

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE RULES COMMITTEE
2 SENATE CS FOR 2d CS FOR HOUSE BILL NO. 276 (Rules)
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 five working days [24 HOURS] after the identification
13 of the apparent low bidder [OPENING OF BIDS], the [TWO] apparent low
14 bidder [BIDDERS] shall submit a list of the subcontractors the bidder
15 proposes [BIDDERS PROPOSE] to use in the performance of the contract.
16 The list must [SHALL] include the name and location of the place of
17 business for each subcontractor and evidence of the subcontractor's
18 valid Alaska business license. A bidder for a construction contract
19 shall also submit evidence of each subcontractor's registration under
20 AS 08.18.

21 * Sec. 5. AS 36.30.115(b) is amended to read:

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

- 24 (1) fails to comply with AS 08.18;
- 25 (2) files for bankruptcy or becomes insolvent;
- 26 (3) fails to execute a contract with the bidder involving
27 performance of the work for which the subcontractor was listed and the
28 bidder acted in good faith;
- 29 (4) fails to obtain bonding;

- 1 (5) fails to obtain insurance acceptable to the state;
2 (6) fails to perform the contract with the bidder involving
3 work for which the subcontractor was listed;
4 (7) must be substituted in order for the prime contractor
5 to satisfy required state and federal affirmative action requirements;
6 (8) refuses to agree or abide with the bidder's labor
7 agreement; or
8 (9) is determined by the procurement officer not to be a
9 responsible bidder.

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

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

17 * Sec. 7. AS 36.30.170(a) is amended to read:

18 (a) Except as provided in (b), (c), and (d) of this section, the
19 procurement officer shall award a contract based on the solicited bids
20 with reasonable promptness by written notice to the lowest responsible
21 and responsive bidder whose bid conforms in all material respects to
22 the requirements and criteria set out in the invitation to bid.

23 * Sec. 8. AS 36.30.170(b) is amended to read:

24 (b) The procurement officer shall award a contract based on
25 solicited bids to the lowest responsive and responsible bidder after
26 an Alaska bidder preference of five percent and an Alaska products
27 preference as described in AS 36.30.322 - 36.30.338 have been applied.
28 [NOTWITHSTANDING AN ALASKA PRODUCT PREFERENCE UNDER AS 36.30.322 -
29 36.30.338, THE PROCUREMENT OFFICER SHALL AWARD A CONTRACT BASED ON

1 SOLICITED BIDS TO THE LOWEST RESPONSIBLE AND RESPONSIVE ALASKA BIDDER
2 IF THE BID IS NOT MORE THAN FIVE PERCENT HIGHER THAN THE LOWEST NON-
3 RESIDENT BIDDER'S.] In this subsection, "Alaska bidder" means a
4 person who

5 (1) holds a current Alaska business license;

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

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

12 (4) is incorporated or qualified to do business under the
13 laws of the state, is a sole proprietorship, and the proprietor is a
14 resident of the state or is a partnership, and all partners are resi-
15 dents of the state; and

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

18 * Sec. 9. AS 36.30.170 is amended by adding a new subsection to read:

19 (d) The procurement officer shall award an insurance-related
20 contract based on solicited bids to the lowest responsive and respon-
21 sible bidder after an Alaska bidder preference of five percent. In
22 this subsection, "Alaska bidder" means a person who meets the criteria
23 set out in (b)(1) - (5) of this section and who is an Alaska domestic
24 insurer.

25 * Sec. 10. AS 36.30.210(a) is amended to read:

26 (a) A request for competitive sealed proposals must contain the
27 date, time and place for delivering proposals, a specific description
28 of the supplies, construction, services, or professional services to
29 be provided under the contract, and the terms under which the

1 supplies, construction, services, or professional services are to be
2 provided. The request shall require the offeror to submit evidence of
3 the offeror's valid Alaska business license and, no later than five
4 working days after identifying which proposal is most advantageous to
5 the state [THE DATE BY WHICH PROPOSALS MUST BE RECEIVED], to list
6 subcontractors the offeror proposes to use in the performance of the
7 contract. The list shall include the name and location of the place
8 of business for each subcontractor and evidence of the subcontractor's
9 valid Alaska business license. An offeror for a construction contract
10 shall also submit evidence of the offeror's registration under AS
11 08.18 and evidence of registration for each listed subcontractor.

