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Referred: Rules

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1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE  
2 HOUSE CS FOR CS FOR SENATE BILL NO. 170 (State Affairs)  
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 36.30.040(b) is amended to read:  
9 (b) The commissioner shall adopt regulations pertaining to the  
10 following:  
11 (1) suspension, debarment, and reinstatement of prospective  
12 bidders and contractors;  
13 (2) bid protests;  
14 (3) conditions and procedures for the procurement of per-  
15 ishables and items for resale;  
16 (4) conditions and procedures for the use of source selec-  
17 tion methods authorized by this chapter, including sole source pro-  
18 curements, emergency procurements, and small procurements;  
19 (5) the opening or rejection of bids and offers, and waiver  
20 of informalities in bids and offers;  
21 (6) confidentiality of technical data and trade secrets  
22 submitted by actual or prospective bidders or offerors;  
23 (7) partial, progressive, and multiple awards;  
24 (8) storerooms and inventories, including determination of  
25 appropriate stock levels and the management of agency supplies;  
26 (9) transfer, sale or other disposal of supplies;  
27 (10) definitions and classes of contractual services and  
28 procedures for acquiring them;  
29 (11) providing for conducting price analysis;

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

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

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

7 (15) a bidder's or offeror's duties under AS 36.30.115 and  
8 36.30.210; and

9 (16) the elimination and prevention of discrimination in  
10 state contracting because of race, religion, color, national origin,  
11 sex, age, marital status, pregnancy, parenthood, handicap, or politi-  
12 cal affiliation.

13 \* Sec. 2. AS 36.30.110(b) is amended to read:

14 (b) The bidder must have a valid Alaska business license at the  
15 time designated in the invitation to bid for bid opening. [WHEN  
16 RESPONDING TO THE INVITATION TO BID, THE BIDDER SHALL SUPPLY EVIDENCE  
17 OF THE BIDDER'S VALID ALASKA BUSINESS LICENSE.] A bidder for a con-  
18 struction contract shall also submit evidence of the bidder's regis-  
19 tration under AS 08.18.

20 \* Sec. 3. AS 36.30.110 is amended by adding a new subsection to read:

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

26 \* Sec. 4. AS 36.30.115(b) is amended to read:

27 (b) A bidder may replace a listed subcontractor if the subcon-  
28 tractor

29 (1) fails to comply with AS 08.18;

- 1           (2) files for bankruptcy or becomes insolvent;  
2           (3) fails to execute a contract with the bidder involving  
3 performance of the work for which the subcontractor was listed and the  
4 bidder acted in good faith;  
5           (4) fails to obtain bonding;  
6           (5) fails to obtain insurance acceptable to the state;  
7           (6) fails to perform the contract with the bidder involving  
8 work for which the subcontractor was listed;  
9           (7) must be substituted in order for the prime contractor  
10 to satisfy required state and federal affirmative action requirements;  
11           (8) refuses to agree or abide with the bidder's labor  
12 agreement; or  
13           (9) is determined by the procurement officer not to be a  
14 responsible subcontractor [BIDDER].

15 \* Sec. 5. AS 36.30.120(b) is amended to read:

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

20           [(1) 10 PERCENT OF THE AMOUNT OF THE BID IF THE BID DOES NOT  
21 EXCEED \$100,000; OR

22           (2) 10 PERCENT OF THE FIRST \$100,000 AND FIVE PERCENT OF  
23 THE AMOUNT OF THE BID OVER \$100,000 IF THE BID EXCEEDS \$100,000 UP TO  
24 A MAXIMUM OF \$200,000 IN SECURITY].

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

26           (b) The procurement officer shall award a contract based on  
27 solicited bids to the lowest responsive and responsible bidder after  
28 an Alaska bidder preference of five percent and an Alaska products  
29 preference as described in AS 36.30.322 - 36.30.338 have been applied.

1 In this subsection, "Alaska bidder" means a person who

2 (1) holds a current Alaska business license;

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

6 (3) is a business entirely owned by residents of the state,  
7 or is a person who does more than \$500,000 worth of business in the  
8 state or performs more than 50 percent of the person's business in the  
9 state;

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

13 (5) [(4)] is incorporated or qualified to do business under  
14 the laws of the state, is a sole proprietorship [,] and the proprietor  
15 is a resident of the state, or is a partnership [,] and at least 50  
16 percent of the partnership interest in the firm is owned by [ALL  
17 PARTNERS ARE] residents of the state; and

18 (6) [(5)] if a joint venture, is composed entirely of  
19 venturers [VENTURES] that qualify under (1) - (5) [(1) - (4)] of this  
20 subsection.

