

S

B

4

2

1



Official Business

# Alaska State Legislature.

## Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V  
Juneau, Alaska 99811  
(907) 465-4954

### MEMORANDUM

TO: Senate State Affairs Committee  
FROM: Senate State Affairs Committee Staff  
RE: SB 421 public contracts  
DATE: March 6, 1984

SB 421 addresses claims against the state for reasonable costs of the preparation of a professional or purchase contract bid when the bid was unreasonably rejected, bad faith was involved on the part of the agency, or the agency arbitrarily cancelled the solicitation.

There is a proposed committee substitute that changes the word "personal" on page 1, line 11 to the word "professional" in accordance with the fiscal note comments.

The bill repeals AS 44.77.010 and locates the substance of that statute in two separate statutes.

Section 1: states that a claim for reimbursement for professional services contract must be submitted within 30 days of the awarding of the contract or notice of cancellation of the bid solicitation. This section also outlines when a claimant is entitled for reimbursement.

Section 2: parallels section 1, but applies to a purchasing contract bid.

### Fiscal information

This bill has no fiscal impact.

### Back-up information

fiscal note from the Department of Administration  
transmittal letter from the Governor  
statutes

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 421

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public contracts; and providing  
7 for an effective date."

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

9 \* Section 1. AS 36.98 is amended by adding a new section to read:

10 Sec. 36.98.075. CLAIMS FOR BID PREPARATION COSTS. (a) A claim  
11 for reimbursement of reasonable costs incurred in preparing a ~~personal~~ *professional*  
12 services contract bid must be presented, within 30 days after award of  
13 the contract or notice of cancellation of the bid solicitation, to the  
14 appropriate administrative or executive officer of the state agency  
15 that solicited the bid.

16 (b) A claimant under (a) of this section is entitled to reim-  
17 bursement if

18 (1) the claimant's bid should have been selected for award  
19 of the contract under AS 36.98.040 and the agency unreasonably reject-  
20 ed the bid;

21 (2) the rejection of the claimant's bid resulted from an  
22 action taken by the agency in bad faith; or

23 (3) the agency arbitrarily and unreasonably cancelled the  
24 bid solicitation.

25 (c) After a claim is filed under this section, the provisions of  
26 AS 44.77 apply to it.

27 \* Sec. 2. AS 37.05 is amended by adding a new section to read:

28 Sec. 37.05.245. CLAIMS FOR BID PREPARATION COSTS. (a) A claim  
29 for reimbursement of reasonable costs incurred in preparing a purchase

1 contract bid must be presented, within 30 days after award of the  
2 contract or notice of cancellation of the bid solicitation, to the  
3 appropriate administrative or executive officer of the state agency  
4 that solicited the bid.

5 (b) A claimant under (a) of this section is entitled to reim-  
6 bursement if

7 (1) the claimant's bid should have been selected for award  
8 of the contract under AS 37.05.240 and the agency unreasonably re-  
9 jected the bid;

10 (2) the rejection of the claimant's bid resulted from an  
11 action taken by the agency in bad faith; or

12 (3) the agency arbitrarily and unreasonably cancelled the  
13 bid solicitation.

14 (c) After a claim is filed under this section, the provisions of  
15 AS 44.77 apply to it.

16 \* Sec. 3. AS 44.77.010(c) is repealed.

17 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.-  
18 10.070(c).



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 8, 1984

The Honorable Jalmar Kerttula  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Dear Senator Kerttula:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to public contracting. This bill clarifies that recovery of costs of bid preparation is the relief available to an unsuccessful bidder under AS 44.77.010(c).

The bill repeals AS 44.77.010(c) and relocates its substance in AS 36.98 and AS 37.05. This relocation places the provision with the statutes pertaining to state professional services contracts and purchase contracts. Location of the provision in those chapters provides bidders with better notice of the availability and scope of the claim.

The bill clarifies that the relief available is recovery of costs of bid preparation. This conforms to the holding of the Alaska Supreme Court in King v. Alaska State Housing Authority, 633 P.2d 256 (Alaska 1981).

