

HOUSE BILL NO. 245

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES CHOQUETTE, Gruenberg, Baker, Barnes, Carney, B.Davis, C.Davis, Donley, Ellis, Finkelstein, Foster, Gonzales, Grussendorf, Hanley, Hudson, Ivan, Jacko, Kubina, Larson, Leman, Lincoln, Mackie, MacLean, Martin, M.A.Miller, M.W.Miller, Moyer, Parnell, G.Phillips, R.Phillips, Sharp, Taylor

Introduced: 3/27/91

Referred: Labor & Commerce, State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to publications produced by state agencies and to the procurement of
2 property and services, including the services of employees, by certain public entities."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1. FINDINGS AND PURPOSE.** (a) The legislature finds that

5 (1) the state needs to develop and maintain a strong, stable, and prosperous economic
6 base;

7 (2) the existence of a strong and healthy free enterprise system is directly related to the
8 well-being and competitive strength of state businesses and to the opportunity for state businesses to
9 have free entry into the business market and to grow and expand;

10 (3) the use of products manufactured, grown, or produced in the state strengthens,
11 stabilizes, and diversifies the state's economy;

12 (4) governmental agencies too frequently purchase and use out-of-state products and
13 services, which reduces the number of jobs available for state residents and weakens the economy of the
14 state;

1 (5) the bid documents for public contracts frequently do not specify the use of available
2 state products, comparable out-of-state goods are purchased instead, and these purchases result in a loss
3 of revenue for the state and weaken the state's economic base;

4 (6) public service contracts are frequently awarded to out-of-state firms although state
5 suppliers, manufacturers, and providers of services are more accessible and responsive to the needs of
6 the state's business community than their out-of-state counterparts;

7 (7) there is a need for the state to examine its purchasing practices in order to ensure that
8 state procurement officers support state businesses by making every reasonable effort to identify
9 available state goods and services and provide local businesses and labor forces with the opportunity to
10 get the work;

11 (8) state procurement officials should consider the administrative costs of different bids
12 because different bids for a contract can require significantly different state costs for the administration
13 of the contract when out-of-state contractors are awarded the contract and, if administrative costs are
14 required by the nature of a particular bid, the costs should be added to the bid amount before the low
15 bidder is determined;

16 (9) before advertising outside the state for goods and services and employees, the state
17 should conduct a search in the state for persons and organizations that can provide needed goods and
18 services.

19 (b) The legislature declares that it is the purpose of this Act to provide that state businesses
20 obtain a fair proportion of the state's total procurement contracts by providing them with a fair and
21 equitable chance to compete for the contracts.

22 * Sec. 2. AS 36.30.050(b) is amended to read:

23 (b) A person who desires to be on a list shall submit to the commissioner or
24 procurement officer evidence of a valid Alaska business license. A biennial fee may be
25 established by regulation in an amount reasonably calculated to pay the costs of administering
26 this section. A construction contractor shall also submit a valid certificate of registration issued
27 under AS 08.18. The commissioner, by regulation, or the procurement officer may require
28 submission of additional information.

29 * Sec. 3. AS 36.30.050(c) is amended to read:

30 (c) Except as prohibited under AS 36.30.875, the [THE] lists may be used by the chief
31 procurement officer or an agency when issuing invitations to bid or requests for proposals under

1 this chapter. The lists may be used by the legislative council, the court system, the Alaska State
2 Housing Authority, and the Alaska Railroad Corporation.

3 * Sec. 4. AS 36.30.050 is amended by adding a new subsection to read:

4 (e) The procurement officer for each agency shall establish and maintain a master list that
5 identifies the persons who are located in the state and who desire to provide supplies, services,
6 professional services, or construction services to the agency. The state agency shall update its
7 list every six months and shall share the list with other state agencies.

8 * Sec. 5. AS 36.30.115(a) is amended to read:

9 (a) Within five working days after the identification of the apparent low bidder, the
10 apparent low bidder shall submit a list of the subcontractors the bidder proposes to use in the
11 performance of the contract. The list must include the name and location of the place of business
12 for each subcontractor and evidence of the subcontractor's valid Alaska business license. A
13 bidder for a construction contract shall also submit evidence of [EACH SUBCONTRACTOR'S]
14 registration under AS 08.18 for each subcontractor that is required to be registered under
15 AS 08.18. If a subcontractor on the list did not have a valid Alaska business license and, if
16 required by AS 08.18, a valid certificate of registration under AS 08.18 at the time the bid was
17 opened, the bidder may not use the subcontractor in the performance of the contract [,] and shall
18 replace the subcontractor with a subcontractor who had a valid Alaska business license and, if
19 required by AS 08.18, a valid certificate of registration under AS 08.18 at the time the bid was
20 opened.

