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IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

HOUSE BILL NO. 276

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. AS 36.30.005(a) is amended to read:

(a) Except as otherwise provided, all rights, powers, duties, and authority relating to the procurement of supplies, services, and professional services, and the control over supplies, services, and professional services vested in or exercised by an agency on January 1, 1988 [JULY 1, 1987], are transferred to the commissioner of administration and to the chief procurement officer. Authority granted under this subsection shall be exercised in accordance with this chapter.

* Sec. 2. AS 36.30.005(b) is amended to read:

(b) Except as otherwise provided, all rights, powers, duties, and authority relating to the procurement of construction and procurements of equipment or services for the state equipment fleet and the control over construction of state facilities and the state equipment fleet vested in or exercised by an agency on January 1, 1988 [JULY 1, 1987], are transferred to the commissioner of transportation and public facilities, subject to regulations adopted by the commissioner of administration. Notwithstanding AS 44.71.010, authority relating to disposals from the state equipment fleet is vested in the commissioner of transportation and public facilities, subject to regulations adopted by the commissioner of administration. Authority granted

1 under this subsection shall be exercised in accordance with this
2 chapter.

3 * Sec. 3. AS 36.30.050(b) is amended to read:

4 (b) A person who desires to be on a list shall submit to the
5 commissioner evidence of a valid Alaska business license. A [TOGETHER
6 WITH A] biennial fee may be established by regulation in an amount
7 reasonably calculated to pay the costs of administering this section.
8 A construction contractor shall also submit a valid certificate of
9 registration issued under AS 08.18. The commissioner, by regulation,
10 may require submission of additional information.

11 * Sec. 4. AS 36.30.115(a) is amended to read:

12 (a) Within 72 [24] hours after receiving notice of intent to
13 award [OPENING OF BIDS], the [TWO] apparent low bidder [BIDDERS] shall
14 submit a list of the subcontractors the bidder proposes [BIDDERS
15 PROPOSE] to use in the performance of the contract. The list must
16 [SHALL] include the name and location of the place of business for
17 each subcontractor and evidence of the subcontractor's valid Alaska
18 business license. A bidder for a construction contract shall also
19 submit evidence of each subcontractor's registration under AS 08.18.

20 * Sec. 5. AS 36.30.140(a) is amended to read:

21 (a) The procurement officer shall open bids [PUBLICLY IN THE
22 PRESENCE OF ONE OR MORE WITNESSES] at the time and place designated in
23 the invitation to bid. All bid openings are open to the public. The
24 amount of each bid and other relevant information that is specified by
25 regulation of the commissioner, together with the name of each bidder,
26 shall be recorded.

27 * Sec. 6. AS 36.30.170(b) is amended to read:

28 (b) The procurement officer shall award a contract based on
29 solicited bids to the lowest responsive and responsible bidder after

1 an Alaska bidder preference of five percent and an Alaska products
2 preference as described in AS 36.30.322 -- 36.30.388 have been ap-
3 plied. [NOTWITHSTANDING AN ALASKA PRODUCT PREFERENCE UNDER AS 36.30.-
4 322 -- 36.30.338, THE PROCUREMENT OFFICER SHALL AWARD A CONTRACT BASED
5 ON SOLICITED BIDS TO THE LOWEST RESPONSIBLE AND RESPONSIVE ALASKA
6 BIDDER IF THE BID IS NOT MORE THAN FIVE PERCENT HIGHER THAN THE LOWEST
7 NONRESIDENT BIDDER'S.] In this subsection, "Alaska bidder" means a
8 person who

9 (1) holds a current Alaska business license;

10 (2) submits a bid for goods, services, or construction
11 under the name as appearing on the person's current Alaska business
12 license;

13 (3) has maintained a place of business within the state
14 staffed by the bidder or an employee of the bidder for a period of six
15 months immediately preceding the date of the bid;

16 (4) is incorporated or qualified to do business under the
17 laws of the state, is a sole proprietorship, and the proprietor is a
18 resident of the state or is a partnership, and all partners are resi-
19 dents of the state; and

20 (5) if a joint venture, is composed entirely of ventures
21 that qualify under (1) - (4) of this subsection.

22 * Sec. 7. AS 36.30.210(a) is amended to read:

23 (a) A request for competitive sealed proposals must contain the
24 date, time and place for delivering proposals, a specific description
25 of the supplies, construction, services, or professional services to
26 be provided under the contract, and the terms under which the sup-
27 plies, construction, services, or professional services are to be
28 provided. The request shall require the offeror to submit evidence of
29 the offeror's valid Alaska business license and, no later than 72

1 hours after receiving notice of intent to award [THE DATE BY WHICH
2 PROPOSALS MUST BE RECEIVED], to list subcontractors the offeror pro-
3 poses to use in the performance of the contract. The list shall
4 include the name and location of the place of business for each sub-
5 contractor and evidence of the subcontractor's valid Alaska business
6 license. An offeror for a construction contract shall also submit
7 evidence of the offeror's registration under AS 08.18 and evidence of
8 registration for each listed subcontractor.

