

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 170

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state procurement."

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

8 * Section 1. AS 36.30.110(b) is amended to read:

9 (b) The bidder must have a valid Alaska business license at the
10 time designated, in the invitation to bid, for bid opening. The [WHEN
11 RESPONDING TO THE INVITATION TO BID, THE] bidder shall supply evidence
12 of the bidder's valid Alaska business license in accordance with regu-
13 lations adopted by the commissioner. A bidder for a construction
14 contract shall also submit evidence of the bidder's registration under
15 AS 08.18.

16 * Sec. 2. AS 36.30.110 is amended by adding a new subsection to read:

17 (c) If the commissioner of transportation and public facilities
18 makes a written finding that it is in the state's best interest, the
19 estimated cost of a construction contract is confidential information
20 and may not be released to the public before bid opening.

21 * Sec. 3. 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 subcontractor [BIDDER].

10 * Sec. 4. AS 36.30.120(b) is amended to read:

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 five percent of the amount of the bid

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 * Sec. 5. AS 36.30.170(b) is amended to read:

21 The procurement officer shall award a contract based on solicited
22 bids to the lowest responsive and responsible bidder after an Alaska
23 bidder preference of five percent and an Alaska products preference as
24 described in AS 36.30.322 -- 36.30.338 have been applied. In this
25 subsection, "Alaska bidder" means a person who

- 26 (1) holds a current Alaska business license;
27 (2) submits a bid for goods, services, or construction
28 under the name as appearing on the person's current Alaska business
29 license;

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

4 (4) is incorporated or qualified to do business under the
5 laws of the state, or is a sole proprietorship[,] and the proprietor
6 is a resident of the state, or is a partnership[,] and one or more of
7 the general [ALL] partners is a resident [ARE RESIDENTS] of the state;

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

10 * Sec. 6. AS 36.30.210(a) is amended to read:

11 (a) A request for competitive sealed proposals must contain the
12 date, time, and place for delivering proposals, a specific description
13 of the supplies, construction, services, or professional services to
14 be provided under the contract, and the terms under which the sup-
15 plies, construction, services, or professional services are to be
16 provided. The request shall require the offeror [TO SUBMIT EVIDENCE
17 OF THE OFFEROR'S VALID ALASKA BUSINESS LICENSE AND], no later than
18 five working days after identifying which proposal is most advanta-
19 geous to the state, to list subcontractors the offeror proposes to use
20 in the performance of the contract. The list shall include the name
21 and location of the place of business for each subcontractor, the work
22 to be subcontracted to each subcontractor, and evidence of the subcon-
23 tractor's valid Alaska business license. An offeror for a construc-
24 tion contract shall also submit evidence of the offeror's registration
25 under AS 08.18 and evidence of registration for each listed subcon-
26 tractor.

27 * Sec. 7. AS 36.30.210 is amended by adding a new subsection to
28 read:

29 (e) The offeror must have a valid Alaska business license at the

1 time designated, in the request for proposals, for opening of the pro-
2 posals. The offeror shall supply evidence of the offeror's valid
3 Alaska business license in accordance with regulations adopted by the
4 commissioner.

5 * Sec. 8. AS 36.30.250(b) is amended to read:

6 (b) In determining whether a proposal is advantageous to the
7 state, the procurement officer shall take into account, in accordance
8 with regulations of the commissioner, whether the offeror [QUALIFIES
9 AS AN ALASKA BIDDER UNDER AS 36.30.170(b) OR] is offering the services
10 of an employment program as defined in AS 36.30.100(c).

11 * Sec. 9. AS 36.30.250 is amended by adding new subsections to read:

12 (c) For the purpose of evaluating cost factors, the proposed
13 costs of an offeror who qualifies as an Alaska bidder under AS 36.30.-
14 170(b) shall be reduced by five percent.

15 (d) An evaluation factor must be included which takes into
16 consideration whether an offeror qualifies as an Alaska bidder under
17 AS 36.30.170(b). At least 10 percent of the value of the rating
18 system, or weighting value, used must be assigned to the Alaska bidder
19 evaluation factor.

20 * Sec. 10. AS 36.30 is amended by adding a new section to read:

21 Sec. 36.30.265. MULTI-STEP SEALED PROPOSALS. When it is con-
22 sidered impractical to initially prepare a definitive description of
23 the procurement to support an award based on listed selection crite-
24 ria, the procurement officer may issue an expression of interest
25 requesting the submission of unpriced technical offers, to be followed
26 by a request for proposals limited to the offerors whose offers are
27 determined to be technically qualified under the criteria set out in
28 the expression of interest.

