

**CS FOR SENATE BILL NO. 129(STA)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**EIGHTEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE STATE AFFAIRS COMMITTEE**

**Offered: 3/18/93**  
**Referred: FINANCE**

**Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND  
 AUDIT COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

**1 "An Act relating to state procurement."**

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

**3 \* Section 1. AS 36.30.010(a) is amended to read:**

**4 (a) The commissioner shall appoint to the partially exempt service the chief**  
**5 procurement officer of the state. The chief procurement officer must have at least five**  
**6 years of prior experience in public procurement, including large scale procurement of**  
**7 supplies, services, or professional services, and must be a person with demonstrated**  
**8 executive and organizational ability. The chief procurement officer may be removed**  
**9 by the commissioner only for cause. The term of office of the chief procurement**  
**10 officer is six [FOUR] years.**

**11 \* Sec. 2. AS 36.30.010 is amended by adding new subsections to read:**

**12 (c) While a person performs the duties of the chief procurement officer under**  
**13 this chapter, the person may not be employed in or appointed to another position with**  
**14 the state.**

1 (d) The annual salary of the chief procurement officer is range 23 of the salary  
2 schedule established in AS 39.27.011.

3 \* Sec. 3. AS 36.30.300(a) is amended to read:

4 (a) A contract may be awarded for supplies, services, professional services, or  
5 construction without competitive sealed bidding, competitive sealed proposals, or other  
6 competition in accordance with regulations adopted by the commissioner. A contract  
7 may be awarded under this section only when the chief procurement officer or, for  
8 construction contracts or procurements for the state equipment fleet, the commissioner  
9 of transportation and public facilities determines in writing that there is only one  
10 source for the required procurement or construction. A sole source procurement may  
11 not be awarded if a reasonable alternative source exists. The written determination  
12 must include findings of fact that support by clear and convincing evidence the  
13 determination that only one source exists. Except for procurements of supplies,  
14 services, professional services, or construction that do not exceed the amount for  
15 small procurements under AS 36.30.320(a) or (b), as applicable [AS 36.30.320(a)],  
16 the authority to make the determination required by this subsection may not be  
17 delegated.

18 \* Sec. 4. AS 36.30.305(a) is amended to read:

19 (a) A contract for supplies, services, professional services, or a construction  
20 contract under \$100,000, may be awarded without competitive sealed bidding or  
21 competitive sealed proposals, in accordance with regulations adopted by the  
22 commissioner. A contract may be awarded under this section only when the chief  
23 procurement officer [COMMISSIONER], or, for construction contracts under  
24 \$100,000 or procurements for the state equipment fleet, the commissioner of  
25 transportation and public facilities, determines in writing that a situation exists that  
26 makes competitive sealed bidding or competitive sealed proposals impractical or  
27 contrary to the public interest. Procurements under this section shall be made with  
28 competition that is practicable under the circumstance. Except for procurements of  
29 supplies, services, professional services, or construction that do not exceed the amount  
30 for small procurements under AS 36.30.320(a) or (b), as applicable  
31 [AS 36.30.320(a)], the authority to make a determination required by this section may

1 not be delegated.

2 \* Sec. 5. AS 36.30.310 is amended to read:

3 Sec. 36.30.310. EMERGENCY PROCUREMENTS. Procurements may be  
4 made under emergency conditions as defined in regulations adopted by the  
5 commissioner when there exists a threat to public health, welfare, or safety, when a  
6 situation exists that makes a procurement through competitive sealed bidding or  
7 competitive sealed proposals impracticable or contrary to the public interest, or to  
8 protect public or private property. An emergency procurement need not be made  
9 through competitive sealed bidding or competitive sealed proposals but shall be made  
10 with competition that is practicable under the circumstances. A written determination  
11 by the chief procurement officer of the basis for the emergency and for the selection  
12 of the particular contractor shall be included in the contract file. The written  
13 determination must include findings of fact that support the determination. Except  
14 when there is insufficient time for the chief procurement officer to make the  
15 written determination required by this section, the chief procurement officer may  
16 not delegate the authority to make the determination.