21 * Sec. 6. AS 36.30.130(a) is amended to read:

22 (a) The procurement officer shall give adequate public notice of the invitation to bid at
23 least 21 days before the date for the opening of bids. If a determination is made in writing that
24 a shorter notice period is necessary for a particular bid, the 21-day period may be shortened. The
25 determination shall be made by the chief procurement officer for bids for supplies, services, or
26 professional services. The determination shall be made by the commissioner of transportation
27 and public facilities for bids for construction or acquisition of property for the state equipment
28 fleet. Notice shall be published in the Alaska Administrative Journal. The time and manner of
29 notice must be in accordance with regulations adopted by the commissioner of administration.
30 In addition, the procurement officer shall provide the notice to every person on the list
31 established under AS 36.30.050(e) who provides the supplies, services, professional services.

1 or construction services that the agency is procuring, except that if the procurement is for
2 construction, the agency shall provide the notice of the procurement to potential prime
3 contractors on the list, but not to potential subcontractors. When practicable, except as
4 prohibited by AS 36.30.875, notice may include

5 (1) publication in a newspaper calculated to reach prospective bidders;

6 (2) notices posted in public places within the area where the work is to be
7 performed or the material furnished; and

8 (3) notices mailed to all active prospective contractors on the appropriate list
9 maintained under AS 36.30.050(a) [AS 36.30.050].

10 * Sec. 7. AS 36.30 is amended by adding a new section to read:

11 Sec. 36.30.165. CONSIDERATION OF ADMINISTRATIVE COSTS. After the opening
12 of the bids for a contract but before the application of preferences and determination of the
13 successful bidder under AS 36.30.170, the procurement officer shall add to the amount of each
14 bid the administrative costs that would be incurred by the state to administer the contract under
15 the bid. The resulting figure is the amount of the bid. In this section, "administrative costs"
16 includes the additional costs that result from the geographical location of the bidder or the
17 bidder's source of supplies, including costs for transportation, communications, and per diem.

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

19 (a) A request for competitive sealed proposals must contain the date, time, and place for
20 delivering proposals, a specific description of the supplies, construction, services, or professional
21 services to be provided under the contract, and the terms under which the supplies, construction,
22 services, or professional services are to be provided. The request must require the offeror, no
23 later than five working days after the proposal that is the most advantageous to the state is
24 identified, to list subcontractors the offeror proposes to use in the performance of the contract.
25 The list must include the name and location of the place of business for each subcontractor, the
26 work to be subcontracted to each subcontractor, and evidence of the subcontractor's valid Alaska
27 business license. If a subcontractor on the list did not have a valid Alaska business license
28 at the time the proposal was opened, the offeror may not use the subcontractor in the
29 performance of the contract and shall replace the subcontractor with a subcontractor who
30 had a valid Alaska business license at the time the proposal was opened. An offeror for a
31 construction contract shall also submit evidence of the offeror's registration under AS 08.18 and

1 evidence of registration for each listed subcontractor who is required to be registered under
2 AS 08.18.

3 * Sec. 9. AS 36.30.305(a) is amended to read:

4 (a) A contract for supplies, services, [PROFESSIONAL SERVICES,] or a construction
5 contract under \$25,000 [\$100,000,] may be awarded without competitive sealed bidding or
6 competitive sealed proposals [,] in accordance with regulations adopted by the commissioner.
7 A contract may be awarded under this section only when the commissioner [,] or, for
8 construction contracts under \$25,000 [\$100,000] or procurements for the state equipment fleet
9 under \$25,000, the commissioner of transportation and public facilities [,] determines in writing
10 that a situation exists that makes competitive sealed bidding or competitive sealed proposals
11 impractical or contrary to the public interest. Procurements under this section shall be made with
12 competition that is practicable under the circumstance. Except for procurements of supplies,
13 services, or construction that do not exceed the amount for small procurements under
14 AS 36.30.320(a), the authority to make a determination required by this section may not be
15 delegated.

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

17 Sec. 36.30.875. OUT-OF-STATE SOLICITATION OF CONTRACTS. (a) An agency
18 may not solicit outside of the state for a contract unless the chief procurement officer, or, for
19 construction contracts or procurements for the state equipment fleet, the commissioner of
20 transportation and public facilities determines in writing

21 (1) that a source for the procurement is not available in the state; or

22 (2) that the agency has solicited within the state for four weeks and that

23 (A) the agency has not received a responsive bid from a responsible bidder
24 if the agency is procuring the contract under AS 36.30.100 - 36.30.190; or

25 (B) the agency has not received a responsive proposal from a responsible
26 offeror if the state is procuring the contract under AS 36.30.200 - 36.30.270.