12 * Sec. 11. AS 36.30 is amended by adding a new section to read:

13 Sec. 36.30.305. LIMITED COMPETITION PROCUREMENTS. (a) A con-
14 tract for supplies, services, professional services, or a construction
15 contract under \$100,000, may be awarded without competitive sealed
16 bidding or competitive sealed proposals, in accordance with regula-
17 tions adopted by the commissioner of administration. A contract may
18 be awarded under this section only when the commissioner of adminis-
19 tration, or, for construction contracts under \$100,000 or procurements
20 for the state equipment fleet, the commissioner of transportation and
21 public facilities, determines in writing that a situation exists that
22 makes competitive sealed bidding or competitive sealed proposals
23 impractical or contrary to the public interest. Procurements under
24 this section shall be made with competition that is practicable under
25 the circumstance. The authority to make a determination required by
26 this section may not be delegated.

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

29 (c) Procurement requirements may not be artificially divided,

1 fragmented, aggregated, or structured so as to constitute a purchase
2 under this section or to circumvent the source selection procedures
3 required by AS 36.30.100 - 36.30.270.

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

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

7 * Sec. 12. AS 36.30.320(e) is amended to read:

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

13 * Sec. 13. AS 36.30.322(a) is amended to read:

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

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

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

26 * Sec. 14. AS 36.30.322 is amended by adding a new subsection to read:

27 (c) During the period of performance of a state contract, the
28 contractor shall maintain records showing efforts made in using Alaska
29 forest products or evidence of Alaska forest products not being

1 available or reasonably competitive. The contractor shall provide the
2 records to the procurement officer on a periodic basis, as required by
3 regulations adopted by the commissioner of commerce and economic
4 development.

5 * Sec. 15. AS 36.30.332(b) is amended to read:

6 (b) Materials and supplies with value added in the state that
7 are

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

11 (2) 50 percent or more and less than 75 percent produced or
12 manufactured in the state are [OF THE MANUFACTURER'S QUOTED PRICE IS
13 A] Class II products [PRODUCT]; and

14 (3) 75 percent or more produced or manufactured in the
15 state are [OF A MANUFACTURER'S QUOTED PRICE IS A] Class III products
16 [PRODUCT].

17 * Sec. 16. AS 36.30.336 is amended to read:

18 Sec. 36.30.336. APPLICATION. Notwithstanding other provisions
19 of this chapter, AS 36.30.322 - 36.30.338 apply to all procurements
20 subject to this chapter [AS 36.30], except as provided in AS 36.30.-
21 322(b) [AS 36.30.170(b) AND 36.30.322(b)].

22 * Sec. 17. AS 36.30.338(1) is amended to read:

23 (1) "Alaska product" means a product of which not less than
24 25 percent of the value, as determined in accordance with regulations
25 adopted under AS 36.30.332(a), has been added by manufacturing or
26 production in the state [PRODUCED OR MANUFACTURED IN THE STATE IF THE
27 VALUE ADDED IN THE STATE IS NOT LESS THAN 25 PERCENT OF THE QUOTED
28 PRICE OF THE MANUFACTURER];

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

1 Sec. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT. At least
2 10 days before the formal award of a contract that is not for con-
3 struction, and at least five days before the award of a construction
4 contract, under this chapter, except for a contract awarded under
5 AS 36.30.300 - 36.30.320, the procurement officer shall provide to
6 each bidder or offeror notice of intent to award a contract. The
7 notice shall conform to regulations adopted by the commissioner.

8 * Sec. 19. AS 36.30.565 is amended to read:

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

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

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

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

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

26 * Sec. 20. AS 36.30.610 is amended by adding a new subsection to read:

27 (c) The commissioner of administration or the commissioner of
28 transportation and public facilities, as appropriate, shall, within 15
29 days after receipt of an appeal, notify the appellant of the

1 acceptance or rejection of the appeal and, if rejected, the reasons
2 for the rejection.

3 * Sec. 21. AS 36.30.850(a) is amended to read:

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

8 * Sec. 22. AS 36.30.850 is amended by adding a new subsection to read:

9 (e) AS 36.30.170 applies to all insurance contracts involving
10 state money, including state grants and reimbursement to municipali-
11 ties, school districts, and other entities.

12 * Sec. 23. AS 36.30.900 is amended to read:

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

18 * Sec. 24. AS 36.30.050(d) and 36.30.380 are repealed.

19 * Sec. 25. 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. 26. 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. 27. 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. 28. Sections 1, 2, 21, and 25 - 27 of this Act take effect
11 immediately under AS 01.10.070(c).

12 * Sec. 29. Sections 3 - 20 and 22 - 24 of this Act take effect Janu-
13 ary 1, 1988.