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Referred: Rules

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1 IN THE SENATE BY THE FINANCE COMMITTEE
2 CS FOR SENATE BILL NO. 170 (Finance)
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 01.10.080 is amended to read:
9 Sec. 01.10.080. COMPUTATION OF TIME. The time in which an act
10 provided by law is required to be done is computed by excluding the
11 first day and including the last, unless the last day is a holiday,
12 and then it is also excluded. This section does not apply to AS 36.-
13 30.
14 * Sec. 2. AS 36.30.015(e) is amended to read:
15 (e) The board [BOARDS] of directors of the [ALASKA RAILROAD
16 CORPORATION AND THE] Alaska State Building Authority shall adopt
17 procedures to govern the procurement of supplies, services, profes-
18 sional services, and construction by the authority [CORPORATION]. The
19 procedures must be substantially equivalent to the procedures pre-
20 scribed in this chapter and in regulations adopted under this chapter.
21 * Sec. 3. AS 36.30.015 is amended by adding a new subsection to read:
22 (f) The board of directors of the Alaska Railroad Corporation
23 shall adopt and publish procedures to govern the procurement of sup-
24 plies, services, professional services, and construction by the corpo-
25 ration. The procedures must be based on the competitive principles
26 consistent with this chapter and must be adapted to the special needs
27 of the corporation as determined by the board of directors.
28 * Sec. 4. AS 36.30.040(b) is amended to read:
29 (b) The commissioner shall adopt regulations pertaining to the

1 following:

2 (1) suspension, debarment, and reinstatement of prospective
3 bidders and contractors;

4 (2) bid protests;

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

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

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

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

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

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

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

18 (10) definitions and classes of contractual services and
19 procedures for acquiring them;

20 (11) providing for conducting price analysis;

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

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

25 (14) conditions under which an agency may use the services
26 of an employment program [AS DEFINED UNDER AS 36.30.100(c)];

27 (15) a bidder's or offeror's duties under AS 36.30.115 and
28 36.30.210; and

29 (16) the elimination and prevention of discrimination in

1 state contracting because of race, religion, color, national origin,
2 sex, age, marital status, pregnancy, parenthood, handicap, or politi-
3 cal affiliation.

4 * Sec. 5. AS 36.30.110(b) is amended to read:

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

12 * Sec. 6. AS 36.30.110 is amended by adding a new subsection to read:

13 (c) If the commissioner of transportation and public facilities
14 makes a written finding that confidentiality is in the state's best
15 interest, the estimated cost of a construction contract is confiden-
16 tial information and may not be released to the public before bid
17 opening.

18 * Sec. 7. AS 36.30.115(b) is amended to read:

19 (b) A bidder may replace a listed subcontractor if the subcon-
20 tractor

21 (1) fails to comply with AS 08.18;

22 (2) files for bankruptcy or becomes insolvent;

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

26 (4) fails to obtain bonding;

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

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

1 (7) must be substituted in order for the prime contractor
2 to satisfy required state and federal affirmative action requirements;

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

5 (9) is determined by the procurement officer, not to be a
6 responsible subcontractor [BIDDER].

7 * Sec. 8. AS 36.30.120(b) is amended to read:

8 (b) Bid security must be a bond provided by a surety company
9 authorized to do business in the state or otherwise supplied in a form
10 satisfactory to the commissioner. Bid security must be in an amount
11 equal to at least five percent of the amount of the bid

12 [(1) 10 PERCENT OF THE AMOUNT OF THE BID IF THE BID DOES NOT
13 EXCEED \$100,000; OR

14 (2) 10 PERCENT OF THE FIRST \$100,000 AND FIVE PERCENT OF
15 THE AMOUNT OF THE BID OVER \$100,000 IF THE BID EXCEEDS \$100,000 UP TO
16 A MAXIMUM OF \$200,000 IN SECURITY].

17 * Sec. 9. AS 36.30.170(b) is amended to read:

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

23 (1) holds a current Alaska business license;

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

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

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

6 (5) if a joint venture, is composed entirely of venturers
7 [VENTURES] that qualify under (1) - (4) of this subsection.

