

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 245
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

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Introduced: 4/12/91

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, property interests, and services, including the services of employees, by certain
3 public entities."

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

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

6 (1) the state needs to develop and maintain a strong, stable, and prosperous economy
7 based on private investment;

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

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

13 (4) when governmental agencies purchase and use out-of-state products and services, they
14 reduce job-creating investments and limit the growth of the economy of Alaska;

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

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

7 (7) there is a need for Alaska to examine its purchasing practices in order to ensure that
8 state agencies support Alaskan businesses by making every reasonable effort to identify available
9 Alaskan goods and services and to foster bidding by local businesses and labor forces;

10 (8) state agencies should consider the administrative costs of bids, and these costs should
11 be added to the bid amount before the low bidder is determined;

12 (9) before advertising outside Alaska for goods and services and employees, state
13 agencies should conduct a search in Alaska for persons and organizations that can provide needed goods
14 and services;

15 (10) state agencies should only look outside Alaska when there is a reason to believe that
16 a competitive response will not be obtained in Alaska.

17 (b) The legislature declares that the purpose of this Act is to foster a procurement process where
18 Alaskan businesses obtain a fair proportion of Alaska's total procurement contracts by providing Alaskan
19 businesses with a fair, equitable, and competitive bid process.

20 * Sec. 2. AS 36.30.115(a) is amended to read:

21 (a) Within five working days after the identification of the apparent low bidder, the
22 apparent low bidder shall submit a list of the subcontractors the bidder proposes to use in the
23 performance of the contract. The list must include the name and location of the place of business
24 for each subcontractor and evidence of the subcontractor's valid Alaska business license. A
25 bidder for a construction contract shall also submit evidence of [EACH SUBCONTRACTOR'S]
26 registration under AS 08.18 for each subcontractor that is required to be registered under
27 AS 08.18. If a subcontractor on the list did not have a valid Alaska business license and, if
28 required by AS 08.18, a valid certificate of registration under AS 08.18 at the time the bid was
29 opened, the bidder may not use the subcontractor in the performance of the contract [,] and shall
30 replace the subcontractor with a subcontractor who had a valid Alaska business license and, if
31 required by AS 08.18, a valid certificate of registration under AS 08.18 at the time the bid was

1 opened.

2 * Sec. 3. AS 36.30.130(a) is amended to read:

3 (a) The procurement officer shall give adequate public notice of the invitation to bid at
4 least 21 days before the date for the opening of bids. If a determination is made in writing that
5 a shorter notice period is necessary for a particular bid, the 21-day period may be shortened. The
6 determination shall be made by the chief procurement officer for bids for supplies, services, or
7 professional services. The determination shall be made by the commissioner of transportation
8 and public facilities for bids for construction or acquisition of property for the state equipment
9 fleet. Notice shall be published in the Alaska Administrative Journal. The time and manner of
10 notice must be in accordance with regulations adopted by the commissioner of administration.
11 **In addition, the procurement officer shall provide the notice to every contractor located in**
12 **the state who is on the list established under AS 36.30.050(a) and who provides the supplies,**
13 **services, or professional services that the agency is procuring.** When practicable, **except as**
14 **prohibited by AS 36.30.875,** notice may include

15 (1) publication in a newspaper calculated to reach prospective bidders **located in**
16 **the state;**

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

19 (3) notices mailed to all active prospective contractors on the appropriate list
20 maintained under AS 36.30.050.

21 * Sec. 4. AS 36.30.150(a) is amended to read:

22 (a) Bids shall be unconditionally accepted without alteration or correction, except as
23 authorized in AS 36.30.160. The procurement officer shall evaluate bids based on the
24 requirements set out in the invitation to bid, which may include criteria to determine acceptability
25 such as inspection, testing, quality, delivery, and suitability for a particular purpose, **and which**
26 **must include consideration of administrative costs.** The criteria that will affect the bid price
27 and be considered in evaluation for award must be objectively measurable, such as discounts,
28 transportation costs, **administrative costs,** and total or life cycle costs. The invitation to bid
29 must set out the evaluation criteria to be used. Criteria may not be used in bid evaluation if they
30 are not set out in the invitation to bid. **In this subsection, "administrative costs" includes the**
31 **additional costs that result from the geographical location of the bidder or the bidder's**

1 **source of supplies, including costs for transportation, communications, and per diem.**

