

CS FOR SENATE BILL NO. 212(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 2/15/94
 Referred: Rules

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST OF THE SENATE
 ECONOMIC TASK FORCE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the giving of procurement notices; changing the content of
 2 the required procurement reports to the legislature by the commissioner of
 3 administration; relating to publications produced by state agencies; establishing an
 4 innovative construction procurement methods pilot program; and establishing
 5 legislative findings, a legislative purpose, and legislative intent for state
 6 procurement; and providing for an effective date."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. FINDINGS, PURPOSE, AND INTENT. (a) The legislature finds that

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

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

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

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

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

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

12 (7) state agencies should look outside Alaska for goods and services only if
13 they have provided notice of the procurement in Alaska.

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

17 (c) It is the intent of the legislature that

18 (1) except as prohibited under AS 36.30.320(d), a state agency shall, when
19 practicable and economically feasible, design procurements in a way that fosters participation
20 by Alaska bidders or offerors;

21 (2) except as prohibited under AS 36.30.320(d), and unless it is anticipated that
22 two or more Alaska bidders or offerors would be capable of performing the procurement, an
23 agency that is proposing a procurement shall, when practicable and economically feasible,
24 divide or otherwise structure the procurement so that it can be performed by Alaska bidders
25 or offerors, if the proposed procurement is too large to be performed by Alaska bidders or
26 offerors, and if the procurement officer determines that Alaska bidders or offerors generally
27 would be capable of performing the procurement if the procurement were reduced in size or
28 otherwise restructured; in this paragraph, "Alaska bidders or offerors" means persons who
29 qualify as Alaska bidders under AS 36.30.170(b).

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

31 (a) The procurement officer shall give adequate public notice of the invitation

1 to bid at least 21 days before the date for the opening of bids. If a determination is
2 made in writing that a shorter notice period is necessary for a particular bid, the
3 21-day period may be shortened. The determination shall be made by the chief
4 procurement officer for bids for supplies, services, or professional services. The
5 determination shall be made by the commissioner of transportation and public facilities
6 for bids for construction or acquisition of property for the state equipment fleet.
7 Notice shall be published in the Alaska Administrative Journal. The time and manner
8 of notice must be in accordance with regulations adopted by the commissioner of
9 administration. When practicable, notice may include

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

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

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

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

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

19 * Sec. 3. AS 36.30.130(a) is repealed and reenacted to read:

20 (a) The procurement officer shall give adequate public notice of the invitation
21 to bid at least 21 days before the date for the opening of bids. If a determination is
22 made in writing that a shorter notice period is necessary for a particular bid, the
23 21-day period may be shortened. The determination shall be made by the chief
24 procurement officer for bids for supplies, services, or professional services. The
25 determination shall be made by the commissioner of transportation and public facilities
26 for bids for construction or acquisition of property for the state equipment fleet.
27 Notice shall be published in the Alaska Administrative Journal. The time and manner
28 of notice must be in accordance with regulations adopted by the commissioner of
29 administration. When practicable, notice may include

30 (1) publication in a newspaper calculated to reach prospective bidders;

31 (2) notices posted in public places within the area where the work is

1 to be performed or the material furnished; and

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

4 * Sec. 4. AS 36.30.540 is amended to read:

5 Sec. 36.30.540. REPORT TO LEGISLATURE. The [BEGINNING WITH
6 DECEMBER 1, 1989, THE] commissioner shall biennially report to the legislature
7 concerning procurements by agencies. The report must include

8 (1) the records maintained by the commissioner under AS 36.30.510
9 and the records maintained under as 36.30.520(a) for the previous two fiscal years;

10 (2) recommendations for changes in this chapter or other laws based
11 on implementation of this chapter in the previous two fiscal years;

12 (3) a description of any matters that involved litigation concerning this
13 chapter in the previous two fiscal years;

14 (4) a list of procurements made under this chapter from out-of-state
15 sources during the previous two fiscal years together with the total number of
16 procurement contracts entered into during that period with out-of-state contractors and
17 the total value of these contracts; this paragraph does not apply to procurements made
18 under AS 36.30.320; and

19 (5) a list of procurements made under this chapter from state sources
20 during the previous two fiscal years together with the total number of procurement
21 contracts entered into during that period with state contractors and the total value of
22 these contracts; this paragraph does not apply to procurements made under
23 AS 36.30.320;

24 (6) the number of bidders and offerors that bid on or made
25 proposals for procurements under this chapter, the number of these bidders and
26 offerors that were located in the state, and the number of these bidders and
27 offerors that were located outside the state; this paragraph does not apply to
28 procurements made under AS 36.30.320.

29 * Sec. 5. AS 44.99.200 is repealed and reenacted to read:

30 Sec. 44.99.200. PRODUCTION OF PUBLICATIONS. The publications of a
31 state agency shall be produced at a private sector facility located in the state, when

1 practicable. The Department of Administration shall establish standards for the
2 production of publications by state agencies, except that the Board of Regents of the
3 University of Alaska shall establish the standards for the university. The standards
4 shall be designed to promote simplicity, low cost, and consistency.

5 * Sec. 6. AS 44.99.210 is amended to read:

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

29 * Sec. 7. AS 44.99.230 is repealed.

30 * Sec. 8. INNOVATIVE CONSTRUCTION PROCUREMENT METHODS PILOT
31 PROGRAM. (a) Within six months after the effective date of this section, the commissioner

1 of transportation and public facilities shall begin a two-year pilot program for the use of
2 innovative methods for the procurement of construction services by using bonuses to replace
3 the preferences required under AS 36.30.

4 (b) Notwithstanding the provisions of AS 36.30, if the commissioner determines in
5 writing that using innovative construction procurement methods for the procurement of
6 construction contracts would be in the best interests of the state, the commissioner may, by
7 regulation, adopt procedures different than those provided under AS 36.30 as necessary to use
8 bonuses instead of preferences in the procurement of construction contracts. The
9 determination must find that the innovative methods are not contrary to the intent and
10 purposes of AS 36.30, demonstrate that the innovative methods are in the best interests of the
11 state, and describe how the innovative methods modify the procurement methods and
12 procedures of AS 36.30.

13 (c) Within 15 months after the pilot program begins, the commissioner shall report
14 to the legislature on the construction contracts awarded during the first year of the pilot
15 program. Within 27 months after the pilot program begins, the commissioner shall report to
16 the legislature on the construction contracts awarded during the second year of the pilot
17 program. In a report under this subsection, the information must include for each contract
18 awarded during the period covered by the report

- 19 (1) the geographical region where the construction is to be performed; and
20 (2) whether the contractor is classified as a minority contractor.

21 (d) The legislature may review the pilot program at any time during the program and
22 may make the program permanent or broaden the scope of the innovative procurement
23 program.

24 (e) In this section,

- 25 (1) "best interests of the state" means that the proposed action would provide
26 (A) an economic benefit to the private businesses and citizens of the
27 state;
28 (B) an economic benefit to state government; and
29 (C) greater administrative efficiencies than existing procedures provide;
30 (2) "commissioner" means the commissioner of transportation and public
31 facilities.

- 1 * **Sec. 9. APPLICABILITY.** AS 36.30.540(6), enacted by sec. 4 of this Act, applies to
2 reports due after the effective date of sec. 4 of this Act.
- 3 * **Sec. 10.** Section 3 of this Act takes effect on the date that is four years after the effective
4 date of sec. 2 of this Act.