8 * Sec. 10. AS 36.30.170(c) is amended to read:

9 (c) If a bidder qualifies under (b) of this section as an Alaska
10 bidder, is offering services through an employment program [AS DEFINED
11 UNDER AS 36.30.100(c)], and is the lowest responsible and responsive
12 bidder with a bid that is not more than 10 percent higher than the
13 lowest bid of a nonresident, the procurement officer shall award the
14 contract to that bidder.

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

16 (a) A request for competitive sealed proposals must contain the
17 date, time, and place for delivering proposals, a specific description
18 of the supplies, construction, services, or professional services to
19 be provided under the contract, and the terms under which the sup-
20 plies, construction, services, or professional services are to be
21 provided. The request must [SHALL] require the offeror [TO SUBMIT
22 EVIDENCE OF THE OFFEROR'S VALID ALASKA BUSINESS LICENSE AND], no later
23 than five working days after the [IDENTIFYING WHICH] proposal that is
24 the most advantageous to the state is identified, to list subcontrac-
25 tors the offeror proposes to use in the performance of the contract.
26 The list must [SHALL] include the name and location of the place of
27 business for each subcontractor, the work to be subcontracted to each
28 subcontractor, and evidence of the subcontractor's valid Alaska busi-
29 ness license. An offeror for a construction contract shall also

1 submit evidence of the offeror's registration under AS 08.18 and
2 evidence of registration for each listed subcontractor.

3 * Sec. 12. AS 36.30.210 is amended by adding a new subsection to read:

4 (e) The offeror must have a valid Alaska business license at the
5 time designated, in the request for proposals, for opening of the pro-
6 posals. The offeror shall supply evidence of the offeror's valid
7 Alaska business license in accordance with regulations adopted by the
8 commissioner.

9 * Sec. 13. AS 36.30.250(b) is amended to read:

10 (b) In determining whether a proposal is advantageous to the
11 state, the procurement officer shall take into account, in accordance
12 with regulations of the commissioner, whether the offeror [QUALIFIES
13 AS AN ALASKA BIDDER UNDER AS 36.30.170(b) OR] is offering the services
14 of an employment program [AS DEFINED IN AS 36.30.100(c)].

15 * Sec. 14. AS 36.30.250 is amended by adding new subsections to read:

16 (c) For the purpose of evaluating cost factors, the proposed
17 costs of an offeror who qualifies as an Alaska bidder under AS 36.30.-
18 170(b) shall be reduced by five percent.

19 (d) The request for proposals must include an Alaska bidder
20 evaluation factor that takes into consideration whether an offeror
21 qualifies as an Alaska bidder under AS 36.30.170(b). At least 10
22 percent of the value of the rating system or weighting value used
23 shall be assigned to the Alaska bidder evaluation factor.

24 * Sec. 15. AS 36.30 is amended by adding a new section to read:

25 Sec. 36.30.265. MULTI-STEP SEALED PROPOSALS. When it is con-
26 sidered impractical to initially prepare a definitive purchase de-
27 scription to support an award based on listed selection criteria, the
28 procurement officer may issue an expression of interest requesting the
29 submission of unpriced technical offers, and then later issue a

1 request for proposals limited to the offerors whose offers are deter-
2 mined to be technically qualified under the criteria set out in the
3 expression of interest.

4 * Sec. 16. AS 36.30.300(a) is amended to read:

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

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

22 (a) A contract for supplies, services, professional services, or
23 a construction contract under \$100,000, may be awarded without compet-
24 itive sealed bidding or competitive sealed proposals, in accordance
25 with regulations adopted by the commissioner [OF ADMINISTRATION]. A
26 contract may be awarded under this section only when the commissioner
27 [OF ADMINISTRATION], or, for construction contracts under \$100,000 or
28 procurements for the state equipment fleet, the commissioner of trans-
29 portation and public facilities, determines in writing that a

1 situation exists that makes competitive sealed bidding or competitive
2 sealed proposals impractical or contrary to the public interest.
3 Procurements under this section shall be made with competition that is
4 practicable under the circumstance. Except for procurements of sup-
5 plies, services, or construction that do not exceed the amount for
6 small procurements under AS 36.30.320(a), the [THE] authority to make
7 a determination required by this section may not be delegated.

