

**HOUSE
COMMITTEE REPORT**

(11)

Date referred: 5/10/86

FURTHER REFERRALS:

DATE: 5-11-86

The FINANCE Committee has considered CSSB 341 (Jud) am

"An Act relating to state procurement practices and procedures; and providing for an effective date".

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with HCS CS SB (7in) 341 same title
- new title

and recommends DO PASS

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note new 5/10/86

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

[Signature]
Mike Szynski
Ronald [Signature]
[Signature]
[Signature]
[Signature]
[Signature]

[Signature]
Chairman

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : HCS CSSB 341 (JUD)
 Title : state procurement
practices

Sponsor : Senate Rules by request
 Requestor : House Finance Committee
 Date of Request : 5/10/86

FISCAL DETAIL

Agency Affected : _____
 BRU : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		0	---	---	---	---
TRAVEL		0	---	---	---	---
CONTRACTUAL		0	---	---	---	---
SUPPLIES		0	---	---	---	---
EQUIPMENT		0	---	---	---	---
LAND & STRUCTURES		0	---	---	---	---
GRANTS, CLAIMS		0	---	---	---	---
MISCELLANEOUS		0	---	---	---	---
TOTAL OPERATING		0	---	---	---	---

CAPITAL		0	---	---	---	---
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REVENUE		0	---	---	---	---
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FUNDING : (Thousands of Dollars)

GENERAL FUND		0	---	---	---	---
FEDERAL FUNDS		0	---	---	---	---
OTHER		0	---	---	---	---
TOTAL		0	---	---	---	---

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

With the exception of one section, the House version of this bill does not take effect until July 1, 1987. Therefore fiscal impact does not occur until FY 88. Necessary funds can be provided for in the budget process.

Prepared by : Al Adams, Chair Phone : 465-3706
 Division : House Finance Committee Date : 5/10/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Original sponsor: Rules Committee
By Request

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 341 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state procurement practices and
7 procedures; and providing for an effective date."

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

9 * Section 1. PURPOSE. This Act shall be construed and applied to
10 promote its underlying purposes and policies. The underlying purposes and
11 policies of this Act are to

12 (1) simplify, clarify, and modernize the law governing pro-
13 curement by the state;

14 (2) establish consistent procurement principles for all branches
15 of state government;

16 (3) provide for increased public confidence in the procedures
17 followed in state procurement;

18 (4) ensure the fair and equitable treatment of all persons who
19 deal with the procurement system of the state;

20 (5) provide increased economy in state procurement activities
21 and maximize to the fullest extent practicable the purchasing value of
22 state funds;

23 (6) foster effective broad-based competition within the free
24 enterprise system;

25 (7) provide safeguards for the maintenance of a procurement
26 system of quality and integrity;

27 (8) permit the continued development of state procurement prac-
28 tices and policies; and

29 (9) eliminate and prevent discrimination in state contracting

1 because of race, religion, color, national origin, sex, age, marital sta-
2 tus, pregnancy, parenthood, handicap, or political affiliation.

3 * Sec. 2. AS 36 is amended by adding a new chapter to read:

4 CHAPTER 30. STATE PROCUREMENT CODE.

5 ARTICLE 1. ORGANIZATION OF STATE PROCUREMENT.

6 Sec. 36.30.005. CENTRALIZATION OF PROCUREMENT AUTHORITY. (a)

7 Except as otherwise provided, all rights, powers, duties, and author-
8 ity relating to the procurement of supplies, services, and profes-
9 sional services, and the control over supplies, services, and profes-
10 sional services vested in or exercised by an agency on January 1,
11 1987, are transferred to the commissioner of administration and to the
12 chief procurement officer. Authority granted under this subsection
13 shall be exercised in accordance with this chapter.

14 (b) Except as otherwise provided, all rights, powers, duties,
15 and authority relating to the procurement of construction and procure-
16 ments of equipment or services for the state equipment fleet and the
17 control over construction of state facilities and the state equipment
18 fleet vested in or exercised by an agency on January 1, 1987, are
19 transferred to the commissioner of transportation and public
20 facilities, subject to regulations adopted by the commissioner of
21 administration. Notwithstanding AS 44.71.010, authority relating to
22 disposals from the state equipment fleet is vested in the the
23 commissioner of transportation and public facilities, subject to
24 regulations adopted by the commissioner of administration. Authority
25 granted under this subsection shall be exercised in accordance with
26 this chapter.

27 (c) Notwithstanding other provisions of law, all rights, powers,
28 duties, and authority relating to the procurement of supplies, servi-
29 ces, professional services, and construction and the disposal of

1 supplies for the University of Alaska are transferred to the Board of
2 Regents. To the maximum extent possible, authority granted under this
3 subsection shall be exercised in accordance with this chapter. The
4 Board of Regents shall adopt regulations under this subsection that
5 are substantially equivalent to the regulations adopted by the commis-
6 sioner of administration to implement this chapter. For the purposes
7 of this subsection, unless the context otherwise requires, in this
8 chapter

9 (1) "agency" means a subunit of the University of Alaska;

10 (2) "attorney general" means the president of the
11 University of Alaska;

12 (3) "chief procurement officer" means a person designated
13 by the president of the University of Alaska whose qualifications are
14 substantially equivalent to those provided in AS 36.30.010(a);

15 (4) "commissioner," "commissioner of administration," or
16 "commissioner of transportation and public facilities" means the Board
17 of Regents or the president of the University of Alaska if so
18 designated by the Board of Regents by regulations adopted under this
19 subsection;

20 (5) "department" means the University of Alaska.

21 Sec. 36.30.010. CHIEF PROCUREMENT OFFICER. (a) The commis-
22 sioner shall appoint to the partially exempt service the chief pro-
23 curement officer of the state. The chief procurement officer must
24 have at least five years of prior experience in public procurement,
25 including large scale procurement of supplies, services, or profes-
26 sional services, and must be a person with demonstrated executive and
27 organizational ability. The chief procurement officer may be removed
28 by the commissioner only for cause. The term of office of the chief
29 procurement officer is four years.

1 (b) Except as otherwise specifically provided in this chapter,
2 the chief procurement officer shall

3 (1) procure or supervise the procurement of all supplies,
4 services, and professional services needed by an agency;

5 (2) exercise general supervision and control over all
6 inventories of supplies belonging to an agency and prescribe the
7 manner in which supplies shall be purchased, delivered, stored, and
8 distributed;

9 (3) prescribe the time, manner, authentication, and form of
10 making requisitions for supplies and services;

11 (4) sell, trade, transfer between agencies, or otherwise
12 dispose of surplus, obsolete, or unused supplies and make proper
13 adjustments in the accounts of agencies concerned;

14 (5) establish and maintain programs for the inspection,
15 testing, and acceptance of supplies and services and the testing of
16 samples submitted with bids;

17 (6) prescribe standard forms for bids and contracts; and

18 (7) provide for other matters that may be necessary to
19 carry out the provisions of this chapter and the regulations adopted
20 under this chapter.

21 Sec. 36.30.015. EXECUTIVE BRANCH AGENCIES. (a) The commis-
22 sioner of transportation and public facilities may delegate to another
23 agency the authority to contract for construction. Before delegating
24 authority to an agency under this subsection, the commissioner of
25 transportation and public facilities shall make a written determina-
26 tion that the agency is capable of implementing the delegated author-
27 ity. Notwithstanding delegation of authority under this subsection,
28 contracts for construction are governed by this chapter and regula-
29 tions adopted by the commissioner of administration under this

1 chapter.