The bill sets out three situations under which costs of bid preparation may be recovered. First, if the claimant's bid should have been selected for award of the contract and the agency unreasonably rejected the bid, costs may be recovered. Second, costs may be recovered if the rejection of the bid resulted from an action taken by the state in bad faith. Under this provision, it may not matter whether the claimant's bid should have been selected for the contract award if, for example, the claimant shows that the agency knew when it solicited bids that it intended to award the contract to a specific company. Third, costs may be recovered if the agency arbitrarily and unreasonably cancels a bid solicitation.

The bill requires the agency to act on a claim for costs of bid preparation in accordance with the claim procedure of AS 44.77.

Sincerely,

*Bill Sheffield*  
Bill Sheffield  
Governor

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_, 198  
Page 1 of 2

<p>REQUEST Bill/Resolution No.: <u>SB 421</u> Title: <u>An Act relating to public contracts and providing for an effective date.</u> Sponsor: _____ Requestor: <u>Department of Administration</u> Date of Request: <u>January 17, 1984</u></p>	<p>FISCAL DETAIL Agency Affected: <u>All Agencies</u> Program Category Affected: <u>All</u> BRU, Program of Subprogram(s) Affected: <u>All</u></p>
---	--

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING	0	0	0	0	0	0
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 SUPPLIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC	0	0	0	0	0	0
800 MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Kenneth R. Ryals  
Division: Administrative Service

Phone: 465-2277  
Date: January 23, 1984

Approved by Commissioner: Lisa Rudd  
Agency: DEPARTMENT OF ADMINISTRATION

Date: 1/24/84

Distribution (by Agency preparing fiscal note):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Comments concerning bill on Public Contracts

This bill clarifies AS 44.77.010(c) and places the appeal procedure in the appropriate statutes. It does not grant or restrict the rights of any party beyond those that currently exist.

Section 1, page 1, line 11-12 incorrectly refers to "personal" services contracts. This should be "professional" services contracts.

HEAT LOSS ANALYSIS, INC.  
BOX 111097  
ANCHORAGE, ALASKA 99511  
907 563-0773

~~VF~~  
~~ST~~  
~~NAL~~  
GB

Ginger Baim  
c/o Senator Fischer  
Pouch V  
Juneau, Alaska 99811  
16 February 1984

Dear Ginger:

Thanks for including me on the mailing list for Senator Fischer's new newsletter. It is one of the most concise and informative reports I've seen come out of a legislative session. Congratulations. Please add Don Slone, 3900 Arctic Blvd Suite 301, Anchorage 99503 to your mailing list. Also please note the new address for Heat Loss Analysis, Inc. above.

My main reason for writing is to express concern over the intrusion of non-profit agencies into the bidding process for state contracts when the services or products requested can be provided by the private sector. It is very difficult for a tax paying business to compete against an entity which is not only shielded from the burden of helping support public services, but may also have been in receipt of public funds for either operating or capital needs. This problem has been recognized to a small extent by the Federal government, however I am unaware of any action at the State level that has occurred.

For example, in 1981(?) the Anchorage Community Development Corporation received a sizeable grant from the State for the purchase of a computer system to develop a residential energy audit program. This was not a competitive grant but was awarded directly to ACDC. My firm, Heat Loss Analysis, Inc., had already developed a computerized energy audit. The equipment was capitalized by the owners and over a year of development time was invested. This occurred prior to the beginning of the State's energy audit program. As a result ACDC now has a State provided computer which it uses to infringe upon the livelihoods of small businesses. I realize that this specific example is water under the bridge, but the basic problem does exist.

I would like to make the following recommendations:

1. The Department of Administration should produce basic instructions for RFP's. It should require that prior to the issuance of an RFP a determination should be made as to whether or not the requested service or product can be provided by the private sector.
2. RFP's which request products or services available from the private sector will not result in contract awards to public or private non-profit entities.
3. For this purpose a non-profit agency could be defined as any agency that has this status under State or Federal statutes or any entity that has received a noncompetitive grant from the State.