21 \* Sec. 7. AS 36.30.170(c) is amended to read:

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

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

29 (a) A request for competitive sealed proposals must contain the

1 date, time, and place for delivering proposals, a specific description  
2 of the supplies, construction, services, or professional services to  
3 be provided under the contract, and the terms under which the sup-  
4 plies, construction, services, or professional services are to be  
5 provided. The request must [SHALL] require the offeror [TO SUBMIT  
6 EVIDENCE OF THE OFFEROR'S VALID ALASKA BUSINESS LICENSE AND], no later  
7 than five working days after the [IDENTIFYING WHICH] proposal that is  
8 the most advantageous to the state is identified, to list subcontractors  
9 the offeror proposes to use in the performance of the contract.  
10 The list must [SHALL] include the name and location of the place of  
11 business for each subcontractor, the work to be subcontracted to each  
12 subcontractor, and evidence of the subcontractor's valid Alaska busi-  
13 ness license. An offeror for a construction contract shall also  
14 submit evidence of the offeror's registration under AS 08.18 and  
15 evidence of registration for each listed subcontractor.

16 \* Sec. 9. AS 36.30.210 is amended by adding a new subsection to read:

17 (e) The offeror must have a valid Alaska business license at the  
18 time designated, in the request for proposals, for opening of the pro-  
19 posals.

20 \* Sec. 10. AS 36.30.250(b) is amended to read:

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

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

27 (c) For the purpose of evaluating cost factors, the proposed  
28 costs of an offeror who qualifies as an Alaska bidder under AS 36.30.-  
29 170(b) shall be reduced by five percent.

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

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

7 Sec. 36.30.265. MULTI-STEP SEALED PROPOSALS. When it is con-  
8 sidered impractical to initially prepare a definitive purchase de-  
9 scription to support an award based on listed selection criteria, the  
10 procurement officer may issue an expression of interest requesting the  
11 submission of unpriced technical offers, and then later issue a re-  
12 quest for proposals limited to the offerors whose offers are deter-  
13 mined to be technically qualified under the criteria set out in the  
14 expression of interest.

15 \* Sec. 13. AS 36.30.300(a) is amended to read:

16 (a) A contract may be awarded for supplies, services, profes-  
17 sional services, or construction without competitive sealed bidding,  
18 competitive sealed proposals, or other competition in accordance with  
19 regulations adopted by the commissioner [OF ADMINISTRATION]. A con-  
20 tract may be awarded under this section only when the chief procure-  
21 ment officer or, for construction contracts or procurements for the  
22 state equipment fleet, the commissioner of transportation and public  
23 facilities determines in writing that there is only one source for the  
24 required procurement or construction. A sole source procurement may  
25 not be awarded if a reasonable alternative source exists. The written  
26 determination must include findings of fact that support by clear and  
27 convincing evidence the determination that only one source exists.  
28 Except for procurements of supplies, services, or construction that do  
29 not exceed the amount for small procurements under AS 36.30.320(a),

1 the [THE] authority to make the determination required by this subsec-  
2 tion may not be delegated.

3 \* Sec. 14. AS 36.30.305(a) is amended to read:

4 (a) A contract for supplies, services, professional services, or  
5 a construction contract under \$100,000, may be awarded without compet-  
6 itive sealed bidding or competitive sealed proposals, in accordance  
7 with regulations adopted by the commissioner [OF ADMINISTRATION]. A  
8 contract may be awarded under this section only when the commissioner  
9 [OF ADMINISTRATION], or, for construction contracts under \$100,000 or  
10 procurements for the state equipment fleet, the commissioner of trans-  
11 portation and public facilities, determines in writing that a situa-  
12 tion exists that makes competitive sealed bidding or competitive  
13 sealed proposals impractical or contrary to the public interest.  
14 Procurements under this section shall be made with competition that is  
15 practicable under the circumstance. Except for procurements of sup-  
16 plies, services, or construction that do not exceed the amount for  
17 small procurements under AS 36.30.320(a), the [THE] authority to make  
18 a determination required by this section may not be delegated.

19 \* Sec. 15. AS 36.30.320(a) is amended to read:

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

24 \* Sec. 16. AS 36.30.360(a) is amended to read:

25 (a) A written determination of nonresponsibility [RESPONSIBIL-  
26 ITY] of a bidder or offeror shall be made by the procurement officer  
27 in accordance with regulations adopted by the commissioner. The  
28 unreasonable failure of a bidder or offeror to promptly supply infor-  
29 mation in connection with an inquiry with respect to responsibility is

1 grounds for a determination of nonresponsibility with respect to the  
2 bidder or offeror.

