                   (3) purchase of surplus supplies by an employee of the  
27 using or disposing agency; and  
28                   (4) transfer of excess supplies.

29           Sec. 36.30.080. LEASES. (a) The department shall lease space

1 for the use of the state or an agency wherever it is necessary and  
2 feasible, subject to compliance with the requirements of this chapter.  
3 A lease may not provide for a period of occupancy greater than 40  
4 years. An agency requiring office, warehouse, or other space shall  
5 lease the space through the department.

6 (b) The department may enter into lease-financing agreements,  
7 including lease-purchase agreements and agreements related to the  
8 issuance of certificates of participation. A lease-financing agree-  
9 ment must provide that lease payments are subject to annual appropria-  
10 tion.

11 (c) If the department intends to enter into a lease or lease-  
12 financing agreement with an annual rent to the state anticipated to  
13 exceed \$1,000,000, the department shall provide notice to the legisla-  
14 ture. The notice must include the anticipated annual lease obligation  
15 amount and the anticipated total construction, acquisition, or other  
16 costs of the project. The department may not enter into an agreement  
17 under this subsection unless the project has been approved by the  
18 legislature by law. An appropriation for the project does not consti-  
19 tute approval of the project for purposes of this subsection.

20 ARTICLE 2. COMPETITIVE SEALED BIDDING.

21 Sec. 36.30.100. GENERAL POLICY. (a) Except as otherwise pro-  
22 vided in this chapter, or unless specifically exempted by law, an  
23 agency contract shall be awarded by competitive sealed bidding.

24 (b) Competitive sealed bidding is not required

25 (1) when the commissioner determines in writing that food,  
26 clothing, or medical supplies, or materials for use in laboratory or  
27 medical studies may be purchased otherwise to the best advantage of  
28 the state;

29 (2) when rates are fixed by law or ordinance;

1 (3) for the purchase of products or services manufactured  
2 or provided by an employment program;

3 (4) for the purchase of products or services provided by  
4 the correctional industries program established under AS 33.32;

5 (5) for professional services; or

6 (6) for concessions operated on state property.

7 (c) In this section "employment program" means a nonprofit  
8 program to increase employment opportunities for individuals with  
9 physical or mental disabilities that constitute substantial handicaps  
10 to employment.

11 Sec. 36.30.110. INVITATION TO BID. (a) When competitive sealed  
12 bidding is used, the procurement officer shall issue an invitation to  
13 bid. It must include a time, place and date by which the bid must be  
14 received, purchase description, and a description of all contractual  
15 terms and conditions applicable to the procurement.

16 (b) When responding to the invitation to bid, the bidder shall  
17 supply evidence of the bidder's valid Alaska business license. A  
18 bidder for a construction contract shall also submit evidence of the  
19 bidder's registration under AS 08.18.

20 Sec. 36.30.115. SUBCONTRACTORS. (a) No later than the time of  
21 opening of bids, the apparent two lowest bidders shall submit a list  
22 of the subcontractors the bidders propose to use in the performance of  
23 the contract. The list shall include the name and location of the  
24 place of business for each subcontractor and evidence of the subcon-  
25 tractor's valid Alaska business license. A bidder for a construction  
26 contract shall also submit evidence of each subcontractor's registra-  
27 tion under AS 08.18.

28 (b) A bidder may replace a listed subcontractor only if the  
29 subcontractor

- 1 (1) fails to comply with AS 08.18;
- 2 (2) files for bankruptcy or becomes insolvent;
- 3 (3) fails to execute a contract with the bidder involving
- 4 performance of the work for which the subcontractor was listed;
- 5 (4) fails to obtain bonding;
- 6 (5) fails to obtain insurance acceptable to the state;
- 7 (6) fails to perform the contract with the bidder involving
- 8 work for which the subcontractor was listed;
- 9 (7) must be substituted in order for the prime contractor
- 10 to satisfy required federal affirmative action requirements;
- 11 (8) refuses to agree or abide with the bidder's labor
- 12 agreement; or
- 13 (9) is determined by the procurement officer not to be a
- 14 responsible bidder.

15 (c) If a bidder fails to list a subcontractor or lists more than  
16 one subcontractor for the same portion of work and the value of that  
17 work is in excess of half of one percent of the total bid, the bidder  
18 shall be considered to have agreed to perform that portion of work  
19 without the use of a subcontractor and to have represented the bidder  
20 to be qualified to perform that work.

21 (d) A bidder who attempts to circumvent the requirements of this  
22 section by listing as a subcontractor another contractor who, in turn,  
23 sublets the majority of the work required under the contract violates  
24 this section.

25 (e) If a contract is awarded to a bidder who violates this  
26 section, the purchasing officer may

- 27 (1) cancel the contract; or
- 28 (2) after notice and a hearing, assess a penalty on the
- 29 bidder in an amount that does not exceed 10 percent of the value of

1 the subcontract at issue.

2 Sec. 36.30.120. BID SECURITY. (a) Bid security shall be re-  
3 quired for all competitive sealed bidding for construction contracts  
4 when the price is estimated by the procurement officer to exceed an  
5 amount established by regulation of the commissioner. Bid security on  
6 construction contracts under the amount set by the commissioner may be  
7 required when the circumstances warrant. Bid security may be required  
8 for competitive sealed bidding for contracts for supplies, services,  
9 or professional services in accordance with regulations of the commis-  
10 sioner when needed for the protection of the state.

11 (b) Bid security must be a bond provided by a surety company  
12 authorized to do business in the state or otherwise supplied in a form  
13 satisfactory to the commissioner. Bid security must be in an amount  
14 equal to at least

15 (1) 10 percent of the amount of the bid if the bid does not  
16 exceed \$100,000; or

17 (2) 10 percent of the first \$100,000 and five percent of  
18 the amount of the bid over \$100,000 if the bid exceeds \$100,000 up to  
19 a maximum of \$200,000 in security.

20 (c) When the invitation to bid requires security, the procure-  
21 ment officer shall reject a bid that does not comply with the bid  
22 security requirement unless, in accordance with regulations, the  
23 officer determines that the bid fails to comply in a nonsubstantial  
24 manner with the security requirements.

25 Sec. 36.30.130. PUBLIC NOTICE OF INVITATION TO BID. (a) The  
26 procurement officer shall give adequate public notice of the invita-  
27 tion to bid at least 21 days before the date for the opening of bids.  
28 If a determination is made in writing that a shorter notice period is  
29 necessary for a particular bid, the 21-day period may be shortened.

1 The determination shall be made by the chief procurement officer for  
2 bids for supplies, services, or professional services. The determina-  
3 tion shall be made by the commissioner of transportation and public  
4 facilities for bids for construction or acquisition of property for  
5 the state equipment fleet. Notice shall be published in the Alaska  
6 Administrative Journal. The time and manner of notice must be in  
7 accordance with regulations adopted by the commissioner of adminis-  
8 tration. When practicable, notice may include

9 (1) publication in a newspaper calculated to reach prospec-  
10 tive bidders;

11 (2) notices posted in public places within the area where  
12 the work is to be performed or the material furnished; and

13 (3) notices mailed to all active prospective contractors on  
14 the appropriate list maintained under AS 36.30.050.

15 (b) Failure to comply with the notice requirements of this  
16 section does not invalidate a bid or the award of a contract. If the  
17 state fails to substantially comply with the requirements of (a) of  
18 this section, the state is liable for damages caused by that failure.

19 Sec. 36.30.140. BID OPENING. (a) The procurement officer shall  
20 open bids publicly in the presence of one or more witnesses at the  
21 time and place designated in the invitation to bid. The amount of  
22 each bid and other relevant information that is specified by regula-  
23 tion of the commissioner, together with the name of each bidder, shall  
24 be recorded.

25 (b) The information recorded under (a) of this section is open  
26 to public inspection as soon as practicable before the notice of  
27 intent to award a contract is given under AS 36.30.365. The bids are  
28 not open for public inspection until after the notice of intent to  
29 award a contract is given. To the extent the bidder designates and

1 the procurement officer concurs, trade secrets and other proprietary  
2 data contained in a bid document are confidential.

3 Sec. 36.30.150. BID ACCEPTANCE AND BID EVALUATION. (a) Bids  
4 shall be unconditionally accepted without alteration or correction,  
5 except as authorized in AS 36.30.160. The procurement officer shall  
6 evaluate bids based on the requirements set out in the invitation to  
7 bid, which may include criteria to determine acceptability such as  
8 inspection, testing, quality, delivery, and suitability for a parti-  
9 cular purpose. The criteria that will affect the bid price and be  
10 considered in evaluation for award must be objectively measurable,  
11 such as discounts, transportation costs, and total or life cycle  
12 costs. The invitation to bid must set out the evaluation criteria to  
13 be used. Criteria may not be used in bid evaluation if they are not  
14 set out in the invitation to bid.

15 (b) A contract based on total or life cycle costs may be awarded  
16 only when the chief procurement officer or, for construction contracts  
17 or procurements for the state equipment fleet, the commissioner of  
18 transportation and public facilities, determines in writing at the  
19 time of contract solicitation that the contract promotes overall  
20 economy for the purposes intended, encourages competition, is not  
21 unduly restrictive, and is in the best interests of the state.

22 Sec. 36.30.160. LATE BIDS; CORRECTION OR WITHDRAWAL OF BIDS;  
23 CANCELLATION OF AWARDS. (a) Bids received after the bid due date and  
24 time indicated on the invitation to bid may not be accepted unless the  
25 delay was due to an error of the contracting agency.

26 (b) Correction or withdrawal of inadvertently erroneous bids  
27 before or after bid opening, or cancellation of awards or contracts  
28 based on bid mistakes may be permitted in accordance with regulations  
29 adopted by the commissioner. After bid opening, changes in bid prices

1 or other provisions of bids prejudicial to the interest of the state  
2 or fair competition may not be permitted. Except as otherwise provid-  
3 ed by regulation, a decision to permit the correction or withdrawal of  
4 a bid, or to cancel an award or contract based on a bid mistake, shall  
5 be supported by a written determination made by the procurement offi-  
6 cer. If a bidder is permitted to withdraw a bid before award, an  
7 action may not be maintained against the bidder or the bid security.

8 Sec. 36.30.170. CONTRACT AWARD AFTER BIDS. (a) Except as  
9 provided in (b) of this section, the procurement officer shall award a  
10 contract based on the solicited bids with reasonable promptness by  
11 written notice to the lowest responsible and responsive bidder whose  
12 bid conforms in all material respects to the requirements and criteria  
13 set out in the invitation to bid.

14 (b) The procurement officer shall award a contract based on  
15 solicited bids to the lowest responsible and responsive Alaska bidder  
16 if the bid is not more than five percent higher than the lowest non-  
17 resident bidder's. In this subsection, "Alaska bidder" means a person  
18 who

- 19 (1) holds a current Alaska business license;
- 20 (2) submits a bid for goods, services, or construction  
21 under the name as appearing on the person's current Alaska business  
22 license;
- 23 (3) has maintained a place of business within the state  
24 staffed by the bidder or an employee of the bidder for a period of six  
25 months immediately preceding the date of the bid;
- 26 (4) is incorporated under the laws of the state, is a sole  
27 proprietorship, and the proprietor is a resident of the state or is a  
28 partnership, and all partners are residents of the state; and
- 29 (5) if a joint venture, is composed entirely of ventures

1 that qualify under (1) - (4) of this subsection.

2 (c) If a bidder qualifies under (b) of this section as an Alaska  
3 bidder, is offering services through an employment program as defined  
4 under AS 36.30.100(c), and is the lowest responsible and responsive  
5 bidder with a bid that is not more than 10 percent higher than the  
6 lowest bid of a nonresident, the procurement officer shall award the  
7 contract to that bidder.

8 Sec. 36.30.190. MULTI-STEP SEALED BIDDING. When it is con-  
9 sidered impractical to initially prepare a definitive purchase de-  
10 scription to support an award based on price, the procurement officer  
11 may issue an invitation to bid requesting the submission of unpriced  
12 technical offers to be followed by an invitation to bid limited to the  
13 bidders whose offers are determined to be technically qualified under  
14 the criteria set out in the first solicitation.

15 ARTICLE 3. COMPETITIVE SEALED PROPOSALS.

16 Sec. 36.30.200. CONDITIONS FOR USE. (a) Except as otherwise  
17 provided in this chapter, or unless specifically exempted by law, an  
18 agency contract shall be awarded by competitive sealed proposals if it  
19 is not awarded by competitive sealed bidding. Construction may only  
20 be procured by competitive sealed proposals if the conditions under  
21 (c) of this section are met.

22 (b) The commissioner may provide by regulation that it is either  
23 not practicable or not advantageous to the state to procure specified  
24 types of supplies, services, or construction by competitive sealed  
25 bidding that would otherwise be procured by that method. When the  
26 chief procurement officer, or for construction contracts or procure-  
27 ments for the state equipment fleet, the commissioner of transporta-  
28 tion and public facilities, determines in writing that the use of  
29 competitive sealed bidding is either not practicable or not advan-

1 tageous to the state, a contract may be entered into by competitive  
2 sealed proposals in accordance with the regulations. When it is  
3 determined that it is practicable but not advantageous to use competi-  
4 tive sealed bidding, the chief procurement officer or commissioner of  
5 transportation and public facilities shall specify with particularity  
6 the basis for the determination.

7 (c) When the chief procurement officer determines that it is  
8 advantageous to the state, a procurement officer may issue a request  
9 for proposals requesting the submission of offers to provide con-  
10 struction in accordance with a design provided by the offeror. The  
11 request for proposals shall require that each proposal submitted  
12 contain a single price that includes the design and construction.

13 Sec. 36.30.210. REQUEST FOR PROPOSALS. (a) A request for  
14 competitive sealed proposals must contain the date, time and place for  
15 delivering proposals, a specific description of the supplies, con-  
16 struction, services, or professional services to be provided under the  
17 contract, and the terms under which the supplies, construction, ser-  
18 vices, or professional services are to be provided. The request shall  
19 require the offeror to submit evidence of the offeror's valid Alaska  
20 business license and, no later than the date by which proposals must  
21 be received, to list subcontractors the offeror proposes to use in the  
22 performance of the contract. The list shall include the name and  
23 location of the place of business for each subcontractor and evidence  
24 of the subcontractor's valid Alaska business license. An offeror for  
25 a construction contract shall also submit evidence of the offeror's  
26 registration under AS 08.18 and evidence of registration for each  
27 listed subcontractor.

28 (b) A request for proposals must contain that information neces-  
29 sary for an offeror to submit a proposal or contain references to any

1 information that cannot reasonably be included with the request. The  
2 request must provide a description of the factors that will be con-  
3 sidered by the procurement officer when evaluating the proposals  
4 received, including the relative importance of price and other evalu-  
5 ation factors.

6 (c) Notice of a request for proposals shall be given in accor-  
7 dance with procedures under AS 36.30.130. The procurement officer may  
8 use additional means considered appropriate to notify prospective  
9 offerors of the intent to enter into a contract through competitive  
10 sealed proposals.

11 (d) The provisions of AS 36.30.115(b) - (e) apply to competitive  
12 sealed proposals.

13 Sec. 36.30.220. STANDARD OVERHEAD RATE. (a) An agency that  
14 provides services to another agency under a contract covered by this  
15 chapter shall establish a standard overhead rate. If an agency sub-  
16 mits a proposal in response to a request for competitive sealed pro-  
17 posals, the agency must include its standard overhead rate within its  
18 proposal.

19 (b) In this section, "standard overhead rate" means a charge  
20 established for services and professional services from an agency that  
21 is designed to compensate the agency for administration and support  
22 services incidentally provided with the services contracted for.

23 Sec. 36.30.230. TREATMENT OF PROPOSALS. The procurement officer  
24 shall open proposals so as to avoid disclosure of contents to compet-  
25 ing offerors during the process of negotiation. A register of pro-  
26 posals containing the name and address of each offeror shall be pre-  
27 pared in accordance with regulations adopted by the commissioner. The  
28 register and the proposals are open for public inspection after the  
29 notice of intent to award a contract is issued under AS 36.30.365. To

1 the extent that the offeror designates and the procurement officer  
2 concurs, trade secrets and other proprietary data contained in the  
3 proposal documents are confidential.