I do not intend this to be an attack against non-profit corporations and certainly not against the Anchorage Community Development Corporation. I believe that non-profits provide essential and valuable services to the people of Alaska in areas that are not served by commercial or governmental efforts. However, I also believe that roles and limits of non-profits need to be more clearly defined. I would be very interested to hear both yours and Senator Fischer's opinions.

Thanks again for the fine newsletter.

Energetically yours,

  
Geoff Feiler  
President

# MEMORANDUM

# State of Alaska

TO: Art Peterson  
Legislation Attorney

DATE: December 20, 1983

FILE NO: 377-011-84

TELEPHONE NO:

FROM: Virginia B. Ragle *VR*  
Assistant Attorney General  
Governmental Affairs-Juneau

SUBJECT: Repeal of AS 44.-  
77.010(c) (wrongful  
rejection of bid  
proposals) and re-  
location of the  
provision

Attached are four options for a bill, requested by the Department of Administration, to delete subsection (c) of AS 44.77.010 and to relocate the provision in AS 36.98.070 and AS 37.10. AS 44.77.010(c), which was enacted in 1982, includes claim for wrongful rejections of bid proposals or arbitrary and unreasonable cancellations of bid solicitations under the provisions provided by AS 44.77 for claims against the state. The memorandum from Robert L. Stewart indicates that the Department of Administration is requesting this bill because subsection (c) provides a disappointed bidder with an unrealistically long period of time -- six months -- within which to appeal from a state contract award. \*/ I believe that subsection (c) was not intended to expand the appeal time for rejected bids and that the concerns expressed by the agency in the bill request result from the fact that subsection (c) does not specify what relief it provides to disappointed bidders. However, the limited legislative history of subsection (c) and the caselaw concerning relief available when the state wrongfully rejects a bid establish that a bidder who successfully pursues a claim under AS 44.77.010(c) is entitled only to recovery of bid preparation expenses.

AS 44.77.010(c) was enacted as sec. 10 of SCS CSHB 156(Fin) am S in 1982. In the bill review provided by this office to Governor Hammond (attachment A), the history of the bill was discussed and sec. 10 was explained as follows:

... in response to concerns raised by Senator Dankworth at the finance committee hearing on the bill regarding the financial impact on bidders when a bid solicitation is cancelled and not awarded, the bill was further amended on the floor of the Senate to permit bidders to pursue, under

---

\*/ Although AS 44.77.010 only requires that claims be "promptly presented to the agency, implementing regulations define "promptly" as meaning "within six months after the money was expended, the labor, materials, or supplies were furnished, or the services were given to or for the state ...." 2 AAC 25.010(b).

the administrative claims procedures set out in AS 44.77, a claim for wrongful rejection of a bid proposal or for an arbitrary and unreasonable cancellation of a bid solicitation. No attempt was made, however, to define what relief or remedy a disgruntled bidder might be entitled to as a result of such a claim.

Although AS 44.77.010(c) does not specify the relief available, a memorandum from the HB 156 file (attachment B) shows that sec. 10 was drafted in this office on May 17, 1982, in response to a suggestion by Senator Dankworth

that language be inserted in HB 156 which would give disgruntled bidders their costs of bid preparation if the state cancelled its bid solicitation.

The caselaw concerning the relief available to unsuccessful bidders substantiates the interpretation that AS 44.77.-010(c) only provides a procedure for claims for costs of bid preparation. The caselaw establishes that a bid submitted in response to an agency's bid solicitation constitutes an offer to the agency. The bidder derives no contractual rights from the bid solicitation or from submission of a bid other than the right arising from the agency's implied promise to consider each bid honestly and fairly. If a breach of that promise is proved by a showing that there was no reasonable basis for the agency's rejection of a bid, recovery of bid preparation expenses is the appropriate remedy. King v. Alaska State Housing Authority, 633 P.2d 256 (Alaska 1981). Since the unsuccessful bidder does not have a contract, there is no basis for recovery of lost profits. Id. at 261, citing Heyer Products Co., Inc. v. United States, 140 F. Supp. 409, 412 (Ct. Cl. 1956).