2 (b) The commissioner of administration may delegate to an agency
3 the authority to contract for and manage services, professional servi-
4 ces, and supplies. Notwithstanding delegation of authority under this
5 subsection, an agency's exercise of the authority is governed by this
6 chapter and regulations adopted by the commissioner under this chap-
7 ter. Before delegating authority to an agency under this subsection,
8 the commissioner shall make a written determination that the agency is
9 capable of implementing the delegated authority.

10 (c) The commissioner of administration may not delegate the
11 authority to dispose of supplies or the authority to adopt regulations
12 under this chapter.

13 (d) An agency may not contract for the services of legal counsel
14 without the approval of the attorney general.

15 (e) The boards of directors of the Alaska Railroad Corporation
16 and the Alaska State Housing Authority shall adopt procedures to
17 govern the procurement of supplies, services, professional services,
18 and construction by the corporation. The procedures must be
19 substantially equivalent to the procedures prescribed in this chapter
20 and in regulations adopted under this chapter.

21 Sec. 36.30.020. LEGISLATURE. The Legislative Council shall
22 adopt and publish procedures to govern the procurement of supplies,
23 services, professional services, and construction by the legislative
24 branch. The procedures must be based on the competitive principles
25 consistent with this chapter and must be adapted to the special needs
26 of the legislative branch as determined by the Legislative Council.

27 Sec. 36.30.030. COURT SYSTEM. The administrative director of
28 courts shall adopt and publish procedures to govern the procurement of
29 supplies, services, professional services, and construction by the

1 judicial branch. The procedures must be based on the competitive
2 principles consistent with this chapter and must be adapted to the
3 special needs of the judicial branch as determined by the administra-
4 tor of courts.

5 Sec. 36.30.040. PROCUREMENT REGULATIONS. (a) The commissioner
6 shall adopt regulations governing the procurement, management, and
7 control of supplies, services, professional services and construction
8 by agencies. The commissioner may audit and monitor the implementa-
9 tion of the regulations and the requirements of this chapter with
10 respect to using agencies.

11 (b) The commissioner shall adopt regulations pertaining to the
12 following:

13 (1) suspension, debarment, and reinstatement of prospective
14 bidders and contractors;

15 (2) bid protests;

16 (3) conditions and procedures for the procurement of per-
17 ishables and items for resale;

18 (4) conditions and procedures for the use of source selec-
19 tion methods authorized by this chapter, including sole source pro-
20 curements, emergency procurements, and small procurements;

21 (5) the opening or rejection of bids and offers, and waiver
22 of informalities in bids and offers;

23 (6) confidentiality of technical data and trade secrets
24 submitted by actual or prospective bidders or offerors;

25 (7) partial, progressive, and multiple awards;

26 (8) storerooms and inventories, including determination of
27 appropriate stock levels and the management of agency supplies;

28 (9) transfer, sale or other disposal of supplies;

29 (10) definitions and classes of contractual services and

1 procedures for acquiring them;

2 (11) providing for conducting price analysis;

3 (12) use of payment and performance bonds in connection with
4 contracts for supplies, services, and construction;

5 (13) guidelines for use of cost principles in negotiations,
6 adjustments, and settlements;

7 (14) conditions under which an agency may use the services
8 of an employment program as defined under AS 36.30.100(c);

9 (15) a bidder's or offeror's duties under AS 36.30.115 and
10 36.30.210; and

11 (16) the elimination and prevention of discrimination in
12 state contracting because of race, religion, color, national origin,
13 sex, age, marital status, pregnancy, parenthood, handicap, or politi-
14 cal affiliation.

15 Sec. 36.30.050. LISTS OF CONTRACTORS. (a) The commissioner
16 shall establish and maintain lists of persons who desire to provide
17 supplies, services, professional services, or construction services to
18 the state.

19 (b) A person who desires to be on a list shall submit to the
20 commissioner evidence of a valid Alaska business license together with
21 a biennial fee established by regulation in an amount reasonably
22 calculated to pay the costs of administering this section. A con-
23 struction contractor shall also submit a valid certificate of regis-
24 tration issued under AS 08.18. The commissioner, by regulation, may
25 require submission of additional information.

26 (c) The lists may be used by the chief procurement officer or an
27 agency when issuing invitations to bid or requests for proposals under
28 this chapter. The lists may be used by the Legislative Council, the
29 court system, the Alaska State Housing Authority, and the Alaska

1 Railroad Corporation.

2 (d) The lists shall be used in providing notice of intent to
3 make a small procurement to Alaska bidders as defined under AS 36.30.-
4 170(c). A procurement officer who intends to make a procurement under
5 AS 36.30.320 shall request names from the appropriate list and the
6 department shall furnish names of Alaska bidders on a rotating basis
7 from the list in response to each request.

8 Sec. 36.30.060. SPECIFICATIONS. (a) The commissioner shall
9 adopt regulations governing the preparation, revision, and content of
10 specifications for supplies, services, professional services, and
11 construction required by an agency. The commissioner shall monitor
12 the use of these specifications.

13 (b) Specifications for construction of highways must conform as
14 closely as practicable to those adopted by the American Association of
15 State Highway and Transportation Officials.

16 (c) The commissioner may obtain expert advice and assistance
17 from personnel of using agencies in the development of specifications.
18 Specifications must promote overall economy for the purposes intended
19 and encourage competition in satisfying the state's needs, and may not
20 be unduly restrictive. The requirements of this subsection regarding
21 the purposes and nonrestrictiveness of specifications apply to all
22 specifications, including those prepared by architects, engineers,
23 designers, and other professionals.

24 (d) In this section, "specification" means a description of the
25 physical or functional characteristics, or of the nature of a supply,
26 service, professional service, or construction project; it may include
27 requirements for licensing, inspecting, testing, and delivery.

28 Sec. 36.30.070. SUPPLY MANAGEMENT. The commissioner shall adopt
29 regulations governing the

- 1 (1) management of supplies during their entire life cycle;
- 2 (2) sale, lease, or disposal of surplus supplies by public
- 3 auction, competitive sealed bidding, or other appropriate method;
- 4 (3) purchase of surplus supplies by an employee of the
- 5 using or disposing agency; and
- 6 (4) transfer of excess supplies.

7 Sec. 36.30.080. LEASES. (a) The department shall lease space
8 for the use of the state or an agency wherever it is necessary and
9 feasible, subject to compliance with the requirements of this chapter.
10 A lease may not provide for a period of occupancy greater than 40
11 years. An agency requiring office, warehouse, or other space shall
12 lease the space through the department.

13 (b) The department may enter into lease-financing agreements,
14 including lease-purchase agreements and agreements related to the
15 issuance of certificates of participation. A lease-financing agree-
16 ment must provide that lease payments are subject to annual appropria-
17 tion.

18 (c) If the department intends to enter into a lease or lease-
19 financing agreement with an annual rent to the state anticipated to
20 exceed \$1,000,000, the department shall provide notice to the legisla-
21 ture. The notice must include the anticipated annual lease obligation
22 amount and the anticipated total construction, acquisition, or other
23 costs of the project. The department may not enter into an agreement
24 under this subsection unless the project has been approved by the
25 legislature by law. An appropriation for the project does not consti-
26 tute approval of the project for purposes of this subsection.

27 ARTICLE 2. COMPETITIVE SEALED BIDDING.

28 Sec. 36.30.100. GENERAL POLICY. (a) Except as otherwise pro-
29 vided in this chapter, or unless specifically exempted by law, an

1 agency contract shall be awarded by competitive sealed bidding.

