

HOUSE BILL NO. 228

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE HOUSE ECONOMIC TASK FORCE

Introduced: 3/15/93

Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to publications produced by state agencies and to the
2 procurement of property, property interests, and services, including the services
3 of employees, by certain 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
7 economy based on private investment;

8 (2) the existence of a strong and healthy free enterprise system is directly
9 related to the well-being and competitive strength of Alaskan businesses and to the opportunity
10 for Alaskan businesses 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
12 strengthens, stabilizes, and diversifies Alaska's economy;

13 (4) when governmental agencies purchase and use out-of-state products and
14 services, they 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
2 Alaskan products, comparable out-of-state goods are usually purchased instead, and these
3 purchases result in a 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
5 suppliers, manufacturers, and providers of services are more accessible and responsive to the
6 needs of Alaska's business community than their out-of-state counterparts;

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

11 (8) state agencies should consider the administrative costs of contract awards
12 in the evaluation of bids;

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

16 (10) state agencies should only look outside Alaska for goods and services if
17 they have provided notice of the procurement in Alaska.

18 (b) The legislature declares that the purpose of secs. 4 - 12 of this Act is to foster a
19 procurement process where Alaskan businesses obtain a fair proportion of Alaska's total
20 procurement contracts by providing Alaskan businesses with a fair, equitable, and competitive
21 bid process.

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

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

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

31 Sec. 36.30.020. LEGISLATURE. Except as provided under AS 24.55.275,

1 ~~the~~ [THE] Legislative Council shall adopt and publish procedures to govern the
2 procurement of supplies, services, professional services, and construction by the
3 legislative branch. The procedures must be based on the competitive principles
4 consistent with this chapter and must be adapted to the special needs of the legislative
5 branch as determined by the Legislative Council. The procedures must be consistent
6 with the provisions of AS 36.30.080(b) - (e).

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

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

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

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

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

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

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

27 * Sec. 5. AS 36.30.150(a) is amended to read:

28 (a) Bids shall be unconditionally accepted without alteration or correction,
29 except as authorized in AS 36.30.160. The procurement officer shall evaluate bids
30 based on the requirements set out in the invitation to bid, which may include criteria
31 to determine acceptability such as inspection, testing, quality, delivery, and suitability

1 **for a particular purpose, and which must include consideration of administrative**
2 **costs.** The criteria that will affect the bid price and be considered in evaluation for
3 award must be objectively measurable, such as discounts, transportation costs,
4 **administrative costs,** and total or life cycle costs. The invitation to bid must set out
5 the evaluation criteria to be used. Criteria may not be used in bid evaluation if they
6 are not set out in the invitation to bid. **In this subsection, "administrative costs"**
7 **includes the additional costs that result from the out-of-state geographical location**
8 **of the bidder.**

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

10 (30) contracts to be performed in an area outside of the country and
11 requiring knowledge of the customs, procedures, rules, or laws of the area.

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

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

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

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

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

27 **Sec. 36.30.960. USE OF LOCAL GOODS AND SERVICES.** A bidder or
28 offeror shall provide the procurement officer with an explanation of how the bidder or
29 offeror proposes to use supplies and services from businesses located in the state,
30 including a description of the components of the contract and the address of each
31 subcontractor the bidder or offeror will use. If a bidder or offeror is not using supplies

1 and services from the state for a part of the contract, the bidder or offeror shall provide
2 the procurement officer with an explanation why they are not being used.

3 * Sec. 9. AS 39.25 is amended by adding a new section to article 4 to read:

4 Sec. 39.25.165. OUT-OF-STATE SOLICITATION OF EMPLOYEES. (a)

5 Except as provided in (b) of this section, a state agency, including the division of
6 personnel, may not solicit outside the state for individuals to fill a position as a state
7 employee unless the personnel officer determines in writing that the agency has
8 actively solicited in good faith in the state during the four-week period that followed
9 the date when the agency began soliciting for the position and has been unable to find
10 sufficient individuals qualified for the position. In this subsection, "personnel officer"
11 means the commissioner of administration for a state agency of the executive branch,
12 the speaker of the house of representatives for the members, committees, and leader-
13 ship of the house of representatives, the president of the senate for the members,
14 committees, and leadership of the senate, the ombudsman for the office of the
15 ombudsman, and the executive director of the Legislative Affairs Agency for the other
16 entities of the legislative branch.

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

18 (1) in the executive branch and the commissioner of administration
19 makes a written finding that the state agency is not likely to be able to find an
20 individual who is qualified for the position by soliciting in the state;

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

24 (c) In this section,

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

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

1 (3) "state agency" means

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

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

8 * Sec. 10. AS 44.99.200 is repealed and reenacted to read:

9 Sec. 44.99.200. PRODUCTION OF PUBLICATIONS. The publications of a
10 state agency shall be produced at a facility located in the state when practicable. The
11 Department of Administration shall establish standards for the production of
12 publications by state agencies, except that the Board of Regents of the University of
13 Alaska shall establish the standards for the university. The standards shall be designed
14 to promote simplicity, low cost, and consistency.

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

16 Sec. 44.99.210. DISCLOSURES ON PUBLICATION. If [A PUBLICATION
17 OF A STATE AGENCY IS EXEMPTED UNDER AS 44.99.200(a) FROM BEING
18 PRODUCED AT A STATE-OPERATED FACILITY AND IF] the actual annual costs
19 for a [THE] publication of a state agency that are paid from the general fund exceed
20 \$1,500, the publication must include a statement that gives the name of the agency
21 releasing the publication, the purpose of the publication, the cost for each copy of the
22 publication, and the city and state where the printing was done. The statement must
23 read: "This publication was released by . . . (name of state agency) . . ., produced at
24 a cost of \$ per copy to . . . (statement of purpose) . . ., and printed in
25 . (city and state where printed)." If the publication is required by law, the statement
26 must also include: "This publication is required by . . . (appropriate citation to Alaska
27 law)." The statement may include, if applicable, a declaration of the revenue raised
28 by the sale of the publication or from the purchase of advertising in the publication.
29 The statement shall be printed in one conspicuous place in the body of the publication
30 in a type size that is not smaller than eight points and shall be placed in a box
31 composed of at least one point rule. In this section, "cost for each copy" means the

1 figure that results after dividing the total contract cost of producing the publication by
2 the number of copies produced. This section does not apply to a publication that is
3 intended primarily for foreign or other out-of-state use, or to a program for a public
4 ceremony of a state agency.

5 * Sec. 12. AS 44.99.230 is repealed.