9 * Sec. 8. AS 36.30 is amended by adding a new section to read:

10 Sec. 36.30.305. LIMITED COMPETITION PROCUREMENTS. (a) A con-
11 tract may be awarded for supplies, services, professional services, or
12 construction without competitive sealed bidding or competitive sealed
13 proposals, in accordance with regulations adopted by the commissioner
14 of administration. A contract may be awarded under this section only
15 when the commissioner of administration, or, for construction con-
16 tracts or procurements for the state equipment fleet, the commissioner
17 of transportation and public facilities, determines in writing that a
18 situation exists that makes competitive sealed bidding or competitive
19 sealed proposals impractical or contrary to the public interest.
20 Procurements under this section shall be made with competition that is
21 practicable under the circumstance. The authority to make a deter-
22 mination required by this section may not be delegated.

23 (b) The using agency shall submit written evidence to support a
24 determination under this section.

25 (c) Procurement requirements may not be artificially divided,
26 fragmented, aggregated, or structured so as to constitute a purchase
27 under this section or to circumvent the source selection procedures
28 required by AS 36.30.100 -- 36.30.270.

29 (d) Sole source procurements may not be made under this section.

1 * Sec. 9. AS 36.30.320(e) is amended to read:

2 (e) The procurement officer shall give adequate public notice of
3 intent to make a procurement under this section in accordance with
4 regulations adopted by the commissioner. [NOTICES SHALL ALSO BE
5 PROVIDED TO THOSE ALASKA BIDDERS DESIGNATED BY THE COMMISSIONER UNDER
6 AS 36.30.050(d).]

7 * Sec. 10. AS 36.30.322(a) is amended to read:

8 (a) Only timber, lumber, and manufactured lumber products orig-
9 inating in this state from Alaska [LOCAL] forests may be procured by
10 an agency or used in construction projects of an agency unless [THE
11 COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT CERTIFIES THAT] the
12 manufacturers and suppliers who have notified the commissioner of
13 commerce and economic development of their willingness to manufacture
14 or supply Alaska forest products

15 (1) have been given reasonable notice of the forest product
16 needs of the procurement or project; and

17 (2) are unable to supply the products at a cost that is
18 within seven percent of the price offered by a manufacturer or suppli-
19 er of non-Alaska forest products.

20 * Sec. 11. AS 36.30.322 is amended by adding a new subsection to read:

21 (c) During the period of performance of a state contract, the
22 contractor shall maintain records showing efforts made in using Alaska
23 forest products or evidence of Alaska forest products not being avail-
24 able or reasonably competitive. The contractor shall provide the
25 records to the procurement officer on a periodic basis, as required by
26 regulations adopted by the commissioner of commerce and economic
27 development.

28 * Sec. 12. AS 36.30.332(b) is amended to read:

29 (b) Materials and supplies with value added in the state that

1 are

2 (1) more than 25 percent and less than 50 percent produced
3 or manufactured in the state are [OF THE MANUFACTURER'S QUOTED PRICE
4 IS A] Class I products [PRODUCT];

5 (2) 50 percent or more and less than 75 percent produced or
6 manufactured in the state are [OF THE MANUFACTURER'S QUOTED PRICE IS
7 A] Class II products [PRODUCT]; and

8 (3) 75 percent or more produced or manufactured in the
9 state are [OF A MANUFACTURER'S QUOTED PRICE IS A] Class III products
10 [PRODUCT].

11 * Sec. 13. AS 36.30.338(1) is amended to read:

12 (1) "Alaska product" means a product of which not less than
13 25 percent of the value, as determined in accordance with regulations
14 adopted under AS 36.30.332(a), has been added by manufacturing or
15 production in the state [PRODUCED OR MANUFACTURED IN THE STATE IF THE
16 VALUE ADDED IN THE STATE IS NOT LESS THAN 25 PERCENT OF THE QUOTED
17 PRICE OF THE MANUFACTURER];

18 * Sec. 14. AS 36.30.365 is amended to read:

19 Sec. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT. At least
20 10 days before the formal award of a contract that is not for con-
21 struction, and at least five days before the award of a construction
22 contract, under this chapter, except for a contract awarded under
23 AS 36.30.300 -- 36.30.320, the procurement officer shall provide to
24 each bidder or offeror notice of intent to award a contract. The
25 notice shall conform to regulations adopted by the commissioner.