29 * Sec. 11. AS 36.30.300(a) is amended to read:

1 (a) A contract may be awarded for supplies, services, profes-
2 sional services, or construction without competitive sealed bidding,
3 competitive sealed proposals, or other competition in accordance with
4 regulations adopted by the commissioner [OF ADMINISTRATION]. A con-
5 tract may be awarded under this section only when the chief procure-
6 ment officer or, for construction contracts or procurements for the
7 state equipment fleet, the commissioner of transportation and public
8 facilities determines in writing that there is only one source for the
9 required procurement or construction. A sole source procurement may
10 not be awarded if a reasonable alternative source exists. The written
11 determination must include findings of fact that support by clear and
12 convincing evidence the determination that only one source exists.
13 Except for procurements of supplies, services, or construction that do
14 not exceed the amount for small procurements under AS 36.30.320(a),
15 the [THE] authority to make the determination required by this subsec-
16 tion may not be delegated.

17 * Sec. 12. AS 36.30.305(a) is amended to read:

18 (a) A contract for supplies, services, professional services, or
19 a construction contract under \$100,000, may be awarded without compe-
20 titive sealed bidding or competitive sealed proposals, in accordance
21 with regulations adopted by the commissioner [OF ADMINISTRATION]. A
22 contract may be awarded under this section only when the commissioner
23 [OF ADMINISTRATION], or, for construction contracts under \$100,000 or
24 procurements for the state equipment fleet, the commissioner of trans-
25 portation and public facilities, determines in writing that a situa-
26 tion exists that makes competitive sealed bidding or competitive
27 sealed proposals impractical or contrary to the public interest.
28 Procurements under this section shall be made with competition that is
29 practicable under the circumstance. Except for procurements of

1 supplies, services, or construction that do not exceed the amount for
2 small procurements under AS 36.30.320(a), the [THE] authority to make
3 a determination required by this section may not be delegated.

4 * Sec. 13. AS 36.30.360(a) is amended to read:

5 (a) A written determination of nonresponsibility [RESPONSIBILI-
6 TY] of a bidder or offeror shall be made by the procurement officer in
7 accordance with regulations adopted by the commissioner. The unrea-
8 sonable failure of a bidder or offeror to promptly supply information
9 in connection with an inquiry with respect to responsibility is
10 grounds for a determination of nonresponsibility with respect to the
11 bidder or offeror.

12 * Sec. 14. AS 36.30.362 is amended to read:

13 Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESI-
14 DENT. Except for awards made under AS 36.30.170, if [IF] the procure-
15 ment officer awards a contract to a person who does not reside or
16 maintain a place of business in the state and if the supplies, ser-
17 vices, professional services, or construction that is the subject of
18 the contract could have been obtained from sources in the state, the
19 procurement officer shall issue a written statement explaining the
20 basis of the award. The statement required under this section shall
21 be kept in the contract file.

22 * Sec. 15. AS 36.30.370 is amended to read:

23 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of
24 this section, any type of contract that will promote the best inter-
25 ests of the state may be used, except that the use of a cost-plus-a-
26 percentage-of-cost contract may only be used when permitted by regu-
27 lations adopted by the commissioner, or, for construction contracts,
28 by the commissioner of transportation and public facilities [IS PRO-
29 HIBITED]. A cost-reimbursement contract may be used only when a

1 determination is made in writing by the procurement officer that a
2 cost-reimbursement contract is likely to be less costly to the state
3 than any other type or that it is impracticable to obtain the sup-
4 plies, services, professional services, or construction required
5 except under a cost-reimbursement contract.

6 * Sec. 16. AS 36.30.575 is repealed and reenacted to read:

7 Sec. 36.30.575. STAY OF AWARD. If a protest is filed within the
8 time set out in AS 36.30.565 and before an award is made, award of the
9 contract shall be stayed until a decision is made on the protest,
10 unless the chief procurement officer, the commissioner, or, for con-
11 struction contracts or procurements for the state equipment fleet, the
12 commissioner of transportation and public facilities, makes a written
13 determination that

14 (1) a reasonable probability exists that the protest will
15 be denied; or

16 (2) delay of award of the contract is contrary to the
17 state's best interests.