For the foregoing reasons, it is clear that AS 44.77.-010(c) does not extend the appeal time for rejected bids but codifies the judicially approved right to recover costs of bid preparation if a bid is unreasonably rejected and extends that right of recovery to bidders who incur costs preparing bids in response to bid solicitations which are arbitrarily and unreasonably cancelled.

The agency has also expressed the concern that, even if AS 44.77.010(c) is not interpreted as extending the appeal time, disappointed bidders may attempt to use the claim procedure to recover profits which would have been earned if the contract had been properly awarded. AS 44.77 is implemented by regulations found at 2 AAC 25. The scope of a claim against the state is set out in 2 AAC 25.010, which provides:

(c) The scope of the claim may properly include

(1) reimbursement for money expended or compensation for labor, materials, or supplies furnished or services given to or for the state;

(2) awards for damages, lost profits, and lost interest; and

(3) any other expenses incurred as a result of the contractual relationships between the claimant and the state.

Both the statute and the implementing regulations contemplate that the claim be based on a right arising out of a contractual relationship with the state. As previously discussed, when a disappointed bidder presents a claim under AS 44.77.010(c), the only contractual right that can be asserted is the right arising out of the agency's implied promise to consider the bid honestly and fairly. Although lost profits can be recovered under the claims procedure in a case in which there is a contractual basis for the expectation of profits, the contractual right of a disappointed bidder does not provide a basis for recovery of lost profits.

In order to clarify the relief provided by AS 44.77.010(c), I have drafted a bill which specifies that the claim is "for reimbursement of bid preparation expenses." This is 377-011-84 option one.

The Department of Administration has requested that the provision of AS 44.77.010(c) be relocated to AS 36.98.070 and AS 37.05.240 since those sections provide appeal procedures for state awards of purchase and professional services contracts and since those sections, or their implementing regulations (2 AAC 15.100 and 2 AAC 17.050), require filing by an aggrieved bidder within five days after the contract is awarded. I believe that the appeal procedure is not appropriate for a claim for costs of bid preparation and that the five-day filing period is unnecessarily short, given the nature of recovery involved in such a claim.

Under the appeal procedures set out in 2 AAC 15.100 and 2 AAC 17.050, the agency may or may not "accept" the appeal and provide a hearing to an unsuccessful bidder. The issues are "limited to determining whether the evaluation and solicitation requirements imposed by law or regulation have been satisfied" in an appeal of a professional services contract award. In con-

Arthur Peterson  
Legislation Attorney  
377-011-84

December 20, 1983  
Page #4

trast, the procedure for claims against the state set out in AS 44.77 and 2 AAC 25 provide for review by the agency, appeal to the Department of Administration, a hearing and judicial review. This procedure provides due process for the resolution of the bidder's contractual claim against the state. I have drafted a bill which places the provision of AS 44.77.010(c) in the chapters relating to state purchase and professional services contracts and which incorporates the procedures of AS 44.77. This is 377-011-84 option two.

The purpose of an appeal of a contract award is to obtain a "redetermination and final award in accordance with law" (AS 37.05.240), or a determination of "whether the evaluation and solicitation requirements" were met (2 AAC 17.050). Presumably, a successful appellant will be awarded the contract. Clearly, a short appeal time is warranted to prevent disruption of the award and performance of state contracts. A claim for costs of bid preparation does not disrupt the award and performance of state contracts, since the object of the claim is recovery of costs, not reaward of the contract. Therefore, the five-day time limitation for filing of a claim is unnecessarily short. I have drafted 377-011-84 options three and four which are similar to the first two options but which establish a 30-day time limit for filing of the claim. Of course, the 30-day time limit can be replaced by any other time limit the Department of Administration desires before the bill is submitted to the governor.