26 * Sec. 15. AS 36.30.540 is amended to read:

27 Sec. 36.30.540. REPORT TO LEGISLATURE. Beginning with December
28 1, 1990 [1989], the commissioner shall biennially report to the legis-
29 lature concerning procurements by agencies. The report must include

1 (1) the records maintained by the commissioner under
2 AS 36.30.510 and the records maintained under AS 36.30.520(a) for the
3 previous two fiscal years;

4 (2) recommendations for changes in this chapter or other
5 laws based on implementation of this chapter in the previous two
6 fiscal years;

7 (3) a description of any matters that involved litigation
8 concerning this chapter in the previous two fiscal years;

9 (4) a list of procurements made under this chapter from
10 out-of-state sources during the previous two fiscal years together
11 with the total number of procurement contracts entered into during
12 that period with out-of-state contractors and the total value of these
13 contracts; this paragraph does not apply to procurements under AS 36.-
14 30.320; and

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

20 * Sec. 16. AS 36.30.565 is amended to read:

21 Sec. 36.30.565. TIME FOR FILING A PROTEST. (a) A protest based
22 upon alleged improprieties in an award of a contract, or a proposed
23 award of a contract must [A PROTEST BASED UPON ALLEGED IMPROPRIETIES
24 IN A SOLICITATION INVOLVING COMPETITIVE SEALED BIDDING THAT ARE APPAR-
25 ENT BEFORE THE BID OPENING SHALL BE FILED BEFORE THE BID OPENING. A
26 PROTEST BASED ON ALLEGED IMPROPRIETIES IN A SOLICITATION INVOLVING
27 COMPETITIVE SEALED PROPOSALS THAT ARE APPARENT

28 (1) BEFORE THE DUE DATE FOR RECEIPT OF INITIAL PROPOSALS
29 SHALL BE FILED BEFORE THAT DUE DATE;

1 (2) AFTER THE DUE DATE FOR RECEIPT OF INITIAL PROPOSALS
2 SHALL BE FILED BEFORE THE NEXT DUE DATE FOR RECEIPT OF ADJUSTED PRO-
3 POSALS THAT OCCURS AFTER THE IMPROPRIETIES ARE APPARENT.

4 (b) IN SITUATIONS NOT COVERED UNDER (a) OF THIS SECTION, PRO-
5 TESTS SHALL] be filed within 10 days after a notice of intent to
6 award the contract is issued by the procurement officer.

7 (b) [(c)] If the protester shows good cause, the procurement
8 officer of the contracting agency may consider a filed protest that is
9 not timely.

10 * Sec. 17. AS 36.30.610 is amended by adding a new subsection to read:

11 (c) The commissioner of administration or the commissioner of
12 transportation and public facilities, as appropriate, shall, within 15
13 days after receipt of an appeal, notify the appellant of the accep-
14 tance or rejection of the appeal and, if rejected, the reasons for the
15 rejection.

16 * Sec. 18. AS 36.30.850(a) is amended to read:

17 (a) This chapter applies only to contracts solicited or entered
18 into after January 1, 1988 [JULY 1, 1987], unless the parties agree to
19 its application to a contract solicited or entered into before that
20 date.

21 * Sec. 19. AS 36.30.900 is amended to read:

22 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
23 does not modify[, AMEND, OR ALTER] AS 36.15.010 and 36.15.020 regard-
24 ing preference for Alaska forest products, [OR AS 36.20.010 REGARDING
25 PREFERENCE TO PRODUCERS OR DEALERS IN ALASKA] except as provided in
26 AS 36.30.170(b) and (c).

27 * Sec. 20. AS 36.30.050(d), 36.30.362, 36.30.380, 36.30.540(4), and
28 36.30.540(5) are repealed.

29 * Sec. 21. Section 65, ch. 106, SLA 1986 is amended to read:

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1 Sec. 65. REPORT. By December 1, 1989 [1988], the commissioner
2 of administration and the commissioner of transportation and public
3 facilities shall report to the legislature concerning procurements by
4 state agencies during fiscal year 1988 [1987]. The report must in-
5 clude

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

7 (2) recommendations for changes in AS 36.30 or other laws
8 based on implementation of AS 36.30 in those 12 months; and

9 (3) a description of any matters that involved litigation
10 concerning AS 36.30 during those 12 months.

11 * Sec. 22. Section 66, ch. 106, SLA 1986 is amended to read:

12 Sec. 66. REGULATIONS DEADLINE. The regulations required under
13 AS 36.30 as added by sec. 2 of this Act, shall be adopted by January
14 1, 1988 [JULY 1, 1987] and shall be effective on that date. Regu-
15 lations adopted under laws repealed in sec. 67 of this Act become
16 ineffective January 1, 1988 [JULY 1, 1987].

17 * Sec. 23. Section 69, ch. 106, SLA 1986 is amended to read:

18 Sec. 69. Except as provided in sec. 68, this Act takes effect
19 January 1, 1988 [JULY 1, 1987].

20 * Sec. 24. Sections 1, 2, 15, 18, and 21 -- 23 of this Act take effect
21 immediately under AS 01.10.070(c). Sections 3 -- 14, 16, 17, 19, and 20 of
22 this Act take effect January 1, 1988.