

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 245 (STATE AFFAIRS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 5/9/91

Referred: Finance

Sponsor(s): 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

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 contract awards in the
11 evaluation of bids;

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 for goods and services if they have
16 provided notice of the procurement 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 three [FIVE] working days after the identification of the apparent low bidder,
22 the 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 When practicable, except as prohibited by AS 36.30.875, notice may include

12 (1) publication in a newspaper calculated to reach prospective bidders located in
13 the state;

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

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

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

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

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

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

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

17 (23) contracts to be performed in an area outside of the country and requiring
18 knowledge of the customs, procedures, rules, or laws of the area.

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

20 Sec. 36.30.875. NOTICE OF CONTRACTS. (a) An agency shall provide notice of a
21 contract solicitation to every contractor located in the state who is on a contractor list established
22 under AS 36.30.050(a) and who provides the supplies, services, or professional services that the
23 agency is procuring.

24 (b) An agency may not provide notice of a contract outside the state until the agency has
25 provided notice inside the state, except the agency may provide notice to a person who has
26 requested the notice. In this section, being on a contractor list maintained under AS 36.30.050(a)
27 does not constitute a request for the notice.

28 (c) This section does not apply to procurements made under AS 36.30.300 - 36.30.320.

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

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

1 offerors.

2 (b) If a proposed procurement is too large to be performed by Alaska bidders or offerors,
3 and if the procurement officer determines that Alaska bidders or offerors generally would be
4 capable of performing the procurement if the procurement were reduced in size or otherwise
5 restructured, the agency that is proposing the procurement shall divide or otherwise structure the
6 procurement so that it can be performed by Alaska bidders or offerors. If it is anticipated that
7 two or more Alaska bidders or offerors would be capable of performing the procurement, this
8 subsection does not apply.

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

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

12 Sec. 36.30.960. USE OF LOCAL GOODS AND SERVICES. A bidder or offeror shall
13 provide the procurement officer with an explanation of how the bidder or offeror proposes to use
14 supplies and services from businesses located in the state, including a description of the
15 components of the contract and the address of each subcontractor the bidder or offeror will use.
16 If a bidder or offeror is not using supplies and services from the state for a part of the contract,
17 the bidder or offeror shall provide the procurement officer with an explanation why they are not
18 being used.

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

20 Sec. 39.25.165. OUT-OF-STATE SOLICITATION OF EMPLOYEES. (a) Except as
21 provided in (b) of this section, a state agency, including the division of personnel, may not solicit
22 outside the state for individuals to fill a position as a state employee unless the personnel officer
23 determines in writing that the agency has actively solicited in good faith in the state during the
24 four-week period that followed the date when the agency began soliciting for the position and
25 has been unable to find sufficient individuals qualified for the position. In this subsection,
26 "personnel officer" means the commissioner of administration for a state agency of the executive
27 branch, the speaker of the house of representatives for the members, committees, and leadership
28 of the house of representatives, the president of the senate for the members, committees, and
29 leadership of the senate, the ombudsman for the office of the ombudsman, and the executive
30 director of the Legislative Affairs Agency for the other entities of the legislative branch.

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

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

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

7 (c) In this section,

8 (1) "position" includes a position in the classified, exempt, or partially exempt
9 service, except a position identified in AS 39.25.110(1), (2), or (4), and except appointments
10 made by the governor for members of boards, commissions, and authorities;

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

13 (3) "state agency" means

14 (A) a department, institution, board, commission, division, authority,
15 public corporation, or other administrative unit of the executive branch, but does not
16 include the University of Alaska;

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

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

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

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