2 (b) Competitive sealed bidding is not required

3 (1) when the commissioner determines in writing that food,
4 clothing, or medical supplies, or materials for use in laboratory or
5 medical studies may be purchased otherwise to the best advantage of
6 the state;

7 (2) when rates are fixed by law or ordinance;

8 (3) for the purchase of products or services manufactured
9 or provided by an employment program;

10 (4) for the purchase of products or services provided by
11 the correctional industries program established under AS 33.32;

12 (5) for professional services; or

13 (6) for concessions operated on state property.

14 (c) In this section "employment program" means a nonprofit
15 program to increase employment opportunities for individuals with
16 physical or mental disabilities that constitute substantial handicaps
17 to employment.

18 Sec. 36.30.110. INVITATION TO BID. (a) When competitive sealed
19 bidding is used, the procurement officer shall issue an invitation to
20 bid. It must include a time, place and date by which the bid must be
21 received, purchase description, and a description of all contractual
22 terms and conditions applicable to the procurement.

23 (b) When responding to the invitation to bid, the bidder shall
24 supply evidence of the bidder's valid Alaska business license. A
25 bidder for a construction contract shall also submit evidence of the
26 bidder's registration under AS 08.18.

27 Sec. 36.30.115. SUBCONTRACTORS. (a) Within 24 hours after
28 opening of bids, the two apparent low bidders shall submit a list of
29 the subcontractors the bidders propose to use in the performance of

1 the contract. The list shall include the name and location of the
2 place of business for each subcontractor and evidence of the subcon-
3 tractor's valid Alaska business license. A bidder for a constructior
4 contract shall also submit evidence of each subcontractor's registra-
5 tion under AS 08.18.

6 (b) A bidder may replace a listed subcontractor if the subcon-
7 tractor

8 (1) fails to comply with AS 08.18;

9 (2) files for bankruptcy or becomes insolvent;

10 (3) fails to execute a contract with the bidder involving
11 performance of the work for which the subcontractor was listed;

12 (4) fails to obtain bonding;

13 (5) fails to obtain insurance acceptable to the state;

14 (6) fails to perform the contract with the bidder involving
15 work for which the subcontractor was listed;

16 (7) must be substituted in order for the prime contractor
17 to satisfy required federal affirmative action requirements;

18 (8) refuses to agree or abide with the bidder's labor
19 agreement; or

20 (9) is determined by the procurement officer not to be a
21 responsible bidder.

22 (c) If a bidder fails to list a subcontractor or lists more than
23 one subcontractor for the same portion of work and the value of that
24 work is in excess of half of one percent of the total bid, the bidder
25 shall be considered to have agreed to perform that portion of work
26 without the use of a subcontractor and to have represented the bidder
27 to be qualified to perform that work.

28 (d) A bidder who attempts to circumvent the requirements of this
29 section by listing as a subcontractor another contractor who, in turn,

1 sublets the majority of the work required under the contract violates
2 this section.

3 (e) If a contract is awarded to a bidder who violates this
4 section, the purchasing officer may

5 (1) cancel the contract; or

6 (2) after notice and a hearing, assess a penalty on the
7 bidder in an amount that does not exceed 10 percent of the value of
8 the subcontract at issue.

9 Sec. 36.30.120. BID SECURITY. (a) Bid security shall be re-
10 quired for all competitive sealed bidding for construction contracts
11 when the price is estimated by the procurement officer to exceed an
12 amount established by regulation of the commissioner. Bid security on
13 construction contracts under the amount set by the commissioner may be
14 required when the circumstances warrant. Bid security may be required
15 for competitive sealed bidding for contracts for supplies, services,
16 or professional services in accordance with regulations of the commis-
17 sioner when needed for the protection of the state.

18 (b) Bid security must be a bond provided by a surety company
19 authorized to do business in the state or otherwise supplied in a form
20 satisfactory to the commissioner. Bid security must be in an amount
21 equal to at least

22 (1) 10 percent of the amount of the bid if the bid does not
23 exceed \$100,000; or

24 (2) 10 percent of the first \$100,000 and five percent of
25 the amount of the bid over \$100,000 if the bid exceeds \$100,000 up to
26 a maximum of \$200,000 in security.

27 (c) When the invitation to bid requires security, the procure-
28 ment officer shall reject a bid that does not comply with the bid
29 security requirement unless, in accordance with regulations, the

1 officer determines that the bid fails to comply in a nonsubstantial
2 manner with the security requirements.

3 Sec. 36.30.130. PUBLIC NOTICE OF INVITATION TO BID. (a) The
4 procurement officer shall give adequate public notice of the invita-
5 tion to bid at least 21 days before the date for the opening of bids.
6 If a determination is made in writing that a shorter notice period is
7 necessary for a particular bid, the 21-day period may be shortened.
8 The determination shall be made by the chief procurement officer for
9 bids for supplies, services, or professional services. The determina-
10 tion shall be made by the commissioner of transportation and public
11 facilities for bids for construction or acquisition of property for
12 the state equipment fleet. Notice shall be published in the Alaska
13 Administrative Journal. The time and manner of notice must be in
14 accordance with regulations adopted by the commissioner of adminis-
15 tration. When practicable, notice may include

16 (1) publication in a newspaper calculated to reach prospec-
17 tive bidders;

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

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

22 (b) Failure to comply with the notice requirements of this
23 section does not invalidate a bid or the award of a contract. If the
24 state fails to substantially comply with the requirements of (a) of
25 this section, the state is liable for damages caused by that failure.

26 Sec. 36.30.140. BID OPENING. (a) The procurement officer shall
27 open bids publicly in the presence of one or more witnesses at the
28 time and place designated in the invitation to bid. The amount of
29 each bid and other relevant information that is specified by

1 regulation of the commissioner, together with the name of each bidder,
2 shall be recorded.

3 (b) The information recorded under (a) of this section is open
4 to public inspection as soon as practicable before the notice of
5 intent to award a contract is given under AS 36.30.365. The bids are
6 not open for public inspection until after the notice of intent to
7 award a contract is given. To the extent the bidder designates and
8 the procurement officer concurs, trade secrets and other proprietary
9 data contained in a bid document are confidential.

10 Sec. 36.30.150. BID ACCEPTANCE AND BID EVALUATION. (a) Bids
11 shall be unconditionally accepted without alteration or correction,
12 except as authorized in AS 36.30.160. The procurement officer shall
13 evaluate bids based on the requirements set out in the invitation to
14 bid, which may include criteria to determine acceptability such as
15 inspection, testing, quality, delivery, and suitability for a parti-
16 cular purpose. The criteria that will affect the bid price and be
17 considered in evaluation for award must be objectively measurable,
18 such as discounts, transportation costs, and total or life cycle
19 costs. The invitation to bid must set out the evaluation criteria to
20 be used. Criteria may not be used in bid evaluation if they are not
21 set out in the invitation to bid.

22 (b) A contract based on total or life cycle costs may be awarded
23 only when the chief procurement officer or, for construction contracts
24 or procurements for the state equipment fleet, the commissioner of
25 transportation and public facilities, determines in writing at the
26 time of contract solicitation that the contract promotes overall
27 economy for the purposes intended, encourages competition, is not
28 unduly restrictive, and is in the best interests of the state.