2 * Sec. 5. AS 36.30.210(a) is amended to read:

3 (a) A request for competitive sealed proposals must contain the date, time, and place for
4 delivering proposals, a specific description of the supplies, construction, services, or professional
5 services to be provided under the contract, and the terms under which the supplies, construction,
6 services, or professional services are to be provided. The request must require the offeror, no
7 later than five working days after the proposal that is the most advantageous to the state is
8 identified, to list subcontractors the offeror proposes to use in the performance of the contract.
9 The list must include the name and location of the place of business for each subcontractor, the
10 work to be subcontracted to each subcontractor, and evidence of the subcontractor's valid Alaska
11 business license. **If a subcontractor on the list did not have a valid Alaska business license**
12 **at the time the proposal was opened, the offeror may not use the subcontractor in the**
13 **performance of the contract and shall replace the subcontractor with a subcontractor who**
14 **had a valid Alaska business license at the time the proposal was opened.** An offeror for a
15 construction contract shall also submit evidence of the offeror's registration under AS 08.18 and
16 evidence of registration for each listed subcontractor **who is required to be registered under**
17 **AS 08.18.**

18 * Sec. 6. AS 36.30.850(b) is amended by adding a new paragraph to read:

19 (23) contracts for professional services to be performed in an area outside of the
20 state and requiring knowledge of the customs, procedures, rules, or laws of the area.

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

22 Sec. 36.30.875. SOLICITATION OF CONTRACTS. (a) An agency may not solicit
23 outside of the state for a contract unless the chief procurement officer, or, for construction
24 contracts or procurements for the state equipment fleet, the commissioner of transportation and
25 public facilities determines in writing that

26 (1) there do not appear to be at least two competitive sources for the contract that
27 are located in the state; or

28 (2) the agency has solicited within the state for 21 days and that

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

31 (B) the agency has not received a responsive proposal from a responsible

1 offeror if the state is procuring the contract under AS 36.30.200 - 36.30.270.

2 (b) In this section, "solicit" includes advertising, initiating contact with a person, and
3 sending an invitation to bid or a request for proposals to a person who has not requested the
4 invitation or request, but does not include sending an invitation to bid or a request for proposals
5 to a person outside the state.

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

7 Sec. 36.30.905. DESIGN OF PROCUREMENTS. (a) To the fullest extent practicable,
8 a state agency shall design procurements in a way that fosters participation by Alaska bidders or
9 offerors.

10 (b) If a proposed procurement is too large to be handled by Alaska bidders or offerors,
11 but if Alaska bidders or offerors would be capable of handling the procurement if the
12 procurement were reduced in size or otherwise restructured, the agency that is proposing the
13 procurement shall divide or otherwise structure the procurement so that it can be handled by
14 Alaska bidders or offerors.

15 (c) In this section, "Alaska bidders or offerors" means persons who qualify as Alaska
16 bidders under AS 36.30.170(b).

17 * Sec. 9. AS 36.30 is amended by adding a new section to read:

18 Sec. 36.30.960. RESPONSIVENESS. A bidder or offeror for a procurement under this
19 chapter is not responsive to the procurement request unless the bidder or offeror has made
20 reasonable attempts to utilize supplies and services from the state in the performance of the
21 contract. The bidder or offeror shall provide the procurement officer with an explanation of how
22 the bidder or offeror proposes to use supplies and services from the state, including a description
23 of the components of the contract and the address of each subcontractor the bidder or offeror will
24 use. If a bidder or offeror is not using supplies and services from the state for a part of the
25 contract, the bidder or offeror shall provide the procurement officer with an explanation why they
26 are not being used.

27 * Sec. 10. AS 39.25 is amended by adding a new section to read:

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

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

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

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

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

15 (c) In this section,

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

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

20 (3) "state agency" means

21 (A) a department, institution, board, commission, division, authority,
22 public corporation, or other administrative unit of the executive branch;

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

26 * Sec. 11. AS 44.99.200 is repealed and reenacted to read:

27 Sec. 44.99.200. PRODUCTION OF PUBLICATIONS. The publications of a state
28 agency, including the University of Alaska, shall be produced at a facility located in the state
29 when practicable. The publications shall be designed to promote simplicity, low cost, and
30 maximum use of printing facilities located in the state.

31 * Sec. 12. AS 44.99.210 and 44.99.230 are repealed.