8 * Sec. 18. AS 36.30.320(a) is amended to read:

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

13 * Sec. 19. AS 36.30.360(a) is amended to read:

14 (a) A written determination of nonresponsibility [RESPONSIBIL-
15 ITY] of a bidder or offeror shall be made by the procurement officer
16 in accordance with regulations adopted by the commissioner. The
17 unreasonable failure of a bidder or offeror to promptly supply infor-
18 mation in connection with an inquiry with respect to responsibility is
19 grounds for a determination of nonresponsibility with respect to the
20 bidder or offeror.

21 * Sec. 20. AS 36.30.362 is amended to read:

22 Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESI-
23 DENT. Except for awards made under AS 36.30.170, if [IF] the procure-
24 ment officer awards a contract to a person who does not reside or
25 maintain a place of business in the state and if the supplies, ser-
26 vices, professional services, or construction that is the subject of
27 the contract could have been obtained from sources in the state, the
28 procurement officer shall issue a written statement explaining the
29 basis of the award. The statement required under this section shall

1 be kept in the contract file.

2 * Sec. 21. AS 36.30.370 is amended to read:

3 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of
4 this section, any type of contract that will promote the best inter-
5 ests of the state may be used, except that the use of a cost-plus-a-
6 percentage-of-cost contract may only be used when permitted by regula-
7 tions adopted by the commissioner, or, for construction contracts, by
8 the commissioner of transportation and public facilities [IS PROHIB-
9 ITED]. A cost-reimbursement contract may be used only when a deter-
10 mination is made in writing by the procurement officer that a cost-
11 reimbursement contract is likely to be less costly to the state than
12 any other type or that it is impracticable to obtain the supplies,
13 services, professional services, or construction required except under
14 a cost-reimbursement contract.

15 * Sec. 22. AS 36.30.575 is repealed and reenacted to read:

16 Sec. 36.30.575. STAY OF AWARD. If a protest is filed within the
17 time set out in AS 36.30.565 and before an award is made, award of the
18 contract shall be stayed until a decision is made on the protest,
19 unless the chief procurement officer, the commissioner, or, for con-
20 struction contracts or procurements for the state equipment fleet, the
21 commissioner of transportation and public facilities, makes a written
22 determination that

23 (1) a reasonable probability exists that the protest will
24 be denied; or

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

27 * Sec. 23. AS 36.30.850(b) is amended to read:

28 (b) This chapter applies to every expenditure of state money
29 [FUNDS, IRRESPECTIVE OF THEIR SOURCES, INCLUDING FEDERAL ASSISTANCE

1 EXCEPT AS OTHERWISE SPECIFIED IN AS 36.30.890,] by the state, acting
2 through an agency, under a contract, except that this chapter does not
3 apply to

4 (1) grants;

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

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

10 (4) contracts for medical doctors and dentists;

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

13 (6) disposals under AS 38.05;

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

16 (8) acquisitions or disposals of property and other con-
17 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
18 091;

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

20 (10) disposals of obsolete material or equipment under
21 AS 35.20.060;

22 (11) agreements with providers of services under AS 44.47.-
23 250; AS 47.07; AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195,
24 and 47.25.310;

25 (12) contracts of the Department of Fish and Game for
26 flights that involve specialized flying and piloting skills and are
27 not point-to-point;

28 (13) purchases of income-producing assets for the state
29 treasury or a public corporation of the state; [.]