29 Sec. 36.30.160. LATE BIDS; CORRECTION OR WITHDRAWAL OF BIDS;

1 CANCELLATION OF AWARDS. (a) Bids received after the bid due date and
2 time indicated on the invitation to bid may not be accepted unless the
3 delay was due to an error of the contracting agency.

4 (b) Correction or withdrawal of inadvertently erroneous bids
5 before or after bid opening, or cancellation of awards or contracts
6 based on bid mistakes may be permitted in accordance with regulations
7 adopted by the commissioner. After bid opening, changes in bid prices
8 or other provisions of bids prejudicial to the interest of the state
9 or fair competition may not be permitted. Except as otherwise provid-
10 ed by regulation, a decision to permit the correction or withdrawal of
11 a bid, or to cancel an award or contract based on a bid mistake, shall
12 be supported by a written determination made by the procurement offi-
13 cer. If a bidder is permitted to withdraw a bid before award, an
14 action may not be maintained against the bidder or the bid security.

15 Sec. 36.30.170. CONTRACT AWARD AFTER BIDS. (a) Except as
16 provided in (b) of this section, the procurement officer shall award a
17 contract based on the solicited bids with reasonable promptness by
18 written notice to the lowest responsible and responsive bidder whose
19 bid conforms in all material respects to the requirements and criteria
20 set out in the invitation to bid.

21 (b) Notwithstanding an Alaska product preference under AS 36.-
22 30.322 - 36.30.338, the procurement officer shall award a contract
23 based on solicited bids to the lowest responsible and responsive
24 Alaska bidder if the bid is not more than five percent higher than the
25 lowest nonresident bidder's. In this subsection, "Alaska bidder"
26 means a person who

27 (1) holds a current Alaska business license;

28 (2) submits a bid for goods, services, or construction
29 under the name as appearing on the person's current Alaska business

1 license;

2 (3) has maintained a place of business within the state
3 staffed by the bidder or an employee of the bidder for a period of six
4 months immediately preceding the date of the bid;

5 (4) is incorporated or qualified to do business under the
6 laws of the state, is a sole proprietorship, and the proprietor is a
7 resident of the state or is a partnership, and all partners are resi-
8 dents of the state; and

9 (5) if a joint venture, is composed entirely of ventures
10 that qualify under (1) - (4) of this subsection.

11 (c) If a bidder qualifies under (b) of this section as an Alaska
12 bidder, is offering services through an employment program as defined
13 under AS 36.30.100(c), and is the lowest responsible and responsive
14 bidder with a bid that is not more than 10 percent higher than the
15 lowest bid of a nonresident, the procurement officer shall award the
16 contract to that bidder.

17 Sec. 36.30.190. MULTI-STEP SEALED BIDDING. When it is con-
18 sidered impractical to initially prepare a definitive purchase de-
19 scription to support an award based on price, the procurement officer
20 may issue an invitation to bid requesting the submission of unpriced
21 technical offers to be followed by an invitation to bid limited to the
22 bidders whose offers are determined to be technically qualified under
23 the criteria set out in the first solicitation.

24 ARTICLE 3. COMPETITIVE SEALED PROPOSALS.

25 Sec. 36.30.200. CONDITIONS FOR USE. (a) Except as otherwise
26 provided in this chapter, or unless specifically exempted by law, an
27 agency contract shall be awarded by competitive sealed proposals if it
28 is not awarded by competitive sealed bidding. Construction may only
29 be procured by competitive sealed proposals if the conditions under

1 (c) of this section are met.

2 (b) The commissioner may provide by regulation that it is either
3 not practicable or not advantageous to the state to procure specified
4 types of supplies, services, or construction by competitive sealed
5 bidding that would otherwise be procured by that method. When the
6 chief procurement officer, or for construction contracts or procure-
7 ments for the state equipment fleet, the commissioner of transporta-
8 tion and public facilities, determines in writing that the use of
9 competitive sealed bidding is either not practicable or not advanta-
10 geous to the state, a contract may be entered into by competitive
11 sealed proposals in accordance with the regulations. When it is
12 determined that it is practicable but not advantageous to use competi-
13 tive sealed bidding, the chief procurement officer or commissioner of
14 transportation and public facilities shall specify with particularity
15 the basis for the determination.

16 (c) When the chief procurement officer determines that it is
17 advantageous to the state, a procurement officer may issue a request
18 for proposals requesting the submission of offers to provide con-
19 struction in accordance with a design provided by the offeror. The
20 request for proposals shall require that each proposal submitted
21 contain a single price that includes the design/build.

22 Sec. 36.30.210. REQUEST FOR PROPOSALS. (a) A request for
23 competitive sealed proposals must contain the date, time and place for
24 delivering proposals, a specific description of the supplies, con-
25 struction, services, or professional services to be provided under the
26 contract, and the terms under which the supplies, construction, ser-
27 vices, or professional services are to be provided. The request shall
28 require the offeror to submit evidence of the offeror's valid Alaska
29 business license and, no later than the date by which proposals must

1 be received, to list subcontractors the offeror proposes to use in the
2 performance of the contract. The list shall include the name and
3 location of the place of business for each subcontractor and evidence
4 of the subcontractor's valid Alaska business license. An offeror for
5 a construction contract shall also submit evidence of the offeror's
6 registration under AS 08.18 and evidence of registration for each
7 listed subcontractor.

8 (b) A request for proposals must contain that information neces-
9 sary for an offeror to submit a proposal or contain references to any
10 information that cannot reasonably be included with the request. The
11 request must provide a description of the factors that will be con-
12 sidered by the procurement officer when evaluating the proposals
13 received, including the relative importance of price and other evalu-
14 ation factors.

15 (c) Notice of a request for proposals shall be given in accor-
16 dance with procedures under AS 36.30.130. The procurement officer may
17 use additional means considered appropriate to notify prospective
18 offerors of the intent to enter into a contract through competitive
19 sealed proposals.

20 (d) The provisions of AS 36.30.115(b) - (e) apply to competitive
21 sealed proposals.

22 Sec. 36.30.220. STANDARD OVERHEAD RATE. (a) An agency that
23 provides services to another agency under a contract covered by this
24 chapter shall establish a standard overhead rate. If an agency sub-
25 mits a proposal in response to a request for competitive sealed pro-
26 posals, the agency must include its standard overhead rate within its
27 proposal.

28 (b) In this section, "standard overhead rate" means a charge
29 established for services and professional services from an agency that

1 is designed to compensate the agency for administration and support
2 services incidentally provided with the services contracted for.

3 Sec. 36.30.230. TREATMENT OF PROPOSALS. The procurement officer
4 shall open proposals so as to avoid disclosure of contents to compet-
5 ing offerors during the process of negotiation. A register of pro-
6 posals containing the name and address of each offeror shall be pre-
7 pared in accordance with regulations adopted by the commissioner. The
8 register and the proposals are open for public inspection after the
9 notice of intent to award a contract is issued under AS 36.30.365. To
10 the extent that the offeror designates and the procurement officer
11 concurs, trade secrets and other proprietary data contained in the
12 proposal documents are confidential.

13 Sec. 36.30.240. DISCUSSION WITH RESPONSIBLE OFFERORS AND REVI-
14 SIONS TO PROPOSALS. As provided in the request for proposals, and
15 under regulations adopted by the commissioner, discussions may be
16 conducted with responsible offerors who submit proposals determined to
17 be reasonably susceptible of being selected for award for the purpose
18 of clarification to assure full understanding of, and responsiveness
19 to, the solicitation requirements. Offerors reasonably susceptible of
20 being selected for award shall be accorded fair and equal treatment
21 with respect to any opportunity for discussion and revision of pro-
22 posals, and revisions may be permitted after submissions and before
23 the award of the contract for the purpose of obtaining best and final
24 offers. In conducting discussions, the procurement officer may not
25 disclose information derived from proposals submitted by competing
26 offerors. AS 44.62.310 does not apply to meetings with offerors under
27 this section.