4 Sec. 36.30.240. DISCUSSION WITH RESPONSIBLE OFFERORS AND REVI-  
5 SIONS TO PROPOSALS. As provided in the request for proposals, and  
6 under regulations adopted by the commissioner, discussions may be  
7 conducted with responsible offerors who submit proposals determined to  
8 be reasonably susceptible of being selected for award for the purpose  
9 of clarification to assure full understanding of, and responsiveness  
10 to, the solicitation requirements. Offerors reasonably susceptible of  
11 being selected for award shall be accorded fair and equal treatment  
12 with respect to any opportunity for discussion and revision of pro-  
13 posals, and revisions may be permitted after submissions and before  
14 the award of the contract for the purpose of obtaining best and final  
15 offers. In conducting discussions, the procurement officer may not  
16 disclose information derived from proposals submitted by competing  
17 offerors. AS 44.62.310 does not apply to meetings with offerors under  
18 this section.

19 Sec. 36.30.250. AWARD OF CONTRACT. (a) The procurement officer  
20 shall award a contract under competitive sealed proposals to the  
21 responsible and responsive offeror whose proposal is determined in  
22 writing to be the most advantageous to the state taking into consid-  
23 eration price and the evaluation factors set out in the request for  
24 proposals. Other factors and criteria may not be used in the evalu-  
25 ation. The contract file must contain the basis on which the award is  
26 made.

27 (b) In determining whether a proposal is advantageous to the  
28 state, the procurement officer shall take into account, in accordance  
29 with regulations of the commissioner, whether the offeror qualifies as

1 an Alaskan bidder under AS 36.30.170(b) or is offering the services of  
2 an employment program as defined in AS 36.30.100(c).

3 Sec. 36.30.260. CONTRACT EXECUTION. A contract awarded under  
4 competitive sealed proposals must contain

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

6 (2) the date for the supplies to be delivered or the dates  
7 for construction, services, or professional services to begin and be  
8 completed;

9 (3) a description of the supplies, construction, services,  
10 or professional services to be provided; and

11 (4) certification by the project director for the contract-  
12 ing agency, the head of the contracting agency, or a designee that  
13 sufficient funds are available in an appropriation to be encumbered  
14 for the amount of the contract.

15 Sec. 36.30.270. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING  
16 CONTRACTS. (a) Notwithstanding conflicting provisions of AS 36.30.-  
17 100 - 36.30.260, a procurement officer shall negotiate a contract for  
18 an agency with the most qualified and suitable person of demonstrated  
19 competence for architectural, engineering, or land surveying services.  
20 The procurement officer shall award a contract for those services at  
21 fair and reasonable compensation as determined by the procurement  
22 officer, after consideration of the estimated value of the services to  
23 be rendered, and the scope, complexity, and professional nature of the  
24 services.

25 (b) If negotiations with the most qualified and suitable person  
26 under (a) of this section are not successful, the procurement officer  
27 shall negotiate a contract with other qualified persons of demon-  
28 strated competence, in order of public ranking. The procurement  
29 officer may reject all or part of a proposal.

1 (c) Notwithstanding the other provisions of this section, a  
2 procurement officer may include price as a factor in selecting archi-  
3 tectural, engineering, and land surveying services when, in the judg-  
4 ment of the procurement officer, the services required are repetitious  
5 in nature, and the scope, nature, and amount of services required are  
6 sufficiently defined by measurable and objective standards to rea-  
7 sonably enable persons making proposals to compete with a clear under-  
8 standing and interpretation of the services required. In order to  
9 include price as a factor in selection, the procurement officer shall  
10 involve in the evaluation of the proposals at least one person who is  
11 registered in the state to perform the architectural, engineering, or  
12 land surveying services that are the primary services to be provided  
13 by the contract.

14 (d) The provisions of (a) - (c) of this section do not apply to  
15 a contract that incorporates both design and construction services.  
16 The provisions of (a) - (c) of this section do not apply to contracts  
17 awarded in a situation of public necessity if the procurement officer  
18 responsible for execution of the contract on behalf of the agency  
19 certifies in writing that a situation of public necessity exists.

20 (e) An agency may not award a contract for architectural,  
21 engineering, or land surveying services to a

22 (1) person who is not registered under AS 08.48 to perform  
23 the architectural, engineering, or land surveying services required by  
24 the contract;

25 (2) partnership that is not qualified under AS 08.48.251 to  
26 provide the architectural, engineering, or land surveying services  
27 required by the contract; or

28 (3) corporation that is not authorized under AS 08.48.241  
29 to offer the architectural, engineering, or land surveying services

1 required by the contract.

2 ARTICLE 4. OTHER PROCUREMENT METHODS.

3 Sec. 36.30.300. SOLE SOURCE PROCUREMENTS. (a) A contract may  
4 be awarded for supplies, services, professional services, or construc-  
5 tion without competitive sealed bidding, competitive sealed proposals,  
6 or other competition in accordance with regulations adopted by the  
7 commissioner of administration. A contract may be awarded under this  
8 section only when the chief procurement officer or, for construction  
9 contracts or procurements for the state equipment fleet, the commis-  
10 sioner of transportation and public facilities determines in writing  
11 that there is only one source for the required procurement or con-  
12 struction. A sole source procurement may not be awarded if a rea-  
13 sonable alternative source exists. The written determination must  
14 include findings of fact that support by clear and convincing evidence  
15 the determination that only one source exists. The authority to make  
16 the determination required by this subsection may not be delegated.

17 (b) The using agency shall submit written evidence to support a  
18 sole source determination. The commissioner of administration or the  
19 commissioner of transportation and public facilities, as appropriate,  
20 may also require the submission of cost or pricing data in connection  
21 with an award under this section.

22 (c) The procurement officer shall negotiate with the single  
23 supplier, to the extent practicable, to obtain a contract advantageous  
24 to the state.

25 Sec. 36.30.310. EMERGENCY PROCUREMENTS. Procurements may be  
26 made under emergency conditions as defined in regulations adopted by  
27 the commissioner when there exists a threat to public health, welfare,  
28 or safety, when a situation exists that makes a procurement through  
29 competitive sealed bidding or competitive sealed proposals

1 impracticable or contrary to the public interest, or to protect public  
2 or private property. An emergency procurement need not be made  
3 through competitive sealed bidding or competitive sealed proposals but  
4 shall be made with competition that is practicable under the circum-  
5 stances. A written determination by the procurement officer of the  
6 basis for the emergency and for the selection of the particular con-  
7 tractor shall be included in the contract file. The written deter-  
8 mination must include findings of fact that support the determination.

9 Sec. 36.30.320. SMALL PROCUREMENTS. (a) A procurement for  
10 supplies, services, or construction that does not exceed an aggregate  
11 dollar amount of \$5,000 may be made in accordance with regulations  
12 adopted by the commissioner for small procurements.

13 (b) A contract for professional services that does not exceed  
14 \$25,000 may be made under regulations adopted by the commissioner for  
15 small procurements, except that an agency may not contract for the  
16 services of legal counsel without the approval of the attorney  
17 general.

18 (c) Small procurements need not be made through competitive  
19 sealed bidding or competitive sealed proposals but shall be made with  
20 competition that is practicable under the circumstances.

21 (d) Procurement requirements may not be artificially divided or  
22 fragmented so as to constitute a purchase under this section or to  
23 circumvent the source selection procedures required by AS 36.30.100 -  
24 36.30.260.

25 (e) The procurement officer shall give adequate public notice of  
26 intent to make a procurement under this section in accordance with  
27 regulations adopted by the commissioner. Notices shall also be pro-  
28 vided to those Alaska bidders designated by the commissioner under  
29 AS 36.30.050(d).

1                   **ARTICLE 5. CONTRACT FORMATION AND MODIFICATION.**

2                   **Sec. 36.30.340. REVIEW AND APPROVAL BY DEPARTMENT OF LAW.** If a  
3 contract contains a term that is in conflict with a state standard  
4 form contract term or if a standard term is deleted or modified by a  
5 term that is not standard, the contract must be reviewed by the De-  
6 partment of Law and approved as to form.

7                   **Sec. 36.30.350. BID CANCELLATION, REJECTION.** An invitation to  
8 bid, a request for proposals, or other solicitation may be cancelled  
9 or any or all bids or proposals may be rejected in whole or in part or  
10 the date for opening bids or proposals may be delayed when it is in  
11 the best interests of the state in accordance with regulations adopted  
12 by the commissioner. The reasons for cancellation, rejection, or  
13 delay in opening bids or proposals shall be made part of the contract  
14 file.

15                   **Sec. 36.30.360. DETERMINATION OF RESPONSIBILITY.** (a) A written  
16 determination of responsibility of a bidder or offeror shall be made  
17 by the procurement officer in accordance with regulations adopted by  
18 the commissioner. The unreasonable failure of a bidder or offeror to  
19 promptly supply information in connection with an inquiry with respect  
20 to responsibility is grounds for a determination of nonresponsibility  
21 with respect to the bidder or offeror.

22                   (b) Information furnished by a bidder or offeror under (a) of  
23 this section is confidential and may not be disclosed without prior  
24 written consent by the bidder or offeror.

25                   **Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESI-**  
26 **DENT.** If the procurement officer awards a contract to a person who  
27 does not reside or maintain a place of business in the state and if  
28 the supplies, services, professional services, or construction that is  
29 the subject of the contract could have been obtained from sources in

1 the state, the procurement officer shall issue a written statement  
2 explaining the basis of the award. The statement required under this  
3 section shall be kept in the contract file.

4 Sec. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT. At least  
5 10 days before the formal award of a contract under this chapter the  
6 procurement officer shall provide to each bidder or offeror notice of  
7 intent to award a contract. The notice shall conform to regulations  
8 adopted by the commissioner.

9 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of  
10 this section, any type of contract that will promote the best inter-  
11 ests of the state may be used, except that the use of a cost-plus-  
12 a-percentage-of-cost contract is prohibited. A cost-reimbursement  
13 contract may be used only when a determination is made in writing by  
14 the procurement officer that a cost-reimbursement contract is likely  
15 to be less costly to the state than any other type or that it is  
16 impracticable to obtain the supplies, services, professional services,  
17 or construction required except under a cost-reimbursement contract.

18 Sec. 36.30.380. APPROVAL OF ACCOUNTING SYSTEM. Except for a  
19 contract awarded through competitive sealed bidding or a firm fixed-  
20 price contract, a contract type may not be used unless it has been  
21 determined in writing by the procurement officer that the proposed  
22 contractor's accounting system

23 (1) will permit timely development of all necessary cost  
24 data in the form required by the specific contract type contemplated;  
25 and

26 (2) is adequate to allocate costs in accordance with gen-  
27 erally accepted accounting principles.

28 Sec. 36.30.390. MULTI-TERM CONTRACTS. (a) Unless otherwise  
29 provided by law, a contract for supplies, services, or professional

1 services may be entered into for any period of time considered to be  
2 in the best interests of the state provided the term of the contract  
3 and conditions of renewal or extension, if any, are included in the  
4 solicitation and funds are available for the first fiscal period at  
5 the time of contracting. Payment and performance obligations for  
6 succeeding fiscal periods shall be subject to the availability and  
7 appropriation of funds for them.

8 (b) Before using a multi-term contract, the procurement officer  
9 shall determine in writing that

10 (1) estimated requirements cover the period of the contract  
11 and are reasonably firm and continuing; and

12 (2) the contract will serve the best interests of the state  
13 by encouraging effective competition or otherwise promoting economies  
14 in state procurement.

15 (c) When funds are not appropriated or otherwise made available  
16 to support continuation of performance in a subsequent fiscal period,  
17 the contract shall be cancelled. The contractor may only be reim-  
18 bursed for the reasonable value of any nonrecurring costs incurred but  
19 not amortized in the price of the supplies, services, or professional  
20 services delivered under the contract that are not otherwise recover-  
21 able. The cost of cancellation may be paid from any appropriations  
22 available for these purposes.

23 Sec. 36.30.400. COST OR PRICING DATA. (a) Before an award of a  
24 contract or a change order or contract modification, the contractor or  
25 prospective contractor shall submit cost and pricing data. The con-  
26 tractor or prospective contractor shall certify that, to the best of  
27 the contractor's or prospective contractor's knowledge and belief, the  
28 data submitted is accurate, complete, and current as of a mutually  
29 determined specified date and will continue to be accurate and

1 complete during the performance of the contract.

2 (b) When a contractor becomes aware of a situation that may form  
3 the basis of a claim for compensation that exceeds the amount desig-  
4 nated as the base amount of the contract and before performing addi-  
5 tional work or supplying additional materials, the contractor shall  
6 submit cost and pricing data on the additional work or materials. The  
7 contractor shall certify that, to the best of the contractor's knowl-  
8 edge and belief, the data submitted is accurate, complete, and current  
9 and is the actual cost to the contractor of performing the additional  
10 work or supplying the additional materials.

11 (c) A contract, change order, or contract modification under  
12 which a certificate is required under (a) or (b) of this section must  
13 contain a provision that the price to the state, including the con-  
14 tractor's profit or fee, will be adjusted to exclude any significant  
15 sums by which the state finds that the price is increased because the  
16 cost or pricing data furnished by the contractor or prospective con-  
17 tractor is inaccurate, incomplete, or not current as of the date  
18 agreed upon by the parties.

19 (d) The requirements of (a) of this section do not apply when

20 (1) the contract price is based on adequate price competi-  
21 tion;

22 (2) the contract price is set by law or regulation; or

23 (3) it is determined by the procurement officer in writing  
24 and in accordance with regulations adopted by the commissioner that  
25 the requirements of (a) of this section may be waived, and the reasons  
26 for waiver are stated.

27 Sec. 36.30.410. RIGHT TO INSPECT PLANT. The state may, at  
28 reasonable times, inspect the part of the plant or place of business  
29 of a contractor or subcontractor that is related to the performance of

1 a contract awarded or to be awarded by an agency.

2 Sec. 36.30.420. RIGHT TO AUDIT RECORDS. (a) The state may, at  
3 reasonable times and places, audit the books and records of a person  
4 who has submitted cost or pricing data under AS 36.30.400 to the  
5 extent that the books and records relate to the cost or pricing data.  
6 A person who receives a contract, change order, or contract modifica-  
7 tion for which cost or pricing data is required, shall maintain books  
8 and records that relate to the cost or pricing data for three years  
9 after the date of final payment under the contract, unless a shorter  
10 period is authorized in writing by the commissioner.

11 (b) The state may audit the books and records of a contractor or  
12 a subcontractor to the extent that the books and records relate to the  
13 performance of the contract or subcontract. Books and records shall  
14 be maintained by the contractor for a period of three years after the  
15 date of final payment under the prime contract and by the subcontrac-  
16 tor for a period of three years after the date of final payment under  
17 the subcontract, unless a shorter period is authorized in writing by  
18 the commissioner.

19 Sec. 36.30.430. STANDARD MODIFICATION CLAUSES FOR CONTRACTS.

20 (a) The commissioner shall adopt regulations permitting the inclusion  
21 of clauses providing for adjustments in prices, time of performance,  
22 or other contract provisions as appropriate.

23 (b) The commissioner shall adopt regulations permitting or  
24 requiring the inclusion in state contracts of clauses providing for  
25 appropriate remedies and covering the following subjects:

- 26 (1) liquidated damages;
- 27 (2) specified excuses for delay or nonperformance;
- 28 (3) termination of the contract for default; and
- 29 (4) termination of the contract in whole or in part for the

1 convenience of the state.

2 Sec. 36.30.460. MODIFICATION OF STANDARD CLAUSES. The procure-  
3 ment officer or the head of a contracting agency may vary the clauses  
4 adopted under AS 36.30.430 for inclusion in a particular state con-  
5 tract if the

6 (1) variations are supported by a written determination  
7 that states the circumstances justifying the variation; and

8 (2) approval required by AS 36.30.340 is obtained.

9 Sec. 36.30.470. FISCAL RESPONSIBILITY. A contract modification,  
10 change order, or contract price adjustment under a construction con-  
11 tract in excess of an amount established by regulation of the commis-  
12 sioner is subject to prior written certification by the fiscal officer  
13 of the agency responsible for funding the project or the contract, or  
14 other official responsible for monitoring and reporting upon the  
15 status of the costs of the total project budget or contract budget, as  
16 to the effect of the contract modification, change order, or adjust-  
17 ment in contract price on the total project budget or the total con-  
18 tract budget. If the certification of the fiscal officer or other  
19 responsible official discloses a resulting increase in the total  
20 project budget or the total contract budget, the procurement officer  
21 may not approve the contract modification, change order, or adjustment  
22 in contract price unless sufficient funds are available, or the scope  
23 of the project or contract is adjusted to permit the degree of com-  
24 pletion that is feasible within the total project budget or total  
25 contract budget as it existed before the contract modification, change  
26 order, or adjustment in contract price under consideration. A con-  
27 tract modification change order, or adjustment in contract that is  
28 signed by both parties and has been reasonably relied on by a contrac-  
29 tor, is presumed to be valid even if the provisions of this section

1 have not been met.