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

18 Sec. 36.30.315. DETERMINATIONS BY CHIEF PROCUREMENT  
19 OFFICER; CRIMINAL PENALTY. (a) In a determination made by the chief  
20 procurement officer under AS 36.30.300 - 36.30.310, the chief procurement officer  
21 shall independently examine the material facts of the procurement and independently  
22 determine whether the procurement is eligible for the procurement method requested.

23 (b) If the chief procurement officer knowingly makes a false statement in a  
24 determination made by the chief procurement officer under AS 36.30.300 - 36.30.310,  
25 the chief procurement officer is guilty of a class A misdemeanor.

26 \* Sec. 7. AS 36.30.370 is amended to read:

27 Sec. 36.30.370. TYPES OF CONTRACTS. Any [SUBJECT TO  
28 LIMITATIONS OF THIS SECTION, ANY] type of contract that will promote the best  
29 interests of the state may be used, except that the use of a  
30 cost-plus-a-percentage-of-cost contract is prohibited. [A COST-REIMBURSEMENT  
31 CONTRACT MAY BE USED ONLY WHEN A DETERMINATION IS MADE IN

1           **WRITING BY THE PROCUREMENT OFFICER THAT A**  
2           **COST-REIMBURSEMENT CONTRACT IS LIKELY TO BE LESS COSTLY TO**  
3           **THE STATE THAN ANY OTHER TYPE OR THAT IT IS IMPRACTICABLE TO**  
4           **OBTAIN THE SUPPLIES, SERVICES, PROFESSIONAL SERVICES, OR**  
5           **CONSTRUCTION REQUIRED EXCEPT UNDER A COST-REIMBURSEMENT**  
6           **CONTRACT.]**

7           \* **Sec. 8.** AS 36.30.610(c) is amended to read:

8                   (c) The commissioner of administration or the commissioner of transportation  
9           and public facilities, as appropriate, shall, within 15 days from the date the  
10           appellant's comments on the protest report are due under AS 36.30.605(c) and (d)  
11           [AFTER RECEIPT OF AN APPEAL], notify the appellant of the acceptance or  
12           rejection of the appeal and, if rejected, the reasons for the rejection.

13           \* **Sec. 9.** AS 36.30.850(b) is amended by adding new paragraphs to read:

14                   (30) contracts that are to be performed in an area outside of the country  
15           and that require a knowledge of the customs, procedures, rules, or laws of the area;

16                   (31) contracts that are between the Department of Law and attorneys  
17           who are not employed by the state and that are for the review or prosecution of  
18           possible violations of the criminal law of the state in situations where the attorney  
19           general concludes that an actual or potential conflict of interest makes it inappropriate  
20           for the Department of Law to review or prosecute the possible violations.

21           \* **Sec. 10.** AS 36.30.150(b) is repealed.

22           \* **Sec. 11. TRANSITIONAL PROVISIONS.** (a) With respect to the person holding the  
23           position of chief procurement officer on the effective date of this Act, the six-year term of the  
24           chief procurement officer under AS 36.30.010(a), as amended by sec. 1 of this Act, shall  
25           include the time the person holds the position before the effective date of this Act.

26                   (b) AS 36.30.010(c) and (d), added by sec. 2 of this Act, apply to the chief  
27           procurement officer on and after the effective date of this Act.

28                   (c) AS 36.30.300(a), 36.30.305(a), 36.30.310, 36.30.370, amended by secs. 3 - 5 and  
29           7 of this Act, and 36.30.850(b)(30) and (31), added by sec. 9 of this Act, apply to a  
30           procurement that begins on or after the effective date of this Act.

31                   (d) AS 36.30.315, enacted by sec. 6 of this Act, applies to a determination made on

1 or after the effective date of this Act.

2 (e) AS 36.30.610(c), amended by sec. 8 of this Act, applies to a protest report filed

3 under AS 36.30.605 on or after the effective date of this Act.