VBR/pjg

Enc.

July 12, 1982

The Honorable Jay S. Hammond  
Governor  
State of Alaska  
Pouch A  
Juneau, Alaska 99811

Re: SCS CSHB 156 (Fin) am S  
(public contracts)  
Our file: 388-137-82

Dear Governor Hammond:

At your request, we have reviewed SCS CSHB 156 (Fin) am S relating to public contracts. The bill, in broad terms, deals with three different aspects of public contracts: it establishes procedures for legislative-branch contracting for services; it establishes procedures for executive-branch contracting for professional services; and it makes certain modifications in the statutes governing competitive bidding requirements for goods and services purchased by the state.

Although finally passed as a version of HB 156, the development of the bill is even more complex than the designation of this final version would indicate. Originally there were two different bills dealing with most of the matters addressed by the bill which is now before you. HB 156, introduced in the first session of the twelfth legislature, initially dealt only with professional services contracting by the legislative branch. A different bill, HB 546, also introduced in the first session of the twelfth legislature, dealt with professional services contracting by the executive branch. HB 156 passed the House during the first session; HB 546 did not.

Early in the second session, the decision was made by your office, in conjunction with this department, to actively pursue adoption by the legislature of a workable version of HB 546 which would establish statutory requirements

The Honorable  
Jay S. Hammond

July 12, 1982

- 2 -

for the issuance of professional services contracts by agencies of the executive branch. As a result, considerable time and effort were spent by the Department of Law in working on the bill with the House committees to which HB 546 had been referred (State Affairs and Judiciary). During all of this time, no action was taken by the Senate Committee (Finance) to which HB 156 had been referred after its passage by the House the prior year.

After HB 546 had passed out of House Judiciary, and with legislative adjournment becoming a possibility in the then not-too-distant future, the decision was made in your office to seek incorporation of an acceptable version of the provisions of HB 546 into HB 156 which, as already indicated, was already sitting in Senate Finance. Senator Sturgulewski, the Senate Finance member to whom HB 156 had been assigned for review and recommendation to the full committee, agreed with this approach and a new version of HB 156 dealing with both legislative and executive branch contracting was prepared by the Legislative Affairs Agency for presentation to Senate Finance. The revised HB 156 also incorporated changes to the state's competitive bidding statutes, AS 37.05.230 and 37.05.240, which increased the threshold dollar figure at which competitive bidding was required from \$2,500 to \$5,000 and otherwise clarified certain of the procedures and other requirements of those statutes. Senate Finance adopted this revised version of HB 156 with only minor changes.

However, in response to concerns raised by Senator Dankworth at the Finance Committee hearing on the bill regarding the financial impact on bidders when a bid solicitation is cancelled and not awarded, the bill was further amended on the floor of the Senate to permit bidders to pursue, under the administrative claims procedures set out in AS 44.77, a claim for wrongful rejection of a bid proposal or for an arbitrary and unreasonable cancellation of a bid solicitation. No attempt was made, however, to define what relief or remedy a disgruntled bidder might be entitled to as a result of such a claim.

The specific aspects of the bill are described in more detail in the attached section-by-section commentary. The bill takes effect immediately and, by its terms, will then apply to all requests for bids or proposals for professional services contracts issued after it takes effect. It would, therefore, be administratively desirable to provide some period of time before the bill takes effect to inform


The Honorable  
Jay S. Hammond

July 12, 1982  
- 3 -

agencies of the requirements of the bill. We suggest that you delay signing the bill for as long as possible or, alternatively, simply permit it to become law without your signature on July 23, 1982.

Aside from some minor drafting problems identified in the accompanying bill commentary, we see no legal or constitutional problems with the bill.