28 Sec. 36.30.250. AWARD OF CONTRACT. (a) The procurement officer
29 shall award a contract under competitive sealed proposals to the

1 responsible and responsive offeror whose proposal is determined in
2 writing to be the most advantageous to the state taking into consid-
3 eration price and the evaluation factors set out in the request for
4 proposals. Other factors and criteria may not be used in the evalu-
5 ation. The contract file must contain the basis on which the award is
6 made.

7 (b) In determining whether a proposal is advantageous to the
8 state, the procurement officer shall take into account, in accordance
9 with regulations of the commissioner, whether the offeror qualifies as
10 an Alaskan bidder under AS 36.30.170(b) or is offering the services of
11 an employment program as defined in AS 36.30.100(c).

12 Sec. 36.30.260. CONTRACT EXECUTION. A contract awarded under
13 competitive sealed proposals must contain

14 (1) the amount of the contract stated on its first page;

15 (2) the date for the supplies to be delivered or the dates
16 for construction, services, or professional services to begin and be
17 completed;

18 (3) a description of the supplies, construction, services,
19 or professional services to be provided; and

20 (4) certification by the project director for the contract-
21 ing agency, the head of the contracting agency, or a designee that
22 sufficient funds are available in an appropriation to be encumbered
23 for the amount of the contract.

24 Sec. 36.30.270. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING
25 CONTRACTS. (a) Notwithstanding conflicting provisions of AS 36.30.-
26 100 - 36.30.260, a procurement officer shall negotiate a contract for
27 an agency with the most qualified and suitable firm or person of
28 demonstrated competence for architectural, engineering, or land
29 surveying services. The procurement officer shall award a contract

1 for those services at fair and reasonable compensation as determined
2 by the procurement officer, after consideration of the estimated value
3 of the services to be rendered, and the scope, complexity, and
4 professional nature of the services. When determining the most
5 qualified and suitable firm or person, the procurement officer shall
6 consider the

7 (1) proximity to the project site of the office of the firm
8 or person unless federal law prohibits this factor from being
9 considered in the awarding of the contract; and

10 (2) employment practices of the firm or person with regard
11 to women and minoricies.

12 (b) If negotiations with the most qualified and suitable firm or
13 person under (a) of this section are not successful, the procurement
14 officer shall negotiate a contract with other qualified firms or
15 persons of demonstrated competence, in order of public ranking. The
16 procurement officer may reject all or part of a proposal.

17 (c) This section does not apply to contracts awarded in a
18 situation of public necessity if the procurement officer certifies in
19 writing that a situation of public necessity exists.

20 (d) Notwithstanding the other provisions of this section, a
21 procurement officer may include price as an added factor in selecting
22 architectural, engineering, and land surveying services when, in the
23 judgment of the procurement officer, the services required are repeti-
24 tious in nature, and the scope, nature, and amount of services re-
25 quired are thoroughly defined by measurable and objective standards to
26 reasonably enable firms or persons making proposals to compete with a
27 clear understanding and interpretatior of the services required. In
28 order to include price as a factor in selection, a majority of the
29 persons involved by the procurement officer in evaluation of the

1 proposals must be registered in the state to perform architectural,
2 engineering, or land surveying services.

3 (e) This section does not apply to a contract that incorporates
4 both design services and construction.

5 ARTICLE 4. OTHER PROCUREMENT METHODS.

6 Sec. 36.30.300. SOLE SOURCE PROCUREMENTS. (a) A contract may
7 be awarded for supplies, services, professional services, or construc-
8 tion without competitive sealed bidding, competitive sealed proposals,
9 or other competition in accordance with regulations adopted by the
10 commissioner of administration. A contract may be awarded under this
11 section only when the chief procurement officer or, for construction
12 contracts or procurements for the state equipment fleet, the commis-
13 sioner of transportation and public facilities determines in writing
14 that there is only one source for the required procurement or con-
15 struction. A sole source procurement may not be awarded if a rea-
16 sonable alternative source exists. The written determination must
17 include findings of fact that support by clear and convincing evidence
18 the determination that only one source exists. The authority to make
19 the determination required by this subsection may not be delegated.

20 (b) The using agency shall submit written evidence to support a
21 sole source determination. The commissioner of administration or the
22 commissioner of transportation and public facilities, as appropriate,
23 may also require the submission of cost or pricing data in connection
24 with an award under this section.

25 (c) The procurement officer shall negotiate with the single
26 supplier, to the extent practicable, to obtain a contract advantageous
27 to the state.

28 (d) Procurement requirements may not be artificially divided,
29 fragmented, aggregated or structured so as to constitute a purchase

1 under this section or to circumvent the source selection procedures
2 required by AS 36.30.100 - 36.30.270.

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

16 Sec. 36.30.320. SMALL PROCUREMENTS. (a) A procurement for
17 supplies, services, or construction that does not exceed an aggregate
18 dollar amount of \$5,000 may be made in accordance with regulations
19 adopted by the commissioner for small procurements.

20 (b) A contract for professional services that does not exceed
21 \$25,000 may be made under regulations adopted by the commissioner for
22 small procurements, except that an agency may not contract for the
23 services of legal counsel without the approval of the attorney
24 general.

25 (c) Small procurements need not be made through competitive
26 sealed bidding or competitive sealed proposals but shall be made with
27 competition that is practicable under the circumstances.

28 (d) Procurement requirements may not be artificially divided or
29 fragmented so as to constitute a purchase under this section or to

1 circumvent the source selection procedures required by AS 36.30.100 -
2 36.30.270.

3 (e) The procurement officer shall give adequate public notice of
4 intent to make a procurement under this section in accordance with
5 regulations adopted by the commissioner. Notices shall also be pro-
6 vided to those Alaska bidders designated by the commissioner under
7 AS 36.30.050(d).

8 ARTICLE 5. PREFERENCE FOR ALASKA PRODUCTS.

9 Sec. 36.30.322. USE OF LOCAL FOREST PRODUCTS. (a) Only timber,
10 lumber, and manufactured lumber products originating in this state
11 from local forests may be procured by an agency or used in construc-
12 tion projects of an agency unless the commissioner of commerce and
13 economic development certifies that the manufacturers and suppliers
14 who have notified the commissioner of commerce and economic develop-
15 ment of their willingness to manufacture or supply Alaska forest
16 products

17 (1) have been given reasonable notice of the forest product
18 needs of the procurement or project; and

19 (2) are unable to supply the products at a cost that is
20 within seven percent of the price offered by a manufacturer or sup-
21 plier of non-Alaska forest products.

22 (b) The provisions of AS 36.30.326 - 36.30.332 do not apply to
23 procurements of timber, lumber, and manufactured lumber products or
24 the use of those items in construction projects of an agency.

25 Sec. 36.30.324. USE OF ALASKA PRODUCTS. Alaska products shall
26 be used whenever practicable in procurements for an agency.

27 Sec. 36.30.326. CONTRACT SPECIFICATIONS. Contract specifica-
28 tions for a procurement for an agency must include a provision that a
29 bidder or offeror that designates in a bid or proposal the use of

1 Alaska products identified in the specifications will receive the
2 preference granted under AS 36.15.323 in the evaluation of the bid or
3 proposal if the designated Alaska products meet the contract specifi-
4 cations.