1 (14) operation of the state boarding school established
2 under AS 14.16, if the State Board of Education or the commissioner of
3 education adopts regulations for use by the state boarding school in
4 procurement and contracting;

5 (15) a contract that is a delegation, in whole or in part,
6 of investment powers held by the commissioner of revenue under AS 14.-
7 25.180, AS 14.40.400, AS 14.42.200, 14.42.210, AS 18.56.095, AS 22.-
8 25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or AS 39.35.-
9 080;

10 (16) a contract that is a delegation, in whole or in part,
11 of investment powers of the Board of Trustees of the Alaska Permanent
12 Fund Corporation under AS 37.13; [OR]

13 (17) the purchase of books, book binding services, newspa-
14 pers, periodicals, audio-visual materials, network information ser-
15 vices access, approval plans, professional memberships, archival
16 materials, objects of art, and items for museum or archival acquisi-
17 tion having cultural, historical, or archaeological significance; in
18 this paragraph

19 (A) "approval plans" means book selection services in
20 which current book titles meeting an agency's customized specifi-
21 cations are provided to the agency subject to the right of the
22 agency to return those books that do not meet with the agency's
23 approval;

24 (B) "audio-visual materials" means nonbook prerecorded
25 materials, including records, tapes, slides, transparencies,
26 films, filmstrips, cassettes, videos, compact discs, laser discs,
27 and items that require the use of equipment to render them us-
28 able;

29 (C) "archival materials" means the noncurrent records

1 of an agency that are preserved after appraisal because of their
2 value;

3 (D) "network information services" means a group of
4 resources from which cataloging information, holdings records,
5 inter-library loans, acquisitions information, and other refer-
6 ence resources can be obtained;

7 (18) contracts for the purchase of standardized examinations
8 for licensure under AS 08;

9 (19) disposals of supplies acquired through foreclosure of
10 loans issued under AS 03.10;

11 (20) purchases of curatorial and conservation services to
12 maintain, preserve, and interpret

13 (A) objects of art; and

14 (B) items having cultural, historical, or archaeologi-
15 cal significance to the state;

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

18 (22) contracts for village public safety officers;

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

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

27 (25) contracts for supplies or services for research pro-
28 jects funded by money received from the federal government or private
29 grants; or

1 (26) guest speakers or performers for an educational or
2 cultural activity.

3 * Sec. 24. AS 36.30.850(e) is amended to read:

4 (e) AS 36.30.170 applies to all insurance contracts involving
5 state money. In this subsection, "state money" includes [, INCLUDING]
6 state grants and reimbursement to municipalities, school districts,
7 and other entities.

8 * Sec. 25. AS 36.30 is amended by adding a new section to read:

9 Sec. 36.30.855. ALTERNATE PROCUREMENT METHODS. (a) In place of
10 the methods provided by AS 36.30.100 - 36.30.320, an alternate pro-
11 curement method may be used in the following situations, in accordance
12 with regulations adopted by the commissioner:

13 (1) if the commissioner determines in writing that food,
14 clothing, medical supplies, or materials for use in laboratory or
15 medical studies can be purchased otherwise to the best advantage of
16 the state;

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

18 (3) to purchase products or services manufactured or pro-
19 vided by an employment program;

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

22 (b) An alternate procurement method to the methods provided by
23 AS 36.30.100 - 36.30.320 may be used for purchases of supplies and
24 services to support operations of the division of Alaska state troop-
25 ers or the division of fish and wildlife protection if the procurement
26 officer for the Department of Public Safety makes a written determina-
27 tion that publicity of the purchases would jeopardize the safety of
28 personnel or the success of the operation.

29 * Sec. 26. AS 36.30 is amended by adding a new section to read:

1 Sec. 36.30.960. COMPUTATION OF TIME. The time in which an act
2 under this chapter is required to be done is computed by excluding the
3 first day and including the last.

4 * Sec. 27. AS 36.30.990 is amended by adding new paragraphs to read:

5 (17) "day" or "working day" means a state working day;

6 (18) "employment program" means a nonprofit program to
7 increase employment opportunities for individuals with physical or
8 mental disabilities that constitute substantial handicaps to employ-
9 ment;

10 (19) "state money" means any money appropriated to an agency
11 or spent by an agency irrespective of its source, including federal
12 assistance except as otherwise specified in AS 36.30.890, but does not
13 include money held in trust by an agency for a person.

14 * Sec. 28. AS 36.30.100(b)(1), 36.30.100(b)(2), 36.30.100(b)(3), 36.-
15 30.100(b)(4), 36.30.100(c), 36.30.540(4), 36.30.540(5), 36.30.605, and
16 AS 44.47.250(c) are repealed.