3 \* Sec. 17. AS 36.30.362 is amended to read:

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

13 \* Sec. 18. AS 36.30.370 is amended to read:

14 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of  
15 this section, any type of contract that will promote the best inter-  
16 ests of the state may be used, except that the use of a cost-plus-a-  
17 percentage-of-cost contract may only be used when permitted by regula-  
18 tions adopted by the commissioner, or, for construction contracts, by  
19 the commissioner of transportation and public facilities [IS PROHIB-  
20 ITED]. A cost-reimbursement contract may be used only when a deter-  
21 mination is made in writing by the procurement officer that a cost-  
22 reimbursement contract is likely to be less costly to the state than  
23 any other type or that it is impracticable to obtain the supplies,  
24 services, professional services, or construction required except under  
25 a cost-reimbursement contract.

26 \* Sec. 19. AS 36.30.575 is repealed and reenacted to read:

27 Sec. 36.30.575. STAY OF AWARD. If a protest is filed within the  
28 time set out in AS 36.30.565 and before an award is made, award of the  
29 contract shall be stayed until a decision is made on the protest,

1 unless the chief procurement officer, the commissioner, or, for con-  
2 struction contracts or procurements for the state equipment fleet, the  
3 commissioner of transportation and public facilities, makes a written  
4 determination that

5 (1) a reasonable probability exists that the protest will  
6 be denied; or

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

9 \* Sec. 20. AS 36.30.590(a) is amended to read:

10 (a) An appeal from a decision of a procurement officer on a  
11 protest may be filed by the protester with the commissioner of admin-  
12 istration, or for protests involving construction or procurements for  
13 the state equipment fleet, the commissioner of transportation and  
14 public facilities. An appeal shall be filed within 10 [FIVE] days  
15 after the decision is received by the protester. The protester shall  
16 file a copy of the appeal with the procurement officer.

17 \* Sec. 21. AS 36.30.850(b) is amended to read:

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

23 (1) grants;

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

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

29 (4) contracts for medical doctors and dentists;

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

1 of investment powers of the Board of Trustees of the Alaska Permanent  
2 Fund Corporation under AS 37.13; [OR]

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

9 (A) "approval plans" means book selection services in  
10 which current book titles meeting an agency's customized specifi-  
11 cations are provided to the agency subject to the right of the  
12 agency to return those books that do not meet with the agency's  
13 approval;

14 (B) "audio-visual materials" means nonbook prerecorded  
15 materials, including records, tapes, slides, transparencies,  
16 films, filmstrips, cassettes, videos, compact discs, laser discs,  
17 and items that require the use of equipment to render them us-  
18 able;

19 (C) "archival materials" means the noncurrent records  
20 of an agency that are preserved after appraisal because of their  
21 value;

22 (D) "network information services" means a group of  
23 resources from which cataloging information, holdings records,  
24 inter-library loans, acquisitions information, and other refer-  
25 ence resources can be obtained;

26 (18) contracts for the purchase of standardised examinations  
27 for licensure under AS 08;

28 (19) disposals of supplies acquired through foreclosure of  
29 loans issued under AS 03.10;

1           (20) purchases of curatorial and conservation services to  
2 maintain, preserve, and interpret

3                   (A) objects of art; and

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

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

8           (22) contracts for village public safety officers;

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

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

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

20           (26) guest speakers or performers for an educational or  
21 cultural activity.

22 \* Sec. 22. AS 36.30.850(e) is amended to read:

23           (e) AS 36.30.170 applies to all insurance contracts involving  
24 state money. In this subsection, "state money" includes [, INCLUDING]  
25 state grants and reimbursement to municipalities, school districts,  
26 and other entities.

27 \* Sec. 23. AS 36.30 is amended by adding a new section to read:

28           Sec. 36.30.855. ALTERNATE PROCUREMENT METHODS. (a) In place of  
29 the methods provided by AS 36.30.100 - 36.30.320, an alternate

1 procurement method may be used in the following situations, in accor-  
2 dance with regulations adopted by the commissioner:

3 (1) if the commissioner determines in writing that food,  
4 clothing, medical supplies, or materials for use in laboratory or  
5 medical studies can be purchased otherwise to the best advantage of  
6 the state;

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

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

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

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

19 \* Sec. 24. AS 36.30.990 is amended by adding new paragraphs to read:

20 (17) "employment program" means a nonprofit program to  
21 increase employment opportunities for individuals with physical or  
22 mental disabilities that constitute substantial handicaps to employ-  
23 ment;

24 (18) "state money" means any money appropriated to an agency  
25 or spent by an agency irrespective of its source, including federal  
26 assistance except as otherwise specified in AS 36.30.890, but does not  
27 include money held in trust by an agency for a person.

28 \* Sec. 25. AS 36.30.100(b)(1), 36.30.100(b)(2), 36.30.100(b)(3), 36.-  
29 30.100(b)(4), 36.30.100(c), 36.30.540(4), 36.30.540(5), 36.30.605, and

1 AS 44.47.250(c) are repealed.