2 Sec. 36.30.480. COST PRINCIPLE REGULATIONS. The commissioner  
3 shall adopt regulations setting out cost principles that shall be used  
4 to determine the allowability of incurred costs for the purpose of  
5 reimbursing costs under contract provisions that provide for the  
6 reimbursement of costs. If a written determination is approved at a  
7 level above the procurement officer, the cost principles may be modi-  
8 fied by contract.

9 ARTICLE 6. PROCUREMENT RECORDS AND REPORTS.

10 Sec. 36.30.500. RETENTION OF PROCUREMENT RECORDS. Procurement  
11 records shall be retained and disposed of in accordance with records  
12 retention guidelines and schedules approved by the state archivist.  
13 Retained documents shall be made available to the attorney general or  
14 a designee upon request and proper receipt.

15 Sec. 36.30.510. RECORDS OF CONTRACTS AWARDED UNDER COMPETITIVE  
16 SEALED PROPOSALS. A contract file open for public inspection shall be  
17 kept by the commissioner and the contracting agency for each contract  
18 awarded under competitive sealed proposals. The file kept by the  
19 commissioner shall contain a summary of the information in the file of  
20 the contracting agency. The file kept by the contracting agency must  
21 contain

- 22 (1) a copy of the contract;  
23 (2) the register of proposals prepared under AS 36.30.230  
24 and a copy of each proposal submitted; and  
25 (3) the written determination to award the contract pre-  
26 pared under AS 36.30.250.

27 Sec. 36.30.520. RECORDS OF SOLE SOURCE AND EMERGENCY PROCURE-  
28 MENTS. (a) The commissioner shall maintain for a minimum of five  
29 years a record listing all sole source procurement contracts made

1 under AS 36.30.300 and emergency procurements made under AS 36.30.310.

2 The record must contain

- 3 (1) each contractor's name;
- 4 (2) the amount and type of each contract; and
- 5 (3) a listing of the supplies, services, professional
- 6 services, or construction procured under each contract.

7 (b) The Department of Transportation and Public Facilities and

8 any agency to whom the commissioner of administration or the commis-

9 sioner of transportation and public facilities has delegated procure-

10 ment authority under AS 36.30.015 shall, by October 1 of each year,

11 submit to the commissioner of administration records of the type

12 specified in (a) of this section. The commissioner of administration

13 shall maintain these records as required by (a) of this section.

14 Sec. 36.30.530. PUBLIC ACCESS TO PROCUREMENT INFORMATION.

15 Procurement information is public except as otherwise provided by law.

16 Sec. 36.30.540. REPORT TO LEGISLATURE. Beginning with Decem-

17 ber 1, 1989, the commissioner shall biennially report to the legisla-

18 ture concerning procurements by agencies. The report must include

19 (1) the records maintained by the commissioner under

20 AS 36.30.510 and the records maintained under AS 36.30.520(a) for the

21 previous two fiscal years;

22 (2) recommendations for changes in this chapter or other

23 laws based on implementation of this chapter in the previous two

24 fiscal years;

25 (3) a description of any matters that involved litigation

26 concerning this chapter in the previous two fiscal years;

27 (4) a list of procurements made under this chapter from

28 out-of-state sources during the previous two fiscal years together

29 with the total number of procurement contracts entered into during

1 that period with out-of-state contractors and the total value of these  
2 contracts; this paragraph does not apply to procurements made under  
3 AS 36.30.320; and

4 (5) a list of procurements made under this chapter from  
5 state sources during the previous two fiscal years together with the  
6 total number of procurement contracts entered into during that period  
7 with state contractors and the total value of these contracts; this  
8 paragraph does not apply to procurements made under AS 36.30.320.

9 ARTICLE 7. LEGAL AND CONTRACTUAL REMEDIES.

10 Sec. 36.30.560. FILING OF A PROTEST. An interested party may  
11 protest the award of a contract, the proposed award of a contract, or  
12 a solicitation for supplies, services, professional services, or  
13 construction by an agency. The protest shall be filed with the pro-  
14 curement officer of the contracting agency in writing and include the  
15 following information:

16 (1) the name, address, and telephone number of the pro-  
17 tester;

18 (2) the signature of the protester or the protester's  
19 representative;

20 (3) identification of the contracting agency and the solici-  
21 tation or contract at issue;

22 (4) a detailed statement of the legal and factual grounds  
23 of the protest, including copies of relevant documents; and

24 (5) the form of relief requested.

25 Sec. 36.30.565. TIME FOR FILING A PROTEST. (a) A protest based  
26 upon alleged improprieties in a solicitation involving competitive  
27 sealed bidding that are apparent before the bid opening shall be filed  
28 before the bid opening. A protest based on alleged improprieties in a  
29 solicitation involving competitive sealed proposals that are apparent

1           (1) before the due date for receipt of initial proposals  
2 shall be filed before that due date;

3           (2) after the due date for receipt of initial proposals  
4 shall be filed before the next due date for receipt of adjusted pro-  
5 posals that occurs after the improprieties are apparent.

6           (b) In situations not covered under (a) of this section, pro-  
7 tests shall be filed within 10 days after a notice of intent to award  
8 the contract is issued by the procurement officer.

9           (c) If the protester shows good cause, the procurement officer  
10 of the contracting agency may consider a filed protest that is not  
11 timely.

12           Sec. 36.30.570. NOTICE OF A PROTEST. The procurement officer  
13 shall immediately give notice of a protest filed under AS 36.30.565 to  
14 the contractor if a contract has been awarded or, if no award has been  
15 made, to all interested parties.

16           Sec. 36.30.575. STAY OF AWARD. If a protest is filed the award  
17 may be made unless the procurement officer of the contracting agency  
18 determines in writing that a

19           (1) reasonable probability exists that the protest will be  
20 sustained; or

21           (2) stay of the award is not contrary to the best interests  
22 of the state.

23           Sec. 36.30.580. DECISION BY THE PROCUREMENT OFFICER. (a) The  
24 procurement officer of the contracting agency shall issue a written  
25 decision containing the basis of the decision within 14 days after a  
26 protest has been filed. A copy of the decision shall be furnished to  
27 the protester by certified mail or other method that provides evidence  
28 of receipt.

29           (b) The time for a decision may be extended up to 26 days for

1 good cause by the commissioner of administration, or for protests  
2 involving construction or procurements for the state equipment fleet,  
3 the commissioner of transportation and public facilities. If an  
4 extension is granted, the procurement officer shall notify the pro-  
5 tester in writing of the date the decision is due.

6 (c) If a decision is not made by the date it is due, the pro-  
7 tester may proceed as if the procurement officer had issued a decision  
8 adverse to the protester.

9 Sec. 36.30.585. PROTEST REMEDIES. (a) If the procurement  
10 officer sustains a protest in whole or in part, the procurement offi-  
11 cer shall implement an appropriate remedy.

12 (b) In determining an appropriate remedy, the procurement offi-  
13 cer shall consider the circumstances surrounding the solicitation or  
14 procurement including the seriousness of the procurement deficiencies,  
15 the degree of prejudice to other interested parties or to the integri-  
16 ty of the procurement system, the good faith of the parties, the  
17 extent the procurement has been accomplished, costs to the agency and  
18 other impacts on the agency of a proposed remedy, and the urgency of  
19 the procurement to the welfare of the state.

20 Sec. 36.30.590. APPEAL ON A PROTEST. (a) An appeal from a  
21 decision of a procurement officer on a protest may be filed by the  
22 protester with the commissioner of administration, or for protests  
23 involving construction or procurements for the state equipment fleet,  
24 the commissioner of transportation and public facilities. An appeal  
25 shall be filed within five days after the decision is received by the  
26 protester. The protester shall file a copy of the appeal with the  
27 procurement officer.

28 (b) An appeal must contain the information required under  
29 AS 36.30.560. In addition, the appeal must include

- 1                   (1) a copy of the decision being appealed; and  
2                   (2) identification of the factual or legal errors in the  
3 decision that form the basis for the appeal.

4                   Sec. 36.30.595. NOTICE OF A PROTEST APPEAL. (a) The procure-  
5 ment officer shall immediately give notice of an appeal filed under  
6 AS 36.30.590 to the contractor if a contract has been awarded or, if  
7 no award has been made, to all interested parties.

8                   (b) The commissioner of administration or the commissioner of  
9 transportation and public facilities, as appropriate, shall, on re-  
10 quest, furnish a copy of the appeal to a person notified under (a) of  
11 this section, except that confidential material shall be deleted from  
12 the copy.

13                   Sec. 36.30.600. STAY OF AWARD DURING PROTEST APPEAL. If a  
14 protest appeal is filed before a contract is awarded and the award was  
15 stayed under AS 36.30.575, the filing of the appeal automatically  
16 continues the stay until the commissioner of administration or the  
17 commissioner of transportation and public facilities, as appropriate,  
18 makes a written determination that the award of the contract without  
19 further delay is necessary to protect substantial interests of the  
20 state.

21                   Sec. 36.30.605. PROTEST REPORT. (a) The procurement officer of  
22 the contracting agency shall file a complete report on the protest and  
23 decision with the commissioner of administration or the commissioner  
24 of transportation and public facilities, as appropriate, within seven  
25 days after a protest appeal is filed. The procurement officer shall  
26 furnish a copy of the report to the protester and to interested par-  
27 ties that have requested a copy of the appeal under AS 36.30.595(b).

28                   (b) The procurement officer may request an extension of time to  
29 prepare the protest report. The request must be in writing listing

1 the reasons for the request. The commissioner of administration or  
2 the commissioner of transportation and public facilities, as appropri-  
3 ate, shall respond to the request in writing. If an extension is  
4 granted, the commissioner shall list the reasons for granting the  
5 extension and indicate the date the protest report is due. The com-  
6 missioner shall notify the protester in writing that the time for  
7 submission of the report has been extended and the date the report is  
8 due.

9 (c) The protester may file comments on the protest report with  
10 the commissioner of administration or the commissioner of transporta-  
11 tion and public facilities, as appropriate, within seven days after  
12 the report is received. The protester shall provide copies of the  
13 comments to the procurement officer and to interested parties that  
14 have requested a copy of the appeal under AS 36.30.595(b).

15 (d) The protester may request an extension of time to prepare  
16 the comments on the protest report. The request must be in writing  
17 listing the reasons for the request. The commissioner of administra-  
18 tion or the commissioner of transportation and public facilities, as  
19 appropriate, shall respond to the request in writing. If an extension  
20 is granted, the commissioner shall list the reasons for granting the  
21 extension and indicate the date the comments are due. The commission-  
22 er shall notify the procurement officer in writing that the time for  
23 submission of the comments has been extended and the date the comments  
24 are due.

25 Sec. 36.30.610. DECISION WITHOUT HEARING. (a) The commissioner  
26 of administration or the commissioner of transportation and public  
27 facilities, as appropriate, shall dismiss a protest appeal before a  
28 hearing is held if it is determined in writing that the appeal is  
29 untimely under AS 36.30.590(a).

1 (b) The commissioner of administration or the commissioner of  
2 transportation and public facilities, as appropriate, may issue a  
3 decision on an appeal without a hearing if the appeal involves ques-  
4 tions of law without genuine issues of fact.

5 Sec. 36.30.615. HEARING ON PROTEST APPEAL. A hearing on a  
6 protest appeal shall be conducted in accordance with AS 36.30.670 and  
7 regulations adopted by the commissioner.

8 Sec. 36.30.620. CONTRACT CONTROVERSIES. (a) A contractor shall  
9 file a claim concerning a contract awarded under this chapter with the  
10 procurement officer. The contractor shall certify that the claim is  
11 made in good faith, that the supporting data are accurate and complete  
12 to the best of the contractor's knowledge and belief, and that the  
13 amount requested accurately reflects the contract adjustment for which  
14 the contractor believes the state is liable.

15 (b) If a controversy asserted by a contractor concerning a  
16 contract awarded under this chapter cannot be resolved by agreement,  
17 the procurement officer shall, after receiving a written request by  
18 the contractor for a decision, issue a written decision. The decision  
19 shall be made no more than 90 days after receipt by the procurement  
20 officer of all necessary information from the contractor. Failure of  
21 the contractor to furnish necessary information to the procurement  
22 officer constitutes a waiver of the claim. Before issuing the deci-  
23 sion the procurement officer shall review the facts relating to the  
24 controversy and obtain necessary assistance from legal, fiscal, and  
25 other advisors.

26 (c) The time for issuing a decision under (b) of this section  
27 may be extended for good cause by the commissioner of administration,  
28 or for a controversy involving a construction contract or procurement  
29 for the state equipment fleet, the commissioner of transportation and

1 public facilities, if the controversy concerns an amount in excess of  
2 \$50,000. The procurement officer shall notify the contractor in  
3 writing that the time for the issuance of a decision has been extended  
4 and of the date by which a decision shall be issued.

5 (d) The procurement officer shall furnish a copy of the decision  
6 to the contractor by certified mail or other method that provides  
7 evidence of receipt. The decision shall include a

- 8 (1) description of the controversy;
- 9 (2) reference to the pertinent contract provisions;
- 10 (3) statement of the agreed upon and disputed facts;
- 11 (4) statement of reasons supporting the decision; and
- 12 (5) statement substantially as follows:

13 "This is the final decision of the procurement officer.  
14 This decision may be appealed to the commissioner of  
15 (administration/transportation and public facilities).  
16 If you appeal, you must file a written notice of appeal  
17 with the commissioner within 14 days after you receive  
18 this decision."

19 (e) If a decision is not made by the date it is due, the con-  
20 tractor may proceed as if the procurement officer had issued a deci-  
21 sion adverse to the contractor.

22 (f) If a controversy asserted by the state concerning a contract  
23 awarded under this chapter cannot be resolved by agreement the matter  
24 shall be immediately referred to the commissioner of administration or  
25 the commissioner of transportation and public facilities, as appro-  
26 priate.

27 **Seq. 36.30.625. APPEAL ON A CONTRACT CONTROVERSY.** (a) An  
28 appeal from a decision of the procurement officer on a contract con-  
29 troversy may be filed by the contractor with the commissioner of

1 administration, or for a controversy involving a construction contract  
2 or procurement for the state equipment fleet, the commissioner of  
3 transportation and public facilities. The appeal shall be filed  
4 within 14 days after the decision is received by the contractor. The  
5 contractor shall file a copy of the appeal with the procurement offi-  
6 cer.

7 (b) An appeal shall contain a copy of the decision being ap-  
8 pealed and identification of the factual or legal errors in the deci-  
9 sion that form the basis for the appeal.

10 Sec. 36.30.630. HEARING ON A CONTRACT CONTROVERSY. (a) Except  
11 as provided in (b) of this section, a hearing shall be conducted  
12 according to AS 36.30.670 and regulations adopted by the commissioner  
13 of administration on a contract controversy appealed to the commis-  
14 sioner of administration or the commissioner of transportation and  
15 public facilities or referred to either commissioner under AS 36.30.-  
16 620(f).

17 (b) Within 15 days after receipt of an appeal on a contract  
18 controversy the commissioner of administration or the commissioner of  
19 transportation and public facilities, as appropriate, may adopt the  
20 decision of the procurement officer as the final decision without a  
21 hearing.

22 Sec. 36.30.632. DELEGATION. The commissioner of administration  
23 and the commissioner of transportation and public facilities may  
24 delegate responsibilities under AS 36.30.590 and 36.30.630 to the head  
25 of the contracting agency.

26 Sec. 36.30.635. AUTHORITY TO DEBAR OR SUSPEND. (a) After  
27 consultation with the using agency and the attorney general and after  
28 a hearing conducted according to AS 36.30.670 and regulations adopted  
29 by the commissioner of administration, the commissioner of

1 administration or the commissioner of transportation and public facil-  
2 ities may debar a person for cause from consideration for award of  
3 contracts. Notice of a debarment hearing shall be provided in writing  
4 at least seven days before the hearing. The debarment may not be for  
5 a period of more than three years.