5 Sec. 36.30.328. GRANT OF PREFERENCE. In the evaluation of a bid
6 or proposal for a procurement for an agency, a bid or offer that
7 designates the use of Alaska products identified in the contract
8 specifications and designated as Class I, Class II, or Class III state
9 products under AS 36.30.332 is decreased by the percentage of the
10 value of the designated Alaska products under AS 36.30.332.

11 Sec. 36.30.330. PENALTY FOR FAILING TO USE DESIGNATED PRODUCTS.

12 (a) If a successful bidder or offeror who designates the use of an
13 Alaska product in a bid or proposal for a procurement for an agency
14 fails to use the designated product for a reason within the control of
15 the successful bidder or offeror, each payment under the contract
16 shall be reduced according to the following schedule:

- 17 (1) for a Class I designated Alaska product - four percent;
18 (2) for a Class II designated Alaska product - six percent;
19 (3) for a Class III designated Alaska product - eight
20 percent.

21 (b) A person is not a responsible bidder or offeror if, in the
22 preceding three years, the person has twice designated the use of an
23 Alaska product in a bid or proposal for a procurement for an agency
24 and has each time failed to use the designated Alaska product for
25 reasons within the control of the bidder or offeror.

26 (c) The procurement officer shall report to the commissioner of
27 commerce and economic development each contractor penalized under (a)
28 of this section. The commissioner of commerce and economic develop-
29 ment shall maintain a list of contractors determined not to be

1 responsible bidders under (b) of this section.

2 Sec. 36.30.332. CLASSIFICATION OF ALASKA PRODUCTS. (a) The
3 commissioner of commerce and economic development shall adopt regu-
4 lations establishing the value added in the state for materials and
5 supplies produced or manufactured in the state that are used in a
6 state procurement and shall publish a list of the products annually.
7 A supplier may request inclusion of its product on the appropriate
8 list.

9 (b) Materials and supplies with value added in the state that
10 are

11 (1) more than 25 percent and less than 50 percent of the
12 manufacturer's quoted price is a Class I product;

13 (2) 50 percent or more and less than 75 percent of the
14 manufacturer's quoted price is a Class II product; and

15 (3) 75 percent or more of a manufacturer's quoted price is
16 a Class III product.

17 (c) In a bid or proposal evaluation a

18 (1) Class I product is given a three percent preference;

19 (2) Class II product is given a five percent preference;

20 and

21 (3) Class III product is given a seven percent preference.

22 Sec. 36.30.334. IDENTIFICATION OF ALASKA PRODUCTS. An agency
23 may identify specific Alaska products for use in making a procurement.

24 Sec. 36.30.336. APPLICATION. Notwithstanding other provisions
25 of AS 36.30, AS 36.30.322 - 36.30.338 apply to all procurements
26 subject to AS 36.30, except as provided in AS 36.30.170(b) and 36.30.-
27 322(b).

28 Sec. 36.30.338. DEFINITIONS. In AS 36.30.322 - 36.30.338

29 (1) "Alaska product" means a product produced or

1 manufactured in the state if the value added in the state is not less
2 than 25 percent of the quoted price of the manufacturer;

3 (2) "product" means materials or supplies but does not
4 include gravel and asphalt;

5 (3) "produced or manufactured" means processing, develop-
6 ing, or making an item into a new item with a distinct character and
7 use through the application within the state of materials, labor,
8 skill, or other services.

9 ARTICLE 6. CONTRACT FORMATION AND MODIFICATION.

10 Sec. 36.30.340. REVIEW AND APPROVAL BY THE ATTORNEY GENERAL.

11 If a contract contains a term that is in conflict with a state
12 standard form contract term or if a standard term is deleted or
13 modified by a term that is not standard, the contract must be reviewed
14 by the Attorney General and approved as to form.

15 Sec. 36.30.350. BID CANCELLATION, REJECTION. An invitation to
16 bid, a request for proposals, or other solicitation may be cancelled
17 or any or all bids or proposals may be rejected in whole or in part or
18 the date for opening bids or proposals may be delayed when it is in
19 the best interests of the state in accordance with regulations adopted
20 by the commissioner. The reasons for cancellation, rejection, or
21 delay in opening bids or proposals shall be made part of the contract
22 file.

23 Sec. 36.30.360. DETERMINATION OF RESPONSIBILITY. (a) A written
24 determination of responsibility of a bidder or offeror shall be made
25 by the procurement officer in accordance with regulations adopted by
26 the commissioner. The unreasonable failure of a bidder or offeror to
27 promptly supply information in connection with an inquiry with respect
28 to responsibility is grounds for a determination of nonresponsibility
29 with respect to the bidder or offeror.

1 (b) Information furnished by a bidder or offeror under (a) of
2 this section is confidential and may not be disclosed without prior
3 written consent by the bidder or offeror.

4 Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESI-
5 DENT. If the procurement officer awards a contract to a person who
6 does not reside or maintain a place of business in the state and if
7 the supplies, services, professional services, or construction that is
8 the subject of the contract could have been obtained from sources in
9 the state, the procurement officer shall issue a written statement
10 explaining the basis of the award. The statement required under this
11 section shall be kept in the contract file.

12 Sec. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT. At least
13 10 days before the formal award of a contract under this chapter the
14 procurement officer shall provide to each bidder or offeror notice of
15 intent to award a contract. The notice shall conform to regulations
16 adopted by the commissioner.

17 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of
18 this section, any type of contract that will promote the best inter-
19 ests of the state may be used, except that the use of a cost-plus-
20 a-percentage-of-cost contract is prohibited. A cost-reimbursement
21 contract may be used only when a determination is made in writing by
22 the procurement officer that a cost-reimbursement contract is likely
23 to be less costly to the state than any other type or that it is
24 impracticable to obtain the supplies, services, professional services,
25 or construction required except under a cost-reimbursement contract.

26 Sec. 36.30.380. APPROVAL OF ACCOUNTING SYSTEM. Except for a
27 contract awarded through competitive sealed bidding or a firm fixed-
28 price contract, a contract type may not be used unless it has been
29 determined in writing by the procurement officer that the proposed

1 contractor's accounting system

2 (1) will permit timely development of all necessary cost
3 data in the form required by the specific contract type contemplated;
4 and

5 (2) is adequate to allocate costs in accordance with gen-
6 erally accepted accounting principles.

7 Sec. 36.30.390. MULTI-TERM CONTRACTS. (a) Unless otherwise
8 provided by law, a contract for supplies, services, or professional
9 services may be entered into for any period of time considered to be
10 in the best interests of the state provided the term of the contract
11 and conditions of renewal or extension, if any, are included in the
12 solicitation and funds are available for the first fiscal period at
13 the time of contracting. Payment and performance obligations for
14 succeeding fiscal periods shall be subject to the availability and
15 appropriation of funds for them.

16 (b) Before using a multi-term contract, the procurement officer
17 shall determine in writing that

18 (1) estimated requirements cover the period of the contract
19 and are reasonably firm and continuing; and

20 (2) the contract will serve the best interests of the state
21 by encouraging effective competition or otherwise promoting economies
22 in state procurement.

