

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 276 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST 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. AS 36.30.005(a) is amended to read:

10 (a) Except as otherwise provided, all rights, powers, duties,
11 and authority relating to the procurement of supplies, services, and
12 professional services, and the control over supplies, services, and
13 professional services vested in or exercised by an agency on Janu-
14 ary 1, 1988 [JULY 1, 1987], are transferred to the commissioner of
15 administration and to the chief procurement officer. Authority gran-
16 ted under this subsection shall be exercised in accordance with this
17 chapter.

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

19 (b) Except as otherwise provided, all rights, powers, duties,
20 and authority relating to the procurement of construction and procure-
21 ments of equipment or services for the state equipment fleet and the
22 control over construction of state facilities and the state equipment
23 fleet vested in or exercised by an agency on January 1, 1988 [JULY 1,
24 1987], are transferred to the commissioner of transportation and
25 public facilities, subject to regulations adopted by the commissioner
26 of administration. Notwithstanding AS 44.71.010, authority relating
27 to disposals from the state equipment fleet is vested in the commis-
28 sioner of transportation and public facilities, subject to regulations
29 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 36.30.115(b) is amended to read:

21 (b) A bidder may replace a listed subcontractor if the subcon-
22 tractor

23 (1) fails to comply with AS 08.18;

24 (2) files for bankruptcy or becomes insolvent;

25 (3) fails to execute a contract with the bidder involving
26 performance of the work for which the subcontractor was listed and the
27 bidder acted in good faith;

28 (4) fails to obtain bonding;

29 (5) fails to obtain insurance acceptable to the state;

1 (6) fails to perform the contract with the bidder involving
2 work for which the subcontractor was listed;

3 (7) must be substituted in order for the prime contractor
4 to satisfy required federal affirmative action requirements;

5 (8) refuses to agree or abide with the bidder's labor
6 agreement; or

7 (9) is determined by the procurement officer not to be a
8 responsible bidder.

9 * Sec. 6. AS 36.30.140(a) is amended to read:

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

16 * Sec. 7. AS 36.30.170(b) is amended to read:

17 (b) The procurement officer shall award a contract based on
18 solicited bids to the lowest responsive and responsible bidder after
19 an Alaska bidder preference of five percent and an Alaska products
20 preference as described in AS 36.30.322 - 36.30.338 have been applied.
21 [NOTWITHSTANDING AN ALASKA PRODUCT PREFERENCE UNDER AS 36.30.322 -
22 36.30.338, THE PROCUREMENT OFFICER SHALL AWARD A CONTRACT BASED ON
23 SOLICITED BIDS TO THE LOWEST RESPONSIBLE AND RESPONSIVE ALASKA BIDDER
24 IF THE BID IS NOT MORE THAN FIVE PERCENT HIGHER THAN THE LOWEST NON-
25 RESIDENT BIDDER'S.] In this subsection, "Alaska bidder" means a
26 person who

27 (1) holds a current Alaska business license;

28 (2) submits a bid for goods, services, or construction
29 under the name as appearing on the person's current Alaska business

1 license;

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

5 (4) is incorporated or qualified to do business under the
6 laws of the state, is a sole proprietorship, and the proprietor is a
7 resident of the state or is a partnership, and all partners are resi-
8 dents of the state; and

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

11 * Sec. 8. AS 36.30.210(a) is amended to read:

12 (a) A request for competitive sealed proposals must contain the
13 date, time and place for delivering proposals, a specific description
14 of the supplies, construction, services, or professional services to
15 be provided under the contract, and the terms under which the sup-
16 plies, construction, services, or professional services are to be
17 provided. The request shall require the offeror to submit evidence of
18 the offeror's valid Alaska business license and, no later than 72
19 hours after receiving notice of intent to award [THE DATE BY WHICH
20 PROPOSALS MUST BE RECEIVED], to list subcontractors the offeror pro-
21 poses to use in the performance of the contract. The list shall
22 include the name and location of the place of business for each sub-
23 contractor and evidence of the subcontractor's valid Alaska business
24 license. An offeror for a construction contract shall also submit
25 evidence of the offeror's registration under AS 08.18 and evidence of
26 registration for each listed subcontractor.

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

28 Sec. 36.30.305. LIMITED COMPETITION PROCUREMENTS. (a) A con-
29 tract may be awarded for supplies, services, professional services, or

1 construction without competitive sealed bidding or competitive sealed
2 proposals, in accordance with regulations adopted by the commissioner
3 of administration. A contract may be awarded under this section only
4 when the commissioner of administration, or, for construction con-
5 tracts or procurements for the state equipment fleet, the commissioner
6 of transportation and public facilities, determines in writing that a
7 situation exists that makes competitive sealed bidding or competitive
8 sealed proposals impractical or contrary to the public interest.
9 Procurements under this section shall be made with competition that is
10 practicable under the circumstance. The authority to make a deter-
11 mination required by this section may not be delegated.

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

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

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

19 (e) Architectural, engineering, and land survey contracts under
20 AS 36.30.270 may not be made under this section.