6 (b) The commissioner of administration or the commissioner of  
7 transportation and public facilities, after consultation with the  
8 using agency and the attorney general, may suspend a person from  
9 consideration for award of contracts if there is probable cause for  
10 debarment and compelling reasons require suspension to protect state  
11 interests. The suspension may not be for a period exceeding three  
12 months.

13 (c) The authority to debar or suspend shall be exercised in  
14 accordance with regulations adopted by the commissioner of adminis-  
15 tration.

16 Sec. 36.30.640. CAUSES FOR DEBARMENT OR SUSPENSION. The causes  
17 for debarment or suspension include the following:

18 (1) conviction for commission of a criminal offense as an  
19 incident to obtaining or attempting to obtain a public or private  
20 contract or subcontract, or in the performance of the contract or  
21 subcontract;

22 (2) conviction under state or federal statutes of embezzle-  
23 ment, theft, forgery, bribery, falsification or destruction of re-  
24 cords, receiving stolen property, or other offense indicating a lack  
25 of business integrity or business honesty that currently and seriously  
26 affects responsibility as a state contractor;

27 (3) conviction or civil judgment finding a violation under  
28 state or federal antitrust statutes;

29 (4) violation of contract provisions of a character that is

1 regarded by the commissioner to be so serious as to justify debarment  
2 action, such as

3 (A) knowing failure without good cause to perform in  
4 accordance with the specifications or within the time limit  
5 provided in the contract; or

6 (B) failure to perform or unsatisfactory performance  
7 in accordance with the terms of one or more contracts, except  
8 that failure to perform or unsatisfactory performance caused by  
9 acts beyond the control of the contractor may not be considered  
10 to be a basis for debarment;

11 (5) for violation of the ethical standards set out in law  
12 or regulation;

13 (6) for a violation of this chapter punishable under  
14 AS 36.30.930(2); and

15 (7) any other cause listed in regulations of the commis-  
16 sioner determined to be so serious and compelling as to affect respon-  
17 sibility as a state contractor, including debarment by another govern-  
18 mental entity for a cause listed in the regulations.

19 Sec. 36.30.645. WRITTEN DETERMINATIONS. (a) The commissioner  
20 of administration or the commissioner of transportation and public  
21 facilities shall issue a written decision to debar or suspend. The  
22 decision must

23 (1) state the reasons for the action taken; and

24 (2) inform the debarred person of rights to judicial appeal  
25 or inform the suspended person of rights to administrative and judi-  
26 cial appeal.

27 (b) A copy of the decision under (a) of this section shall be  
28 mailed or otherwise furnished immediately to the debarred or suspended  
29 person and any other intervening party.

1           Sec. 36.30.650. HEARING ON A SUSPENSION. (a) A person suspend-  
2           ed under AS 36.30.635 is entitled to a hearing conducted according to  
3           AS 36.30.670 and regulations adopted by the commissioner of adminis-  
4           tration if the person files a written request for a hearing with the  
5           commissioner of administration or the commissioner of transportation  
6           and public facilities, as appropriate, within seven days after receipt  
7           of the notice of suspension under AS 36.30.645.

8           (b) If a suspended person requests a hearing the commissioner of  
9           administration or the commissioner of transportation and public facil-  
10          ities, as appropriate, shall schedule a prompt hearing unless the  
11          attorney general determines that a hearing at the proposed time is  
12          likely to jeopardize an investigation. A hearing may not be delayed  
13          longer than six months after notice of the suspension is provided  
14          under AS 36.30.645.

15          Sec. 36.30.655. LIST OF PERSONS DEBARRED OR SUSPENDED. The  
16          commissioner shall maintain a list of all persons debarred or suspend-  
17          ed from consideration for award of contracts.

18          Sec. 36.30.660. REINSTATEMENT. (a) The commissioner of admin-  
19          istration or the commissioner of transportation and public facilities  
20          may at any time after a final decision to debar a person from consid-  
21          eration for award of contracts reinstate the person after determining  
22          that the cause for which the person was debarred no longer exists or  
23          has been substantially mitigated.

24          (b) A debarred person may request reinstatement by submitting a  
25          petition to the commissioner of administration or the commissioner of  
26          transportation and public facilities supported by evidence showing  
27          that the cause for debarment no longer exists or has been substantial-  
28          ly mitigated.

29          (c) The commissioner of administration or the commissioner of

1 transportation and public facilities may require a hearing on a rein-  
2 statement petition. A decision on reinstatement shall be made in  
3 writing within seven days after a reinstatement petition is submitted.  
4 The decision shall specify the factors on which it is based. A deci-  
5 sion under this section is not subject to judicial appeal.

6 Sec. 36.30.665. LIMITED PARTICIPATION. The commissioner of  
7 administration or the commissioner of transportation and public facil-  
8 ities may permit a debarred person to participate in a contract on a  
9 limited basis during the debarment period if the commissioner deter-  
10 mines in writing that the participation is advantageous to the state.  
11 The determination shall specify the factors on which it is based and  
12 the limits imposed on the debarred person.

13 Sec. 36.30.670. HEARING PROCEDURES. (a) The commissioner of  
14 administration or the commissioner of transportation and public facil-  
15 ities shall act as a hearing officer or appoint a hearing officer for  
16 a hearing conducted under this chapter. The hearing officer shall  
17 arrange for a prompt hearing and notify the parties in writing of the  
18 time and place of the hearing. The hearing shall be conducted in an  
19 informal manner. The provisions of AS 44.62 (Administrative Procedure  
20 Act) do not apply to a hearing conducted under this chapter.

21 (b) The hearing officer may

22 (1) hold prehearing conferences to settle, simplify, or  
23 identify the issues in a proceeding, or to consider other matters that  
24 may aid in the expeditious disposition of the proceeding;

25 (2) require parties to state their positions concerning the  
26 various issues in the proceeding;

27 (3) require parties to produce for examination those rele-  
28 vant witnesses and documents under their control;

29 (4) rule on motions and other procedural matters;

1 (5) regulate the course of the hearing and conduct of the  
2 participants;

3 (6) establish time limits for submission of motions or  
4 memoranda;

5 (7) impose appropriate sanctions against a person who fails  
6 to obey an order of the hearing officer, including

7 (A) prohibiting the person from asserting or opposing  
8 designated claims or defenses or introducing designated matters  
9 into evidence;

10 (B) excluding all testimony of an unresponsive or  
11 evasive witness; and

12 (C) excluding a person from further participation in  
13 the hearing;

14 (8) take official notice of a material fact not appearing  
15 in evidence, if the fact is among the traditional matters subject to  
16 judicial notice;

17 (9) administer oaths or affirmations.

18 (c) A transcribed record of the hearing shall be made available  
19 at cost to a party that requests it.

20 Sec. 36.30.675. RECOMMENDATION BY THE HEARING OFFICER. (a) If  
21 the commissioner of administration or the commissioner of transporta-  
22 tion and public facilities is not acting as hearing officer, the  
23 hearing officer shall recommend a decision to the commissioner based  
24 on the evidence presented. The recommendation shall include findings  
25 of fact and conclusions of law.

26 (b) The commissioner of administration or the commissioner of  
27 transportation and public facilities may affirm, modify, or reject the  
28 hearing officer's recommendation in whole or in part, may remand the  
29 matter to the hearing officer with instructions, or take other

1 appropriate action.

2 Sec. 36.30.680. FINAL DECISION BY THE COMMISSIONER. A decision  
3 by the commissioner of administration or the commissioner of transpor-  
4 tation and public facilities after a hearing under this chapter is  
5 final. A decision shall be sent within 20 days after the hearing to  
6 all parties by personal service or certified mail, except that a  
7 decision by the commissioner of transportation and public facilities  
8 involving procurement of construction shall be sent within 90 days  
9 after the hearing to all parties by personal service or certified  
10 mail.

11 Sec. 36.30.685. JUDICIAL APPEAL. (a) A final decision of the  
12 commissioner of administration or the commissioner of transportation  
13 and public facilities under AS 36.30.610, 36.30.635(a), 36.30.650, or  
14 36.30.680 may be appealed to the superior court in accordance with the  
15 Alaska Rules of Appellate Procedure.

16 (b) A final decision of the commissioner of administration or  
17 the commissioner of transportation and public facilities under AS 36.-  
18 30.630(b) may be appealed to the superior court for a trial de novo.

19 Sec. 36.30.687. MISREPRESENTATIONS AND FRAUDULENT CLAIMS. (a)  
20 A person who makes or uses in support of a contract claim under this  
21 chapter, a misrepresentation, or who practices or attempts to practice  
22 a fraud, at any stage of proceedings relating to a procurement or  
23 contract controversy under this chapter:

24 (1) forfeits all claims relating to that procurement or  
25 contract; and

26 (2) is liable to the state for reimbursement of all sums  
27 paid on the claim, for all costs attributable to review of the claim,  
28 and for a civil penalty equal to the amount by which the claim is  
29 misrepresented.

1           (b) The procurement officer, commissioner or court shall make  
2 specific findings of misrepresentation, attempted fraud or fraud  
3 before declaring a forfeiture under (a)(1) of this section.

4           (c) Suits to recover costs and penalties under (a)(2) of this  
5 section must be commenced within six years after the discovery of the  
6 misrepresentation, fraud, or attempted fraud.

7           (d) A person who in a matter relating to a procurement or a  
8 contract controversy or claim under this chapter makes a misrepresen-  
9 tation to the state through a trick, scheme, or device is guilty of a  
10 class C felony.

11           (e) In this section, "misrepresentation" means a false or mis-  
12 leading statement of material fact, or conduct intended to deceive or  
13 mislead concerning material fact, whether it succeeds in deceiving or  
14 misleading.

15           Sec. 36.30.690. EXCLUSIVE REMEDY. Notwithstanding AS 44.77 or  
16 other law to the contrary, AS 36.30.560 - 36.30.699 and regulations  
17 adopted under those sections provide the exclusive procedure for  
18 asserting a claim against an agency arising in relation to a procure-  
19 ment under this chapter.

20           Sec. 36.30.695. OTHER RULES OF PROCEDURE. The commissioner may  
21 adopt by regulation additional rules of procedure providing for the  
22 expeditious administrative review of all contract claims or contro-  
23 versies, both before the contracting agency and through an appeal  
24 heard de novo.

25           Sec. 36.30.699. DEFINITION. In AS 36.30.560 - 36.30.695, "in-  
26 terested party" means an actual or prospective bidder or offeror whose  
27 economic interest may be affected substantially and directly by the  
28 issuance of a contract solicitation, the award of a contract, or the  
29 failure to award a contract; whether an actual or prospective bidder

1 or offeror has an economic interest depends on the circumstances.

2 **ARTICLE 8. INTERGOVERNMENTAL RELATIONS.**

3 **Sec. 36.30.700. COOPERATIVE PURCHASING AUTHORIZED.** A public  
4 procurement unit may either participate in, sponsor, conduct, or  
5 administer a cooperative purchasing agreement for the procurement of  
6 supplies, services, professional services, or construction with one or  
7 more public procurement units or external procurement activities in  
8 accordance with an agreement entered into between the participants.  
9 Cooperative purchasing may include joint or multi-party contracts  
10 between public procurement units and open-ended state public procure-  
11 ment unit contracts that are made available to local public procure-  
12 ment units.

13 **Sec. 36.30.710. SALE, ACQUISITION, OR USE OF SUPPLIES BY A**  
14 **PUBLIC PROCUREMENT UNIT.** (a) A public procurement unit may sell to,  
15 acquire from, or use any supplies belonging to another public procure-  
16 ment unit or external procurement activity independent of the require-  
17 ments of AS 36.30.060 and 36.30.100 - 36.30.260.

18 (b) A public procurement unit may enter into an agreement,  
19 independent of the requirements of AS 36.30.060 and 36.30.100 - 36.-  
20 30.260, with another public procurement unit or external procurement  
21 activity for the cooperative use of supplies or services under the  
22 terms agreed upon between the parties.

23 **Sec. 36.30.720. JOINT USE OF FACILITIES.** A public procurement  
24 unit may enter into agreements for the common use or lease of ware-  
25 housing facilities, capital equipment, and other facilities with  
26 another public procurement unit or an external procurement activity  
27 under the terms agreed upon between the parties.

28 **Sec. 36.30.730. SUPPLY OF PERSONNEL, INFORMATION, AND TECHNICAL**  
29 **SERVICES.** (a) A public procurement unit may, upon written request

1 from another public procurement unit or external procurement activity,  
2 provide personnel to the requesting public procurement unit or exter-  
3 nal procurement activity. The public procurement unit or external  
4 procurement activity making the request shall pay the public procure-  
5 ment unit providing the personnel the direct and indirect cost of  
6 furnishing the personnel, in accordance with an agreement between the  
7 parties.

8 (b) The informational, technical, and other services of a public  
9 procurement unit may be made available to another public procurement  
10 unit or external procurement activity except that the requirements of  
11 the public procurement unit tendering the services has precedence over  
12 the requesting public procurement unit or external procurement activi-  
13 ty. The requesting public procurement unit or external procurement  
14 activity shall pay for the expenses of the services so provided, in  
15 accordance with an agreement between the parties.

16 (c) Upon request, the commissioner may make available to public  
17 procurement units or external procurement activities the following  
18 services, among others:

- 19 (1) standard forms;
- 20 (2) printed manuals;
- 21 (3) product specifications and standards;
- 22 (4) quality assurance testing services and methods;
- 23 (5) qualified products lists;
- 24 (6) source information;
- 25 (7) common use commodities listings;
- 26 (8) supplier performance ratings;
- 27 (9) lists of persons debarred or suspended from considera-  
28 tion for award of state contracts;
- 29 (10) forms for invitations for bids, requests for proposals,

1 instructions to bidders, general contract provisions, and other con-  
2 tract forms; and

3 (11) contracts or published summaries of them, including  
4 price and time of delivery information.

5 (d) The commissioner may provide the following technical ser-  
6 vices, among others:

7 (1) development of product specifications;

8 (2) development of quality assurance test methods, includ-  
9 ing receiving, inspection, and acceptance procedures;

10 (3) use of product testing and inspection facilities; and

11 (4) use of personnel training programs.

12 (e) The commissioner may enter into contractual arrangements and  
13 publish a schedule of fees for the services provided under (c) and (d)  
14 of this section.

15 Sec. 36.30.735. RESTRICTION ON CONTRACTING WITH OR EMPLOYING  
16 EXPERTS ON RADIATION HAZARDS. (a) Except for the Department of  
17 Health and Social Services, the Department of Labor, the Department of  
18 Environmental Conservation, and the Department of Military and Veter-  
19 ans' Affairs, a state agency may not

20 (1) contract, other than with the Department of Health and  
21 Social Services, to have services performed that require expertise in  
22 determining or reducing the hazards of radiation; or

23 (2) employ a person whose duties require expertise in  
24 determining or reducing the hazards of radiation.

25 (b) In this section, "state agency" means a state department or  
26 agency, whether in the legislative, judicial, or executive branch,  
27 including such entities as the Alaska State Housing Authority, but not  
28 including the University of Alaska, a municipality, or an agency of a  
29 municipality or the Alaska State Housing Authority.

1 (c) In this section, "radiation" does not include radiation  
2 emitted from a Federal Communications Commission licensed facility  
3 emitting radiation of a wave length longer than one centimeter and an  
4 average power output not exceeding two kilowatts.

5 Sec. 36.30.740. REVIEW OF PROCUREMENT REQUIREMENTS. To the  
6 extent possible, the commissioner may collect information concerning  
7 the type, cost, quality, and quantity of commonly used supplies,  
8 equipment for the state fleet, services, or construction being pro-  
9 cured or used by state public procurement units. The commissioner may  
10 also collect this information from local public procurement units.  
11 The commissioner may make this information available to a public  
12 procurement unit upon request.

13 Sec. 36.30.750. CONTRACT CONTROVERSIES. (a) Under a coopera-  
14 tive purchasing agreement, controversies arising between an adminis-  
15 tering public procurement unit and its bidders, offerors, or contrac-  
16 tors shall be resolved in accordance with AS 36.30.560 - 36.30.699.

17 (b) A local public procurement unit that is not subject to  
18 AS 36.30.560 - 36.30.699 may enter into an agreement with another  
19 local public procurement unit or external procurement activity to  
20 establish procedures or use that unit's or activity's existing proce-  
21 dures to resolve controversies with contractors, whether or not the  
22 controversy arose under a cooperative purchasing agreement.