23 (c) When funds are not appropriated or otherwise made available
24 to support continuation of performance in a subsequent fiscal period,
25 the contract shall be cancelled. The contractor may only be reim-
26 bursed for the reasonable value of any nonrecurring costs incurred but
27 not amortized in the price of the supplies, services, or professional
28 services delivered under the contract that are not otherwise recover-
29 able. The cost of cancellation may be paid from any appropriations

1 available for these purposes.

2 Sec. 36.30.400. COST OR PRICING DATA. (a) Before an award of a
3 contract or a change order or contract modification, the contractor or
4 prospective contractor shall submit cost and pricing data. The con-
5 tractor or prospective contractor shall certify that, to the best of
6 the contractor's or prospective contractor's knowledge and belief, the
7 data submitted is accurate, complete, and current as of a mutually
8 determined specified date and will continue to be accurate and com-
9 plete during the performance of the contract.

10 (b) When a contractor becomes aware of a situation that may form
11 the basis of a claim for compensation that exceeds the amount desig-
12 nated as the base amount of the contract and before performing addi-
13 tional work or supplying additional materials, the contractor shall
14 submit cost and pricing data on the additional work or materials. The
15 contractor shall certify that, to the best of the contractor's knowl-
16 edge and belief, the data submitted is accurate, complete, and current
17 and is the actual cost to the contractor of performing the additional
18 work or supplying the additional materials.

19 (c) A contract, change order, or contract modification under
20 which a certificate is required under (a) or (b) of this section must
21 contain a provision that the price to the state, including the con-
22 tractor's profit or fee, will be adjusted to exclude any significant
23 sums by which the state finds that the price is increased because the
24 cost or pricing data furnished by the contractor or prospective con-
25 tractor is inaccurate, incomplete, or not current as of the date
26 agreed upon by the parties.

27 (d) The requirements of (a) of this section do not apply when

28 (1) the contract price is based on adequate price competi-
29 tion;

1 (2) the contract price is set by law or regulation; or

2 (3) it is determined by the procurement officer in writing
3 and in accordance with regulations adopted by the commissioner that
4 the requirements of (a) of this section may be waived, and the reasons
5 for waiver are stated.

6 Sec. 36.30.410. RIGHT TO INSPECT PLANT. The state may, at
7 reasonable times, inspect the part of the plant or place of business
8 of a contractor or subcontractor that is related to the performance of
9 a contract awarded or to be awarded by an agency.

10 Sec. 36.30.420. RIGHT TO AUDIT RECORDS. (a) The state may, at
11 reasonable times and places, audit the books and records of a person
12 who has submitted cost or pricing data under AS 36.30.400 to the
13 extent that the books and records relate to the cost or pricing data.
14 A person who receives a contract, change order, or contract modifica-
15 tion for which cost or pricing data is required, shall maintain books
16 and records that relate to the cost or pricing data for three years
17 after the date of final payment under the contract, unless a shorter
18 period is authorized in writing by the commissioner.

19 (b) The state may audit the books and records of a contractor or
20 a subcontractor to the extent that the books and records relate to the
21 performance of the contract or subcontract. Books and records shall
22 be maintained by the contractor for a period of three years after the
23 date of final payment under the prime contract and by the subcontrac-
24 tor for a period of three years after the date of final payment under
25 the subcontract, unless a shorter period is authorized in writing by
26 the commissioner.

27 Sec. 36.30.430. STANDARD MODIFICATION CLAUSES FOR CONTRACTS.
28 (a) The commissioner shall adopt regulations permitting the inclusion
29 of clauses providing for adjustments in prices, time of performance,

1 or other contract provisions as appropriate.

2 (b) The commissioner shall adopt regulations permitting or
3 requiring the inclusion in state contracts of clauses providing for
4 appropriate remedies and covering the following subjects:

- 5 (1) liquidated damages;
6 (2) specified excuses for delay or nonperformance;
7 (3) termination of the contract for default; and
8 (4) termination of the contract in whole or in part for the
9 convenience of the state.

10 Sec. 36.30.460. MODIFICATION OF STANDARD CLAUSES. The procure-
11 ment officer or the head of a contracting agency may vary the clauses
12 adopted under AS 36.30.430 for inclusion in a particular state con-
13 tract if the

14 (1) variations are supported by a written determination
15 that states the circumstances justifying the variation; and

16 (2) approval required by AS 36.30.340 is obtained.

17 Sec. 36.30.470. FISCAL RESPONSIBILITY. A contract modification,
18 change order, or contract price adjustment under a construction con-
19 tract in excess of an amount established by regulation of the commis-
20 sioner is subject to prior written certification by the fiscal officer
21 of the agency responsible for funding the project or the contract, or
22 other official responsible for monitoring and reporting upon the
23 status of the costs of the total project budget or contract budget, as
24 to the effect of the contract modification, change order, or adjust-
25 ment in contract price on the total project budget or the total con-
26 tract budget. If the certification of the fiscal officer or other
27 responsible official discloses a resulting increase in the total
28 project budget or the total contract budget, the procurement officer
29 may not approve the contract modification, change order, or adjustment

1 in contract price unless sufficient funds are available, or the scope
2 of the project or contract is adjusted to permit the degree of com-
3 pletion that is feasible within the total project budget or total
4 contract budget as it existed before the contract modification, change
5 order, or adjustment in contract price under consideration. A con-
6 tract modification change order, or adjustment in contract that is
7 signed by both parties and has been reasonably relied on by a contrac-
8 tor, is presumed to be valid even if the provisions of this section
9 have not been met.

10 Sec. 36.30.480. COST PRINCIPLE REGULATIONS. The commissioner
11 shall adopt regulations setting out cost principles that shall be used
12 to determine the allowability of incurred costs for the purpose of
13 reimbursing costs under contract provisions that provide for the
14 reimbursement of costs. If a written determination is approved at a
15 level above the procurement officer, the cost principles may be modi-
16 fied by contract.

17 ARTICLE 7. PROCUREMENT RECORDS AND REPORTS.

18 Sec. 36.30.500. RETENTION OF PROCUREMENT RECORDS. Procurement
19 records shall be retained and disposed of in accordance with records
20 retention guidelines and schedules approved by the state archivist.
21 Retained documents shall be made available to the attorney general or
22 a designee upon request and proper receipt.

23 Sec. 36.30.510. RECORDS OF CONTRACTS AWARDED UNDER COMPETITIVE
24 SEALED PROPOSALS. A contract file open for public inspection shall be
25 kept by the commissioner and the contracting agency for each contract
26 awarded under competitive sealed proposals. The file kept by the
27 commissioner shall contain a summary of the information in the file of
28 the contracting agency. The file kept by the contracting agency must
29 contain

- 1 (1) a copy of the contract;
- 2 (2) the register of proposals prepared under AS 36.30.230
- 3 and a copy of each proposal submitted; and
- 4 (3) the written determination to award the contract pre-
- 5 pared under AS 36.30.250.

6 Sec. 36.30.520. RECORDS OF SOLE SOURCE AND EMERGENCY PROCURE-

7 MENTS. (a) The commissioner shall maintain for a minimum of five

8 years a record listing all sole source procurement contracts made

9 under AS 36.30.300 and emergency procurements made under AS 36.30.310.

10 The record must contain

- 11 (1) each contractor's name;
- 12 (2) the amount and type of each contract; and
- 13 (3) a listing of the supplies, services, professional
- 14 services, or construction procured under each contract.

15 (b) The Department of Transportation and Public Facilities and

16 any agency to whom the commissioner of administration or the commis-

17 sioner of transportation and public facilities has delegated procure-

18 ment authority under AS 36.30.015 shall, by October 1 of each year,

19 submit to the commissioner of administration records of the type

20 specified in (a) of this section. The commissioner of administration

21 shall maintain these records as required by (a) of this section.