Sincerely,



Wilson L. Condon  
Attorney General

WLC:RWL:dln

cc: William C. Mullin, Director  
Division of Finance  
Department of Administration

George Elgee, Director  
Division of General Service and Supply  
Department of Administration

5/17

Jean:

please call Glen Svendsen this morning (ph. 3818)  
in Sen. Sturgulowski's office and give him the following message  
from me:

I talked to Senator Dentworth late yesterday afternoon about his suggestion that language be inserted in HB 156 which would give disgruntled bidders their costs of bid preparation if the state cancelled its bid solicitation. He feels now that it's too difficult a question to try to deal with this late in the session and has decided not to propose any new language for that problem. He thinks it should be looked at next year, however.

I did come up with one approach to the problem which you can have if you want it (attached). I did not even discuss it with Sen. Dentworth after he said he wanted to drop it for this year. I'll be in Anchorage the rest of the week, but I'm taking my bill file with me and I can be reached through my administrative assistant.

Thanks for all your good work and help on the bill.

Did  
5/18/82  
8:07 am  
Glen

SCS CSHB (Fin)

① in workdraft 5/15 insert at p. 12, line 21, after "aword":

insert:

upon a written finding which specifies the relevant facts

that

delete

"if"

② add new bill section to 5/15 workdraft:

\* Sec. 10. AS 14.77.010 is amended by adding a new subsection to read:

(c) For purposes of this chapter, "claim" includes a claim for a wrongful rejection of a bid proposal or for an arbitrary and unreasonable cancellation of a bid solicitation.

③ -renumber current Sec. 10

SENATE AMENDMENT

By State Affairs Committee

To: \_\_\_\_\_ SENATE BILL No. 421

To: \_\_\_\_\_ HOUSE BILL No. \_\_\_\_\_

PAGE: 1      LINE: 11

Delete "personal"

Page 1      Line 11

Add, "professional"

COMMITTEE REPORT  
SENATE

FURTHER:

FINANCE

2/8/84

Date

3/6/84

Mr. President

The Committee on STATE AFFAIRS considered SB 421

relating to public contracts; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for \_\_\_\_\_
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation ZERO
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]  
Chairman

do pass  
Chairman recommendation

*Senator Ole Fisher*

Sofa  
3/6/84

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE  
2 CS FOR SENATE BILL NO. 421 (State Affairs)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public contracts; and providing  
7 for an effective date."

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

9 \* Section 1. AS 36.98 is amended by adding a new section to read:

10 Sec. 36.98.075. CLAIMS FOR BID PREPARATION COSTS. (a) A claim  
11 for reimbursement of reasonable costs incurred in preparing a  
12 professional services contract bid shall be presented, within 30 days  
13 after award of the contract or notice of cancellation of the bid  
14 solicitation, to the appropriate administrative or executive officer  
15 of the state agency that solicited the bid.

16 (b) A claimant under (a) of this section is entitled to reim-  
17 bursement if

18 (1) the claimant's bid should have been selected for award  
19 of the contract under AS 36.98.040 and the agency unreasonably reject-  
20 ed the bid;

21 (2) the rejection of the claimant's bid resulted from an  
22 action taken by the agency in bad faith; or

23 (3) the agency arbitrarily and unreasonably cancelled the  
24 bid solicitation.

25 (c) After a claim is filed under this section, the provisions of  
26 AS 44.77 apply to it.

27 \* Sec. 2. AS 37.05 is amended by adding a new section to read:

28 Sec. 37.05.245. CLAIMS FOR BID PREPARATION COSTS. (a) A claim  
29 for reimbursement of reasonable costs incurred in preparing a purchase

1 contract bid shall be presented, within 30 days after award of the  
2 contract or notice of cancellation of the bid solicitation, to the  
3 appropriate administrative or executive officer of the state agency  
4 that solicited the bid.

5 (b) A claimant under (a) of this section is entitled to reim-  
6 bursement if

7 (1) the claimant's bid should have been selected for award  
8 of the contract under AS 37.05.240 and the agency unreasonably re-  
9 jected the bid;

10 (2) the rejection of the claimant's bid resulted from an  
11 action taken by the agency in bad faith; or

12 (3) the agency arbitrarily and unreasonably cancelled the  
13 bid solicitation.