21 * Sec. 10. AS 36.30.320(e) is amended to read:

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

27 * Sec. 11. AS 36.30.322(a) is amended to read:

28 (a) Only timber, lumber, and manufactured lumber products orig-
29 inating in this state from Alaska [LOCAL] forests may be procured by

1 an agency or used in construction projects of an agency unless [THE
2 COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT CERTIFIES THAT] the
3 manufacturers and suppliers who have notified the commissioner of
4 commerce and economic development of their willingness to manufacture
5 or supply Alaska forest products

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

8 (2) are unable to supply the products at a cost that is
9 within seven percent of the price offered by a manufacturer or sup-
10 plier of non-Alaska forest products.

11 * Sec. 12. AS 36.30.322 is amended by adding a new subsection to read:

12 (c) During the period of performance of a state contract, the
13 contractor shall maintain records showing efforts made in using Alaska
14 forest products or evidence of Alaska forest products not being avail-
15 able or reasonably competitive. The contractor shall provide the
16 records to the procurement officer on a periodic basis, as required by
17 regulations adopted by the commissioner of commerce and economic
18 development.

19 * Sec. 13. AS 36.30.332(b) is amended to read:

20 (b) Materials and supplies with value added in the state that
21 are

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

25 (2) 50 percent or more and less than 75 percent produced or
26 manufactured in the state are [OF THE MANUFACTURER'S QUOTED PRICE IS
27 A] Class II products [PRODUCT]; and

28 (3) 75 percent or more produced or manufactured in the
29 state are [OF A MANUFACTURER'S QUOTED PRICE IS A] Class III products

1 [PRODUCT].

2 * Sec. 14. AS 36.30.338(1) is amended to read:

3 (1) "Alaska product" means a product of which not less than
4 25 percent of the value, as determined in accordance with regulations
5 adopted under AS 36.30.332(a), has been added by manufacturing or
6 production in the state [PRODUCED OR MANUFACTURED IN THE STATE IF THE
7 VALUE ADDED IN THE STATE IS NOT LESS THAN 25 PERCENT OF THE QUOTED
8 PRICE OF THE MANUFACTURER];

9 * Sec. 15. AS 36.30.365 is amended to read:

10 Sec. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT. At least
11 10 days before the formal award of a contract that is not for con-
12 struction, and at least five days before the award of a construction
13 contract, under this chapter, except for a contract awarded under
14 AS 36.30.300 - 36.30.320, the procurement officer shall provide to
15 each bidder or offeror notice of intent to award a contract. The
16 notice shall conform to regulations adopted by the commissioner.

17 * Sec. 16. AS 36.30.540 is amended to read:

18 Sec. 36.30.540. REPORT TO LEGISLATURE. Beginning with December 1
19 1990 [1989], the commissioner shall biennially report to the legis-
20 lature concerning procurements by agencies. The report must include

21 (1) the records maintained by the commissioner under AS
22 36.30.510 and the records maintained under AS 36.30.520(a) for the
23 previous two fiscal years;

24 (2) recommendations for changes in this chapter or other
25 laws based on implementation of this chapter in the previous two
26 fiscal years;

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

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

1 out-of- state sources during the previous two fiscal years together
2 with the total number of procurement contracts entered into during
3 that period with out-of-state contractors and the total value of these
4 contracts; this paragraph does not apply to procurements made under AS
5 36.30.320; and

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

11 * Sec. 17. AS 36.30.565 is amended to read:

12 Sec. 36.30.565. TIME FOR FILING A PROTEST. (a) A protest based
13 upon alleged improprieties in an award of a contract or a proposed
14 award of a contract must [A SOLICITATION INVOLVING COMPETITIVE SEALED
15 BIDDING THAT ARE APPARENT BEFORE THE BID OPENING SHALL BE FILED BEFORE
16 THE BID OPENING. A PROTEST BASED ON ALLEGED IMPROPRIETIES IN A SOLIC-
17 ITATION INVOLVING COMPETITIVE SEALED PROPOSALS THAT ARE APPARENT

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

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

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

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

29 * Sec. 18. AS 36.30.610 is amended by adding a new subsection to read:

1 (c) The commissioner of administration or the commissioner of
2 transportation and public facilities, as appropriate, shall, within 15
3 days after receipt of an appeal, notify the appellant of the accep-
4 tance or rejection of the appeal and, if rejected, the reasons for the
5 rejection.

6 * Sec. 19. AS 36.30.850(a) is amended to read:

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

11 * Sec. 20. AS 36.30.900 is amended to read:

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

17 * Sec. 21. AS 36.30.050(d), 36.30.362, 36.30.380, 36.30.540(4), and
18 36.30.540(5) are repealed.

19 * Sec. 22. Section 65, ch. 106, SLA 1986 is amended to read:

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

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

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

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

1 * Sec. 23. Section 66, ch. 106, SLA 1986 is amended to read:

2 Sec. 66. REGULATIONS DEADLINE. The regulations required under
3 AS 36.30 as added by sec. 2 of this Act, shall be adopted by Jan-
4 uary 1, 1988, [JULY 1, 1987] and shall be effective on that date.
5 Regulations adopted under laws repealed in sec. 67 of this Act become
6 ineffective January 1, 1988 [JULY 1, 1987].

7 * Sec. 24. Section 69, ch. 106, SLA 1986 is amended to read:

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

10 * Sec. 25. Sections 1, 2, 16, 19, and 22 - 24 of this Act take effect
11 immediately under AS 01.10.070(c).

12 * Sec. 26. Sections 3 - 15, 17, 18, 20, and 21 of this Act take effect
13 January 1, 1988.