27 (b) This action does not apply to contracts for professional services to be performed in
28 an area outside of the state and requiring knowledge of the customs, procedures, rules, or laws
29 of the area.

30 (c) In this section, "solicit" includes advertising, initiating contact with a person, and
31 sending an invitation to bid or a request for proposals to a person who has not requested the

1 invitation or request, but does not include sending an invitation to bid or a request for proposals
2 to a person outside the state.

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

4 Sec. 36.30.905. DESIGN OF PROCUREMENTS. (a) To the fullest extent possible, a
5 state agency shall design a procurement so that the procurement can be performed by persons in
6 the state.

7 (b) If a proposed procurement is too large to be handled by Alaska bidders or offerors,
8 but if Alaska bidders or offerors would be capable of handling the procurement if the
9 procurement were reduced in size or otherwise restructured, the agency that is proposing the
10 procurement shall divide or otherwise structure the procurement so that it can be handled by
11 Alaska bidders or offerors. In this subsection, "Alaska bidders or offerors" means persons who
12 qualify as Alaska bidders under AS 36.30.170(b).

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

14 Sec. 36.30.960. RESPONSIVENESS. A bidder or offeror for a procurement under this
15 chapter is not responsive to the procurement request unless the bidder or offeror has made
16 reasonable attempts to utilize goods and services of the state in the performance of the contract.
17 The bidder or offeror shall provide the procurement officer with an explanation of where the
18 bidder or offeror plans to spend the money for the contract, including a description of the
19 components of the contract and the address of each subcontractor the bidder or offeror will use.
20 If a person is not using goods and services of the state for a part of the contract, the person shall
21 provide the procurement officer with an explanation why they are not being used.

22 * Sec. 13. AS 36.30.990 is amended by adding a new paragraph to read:

23 (22) "subcontractor" means a person who contracts with a contractor to provide
24 the contractor with services or supplies, and includes manufacturers; in this paragraph,

25 (A) "services" means labor, time, or effort;

26 (B) "supplies" means property, including equipment, materials, and
27 insurance; it includes leased space, but does not include other interests in land.

28 * Sec. 14. AS 39.25 is amended by adding a new section to read:

29 Sec. 39.25.165. OUT-OF-STATE SOLICITATION OF EMPLOYEES. (a) Except as
30 provided in (b) of this section, a state agency, including the division of personnel, may not solicit
31 outside the state for an individual to fill a position as a state employee unless the personnel

1 officer determines in writing that the agency has actively solicited in good faith in the state
2 during the 15-week period that followed the date when the agency began soliciting for the
3 position and has been unable to find an individual who is qualified for the position. In this
4 subsection, "personnel officer" means the commissioner of administration for a state agency of
5 the executive branch, the speaker of the house of representatives for the members, committees,
6 and leadership of the house of representatives, the president of the senate for the members,
7 committees, and leadership of the senate, and the executive director of the Legislative Affairs
8 Agency for the other entities of the legislative branch.

9 (b) The prohibition in (a) of this section does not apply if the state agency is

10 (1) in the executive branch and the governor makes a written finding that the state
11 agency is not likely to be able to find an individual who is qualified for the position by soliciting
12 in the state;

13 (2) in the legislative branch and the legislative budget and audit committee makes
14 a written finding that the state agency is not likely to be able to find an individual who is
15 qualified for the position by soliciting in the state.

16 (c) In this section,

17 (1) "position" includes a position in the exempt or partially exempt service, except
18 a position identified in AS 39.25.110(1) - (2);

19 (2) "solicit" includes advertising, initiating contact with an individual, and sending
20 a copy of an employment vacancy notice to an individual who has not requested the notice;

21 (3) "state agency" means

22 (A) a department, institution, board, commission, division, authority,
23 public corporation, or other administrative unit of the executive branch, including the
24 University of Alaska and the Alaska State Housing Authority, but not including the
25 Alaska Railroad Corporation;

26 (B) a committee, commission, or other administrative or organizational
27 unit of the legislative branch, including the leadership of each house and the office of the
28 ombudsman.

29 * Sec. 15. AS 44.99.200 is repealed and reenacted to read:

30 Sec. 44.99.200. PRODUCTION OF PUBLICATIONS. The publications of a state
31 agency shall be produced at a facility located in the state.

1 * Sec. 16. AS 44.99.230 is amended to read:

2 Sec. 44.99.230. STANDARDS. The Department of Administration shall establish
3 standards for the production of publications by state agencies, except that the Board of Regents
4 of the University of Alaska shall establish the standards for the university. The standards must
5 be designed to promote simplicity, low cost, consistency, and exclusive [MAXIMUM] use of
6 [STATE-OPERATED] production facilities located in the state.

7 * Sec. 17. AS 44.99.210 is repealed.