14 (c) After a claim is filed under this section, the provisions of  
15 AS 44.77 apply to it.

16 \* Sec. 3. AS 44.77.010(c) is repealed.

17 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.-  
18 10.070(c).

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 421

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to public contracts; and providing  
7 for an effective date."

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

9 \* Section 1. AS 36.98 is amended by adding a new section to read:

10 Sec. 36.98.075. CLAIMS FOR BID PREPARATION COSTS. (a) A claim  
11 for reimbursement of reasonable costs incurred in preparing a personal  
12 services contract bid must be presented, within 30 days after award of  
13 the contract or notice of cancellation of the bid solicitation, to the  
14 appropriate administrative or executive officer of the state agency  
15 that solicited the bid.

16 (b) A claimant under (a) of this section is entitled to reim-  
17 burse: nt if

18 (1) the claimant's bid should have been selected for award  
19 of the contract under AS 36.98.040 and the agency unreasonably reject-  
20 ed the bid;

21 (2) the rejection of the claimant's bid resulted from an  
22 action taken by the agency in bad faith; or

23 (3) the agency arbitrarily and unreasonably cancelled the  
24 bid solicitation.

25 (c) After a claim is filed under this section, the provisions of  
26 AS 44.77 apply to it.

27 \* Sec. 2. AS 37.05 is amended by adding a new section to read:

28 Sec. 37.05.245. CLAIMS FOR BID PREPARATION COSTS. (a) A claim  
29 for reimbursement of reasonable costs incurred in preparing a purchase

1 contract bid must be presented, within 30 days after award of the  
2 contract or notice of cancellation of the bid solicitation, to the  
3 appropriate administrative or executive officer of the state agency  
4 that solicited the bid.

5 (b) A claimant under (a) of this section is entitled to reim-  
6 bursement if

7 (1) the claimant's bid should have been selected for award  
8 of the contract under AS 37.05.240 and the agency unreasonably re-  
9 jected the bid;

10 (2) the rejection of the claimant's bid resulted from an  
11 action taken by the agency in bad faith; or

12 (3) the agency arbitrarily and unreasonably cancelled the  
13 bid solicitation.

14 (c) After a claim is filed under this section, the provisions of  
15 AS 44.77 apply to it.

16 \* Sec. 3. AS 44.77.010(c) is repealed.

17 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.-  
18 10.070(c).

### Part 7. Claims and Liability.

#### Chapter

#### 77. Claims Against the State (§ 44.77.010)

#### Chapter 77. Claims Against the State.

##### Section

##### 10. Presentation of claims

**Sec. 44.77.010. Presentation of claims.** (a) Every claim for reimbursement for money expended, or for compensation for labor, materials, or supplies furnished, or services given to or for the state, whether based on a contract or on a ratification, shall be promptly presented to the appropriate administrative or executive officer for approval and payment.

(b) For the purposes of filing claims for medical services provided under AS 47.07 or 47.25.120 — 47.25.300, "promptly", in (a) of this section, means within six months after the date the service was provided or third-party payment was received. No such claim may be paid which is not filed within that period; no inference to the contrary may be drawn from AS 09.10.050, 09.50.250 — 09.50.300, or AS 37.25.010.

(c) For purposes of this chapter, "claim" includes a claim for a wrongful rejection of a bid proposal or for an arbitrary and unreasonable cancellation of a bid solicitation. (§ 15-1-1 ACLA 1949; am § 1 ch 96 SLA 1974; am § 10 ch 144 SLA 1982)

**Effect of amendments.** — The 1982 amendment added subsection (c).

#### Chapter 80. Liability of the State.

##### Article 1. Actions.

##### Sec. 4 80.010. State as a party to actions.

##### NOTES TO DECISIONS

Stated in *McDaniel v. Cory*, Sup. Ct. Op. No. 2383 (File Nos. 4793, 4794), 631 P.2d 82 (1981).

in subsection (d).  
— This section was  
revisor of statutes to  
pronouns in conformity  
(c) and § 4, Chapter 58,