

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 245 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 3/20/92

Referred: Rules

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 secs. 4 - 12 of this Act is to foster a procurement
18 process where Alaskan businesses obtain a fair proportion of Alaska's total procurement contracts by
19 providing Alaskan businesses with a fair, equitable, and competitive bid process.

20 * Sec. 2. AS 24.55.275 is amended to read:

21 Sec. 24.55.275. PROCUREMENT [CONTRACT] PROCEDURES. The ombudsman
22 shall adopt by regulation procedures consistent with AS 36.30 to be followed by the office of the
23 ombudsman in procuring supplies, services, professional services, construction, and office
24 space [CONTRACTING FOR SERVICES]. However, the procedures based on competitive
25 principles do [PROCEDURE FOR REQUESTS FOR PROPOSALS DOES] not apply to
26 contracts for investigations under AS 24.55.100.

27 * Sec. 3. AS 36.30.020 is amended to read:

28 Sec. 36.30.020. LEGISLATURE. Except as provided under AS 24.55.275, the [THE]
29 Legislative Council shall adopt and publish procedures to govern the procurement of supplies,
30 services, professional services, and construction by the legislative branch. The procedures must
31 be based on the competitive principles consistent with this chapter and must be adapted to the

1 special needs of the legislative branch as determined by the Legislative Council. The procedures
2 must be consistent with the provisions of AS 36.30.080(b) - (c).

3 * Sec. 4. AS 36.30.130(a) is amended to read:

4 (a) The procurement officer shall give adequate public notice of the invitation to bid at
5 least 21 days before the date for the opening of bids. If a determination is made in writing that
6 a shorter notice period is necessary for a particular bid, the 21-day period may be shortened. The
7 determination shall be made by the chief procurement officer for bids for supplies, services, or
8 professional services. The determination shall be made by the commissioner of transportation
9 and public facilities for bids for construction or acquisition of property for the state equipment
10 fleet. Notice shall be published in the Alaska Administrative Journal. The time and manner of
11 notice must be in accordance with regulations adopted by the commissioner of administration.
12 When practicable, notice may include

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

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

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

19 (A) if the contractors are located in the state;

20 (B) upon request, if the contractors are not located in the state.

21 * Sec. 5. 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 out-of-state geographical location of the bidder.

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

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

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

5 Sec. 36.30.905. DESIGN OF PROCUREMENTS. (a) Except as prohibited under
6 AS 36.30.320(d), a state agency shall, to the fullest extent practicable, design procurements in
7 a way that fosters participation by Alaska bidders or offerors.

8 (b) Except as prohibited under AS 36.30.320(d), if a proposed procurement is too large
9 to be performed by Alaska bidders or offerors, and if the procurement officer determines that
10 Alaska bidders or offerors generally would be capable of performing the procurement if the
11 procurement were reduced in size or otherwise restructured, the agency that is proposing the
12 procurement shall divide or otherwise structure the procurement so that it can be performed by
13 Alaska bidders or offerors. If it is anticipated that two or more Alaska bidders or offerors would
14 be capable of performing the procurement, this subsection does not apply.

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

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

25 * Sec. 9. AS 39.25 is amended by adding a new section to read:

26 Sec. 39.25.165. OUT-OF-STATE SOLICITATION OF EMPLOYEES. (a) Except as
27 provided in (b) of this section, a state agency, including the division of personnel, may not solicit
28 outside the state for individuals to fill a position as a state employee unless the personnel officer
29 determines in writing that the agency has actively solicited in good faith in the state during the
30 four-week period that followed the date when the agency began soliciting for the position and
31 has been unable to find sufficient individuals qualified for the position. In this subsection,

1 "personnel officer" means the commissioner of administration for a state agency of the executive
2 branch, the speaker of the house of representatives for the members, committees, and leadership
3 of the house of representatives, the president of the senate for the members, committees, and
4 leadership of the senate, the ombudsman for the office of the ombudsman, and the executive
5 director of the Legislative Affairs Agency for the other entities of the legislative branch.

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

7 (1) in the executive branch and the commissioner of administration makes a writ-
8 ten finding that the state agency is not likely to be able to find an individual who is qualified for
9 the position by soliciting in the state;

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

13 (c) In this section,

14 (1) "position" includes a position in the classified, exempt, or partially exempt
15 service, except a position identified in AS 39.25.110(1), (2), (4), (11), or (17), and except
16 appointments made by the governor for members of boards, commissions, and authorities;

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

19 (3) "state agency" means

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

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. 10. 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 shall be produced at a facility located in the state when practicable. The Department of
29 Administration shall establish standards for the production of publications by state agencies,
30 except that the Board of Regents of the University of Alaska shall establish the standards for the
31 university. The standards shall be designed to promote simplicity, low cost, and consistency.

1 * Sec. 11. AS 44.99.210 is amended to read:

2 Sec. 44.99.210. DISCLOSURES ON PUBLICATION. If [A PUBLICATION OF A
3 STATE AGENCY IS EXEMPTED UNDER AS 44.99.200(a) FROM BEING PRODUCED AT
4 A STATE-OPERATED FACILITY AND IF] the actual annual costs for a [THE] publication of
5 a state agency that are paid from the general fund exceed \$1,500, the publication must include
6 a statement that gives the name of the agency releasing the publication, the purpose of the
7 publication, the cost for each copy of the publication, and the city and state where the printing
8 was done. The statement must read: "This publication was released by . . . (name of state
9 agency) . . . , produced at a cost of \$ per copy to . . . (statement of purpose) . . . , and
10 printed in (city and state where printed)." If the publication is required by law, the
11 statement must also include: "This publication is required by . . . (appropriate citation to Alaska
12 law)." The statement may include, if applicable, a declaration of the revenue raised by the sale
13 of the publication or from the purchase of advertising in the publication. The statement shall be
14 printed in one conspicuous place in the body of the publication in a type size that is not smaller
15 than eight points and shall be placed in a box composed of at least one point rule. In this
16 section, "cost for each copy" means the figure that results after dividing the total contract cost
17 of producing the publication by the number of copies produced. This section does not apply to
18 a publication that is intended primarily for foreign or other out-of-state use, or to a program for
19 a public ceremony of a state agency.

20 * Sec. 12. AS 44.99.230 is repealed.