23 Sec. 36.30.790. DEFINITIONS. In AS 36.30.700 - 36.30.790

24 (1) "cooperative purchasing" means procurement conducted  
25 by, or on behalf of, more than one public procurement unit, or by a  
26 public procurement unit with an external procurement activity;

27 (2) "external procurement activity" means a buying orga-  
28 nization not located in this state that, if located in this state,  
29 would qualify as a public procurement unit; an agency of the United

1 States is an external procurement activity;

2 (3) "local public procurement unit" means a municipality or  
3 other subdivision of the state or other entity that expends public  
4 funds for the procurement of supplies, services, professional ser-  
5 vices, and construction, and any nonprofit corporation operating a  
6 charitable hospital;

7 (4) "public procurement unit" means either a local public  
8 procurement unit or a state public procurement unit;

9 (5) "state public procurement unit" means the Department of  
10 Administration and any other contracting agency of the state.

11 ARTICLE 9. GENERAL PROVISIONS.

12 Sec. 36.30.850. APPLICATION OF THIS CHAPTER. (a) This chapter  
13 applies only to contracts solicited or entered into after January 1,  
14 1987, unless the parties agree to its application to a contract solic-  
15 ited or entered into before that date.

16 (b) This chapter applies to every expenditure of state funds  
17 irrespective of their sources, including federal assistance except as  
18 otherwise specified in AS 36.30.890, by the state, acting through an  
19 agency, under a contract, except that this chapter does not apply to

20 (1) grants;

21 (2) contracts for professional witnesses to provide for  
22 professional services or testimony relating to existing or probable  
23 lawsuits in which the state is or may become a party;

24 (3) contracts of the University of Alaska where the work is  
25 to be performed substantially by students enrolled in the university;

26 (4) contracts for medical doctors and dentists;

27 (5) acquisitions or disposals of real property or interest  
28 in real property, except as provided in AS 36.30.080;

29 (6) disposals under AS 38.05;

1 (7) contracts for the preparation of ballots under AS 15.-  
2 15.030;

3 (8) acquisitions or disposals of property and other con-  
4 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-  
5 091;

6 (9) disposals of obsolete property under AS 19.05.060;

7 (10) disposals of obsolete material or equipment under  
8 AS 35.20.060;

9 (11) agreements with providers of services under AS 47.07;  
10 AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195, and 47.25.310;

11 (12) contracts of the Department of Fish and Game for  
12 flights that involve specialized flying and piloting skills and are  
13 not point-to-point.

14 (c) Except for AS 36.30.700 - 36.30.790, this chapter does not  
15 apply to contracts between two or more agencies, the state and its  
16 political subdivisions, or the state and other governments.

17 (d) Nothing in this chapter or in regulations adopted under this  
18 chapter prevents an agency or political subdivision from complying  
19 with the terms and conditions of a grant, gift, bequest, cooperative  
20 agreement or federal assistance agreement.

21 Sec. 36.30.860. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLIC-  
22 ABLE. Unless displaced by the particular provisions of this chapter,  
23 the principles of law and equity, including the Uniform Commercial  
24 Code (AS 45.01 - AS 45.09), the law merchant, and law relative to  
25 capacity to contract, agency, fraud, misrepresentation, duress, coer-  
26 cion, mistake, or bankruptcy shall supplement the provisions of this  
27 chapter.

28 Sec. 36.30.870. ADOPTION OF REGULATIONS. (a) Regulations under  
29 this chapter shall be adopted in accordance with the Administrative

1 Procedure Act (AS 44.62).

2 (b) Regulations under this chapter applicable to procurements of  
3 construction or procurements for or disposal of property of the state  
4 equipment fleet shall be adopted by the commissioner of administration  
5 only after consultation with the commissioner of transportation and  
6 public facilities.

7 Sec. 36.30.880. REQUIREMENT OF GOOD FAITH. All parties involved  
8 in the negotiation, performance, or administration of state contracts  
9 shall act in good faith.

10 Sec. 36.30.890. FEDERAL ASSISTANCE. If a procurement involves  
11 the expenditure of federal funds or federal assistance and there is a  
12 conflict between a provision of this chapter or a regulation adopted  
13 under a provision of this chapter and a federal statute regulation,  
14 policy or requirement, the federal statute regulation, policy or  
15 requirement, shall prevail.

16 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter  
17 does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding  
18 preference for Alaska forest products, or AS 36.20.010 regarding  
19 preference to producers or dealers in Alaska except as provided in  
20 AS 36.30.170(b) and (c).

21 Sec. 36.30.910. PURCHASES THROUGH GENERAL SERVICES ADMINISTRA-  
22 TION. This chapter does not prevent purchasing through the general  
23 services administration as provided by law.

24 Sec. 36.30.920. REPORTING OF ANTICOMPETITIVE PRACTICES. When  
25 for any reason collusion or other anticompetitive practices are sus-  
26 pected among bidders or offerors, a notice of the relevant facts shall  
27 be transmitted to the attorney general by the person who suspects the  
28 collusion or other anticompetitive practices.

29 Sec. 36.30.930. CIVIL AND CRIMINAL PENALTIES. The following

1 penalties apply to violations of this chapter:

2 (1) a person who contracts for or purchases supplies,  
3 equipment for the state fleet, services, professional services, or  
4 construction in a manner the person knows to be contrary to the re-  
5 quirements of this chapter or the regulations adopted under this  
6 chapter is liable for all costs and damages to the state arising out  
7 of the violation;

8 (2) a person who intentionally or knowingly contracts for  
9 or purchases supplies, equipment for the state fleet, services, pro-  
10 fessional services, or construction under a scheme or artifice to  
11 avoid the requirements of this chapter is guilty of a class C felony.

12 Sec. 36.30.940. ENFORCEMENT. The attorney general on behalf of  
13 the state shall enforce the provisions of this chapter.

14 Sec. 36.30.990. DEFINITIONS. In this chapter, unless the con-  
15 text in which a term is used clearly requires a different meaning or a  
16 different definition is prescribed for a particular provision,

17 (1) "agency" means a department, institution, board, com-  
18 mission, division, authority, public corporation, the Alaska Pioneers'  
19 Home, or other administrative unit of the executive branch of state  
20 government, except for the University of Alaska, the Alaska State  
21 Housing Authority and the Alaska Railroad Corporation; it does not  
22 include a regional Native housing authority created under AS 18.-  
23 55.996, or a regional electrical authority created under AS 18.57.020;

24 (2) "change order" means a written order signed by the  
25 procurement officer, directing the contractor to make changes that the  
26 changes clause of the contract authorizes the procurement officer to  
27 order without the consent of the contractor;

28 (3) "commissioner" means the commissioner of the Department  
29 of Administration;

1           (4) "competitive sealed bidding" means the procedure under  
2 AS 36.30.100 - 36.30.190;

3           (5) "competitive sealed proposals" means the procedure  
4 under AS 36.30.200 - 36.30.260;

5           (6) "construction" means the process of building, altering,  
6 repairing, maintaining, improving, or demolishing a public highway,  
7 structure, building, or other public improvement of any kind to real  
8 property other than privately owned real property leased for the use  
9 of agencies; it includes services and professional services relating  
10 to planning and design required for the construction; it does not  
11 include the routine operation of a public improvement to real property  
12 nor does it include the construction of public housing;

13           (7) "contract" means all types of state agreements, regard-  
14 less of what they may be called, for the procurement or disposal of  
15 supplies, equipment for the state fleet, services, professional servi-  
16 ces, or construction;

17           (8) "contract modification" means a written alteration in  
18 specifications, delivery point, rate of delivery, period of perfor-  
19 mance, price, quantity, or other provisions of a contract accomplished  
20 by mutual action of the parties to the contract;

21           (9) "department" means the Department of Administration;

22           (10) "grant" means property furnished by the state, whether  
23 real or personal, designated by law, including an appropriation Act,  
24 as a grant;

25           (11) "person" means a business, individual, union, commit-  
26 tee, club, other organization, or group of individuals;

27           (12) "procurement" means buying, purchasing, renting, leas-  
28 ing, or otherwise acquiring supplies, equipment for the state fleet,  
29 services, or construction; it also includes functions that pertain to

1 the obtaining of a supply, equipment for the state fleet, service, or  
2 construction, including description of requirements, selection and  
3 solicitation of sources, preparation and award of contract, and all  
4 phases of contract administration;

5 (13) "procurement officer" means a person authorized to  
6 enter into and administer contracts for an agency and make written  
7 determinations with respect to them; it also includes an authorized  
8 representative of a procurement officer acting within the limits of  
9 authority;

10 (14) "professional services" means professional, technical,  
11 or consultant's services that are predominantly intellectual in char-  
12 acter, result in the production of a report or the completion of a  
13 task, and include analysis, evaluation, prediction, planning, or  
14 recommendation;

15 (15) "services" means the furnishing of labor, time, or  
16 effort by a contractor, not involving the delivery of a specific end  
17 product other than reports that are merely incidental to the required  
18 performance; it does not include employment agreements or collective  
19 bargaining agreements;

20 (16) "supplies" means all property of an agency, including  
21 equipment, materials, and insurance; it includes privately owned real  
22 property leased for the use of agencies, such as office space, but  
23 does not include the acquisition or disposition of other interests in  
24 land.

25 Sec. 36.30.995. SHORT TITLE. This chapter may be cited as the  
26 State Procurement Code.

27 \* Sec. 3. AS 03.22.030 is amended to read:

28 Sec. 03.22.030. CENTER SITE, BUILDINGS AND EQUIPMENT. The  
29 department shall obtain a site, either by donation, lease, or

1 purchase, and erect suitable buildings on the site, if they are needed  
2 for the use of the plant materials center. The department shall also  
3 acquire the agricultural land, scientific instruments and equipment  
4 necessary to carry on the work of the center. Acquisition of scien-  
5 tific instruments and equipment under this section is governed by  
6 AS 36.30 (State Procurement Code).

7 \* Sec. 4. AS 05.20.040 is amended to read:

8 Sec. 05.20.040. PERSONNEL TO INSPECT DEVICES. The department  
9 shall designate a person qualified in experience and training as the  
10 inspector of devices. The department may employ additional employees  
11 as are necessary to administer this chapter. The inspector and the  
12 employees may be hired on a temporary basis or borrowed from other  
13 state departments or political subdivisions of the state, or the  
14 department may contract with individuals or firms for the inspecting  
15 service on an independent basis. The department shall prescribe the  
16 salary or other remuneration for this service. Contracting under this  
17 section is governed by AS 36.30 (State Procurement Code).

18 \* Sec. 5. AS 09.50.250 is amended to read:

19 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person  
20 or corporation having a contract, quasi-contract, or tort claim  
21 against the state may bring an action against the state in the superi-  
22 or court. A person who may present the claim under AS 44.77 may not  
23 bring an action under this section except as set out in AS 44.77.-  
24 040(c). A person who may bring an action under AS 36.30.560 - 36.30.-  
25 695 may not bring an action under this section except as set out in  
26 AS 36.30.685. However, no action may be brought under this section if  
27 the claim

28 (1) is an action for tort, and is based upon an act or  
29 omission of an employee of the state, exercising due care, in the

1 execution of a statute or regulation, whether or not the statute or  
2 regulation is valid; or is an action for tort, and based upon the  
3 exercise or performance or the failure to exercise or perform a dis-  
4 cretionary function or duty on the part of a state agency or an em-  
5 ployee of the state, whether or not the discretion involved is abused;

6 (2) is for damages caused by the imposition or establish-  
7 ment of a quarantine by the state;

8 (3) arises out of assault, battery, false imprisonment,  
9 false arrest, malicious prosecution, abuse of process, libel, slander,  
10 misrepresentation, deceit, or interference with contract rights.

11 \* Sec. 6. AS 14.08.101 is amended to read:

12 Sec. 14.08.101. POWERS. A regional school board may

13 (1) sue and be sued;

14 (2) contract with the department, the Bureau of Indian  
15 Affairs, or any other school district, agency, or regional board for  
16 the provision of services, facilities, supplies or utilities;

17 (3) determine its own fiscal procedures including but not  
18 limited to policies and procedures for the purchase of supplies and  
19 equipment; the regional school boards are exempt from the Fiscal  
20 Procedures Act (AS 37.05) and the State Procurement Code (AS 36.30);

21 (4) appoint, compensate and otherwise control all school  
22 employees in accordance with this title; these employees are not  
23 subject to the State Personnel Act (AS 39.25);

24 (5) adopt regulations governing organization, policies and  
25 procedures for the operation of the schools;

26 (6) establish, maintain, operate, discontinue and combine  
27 schools subject to the approval of the commissioner;

28 (7) recommend to the department projects for construction,  
29 rehabilitation, and improvement of schools and education-related

1 facilities as specified in AS 14.11.010(a), and plan, design, and  
2 construct the project when the responsibility for it is assumed under  
3 AS 14.11.020;

4 (8) exercise those other functions that may be necessary  
5 for the proper performance of its responsibilities;

6 (9) by resolution adopted by a majority of all the members  
7 of the board and provided to the commissioner of the department,  
8 assume ownership of all land and buildings used in relation to the  
9 schools in the regional educational attendance area;

10 (10) provide housing for rental to teachers, by leasing  
11 existing housing from a local agency or individual, or by entering  
12 into contractual arrangements with a local agency or individual to  
13 lease housing that will be constructed by the local agency or indi-  
14 vidual for that purpose.

15 \* Sec. 7. AS 16.05.050 is amended to read:

16 Sec. 16.05.050. POWERS AND DUTIES OF COMMISSIONER. The commis-  
17 sioner has, but not by way of limitation, the following powers and  
18 duties:

19 (1) assist the United States Fish and Wildlife Service in  
20 the enforcement of federal laws and regulations pertaining to fish and  
21 game;

22 (2) through the appropriate state agency and under the  
23 provisions of AS 36.30 (State Procurement Code), acquire by gift,  
24 purchase, or lease, or other lawful means, land, buildings, water,  
25 rights-of-way, or other necessary or proper real or personal property  
26 when the acquisition is in the interest of furthering an objective or  
27 purpose of the department and the state;

28 (3) under the provisions of AS 36.30, design and construct  
29 hatcheries, pipelines, rearing ponds, fishways, and other projects

- 1 beneficial for the fish and game resources of the state;
- 2 (4) accept money from any person under conditions requiring  
3 the use of the money for specific purposes in the furtherance of the  
4 protection, rehabilitation, propagation, preservation, or investiga-  
5 tion of the fish and game resources of the state or in settlement of  
6 claims for damages to fish or game resources;
- 7 (5) collect, classify, and disseminate statistics, data and  
8 information that, in the commissioner's discretion, will tend to  
9 promote the purposes of this title except AS 16.51 and AS 16.52;
- 10 (6) capture, propagate, transport, buy, sell, or exchange  
11 fish or game or eggs for propagating, scientific or stocking purposes;
- 12 (7) under the provisions of AS 36.30, provide public facil-  
13 ities where necessary or proper to facilitate the taking of fish or  
14 game, and enter into cooperative agreements with any person to effect  
15 them;
- 16 (8) exercise administrative, budgeting, and fiscal powers;
- 17 (9) under the provisions of AS 36.30, construct, operate,  
18 supervise, and maintain vessels used by the Department of Fish and  
19 Game;
- 20 (10) authorize the holder of an interim-use permit under  
21 AS 16.43 to engage on an experimental basis in commercial taking of a  
22 fishery resource with vessel, gear, and techniques not presently  
23 qualifying for licensing under this chapter in conformity with stand-  
24 ards established by the Alaska Commercial Fisheries Entry Commission;
- 25 (11) not later than January 31 of each year, provide to the  
26 commissioner of revenue the names of those fish and shellfish species  
27 which the commissioner of fish and game designates as developing  
28 commercial fish species for that calendar year; a fish or shellfish  
29 species is a developing commercial fish species if, within a specified

1 geographical region,

2 (A) the optimum yield from the harvest of the species  
3 has not been reached;

4 (B) a substantial portion of the allowable harvest of  
5 the species has been allocated to fishing vessels of a foreign  
6 nation; or

7 (C) a commercial harvest of the fish species has  
8 recently developed;

9 (12) initiate or conduct research necessary or advisable to  
10 carry out the purposes of this title except AS 16.51 and AS 16.52;

11 (13) enter into cooperative agreements with agencies of the  
12 federal government, educational institutions, or other agencies or  
13 organizations, when in the public interest, to carry out the purposes  
14 of this title except AS 16.51 and AS 16.52.