18 * Sec. 17. AS 36.30.850(b) is amended to read:

19 (b) This chapter applies to every expenditure of state money
20 [FUNDS, IRRESPECTIVE OF THEIR SOURCES, INCLUDING FEDERAL ASSISTANCE
21 EXCEPT AS OTHERWISE SPECIFIED IN AS 36.30.890,] by the state, acting
22 through an agency, under a contract, except that this chapter does not
23 apply to

24 (1) grants;

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

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

- 1 (4) contracts for medical doctors and dentists;
- 2 (5) acquisitions or disposals of real property or interest
3 in real property, except as provided in AS 36.30.080;
- 4 (6) disposals under AS 38.05;
- 5 (7) contracts for the preparation of ballots under AS 15.-
6 15.030;
- 7 (8) acquisitions or disposals of property and other con-
8 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
9 091;
- 10 (9) disposals of obsolete property under AS 19.05.060;
- 11 (10) disposals of obsolete material or equipment under
12 AS 35.20.060;
- 13 (11) agreements with providers of services under AS 44.47.-
14 250; AS 47.07; AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195,
15 and 47.25.310;
- 16 (12) contracts of the Department of Fish and Game for
17 flights that involve specialized flying and piloting skills and are
18 not point-to-point;
- 19 (13) purchases of income-producing assets for the state
20 treasury or a public corporation of the state; [.]
- 21 (14) operation of the state boarding school established
22 under AS 14.16, if the State Board of Education or the commissioner of
23 education adopts regulations for use by the state boarding school in
24 procurement and contracting;
- 25 (15) a contract that is a delegation, in whole or in part,
26 of investment powers held by the commissioner of revenue under AS 14.-
27 25.180, AS 14.40.400, AS 14.42.200, 14.42.210, AS 18.56.095, AS 22.-
28 25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or AS 39.35.-
29 080;

1 loans issued under AS 03.10;

2 (20) purchases of curatorial and conservation services to
3 maintain, preserve, and interpret objects of art and items having
4 cultural, historical, or archaeological significance to the state;

5 (21) acquisition of confidential seismic survey data neces-
6 sary for pre-sale oil and gas lease analyses under AS 38.05.180;

7 (22) contracts for village public safety officers;

8 (23) expenditures to pay travel expenses of personal care
9 attendants and sign language interpreters needed to accompany develop-
10 mentally disabled members of the Governor's Council for the Handi-
11 capped and Gifted to meetings for which reimbursement of members'
12 expenses is authorized under AS 47.80.060;

13 (24) contracts for home health care and adult residential
14 and foster care services provided under regulations adopted by the
15 Department of Health and Social Services; or

16 (25) contracts for supplies or services for research pro-
17 jects funded by money received from the federal government or private
18 grants.

19 * Sec. 18. AS 36.30 is amended by adding a new section to read:

20 Sec. 36.30.855. ALTERNATE PROCUREMENT METHODS. (a) An alter-
21 nate procurement method to the methods provided by AS 36.30.100 --
22 36.30.320 may be used, in accordance with regulations adopted by the
23 commissioner,

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

28 (2) if rates are fixed by law or ordinance;

29 (3) to purchase products or services manufactured or

1 provided by an employment program operated by a nonprofit organization
2 to increase employment opportunities for individuals with physical or
3 mental disabilities that constitute substantial handicaps to employ-
4 ment;

5 (4) to purchase products or services provided by the cor-
6 rectional industries program established under AS 33.32.

7 (b) An alternate procurement method to the methods provided by
8 AS 36.30.100 -- 36.30.320 may be used for purchases of supplies and
9 services to support operations of the division of Alaska state troop-
10 ers or the division of fish and wildlife protection if the procurement
11 officer for the Department of Public Safety makes a written determina-
12 tion that publicity of the purchases would jeopardize the safety of
13 personnel or the success of the operation.

14 * Sec. 19. AS 36.30.990 is amended by adding a new paragraph to read:

15 (17) "state money" means any money appropriated to an
16 agency or spent by an agency under an appropriation, irrespective of
17 its sources, including federal assistance except as otherwise spec-
18 ified in AS 36.30.890.

19 * Sec. 20. AS 36.30.100(b)(1) -- (4), 36.30.540(4) -- (5), 36.30.605;
20 and AS 44.47.250(c) are repealed.