15 \* Sec. 8. AS 16.05.826(c) is amended to read:

16 (c) The department may contract to others the performance of the  
17 department's responsibilities under this section. Contracting under  
18 this subsection is governed by AS 36.30 (State Procurement Code),  
19 except that a [A] contract may include provisions for advance payment  
20 or reimbursement for services performed under the contract. All costs  
21 incurred under this section may be paid from the fish and game fund.

22 \* Sec. 9. AS 18.15.120 is amended to read:

23 Sec. 18.15.120. TUBERCULOSIS CONTROL PROGRAM AUTHORIZED. The  
24 department may establish a comprehensive program for the control of  
25 tuberculosis in the state, and may

26 (1) arrange means by which persons in the state may be  
27 X-rayed to determine the presence of tuberculosis;

28 (2) establish necessary out-patient clinics for the care of  
29 tuberculosis;

1 (3) encourage and promote the establishment of adequate  
2 sanatorium facilities within the state to care for persons suffering  
3 from tuberculosis and allied conditions;

4 (4) under the provisions of AS 36.30 (State Procurement  
5 Code), obtain, by purchase or donation from surplus federal property  
6 or otherwise, medical supplies and equipment useful in carrying out  
7 this program and to allot or resell these supplies and equipment to  
8 private institutions engaged by the department to carry out this  
9 program;

10 (5) under the provisions of AS 36.30, contract with hos-  
11 pitals, associations, or sanatorium qualified and equipped to give  
12 adequate care inside or outside the state;

13 (6) employ necessary and trained personnel to carry out the  
14 purposes of AS 18.15.120 - 18.15.140;

15 (7) pay the costs of care and incidental expenses for  
16 residents of the state, in whole or in part, depending on the ability  
17 of each patient to pay, and the temporary costs of care and transpor-  
18 tation for nonresidents on the same basis until they can be trans-  
19 ferred to their residence;

20 (8) enlist the cooperation of state and federal agencies  
21 operating in the state for the furtherance of this program;

22 (9) establish standards in accordance with department  
23 procedure for the care of tuberculars receiving treatment under  
24 AS 18.15.120 - 18.15.140.

25 \* Sec. 10. AS 19.05.020 is amended to read:

26 Sec. 19.05.020. REGULATIONS. The department shall adopt regu-  
27 lations necessary to carry out the purpose of AS 19.05 - AS 19.25.  
28 The regulations may not conflict with AS 36.30 (State Procurement  
29 Code) or regulations adopted by the Department of Administration to

1 implement that chapter.

2 \* Sec. 11. AS 19.05.080 is amended to read:

3       Sec. 19.05.080. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-  
4       RIALS BY PURCHASE OR EMINENT DOMAIN. The department on behalf of the  
5       state and as part of the cost of constructing or maintaining a highway  
6       may purchase in the open market, acquire, take over, or condemn under  
7       the right and power of eminent domain land in fee simple or easements  
8       which it considers necessary for present public use, either temporary  
9       or permanent, or which it considers necessary and reasonable for the  
10      public use. By the same means, the department may obtain material,  
11      including clay, gravel, sand, or rock, or the land necessary to obtain  
12      material, including access to it. The department may acquire the land  
13      or materials notwithstanding the fact that title to it is vested in  
14      the state or a department, agency, commission or institution of the  
15      state. Acquisition of materials by purchase in the open market under  
16      this section is governed by AS 36.30 (State Procurement Code).

17 \* Sec. 12. AS 19.10.160 is amended to read:

18       Sec. 19.10.160. STANDARD PLANS AND SPECIFICATIONS. The depart-  
19      ment shall prepare and adopt uniform standard plans and specifications  
20      for the establishment, construction and maintenance of highways in the  
21      state. The department may amend the plans and specifications as it  
22      considers advisable. The standards shall conform as closely as prac-  
23      ticable to those adopted by the American Association of State Highway  
24      and Transportation Officials.

25 \* Sec. 13. AS 19.10.170(a) is amended to read:

26       (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is  
27      [SHALL BE] the general policy of the state [DEPARTMENT] to require the  
28      construction of all highways under bid contract in accordance with  
29      AS 36.30 (State Procurement Code). However, subject to the provisions

1 of (b) of this section, when the estimated cost of a construction  
2 project is less than \$100,000 or when it appears to be in the best  
3 interests of the state, the department may perform the work notwith-  
4 standing any other provisions of law.

5 \* Sec. 14. AS 19.10.180 is repealed and reenacted to read:

6 Sec. 19.10.180. REQUEST FOR PUBLIC BIDS. Requests for public  
7 bids are governed by AS 36.30 (State Procurement Code). The request  
8 for public bids may require the contractor to furnish equipment,  
9 labor, materials, and supplies for the project, or it may state that  
10 the department will furnish the materials and supplies. If the de-  
11 partment elects to provide materials and supplies for a project, it  
12 shall do so at the time it adopts the construction program. The  
13 department shall acquire these materials and supplies under AS 36.30  
14 by requesting bids for them according to the class, type, and nature  
15 of the materials and supplies. The contract for materials and sup-  
16 plies may be awarded either upon the basis of delivery to the con-  
17 struction project directly or to a central storehouse or storehouses  
18 maintained by the department. Those materials and supplies so pur-  
19 chased by the department may be delivered to the project site without  
20 expense to the contractor, or it may sell them to the contractor at  
21 cost and make the materials and supplies a part of the construction  
22 cost.

23 \* Sec. 15. AS 19.10.200 is repealed and reenacted to read:

24 Sec. 19.10.200. PROCEDURES FOR THE AWARD OF CONTRACTS. The  
25 award of a contract for highway construction work is governed by  
26 AS 36.30 (State Procurement Code), AS 19.05 - AS 19.25, and regula-  
27 tions adopted under those laws.

28 \* Sec. 16. AS 19.30.070 is amended to read:

29 Sec. 19.30.070. CONTRACTS FOR CONSTRUCTION OF ROADS. The

1 director of the division of lands may contract with private persons  
2 for the construction of roads to and on state lands programmed for  
3 surface disposal which are not more than six miles from existing roads  
4 or highways. Contracts under this section are governed by AS 36.30  
5 (State Procurement Code).

6 \* Sec. 17. AS 19.30.080 is amended to read:

7 Sec. 19.30.080. CONSTRUCTION STANDARDS AND MAINTENANCE. An  
8 access road constructed under AS 19.30.060 - 19.30.100 shall be of low  
9 standard, not necessarily suitable for all weather use. The state is  
10 not under obligation to maintain an access road constructed under AS  
11 19.30.060 - 19.30.100. If an access road is constructed outside a  
12 municipality that has zoning ordinances, the right-of-way width for  
13 the road shall be determined by the division of lands and the Depart-  
14 ment of Transportation and Public Facilities. If an access road is  
15 constructed within the boundaries of a municipality that has zoning  
16 ordinances, the right-of-way width shall conform to the subdivision  
17 control ordinances of the municipality. Contracts for the work on an  
18 access road are governed by AS 36.30 (State Procurement Code) [SHALL  
19 BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER QUALIFIED TO CONTRACT WITH  
20 THE STATE].

21 \* Sec. 18. AS 19.40.020(a) is amended to read:

22 (a) Subject to (b) of this section, the department may contract  
23 in accordance with AS 36.30 for the construction of a secondary high-  
24 way from the Yukon River to the Arctic Ocean. [THE DEPARTMENT MAY  
25 REQUEST BIDS AND AWARD CONTRACTS FOR THE CONSTRUCTION OF THE HIGHWAY,  
26 OR IT MAY ELECT TO DIRECTLY NEGOTIATE CONTRACTS FOR THE CONSTRUCTION  
27 OF THE HIGHWAY IF IT APPEARS TO BE IN THE BEST INTERESTS OF THE  
28 STATE.] The provisions of AS 36.10 govern in employment practices on  
29 all work authorized by this chapter.

1 \* Sec. 19. AS 19.60.010 is amended to read:

2       Sec. 19.60.010.   ACQUISITION AND MAINTENANCE OF FERRY TERMINAL  
3       FACILITIES. The department shall construct, purchase or lease ferry  
4       terminal facilities at locations it selects for the loading and un-  
5       loading of passengers and vehicles under their own power, on and off  
6       ferries. The department shall repair and maintain these facilities.  
7       Construction and purchasing under this section are governed by AS 36.-  
8       30 (State Procurement Code).

9 \* Sec. 20. AS 23.15.611(a) is amended to read:

10       (a) The department may [IS AUTHORIZED TO] participate in pro-  
11       grams of manpower training if it finds they are necessary to meet the  
12       occupational needs of the state. This authorization includes authori-  
13       ty to execute on behalf of the state agreements or contracts which may  
14       be necessary or desirable to enable the state to participate in a  
15       program, to receive and expend all appropriate funds made available  
16       for programs by the state or from other sources, to supervise the  
17       expenditure of the funds and conduct of the programs by other public  
18       and private agencies of the state, and to make the reports and certifi-  
19       cates which are called for, and in cooperative arrangements with the  
20       Department of Education. Contracts with private entities under this  
21       subsection are governed by AS 36.30 (State Procurement Code).

22 \* Sec. 21. AS 23.20.075(a) is amended to read:

23       (a) The department may acquire in the name of the state by term  
24       purchase agreements based on competitive bids in accordance with  
25       AS 36.30 (State Procurement Code) land and buildings upon terms and  
26       conditions that [WHICH] are approved by the Bureau of Employment  
27       Security of the United States, or its successor, for the purpose of  
28       providing office space for the department at a place which the depart-  
29       ment finds necessary and suitable.

1 \* Sec. 22. AS 23.35.110 is amended to read:

2       Sec. 23.35.110. CONTRACTS FOR CARE. In carrying out this  
3 chapter, the department may enter into contracts or other arrangements  
4 with hospitals and doctors in the state for furnishing care on an  
5 annual basis to persons entitled to benefits. Contracting under this  
6 section is governed by AS 36.30 (State Procurement Code).

7 \* Sec. 23. AS 24.55.275 is amended to read:

8       Sec. 24.55.275. CONTRACT PROCEDURES. The ombudsman shall adopt  
9 by regulation procedures consistent with AS 36.30 [AS 24.23] to be  
10 followed by the office of the ombudsman in contracting for services.  
11 However, the procedure for requests for proposals does not apply to  
12 contracts for investigations under AS 24.55.100.

13 \* Sec. 24. AS 24.60.040(a) is amended to read:

14       (a) A person to whom this chapter applies may not be a party to  
15 or have an interest in a state contract or lease unless the contract  
16 or lease is let through competitive sealed bidding under AS 36.30  
17 (State Procurement Code) [AS 37.05.230] or the total annual amount of  
18 the state contract or lease is \$1,000 or less, or is a standardized  
19 contract or lease which was developed under publicly established  
20 guidelines and is generally available to the public at large, members  
21 of a profession, occupation or group. A person has an interest in a  
22 state contract or lease under this section if the person receives  
23 direct or indirect financial benefits.

24 \* Sec. 25. AS 26.05.230(a) is amended to read:

25       (a) Buildings and sites for armory purposes may be leased or  
26 constructed, based upon location and size of units to be organized,  
27 and shall be financed through state and federal appropriations or  
28 both. These facilities may be made available by local communities or  
29 by the cooperative arrangement between the state and the federal

1 government and any local community. Leasing and construction under  
2 this subsection are governed by AS 36.30 (State Procurement Code).

3 \* Sec. 26. AS 26.05.280 is amended to read:

4 Sec. 26.05.280. TRANSPORTATION, SUBSISTENCE, AND SUPPLIES.  
5 There shall be provided by the state, transportation and subsistence  
6 for all officers and enlisted persons who are ordered into active  
7 service by the state for encampment, field duty, or other duty. Neces-  
8 sary transportation, stores and subsistence for troops when ordered on  
9 duty shall be contracted by the proper officers and paid for as other  
10 military bills. Contracting under this section is governed by AS 36.-  
11 30 (State Procurement Code).

12 \* Sec. 27. AS 27.21.030 is amended to read:

13 Sec. 27.21.030. GENERAL POWERS. To accomplish the purposes of  
14 this chapter, the commissioner may

15 (1) in accordance with the Administrative Procedure Act  
16 (AS 44.62) adopt, amend, and enforce regulations pertaining to surface  
17 coal mining and reclamation operations;

18 (2) issue permits;

19 (3) conduct hearings and conferences;

20 (4) issue orders requiring an operator to take the actions  
21 necessary to comply with this chapter and the regulations adopted  
22 under this chapter;

23 (5) issue orders modifying previous orders;

24 (6) after opportunity for a due process hearing, issue a  
25 final order revoking the permit of an operator who has failed to  
26 comply with an order of the commissioner to take action required by  
27 this chapter or regulations adopted under this chapter;

28 (7) order the immediate cessation of all or part of a  
29 surface coal mining and reclamation operation if the commissioner

1 finds that the operation or part of the operation creates an imminent  
2 danger to the health or safety of the public or is causing or can  
3 reasonably be expected to cause significant imminent harm to land,  
4 air, or water resources, and, to the extent reasonably necessary to  
5 eliminate or alleviate those conditions, take other action or make  
6 changes in a permit, as provided in this chapter;

7 (8) hire and authorize the hiring of employees and private  
8 contractors, subject to the conflict of interest provisions of this  
9 chapter and subject to AS 36.30 (State Procurement Code), to assist in  
10 carrying out the requirements of this chapter;

11 (9) enter and inspect a surface coal mining operation that  
12 is subject to the provisions of this chapter to assure that the opera-  
13 tion is in compliance with this chapter;

14 (10) conduct, encourage, request, and participate in  
15 studies, surveys, investigations, research, experiments, training, and  
16 demonstrations;

17 (11) prepare reports and require permittees to prepare  
18 reports;

19 (12) accept, receive, and administer grants, gifts, or other  
20 money made available for the purposes of this chapter regardless of  
21 the source of the grants, gifts, or money;

22 (13) take the steps necessary to allow the state to partici-  
23 pate to the fullest extent practicable in the abandoned mine land  
24 program provided in Title IV of the Surface Mining Control and Recla-  
25 mation Act of 1977, including engaged in any work and adopting, amend-  
26 ing and enforcing regulations;

27 (14) take the actions necessary to establish and maintain  
28 exclusive jurisdiction over surface coal mining and reclamation opera-  
29 tions in the state under the provisions of the Surface Mining Control

1 and Reclamation Act of 1977, including making recommendations for  
2 legislation to clarify or amend this chapter to conform with the terms  
3 of the Surface Mining Control and Reclamation Act of 1977;

4 (15) contract with state agencies to obtain the professional  
5 and technical services necessary to carry out the provisions of this  
6 chapter;

7 (16) coordinate the review of applications and issuance of  
8 permits for surface coal mining and reclamation operations with other  
9 federal or state permit processes applicable to those operations;

10 (17) enter into cooperative agreements with the Secretary of  
11 the United States Department of the Interior for the regulation of  
12 surface coal mining operations on federal land in accordance with the  
13 Surface Mining Control and Reclamation Act of 1977; and

14 (18) perform other duties required by this chapter.

15 \* Sec. 28. AS 33.30.050 is amended to read:

16 Sec. 33.30.050. COMMISSIONER TO PROVIDE MEDICAL SERVICES. The  
17 commissioner shall detail physicians, nurses, and psychiatrists, or  
18 their aides, and laboratory technicians, employed by the department to  
19 any prison facility where state prisoners are detained or confined,  
20 for the purpose of furnishing necessary medical services, including  
21 examinations for communicable and infectious diseases. However, if  
22 medical services cannot be furnished by physicians, nurses, psychia-  
23 trists, or their aides, and laboratory technicians, regularly employed  
24 by the department, the commissioner may contract with private practi-  
25 tioners located in the area of a prison facility to furnish these  
26 services. The cost of contracted services shall be paid out of appro-  
27 priations made to the department. Contracting for services under this  
28 section is governed by AS 36.30 (State Procurement Code).

29 \* Sec. 29. AS 33.30.062(a) is amended to read:

1 (a) The commissioner may enter into an agreement with a private-  
2 ly operated correctional facility, but only if the facility is located  
3 in the state and if the purpose of the agreement is to involve prison-  
4 ers in a work or rehabilitation furlough program established under  
5 this chapter, to provide necessary facilities under AS 33.30.282 -  
6 33.30.288, or to confine prisoners convicted of a misdemeanor. An  
7 [NOTWITHSTANDING AS 37.05.230(1)(B), AN] agreement awarded under this  
8 subsection is governed by AS 36.30 (State Procurement Code) [SHALL BE  
9 BASED ON COMPETITIVE BIDS].

10 \* Sec. 30. AS 33.32.015(b) is amended to read:

11 (b) The commissioner of corrections may  
12 (1) subject to AS 36.30 (State Procurement Code) [THE  
13 FISCAL PROCEDURES ACT (AS 37.05)], use, purchase, lease, equip, and  
14 maintain buildings, machinery, and other equipment, and may purchase  
15 materials and enter into contracts, which may be necessary for the  
16 correctional industries program;

17 (2) provide for prisoners to be employed in rendering  
18 services and producing articles, materials, and supplies needed by a  
19 state agency, a political subdivision of the state, an agency of the  
20 federal government, other states or their political subdivisions, or  
21 for use by nonprofit organizations;

22 (3) if the Correctional Industries Commission established  
23 in AS 33.32.070 approves, employ prisoners to provide services or  
24 products as needed by private industry if the services or products  
25 have potential for contributing to the economy of the state and will  
26 have minimal negative impact on an existing private industry or labor  
27 force in the state.

28 \* Sec. 31. AS 35.05.010 is amended to read:

29 Sec. 35.05.010. PLANNING AND CONSTRUCTION. The department is

1 responsible for the planning and construction of public works except  
2 as provided for court facilities in AS 22.05.025. Contracts for  
3 planning and construction of public works are governed by AS 36.30  
4 (State Procurement Code).

5 \* Sec. 32. AS 35.05.020 is amended to read:

6 Sec. 35.05.020. RULES AND REGULATIONS. The department shall  
7 adopt [RULES AND] regulations that [WHICH] it considers necessary to  
8 carry out the purpose of this title. The regulations may not conflict  
9 with AS 36.30 (State Procurement Code) or the regulations adopted by  
10 the Department of Administration under that chapter.

11 \* Sec. 33. AS 35 is amended by adding a new section to read:

12 Sec. 35.10.195. CONFORMANCE WITH AS 36.30. The contractual  
13 techniques for the procurement of labor, materials, and contractual  
14 services under the policies developed under this chapter must conform  
15 to the requirements of AS 36.30 (State Procurement Code).

16 \* Sec. 34. AS 35.15.010(a) is amended to read:

17 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is  
18 [SHALL BE] the general policy of the state [DEPARTMENT] to require the  
19 construction of all public works under bid contract in accordance with  
20 AS 36.30 (State Procurement Code). However, when the estimated cost  
21 of a construction project is less than \$100,000, or when it appears to  
22 be in the best interests of the state, the department may perform the  
23 work, notwithstanding any other provisions of law. A complete record  
24 shall be kept by the commissioner or the commissioner's designee of  
25 all transactions entered into under this section including names of  
26 employees involved in the transactions.

27 \* Sec. 35. AS 35.15.020 is repealed and reenacted to read:

28 Sec. 35.15.020. REQUEST FOR PUBLIC BIDS. The solicitation of  
29 bids for construction of public works is governed by AS 36.30 (State

1 Procurement Code). The request for bids may require the contractor to  
2 furnish equipment, labor, materials, and supplies for the project, or  
3 it may state that the department will furnish the materials and sup-  
4 plies. If the department elects to provide materials and supplies for  
5 a project, it shall make the election at the time it adopts the con-  
6 struction program. The department shall acquire these materials and  
7 supplies under AS 36.30 by requesting bids for them according to the  
8 class, type, and nature of the materials and supplies. The contract  
9 may be awarded either upon the basis of delivery to the construction  
10 project directly or to a central storehouse or storehouses maintained  
11 by the department. Those materials and supplies so purchased by the  
12 department may be delivered to the project site without expense to the  
13 contractor, or it may sell them to the contractor at cost and make the  
14 materials and supplies a part of the construction cost.

15 \* Sec. 36. AS 35.15.040 is repealed and reenacted to read:

16 Sec. 35.15.040. PROCEDURES FOR THE AWARD OF CONTRACTS. Award of  
17 a contract for the construction of a public work shall comply with  
18 this title, AS 36.30 (State Procurement Code), and the regulations  
19 adopted under those laws.

20 \* Sec. 37. AS 35.20.010 is amended to read:

21 Sec. 35.20.010. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-  
22 RIALS BY PURCHASE OR EMINENT DOMAIN. The department, on behalf of the  
23 state and as part of the cost of constructing or maintaining a public  
24 work, may purchase in the open market, acquire, take over, or condemn  
25 under the right and power of eminent domain land in fee simple or  
26 easements which it considers necessary for present public use, either  
27 temporary or permanent, or which it considers necessary and reasonable  
28 for the public use. By the same means, the department may obtain  
29 material including clay, gravel, sand, or rock, or the land necessary

1 to obtain the material, and the necessary land or easements to provide  
2 access to it. The department may acquire the land or material not-  
3 withstanding the fact that the title to it is in the state or a  
4 department, agency, commission or institution of the state. Acquisi-  
5 tion of material in the open market under this section is governed by  
6 AS 36.30 (State Procurement Code).

7 \* Sec. 38. AS 37.05 is amended by adding a new section to read:

8 Sec. 37.05.232. PETTY CASH ACCOUNTS. The department shall  
9 determine the amount of the petty cash accounts needed by each state  
10 agency and inspect the petty cash accounts at least once each year to  
11 determine that the total plus amounts of receipts for unreplenished  
12 disbursements is equal to the fixed sum of cash set aside. Shortages  
13 in petty cash accounts are a personal liability of the responsible  
14 head of the agency to whom the account is set aside. The department  
15 shall adopt necessary regulations governing use and replenishment of  
16 petty cash funds.

17 \* Sec. 39. AS 37.05.316 is amended to read:

18 Sec. 37.05.316. GRANTS TO NAMED RECIPIENTS. When an amount is  
19 appropriated or allocated to a department as a grant for a named  
20 recipient that [WHICH] is not a municipality, the department to which  
21 the appropriation or allocation is made shall promptly notify the  
22 named recipient of the availability of the grant and request the named  
23 recipient to submit a proposal to provide the goods or services speci-  
24 fied in the appropriation act [, OR BOTH,] for which the appropriation  
25 or allocation is made. At the same time, the department may issue a  
26 request for proposals from other qualified persons to provide the same  
27 goods or services [, OR BOTH,] in the same area. The department shall  
28 award the grant to [CONTRACT WITH] the named recipient unless the  
29 Office of the Governor, with due regard for the [ANY] local expertise

1 or experience of [AMONG] those making proposals, determines that an  
2 award [OF THE CONTRACT] to a different party would better serve the  
3 public interest. If the grant [CONTRACT] is awarded to a [ANOTHER]  
4 party other than that named by the legislature, the basis of that  
5 action shall be stated in writing at the time the grant is issued and  
6 a copy of the written statement shall be sent to the Legislative  
7 Budget and Audit Committee. A grant agreement must [CONTRACT SHALL]  
8 be executed within 60 days after the effective date of the appro-  
9 priation or allocation. [THE PURCHASE OF THE GOODS OR SERVICES, OR  
10 BOTH, SHALL BE IN ACCORDANCE WITH AS 37.05.230(1)(B).]

11 \* Sec. 40. AS 41.21.020(a) is amended to read:

12 (a) The Department of Natural Resources shall

13 (1) develop a continuing plan for the conservation and  
14 maximum use in the public interest of the scenic, historic, archaeo-  
15 logic, scientific, biological, and recreational resources of the  
16 state;

17 (2) plan for and develop a system of state parks and recre-  
18 ational facilities, to be established as the legislature authorizes  
19 and directs;

20 (3) acquire by gift, purchase, or transfer from state or  
21 federal agencies, or from individuals, corporations, partnerships or  
22 associations, land necessary, suitable and proper for roadside, pic-  
23 nic, recreational or park purposes;

24 (4) control, develop and maintain state parks and recrea-  
25 tional areas;

26 (5) provide for the acquisition, care, control, supervi-  
27 sion, improvement, development, extension and maintenance of public  
28 recreational land, and make necessary arrangements, contracts or  
29 commitments for the improvement and development of land acquired under

1 AS 41.21.010 - 41.21.040; contracting for improvement and development  
2 under this paragraph is governed by AS 36.30 (State Procurement Code);

3 (6) adopt, in accordance with this section and the Adminis-  
4 trative Procedure Act (AS 44.62), regulations governing the use and  
5 designating incompatible uses within the boundaries of state park and  
6 recreational areas to protect the property and to preserve the peace;

7 (7) cooperate with the United States and its agencies and  
8 local subdivisions of the state to secure the effective supervision,  
9 improvement, development, extension, and maintenance of state parks,  
10 state monuments, state historical areas, and state recreational areas,  
11 and secure agreements or contracts for the purpose of AS 41.21.010 -  
12 41.21.040;

13 (8) encourage the organization of state public park and  
14 recreational activities in the local political subdivisions of the  
15 state;

16 (9) provide for consulting service designed to develop  
17 local park and recreation facilities and programs;

18 (10) provide clearing-house services for other state agen-  
19 cies concerned with park and recreation matters; and

20 (11) perform other duties as are prescribed by executive  
21 order or by law;

22 (12) maintain memorials to Alaska veterans located in state  
23 parks;

24 (13) adopt, in accordance with the Administrative Procedure  
25 Act (AS 44.62), regulations governing the use of the Chena River State  
26 Recreation Area and designating incompatible uses within the bound-  
27 aries of the Chena River State Recreation Area in accordance with  
28 AS 41.21.490.

29 \* Sec. 41. AS 42.40.920(b) is amended to read:

1 (b) Unless specifically provided otherwise in this chapter, the  
2 following laws do not apply to the operations of the corporation:

3 (1) AS 19;

4 (2) AS 30.15;

5 (3) AS 35;

6 (4) AS 36.30, except as specifically provided in AS 36.30

7 (State Procurement Code);

8 (5) AS 37.05;

9 (6) [(5)] AS 37.07;

10 (7) [(6)] AS 37.10.010 - 37.10.060;

11 (8) [(7)] AS 37.10.085;

12 (9) [(8)] AS 37.20;

13 (10) [(9)] AS 37.25;

14 (11) [(10)] AS 38;

15 (12) [(11)] AS 44.62.040 - 44.62.320.

16 \* Sec. 42. AS 44.21.310(a) is amended to read:

17 (a) The telecommunications divisions, as directed by the deputy  
18 commissioner, shall

19 (1) advise the governor on matters of policy and comprehen-  
20 sive state planning for telecommunications services;

21 (2) make an annual report to the governor and to the legis-  
22 lature on the activities of the telecommunications divisions;

23 (3) coordinate, manage, and supervise state programs in  
24 telecommunications, including the management of those telecommunica-  
25 tion services for the state obtained from common carriers and from the  
26 communications industry;

27 (4) when requested, provide technical and consulting assis-  
28 tance to the executive, judicial, and legislative branches of state  
29 government, to the University of Alaska, and to private noncommercial

1 entities which request that assistance in facility procurement and  
2 leasing and in identifying long-range goals and objectives for the  
3 state and its political subdivisions in all aspects of telecommunica-  
4 tions, including public, educational, and instructional telecommunica-  
5 tions;

6 (5) prepare and maintain a state comprehensive telecommu-  
7 nications development plan to further state telecommunications devel-  
8 opment and to meet state telecommunications needs and prepare and  
9 maintain a comprehensive inventory of all state communications facil-  
10 ities;

11 (6) whenever feasible, procure services from private enter-  
12 prise or certified and franchised utilities and contract for the  
13 construction, management, operation and maintenance of telecommunica-  
14 tions systems, and develop a procurement policy consistent with  
15 AS 36.30 (State Procurement Code) [UNDER AS 37.05.010 - 37.05.410];  
16 the procurement policy must seek to achieve the maximum benefit to the  
17 public, and methods of procurement, including lease, purchase, rental,  
18 or combinations of lease, purchase, and rental, must be selected on  
19 the basis of factors such as the ratio of long-range costs versus  
20 benefits, life cycle costing, and the costs to the communications  
21 industry to the extent that these costs may affect local and long  
22 distance basic telephone rates; procurement, contracting, construc-  
23 tion, and maintenance under this paragraph is governed by AS 36.30;

24 (7) provide information and assistance to state agencies to  
25 promote governmental coordination and unity in the preparation of  
26 agency plans and programs involving the use of telecommunications;

27 (8) apply for and accept federal and private money, proper-  
28 ty, or assistance, that may be appropriated, granted, or otherwise  
29 made available to the telecommunications divisions and use and

1 disburse money and property for purposes consistent with AS 44.21.300  
2 - 44.21.330 and AS 44.21.256 - 44.21.290, subject to reasonable  
3 limitations imposed by the grantor;

4 (9) participate with other governmental units in planning,  
5 and assist local governments and governmental conferences and councils  
6 in the state in planning and coordinating their activities relating to  
7 telecommunications;

8 (10) provide for the orderly transition to new telecommu-  
9 nications services and systems by state agencies;

10 (11) serve as a clearinghouse for information, data, and  
11 other materials which may be necessary or helpful to federal, state,  
12 or local governmental agencies in the development of telecommunication  
13 systems;

14 (12) coordinate their services and activities with those of  
15 other state departments and agencies to the fullest extent possible to  
16 avoid unnecessary duplication; and

17 (13) provide that all activities of the telecommunications  
18 divisions are responsive to state statutes and regulations, and to the  
19 regulations and rulings of the Federal Communications Commission.

20 \* Sec. 43. AS 44.19.144(b) is amended to read:

21 (b) The director may

22 (1) with the written concurrence of the governor, enter  
23 into contracts and subcontracts on behalf of the state to carry out  
24 the provisions of AS 44.19.141 - 44.19.152; contracting under this  
25 paragraph is governed by AS 36.30 (State Procurement Code);

26 (2) act for the state in the initiation, investigation,  
27 evaluation of or participation in any program relative to the stated  
28 purpose of AS 44.19.141 - 44.19.152 which may involve more than one  
29 government or governmental unit;

1                   (3) on behalf of the state, accept and expend any gifts or  
2 grants made to the state with the approval of the governor where such  
3 gifts or grants were made for the purposes of furthering the objec-  
4 tives of the office.

5 \* Sec. 44. AS 44.33.300 is amended to read:

6                   Sec. 44.33.300. WAIVER OF CERTAIN PROVISIONS. When the gover-  
7 nor has by proclamation declared an area impacted by an economic  
8 disaster, the following provisions regarding public contracts may be  
9 waived to the extent specified in the proclamation:

10                   (1) the requirement of a contractor's bond as prescribed in  
11 AS 36.25.010 may be waived if the contract amount does not exceed  
12 \$100,000;

13                   (2) the public bid requirements as contained in AS 19.10.-  
14 170, AS [19.10.190,] 19.30.191(b), AS 35.15.010 - 35.15.020, and  
15 AS 36.30 (State Procurement Code) [AND AS 35.15.010 - 35.15.030] may  
16 be waived if the contract is to be performed by a contractor whose  
17 principal office is in the designated area and the contract amount  
18 does not exceed \$50,000;

19                   (3) the general policy to require all construction to be  
20 under bid contract as contained in AS 19.10.170, AS 35.15.010, and  
21 AS 36.30 (State Procurement Code) may be waived if the contract is to  
22 be performed by the state, another governmental entity, or a nonprofit  
23 entity.

24 \* Sec. 45. AS 44.47.250 is amended by adding a new subsection to read:

25                   (c) Contracts with persons or nongovernmental entities under  
26 this section are governed by AS 36.30.

27 \* Sec. 46. AS 44.47.490(a) is amended to read:

28                   (a) The director may establish field offices under this chapter,  
29 may hire one or more lending officers, and, under AS 36.30 (State

1 Procurement Code), may contract for the services of

2 (1) real property appraisers who are familiar with rural  
3 construction; and

4 (2) engineers who are familiar with engineering problems in  
5 arctic and subarctic regions.

6 \* Sec. 47. AS 44.47.730(a) is amended to read:

7 (a) The commissioner shall contract for a study of the feasibil-  
8 ity of establishing a borough in the unorganized borough by following  
9 the procedures under AS 36.30 (State Procurement Code) [SET OUT IN  
10 AS 36.98]. The commissioner shall include terms in the contract that  
11 provide for

12 (1) public participation in the preparation of the study;

13 (2) completion of the study not later than June 30 of the  
14 third year after the year the contract is executed.

15 \* Sec. 48. AS 44.62.175(a) is amended to read:

16 (a) The lieutenant governor shall publish or contract for the  
17 publication of the Alaska Administrative Journal. The journal shall  
18 be published weekly. The journal must include

19 (1) notices of proposed actions given under AS 44.62.-  
20 190(a);

21 (2) notices of state agency meetings required under AS 44.-  
22 62.310(e), even if the meeting has been held;

23 (3) notices of solicitations to bid issued under AS 36.30.-  
24 130 [AS 37.05.230];

25 (4) notices of state agency requests for proposals issued  
26 under AS 18.55.255, 18.55.320; [AS 19.10.190; AS 19.40.020; AS 35.15.-  
27 030; AS 36.98.030; AS 37.05.230,] AS 37.05.315(d); AS 38.05.120; and  
28 AS 43.40.010;

29 (5) executive orders and administrative orders issued by

1 the governor;

2 (6) written delegations of authority made by the governor  
3 or the head of a principal department under AS 44.17.010;

4 (7) the text or a summary of the text of a regulation or  
5 order of repeal of a regulation for which notice is given under AS  
6 44.62.190(a), including an emergency regulation or repeal whether or  
7 not it has taken effect;

8 (8) a summary of the text of recently issued formal opin-  
9 ions and memoranda of advice of the attorney general; and

10 (9) a list of vacancies on boards, commissions, and other  
11 bodies whose members are appointed by the governor.

12 \* Sec. 49. AS 44.71.010 is amended to read:

13 Sec. 44.71.010. DISPOSITION OF OBSOLETE OR SURPLUS STATE PROP-  
14 ERTY. The Department of Administration shall take possession of  
15 obsolete or surplus property of the state for which there is no imme-  
16 diate or prospective use, except abandoned or obsolete school build-  
17 ings and other school property. It shall also take possession of  
18 property remaining in the control of a commission or board of the  
19 state government after the commission or board stops functioning. The  
20 Department of Administration shall sell, lease, license, or dispose of  
21 the property on the terms it considers for the best interests of the  
22 state in conformance with regulations adopted under AS 36.30 (State  
23 Procurement Code).

24 \* Sec. 50. AS 44.77.010(a) is amended to read:

25 (a) Except as provided in (d) of this section, every [EVERY]  
26 claim for reimbursement for money expended, or for compensation for  
27 labor, materials, or supplies furnished, or services given to or for  
28 the state, whether based on a contract or on a ratification, shall be  
29 promptly presented to the appropriate administrative or executive

1 officer for approval and payment.

2 \* Sec. 51. AS 44.77.010 is amended by adding a new subsection to read:

3 (d) A claim that is governed by AS 36.30.560 - 36.30.699 is not  
4 governed by this chapter.

5 \* Sec. 52. AS 44.85.120 is amended to read:

6 Sec. 44.85.120. CARE AND CUSTODY OF BONDS. The bond bank  
7 authority, in accordance with AS 36.30 (State Procurement Code), may  
8 enter into agreements or contracts with a bank, trust company, banking  
9 or financial institution inside or outside the state as may be neces-  
10 sary, desirable or convenient, in the opinion of the bond bank author-  
11 ity, for rendering services in connection with the care, custody or  
12 safekeeping of municipal bonds or other investments held or owned by  
13 the bond bank authority, for rendering services in connection with the  
14 payment or collection of amounts payable as to principal or interest,  
15 and for rendering services in connection with the delivery to the bond  
16 bank authority of municipal bonds or other investments purchased by it  
17 or sold by it, and to pay the cost of those services. The bond bank  
18 authority may also, in connection with any of the services to be  
19 rendered by a bank, trust company or banking or financial institution  
20 as to the custody and safekeeping of its municipal bonds or invest-  
21 ments, require security in the form of collateral bonds, surety agree-  
22 ments or security agreements in such form and amount as, in the opin-  
23 ion of the bond bank authority, is necessary or desirable.

24 \* Sec. 53. AS 44.99.001 is amended to read:

25 Sec. 44.99.001. ADMINISTRATION OF HIGHWAY SAFETY PROGRAM. The  
26 governor may contract and do all other things necessary on behalf of  
27 this state under 23 U.S.C. 401-404 (Highway Safety Act of 1966), and  
28 may cooperate with interested persons and agencies to effectuate the  
29 purposes of that Act. Contracting under this section is governed by

1       AS 36.30 (State Procurement Code).     The governor may designate a  
2       person to serve as the governor's highway safety representative;  
3       however, the governor is the official in this state having the ulti-  
4       mate responsibility for dealing with the federal government with  
5       respect to programs and activities under the Federal Highway Safety  
6       Act of 1966. The governor shall coordinate the activities relating to  
7       highway safety of state departments, agencies and subdivisions and of  
8       the Governor's Commission on Transportation Safety established in  
9       AS 44.19.190.

10     \* Sec. 54. AS 46.04.090(a) is amended to read:

11             (a) The department, when feasible, shall enter into contracts  
12       with persons or private organizations to provide the personnel, equip-  
13       ment, or other services or supplies which may be required to carry out  
14       this chapter. Contracts under this section are governed by AS 36.30  
15       (State Procurement Code). When private contracting is not feasible,  
16       the department may establish and maintain at ports, harbors, or other  
17       locations in the state, the cleanup personnel, equipment, and supplies  
18       which, in its judgment, are necessary to carry out this chapter.

19     \* Sec. 55. AS 46.07.040(a) is amended to read:

20             (a) The commissioner shall provide for the construction of  
21       facilities under this chapter, and is authorized to provide for the  
22       construction by contract or through grants to public agencies or  
23       private nonprofit organizations, or otherwise. A [NO] contribution  
24       toward the cost of the construction of a facility may not be required  
25       from its users. Construction under this section by contract is gov-  
26       erned by AS 36.30 (State Procurement Code).

27     \* Sec. 56. AS 46.15.020(a) is amended to read:

28             (a) The commissioner shall exercise all those powers and do all  
29       those acts necessary to carry out the provisions and objectives of

1 this chapter. The commissioner may

2 (1) subject to AS 36.30 (State Procurement Code), enter  
3 into contractual agreements necessary to carry out the provisions of  
4 this chapter including agreements with federal, state and local agen-  
5 cies;

6 (2) apply for, accept, administer and expend grants, gifts,  
7 and loans from the federal government and any other public or private  
8 sources for the purposes of this chapter, and adopt procedures and do  
9 acts not otherwise restricted by law which are necessary to qualify  
10 the state to receive grants, gifts and loans;

11 (3) establish a division of water in the Department of  
12 Natural Resources and assign to that division the responsibility for  
13 carrying out the provisions of this chapter.

14 \* Sec. 57. AS 47.05.015(c) is amended to read:

15 (c) A contract authorized under this section is exempt from the  
16 competitive bid requirements of AS 36.30 (State Procurement Code)  
17 [AS 37.05.230]. In awarding a contract under this section the depart-  
18 ment shall [PUBLISH A] request [FOR] proposals in accordance with  
19 regulations of the Department of Administration under AS 36.30 (State  
20 Procurement Code) [DEPARTMENT].

21 \* Sec. 58. AS 47.30.350(a) is amended to read:

22 (a) The department shall

23 (1) develop and submit to the Surgeon General of the United  
24 States Public Health Service a comprehensive program for the con-  
25 structing and equipping of hospitals and other facilities for the  
26 examination, observation, care, and treatment of the mentally ill;

27 (2) develop and submit to the Surgeon General plans and  
28 specifications for the constructing and equipping of the hospitals and  
29 other facilities;

1 (3) construct and equip the hospitals and other facilities  
2 in accordance with the program, plans, and specifications approved by  
3 the Surgeon General; construction and equipping under this paragraph  
4 is governed by AS 36.30 (State Procurement Code);

5 (4) cooperate, coordinate, and contract, wherever indicated  
6 and desirable, with other state boards, departments and agencies, and  
7 agencies of the United States in the construction program, and hire  
8 necessary personnel and enter into contracts with private individuals  
9 and companies, to the end that the hospitals and other facilities are  
10 constructed in the most economical and expeditious manner; contracting  
11 and construction under this section are governed by AS 36.30 (State  
12 Procurement Code).

13 \* Sec. 59. AS 47.30.660 is amended to read:

14 Sec. 47.30.660. POWERS AND DUTIES OF DEPARTMENT. The depart-  
15 ment is the mental health authority of the state and shall

16 (1) administer a comprehensive program for the prevention  
17 of mental illness and the care and treatment of the mentally ill,  
18 including inpatient and outpatient care and treatment and the procure-  
19 ment of services of specialists or other persons on a contractual or  
20 other basis;

21 (2) take the actions and undertake the obligations which  
22 are necessary to participate in federal grants-in-aid programs and  
23 accept federal or other financial aid from whatever sources for the  
24 study, examination, care, and treatment of the mentally ill;

25 (3) administer AS 47.30.660 - 47.30.915;

26 (4) designate, operate, and maintain treatment facilities  
27 equipped and qualified to provide inpatient and outpatient care and  
28 treatment for the mentally ill;

29 (5) provide for the placement of mentally ill patients in

1 designated treatment facilities;

2 (6) enter into arrangements with governmental agencies for  
3 the care or treatment of the mentally ill in facilities of the govern-  
4 mental agencies in the state or in another state;

5 (7) enter into contracts with treatment facilities for the  
6 custody and care or treatment of the mentally ill; contracts under  
7 this paragraph are governed by AS 36.30 (State Procurement Code);

8 (8) enter into contracts which incorporate safeguards  
9 consistent with AS 47.30.660 - 47.30.915 and the preservation of the  
10 civil rights of the patients with another state for the custody and  
11 care or treatment of patients previously committed from this state  
12 under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd  
13 Session, 70 Stat. 709;

14 (9) prescribe the form of applications, records, reports,  
15 requests for release, and consents to medical or psychological treat-  
16 ment required by AS 47.30.660 - 47.30.915;

17 (10) require reports from the head of a treatment facility  
18 concerning the care of patients;

19 (11) visit each treatment facility at least annually to  
20 review methods of care or treatment for patients;

21 (12) investigate complaints made by a patient or an inter-  
22 ested party on behalf of a patient;

23 (13) delegate upon mutual agreement to another officer or  
24 agency of it, or a political subdivision of the state, or a treatment  
25 facility designated, any of the duties and powers imposed upon it by  
26 AS 47.30.660 - 47.30.915; and

27 (14) adopt regulations to implement the provisions of  
28 AS 47.30.660 - 47.30.915.

29 \* Sec. 60. AS 47.35.010(a) is amended to read:

1           (a) The department may  
2           (1) license and supervise boarding homes, foster homes,  
3 group homes, nurseries, institutions caring for children and foster  
4 homes, group homes and institutions caring for dependent adults;  
5           (2) investigate and supervise licensees;  
6           (3) enforce the standards established by it;  
7           (4) contract with private or municipal agencies to investi-  
8 gate and make recommendations to the department for the licensing and  
9 supervision of boarding homes, foster homes, group homes, nurseries,  
10 institutions caring for children and foster homes, group homes and  
11 institutions caring for dependent adults under procedures and stan-  
12 dards of operation established by the department; contracts with  
13 private agencies under this paragraph are governed by AS 36.30 (State  
14 Procurement Code).

15 \* Sec. 61. AS 47.37.030 is amended to read:

16           Sec. 47.37.030.   POWERS OF OFFICE. The office may  
17           (1) plan, establish, and maintain treatment programs as  
18 appropriate;  
19           (2) make contracts and award grants necessary or incidental  
20 to the performance of its duties and the execution of its powers,  
21 including contracts with and grants to public and private agencies,  
22 organizations, and individuals, to pay them for services rendered or  
23 furnished to alcoholics or intoxicated persons; to the maximum extent  
24 possible, contracts and grants shall be for a period of two years;  
25 contracts under this paragraph are governed by AS 36.30 (State Pro-  
26 urement Code);  
27           (3) solicit and accept for use a gift of money or property  
28 or a grant of money, services, or property from the federal govern-  
29 ment, the state, or a political subdivision of it or a private source,

1 and do all things necessary to cooperate with the federal government  
2 or any of its agencies in making an application for a grant;

3 (4) administer or supervise the administration of the  
4 provisions relating to alcoholics and intoxicated persons of any state  
5 plan submitted for federal funding under federal health, welfare, or  
6 treatment legislation;

7 (5) coordinate its activities and cooperate with alcoholism  
8 programs in this and other states, and make contracts and other joint  
9 or cooperative arrangements with state, local, or private agencies for  
10 the treatment of alcoholics and intoxicated persons and for the common  
11 advancement of alcoholism programs in this and other states;

12 (6) keep records and engage in research and the gathering  
13 of relevant statistics;

14 (7) do other acts necessary to implement the authority  
15 expressly granted to it;

16 (8) acquire, hold, or dispose of real property or any  
17 interest in it, and construct, lease, or otherwise provide treatment  
18 facilities for alcoholics and intoxicated persons; however, the office  
19 shall encourage local initiative, involvement and financial participa-  
20 tion under grants-in-aid whenever possible in preference to the con-  
21 struction or operation of facilities directly by the office; contract-  
22 ing and construction under this paragraph are governed by AS 36.30  
23 (State Procurement Code).

24 \* Sec. 62. AS 47.37.130(g) is amended to read:

25 (g) The office may contract for the use of any facility as an  
26 approved public treatment facility if the coordinator, subject to the  
27 regulations of the department, considers this an effective and econom-  
28 ical course to follow. Contracting under this subsection is governed  
29 by AS 36.30 (State Procurement Code).

1 \* Sec. 63. AS 47.40.041(b) is amended to read:

2 (b) Notices published by the department concerning the opening  
3 of the application process for a grant award shall specify the geo-  
4 graphical area in which services are needed, the type of services, the  
5 number of beds anticipated to be needed, the maximum number of days of  
6 care, and any other requirements established by the department.  
7 Grants authorized under this section are exempt from the competitive  
8 bid requirements of AS 36.30 [AS 37.05.230].

9 \* Sec. 64. AS 47.90.010(a) is amended to read:

10 (a) The commissioner, in consultation with state and local  
11 government agencies, community groups, and groups concerned with  
12 displaced homemakers, may

13 (1) contract with eligible private profit and nonprofit  
14 corporations for multipurpose service centers for displaced home-  
15 makers; contracting under this paragraph is governed by AS 36.30  
16 (State Procurement Code); and

17 (2) coordinate existing state programs for displaced home-  
18 makers.

19 \* Sec. 65. AS 47.40.041(b) is amended to read:

20 (b) Notices published by the department concerning the opening  
21 of the application process for a grant award shall specify the geo-  
22 graphical area in which services are needed, the type of services, the  
23 number of beds anticipated to be needed, the maximum number of days of  
24 care, and any other requirements established by the department.  
25 Grants authorized under this section are exempt from AS 36.30 (State  
26 Procurement Code) [THE COMPETITIVE BID REQUIREMENTS OF AS 37.05.230].

27 \* Sec. 66. REPORT. By December 1, 1987, the commissioner of adminis-  
28 tration and the commissioner of transportation and public facilities shall  
29 report to the legislature concerning procurements by state agencies during

1 the first six months of 1987. The report must include

2 (1) the records prepared under AS 36.30.510(4);

3 (2) recommendations for changes in AS 36.30 or other laws based  
4 on implementation of AS 36.30 in those six months; and

5 (3) a description of any matters that involved litigation con-  
6 cerning AS 36.30 during those six months.

7 \* Sec. 67. REGULATIONS DEADLINE. The regulations required under  
8 AS 36.30 as added by sec. 2 of this Act, shall be adopted by January 1,  
9 1987 and shall be effective on that date. Regulations adopted under laws  
10 repealed in sec. 69 of this Act become ineffective January 1, 1987.

11 \* Sec. 68. REPEALER. The following laws are repealed: AS 14.40.340;  
12 AS 19.10.190, 19.10.210; AS 24.23; AS 35.15.030, 35.15.050; AS 36.98;  
13 AS 37.05.220, 37.05.230, 37.05.231, 37.05.240, 37.05.250, 37.05.260, 37.-  
14 05.270, 37.05.280, 37.05.290, 37.05.400(2) and (3); AS 44.65; AS 44.77.-  
15 010(c); and AS 47.90.010(c).

16 \* Sec. 69. Section 67 of this Act takes effect immediately in accor-  
17 dance with AS 01.10.070(c).

18 \* Sec. 70. Except as provided in sec. 69, this Act takes effect Janu-  
19 ary 1, 1987.