22 Sec. 36.30.530. PUBLIC ACCESS TO PROCUREMENT INFORMATION.

23 Procurement information is public except as otherwise provided by law.

24 Sec. 36.30.540. REPORT TO LEGISLATURE. Beginning with Decem-

25 ber 1, 1989, the commissioner shall biennially report to the legisla-

26 ture concerning procurements by agencies. The report must include

- 27 (1) the records maintained by the commissioner under
- 28 AS 36.30.510 and the records maintained under AS 36.30.520(a) for the
- 29 previous two fiscal years;

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

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

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

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

17 ARTICLE 8. LEGAL AND CONTRACTUAL REMEDIES.

18 Sec. 36.30.560. FILING OF A PROTEST. An interested party may
19 protest the award of a contract, the proposed award of a contract, or
20 a solicitation for supplies, services, professional services, or
21 construction by an agency. The protest shall be filed with the pro-
22 curement officer of the contracting agency in writing and include the
23 following information:

24 (1) the name, address, and telephone number of the pro-
25 tester;

26 (2) the signature of the protester or the protester's
27 representative;

28 (3) identification of the contracting agency and the solici-
29 tation or contract at issue;

1 (4) a detailed statement of the legal and factual grounds
2 of the protest, including copies of relevant documents; and

3 (5) the form of relief requested.

4 Sec. 36.30.565. TIME FOR FILING A PROTEST. (a) A protest based
5 upon alleged improprieties in a solicitation involving competitive
6 sealed bidding that are apparent before the bid opening shall be filed
7 before the bid opening. A protest based on alleged improprieties in a
8 solicitation involving competitive sealed proposals that are apparent

9 (1) before the due date for receipt of initial proposals
10 shall be filed before that due date;

11 (2) after the due date for receipt of initial proposals
12 shall be filed before the next due date for receipt of adjusted pro-
13 posals that occurs after the improprieties are apparent.

14 (b) In situations not covered under (a) of this section, pro-
15 tests shall be filed within 10 days after a notice of intent to award
16 the contract is issued by the procurement officer.

17 (c) If the protester shows good cause, the procurement officer
18 of the contracting agency may consider a filed protest that is not
19 timely.

20 Sec. 36.30.570. NOTICE OF A PROTEST. The procurement officer
21 shall immediately give notice of a protest filed under AS 36.30.565 to
22 the contractor if a contract has been awarded or, if no award has been
23 made, to all interested parties.

24 Sec. 36.30.575. STAY OF AWARD. If a protest is filed the award
25 may be made unless the procurement officer of the contracting agency
26 determines in writing that a

27 (1) reasonable probability exists that the protest will be
28 sustained; or

29 (2) stay of the award is not contrary to the best interests

1 of the state.

2 Sec. 36.30.580. DECISION BY THE PROCUREMENT OFFICER. (a) The
3 procurement officer of the contracting agency shall issue a written
4 decision containing the basis of the decision within 14 days after a
5 protest has been filed. A copy of the decision shall be furnished to
6 the protester by certified mail or other method that provides evidence
7 of receipt.

8 (b) The time for a decision may be extended up to 26 days for
9 good cause by the commissioner of administration, or for protests
10 involving construction or procurements for the state equipment fleet,
11 the commissioner of transportation and public facilities. If an
12 extension is granted, the procurement officer shall notify the pro-
13 tester in writing of the date the decision is due.

14 (c) If a decision is not made by the date it is due, the pro-
15 tester may proceed as if the procurement officer had issued a decision
16 adverse to the protester.

17 Sec. 36.30.585. PROTEST REMEDIES. (a) If the procurement
18 officer sustains a protest in whole or in part, the procurement offi-
19 cer shall implement an appropriate remedy.

20 (b) In determining an appropriate remedy, the procurement offi-
21 cer shall consider the circumstances surrounding the solicitation or
22 procurement including the seriousness of the procurement deficiencies,
23 the degree of prejudice to other interested parties or to the integri-
24 ty of the procurement system, the good faith of the parties, the
25 extent the procurement has been accomplished, costs to the agency and
26 other impacts on the agency of a proposed remedy, and the urgency of
27 the procurement to the welfare of the state.

28 Sec. 36.30.590. APPEAL ON A PROTEST. (a) An appeal from a
29 decision of a procurement officer on a protest may be filed by the

1 protester with the commissioner of administration, or for protests
2 involving construction or procurements for the state equipment fleet,
3 the commissioner of transportation and public facilities. An appeal
4 shall be filed within five days after the decision is received by the
5 protester. The protester shall file a copy of the appeal with the
6 procurement officer.

7 (b) An appeal must contain the information required under
8 AS 36.30.560. In addition, the appeal must include

9 (1) a copy of the decision being appealed; and

10 (2) identification of the factual or legal errors in the
11 decision that form the basis for the appeal.

12 Sec. 36.30.595. NOTICE OF A PROTEST APPEAL. (a) The procure-
13 ment officer shall immediately give notice of an appeal filed under
14 AS 36.30.590 to the contractor if a contract has been awarded or, if
15 no award has been made, to all interested parties.

16 (b) The commissioner of administration or the commissioner of
17 transportation and public facilities, as appropriate, shall, on re-
18 quest, furnish a copy of the appeal to a person notified under (a) of
19 this section, except that confidential material shall be deleted from
20 the copy.

21 Sec. 36.30.600. STAY OF AWARD DURING PROTEST APPEAL. If a
22 protest appeal is filed before a contract is awarded and the award was
23 stayed under AS 36.30.575, the filing of the appeal automatically
24 continues the stay until the commissioner of administration or the
25 commissioner of transportation and public facilities, as appropriate,
26 makes a written determination that the award of the contract without
27 further delay is necessary to protect substantial interests of the
28 state.

29 Sec. 36.30.605. PROTEST REPORT. (a) The procurement officer of

1 the contracting agency shall file a complete report on the protest and
2 decision with the commissioner of administration or the commissioner
3 of transportation and public facilities, as appropriate, within seven
4 days after a protest appeal is filed. The procurement officer shall
5 furnish a copy of the report to the protester and to interested par-
6 ties that have requested a copy of the appeal under AS 36.30.595(b).

7 (b) The procurement officer may request an extension of time to
8 prepare the protest report. The request must be in writing listing
9 the reasons for the request. The commissioner of administration or
10 the commissioner of transportation and public facilities, as appropri-
11 ate, shall respond to the request in writing. If an extension is
12 granted, the commissioner shall list the reasons for granting the
13 extension and indicate the date the protest report is due. The com-
14 missioner shall notify the protester in writing that the time for
15 submission of the report has been extended and the date the report is
16 due.

17 (c) The protester may file comments on the protest report with
18 the commissioner of administration or the commissioner of transporta-
19 tion and public facilities, as appropriate, within seven days after
20 the report is received. The protester shall provide copies of the
21 comments to the procurement officer and to interested parties that
22 have requested a copy of the appeal under AS 36.30.595(b).

23 (d) The protester may request an extension of time to prepare
24 the comments on the protest report. The request must be in writing
25 listing the reasons for the request. The commissioner of administra-
26 tion or the commissioner of transportation and public facilities, as
27 appropriate, shall respond to the request in writing. If an extension
28 is granted, the commissioner shall list the reasons for granting the
29 extension and indicate the date the comments are due. The

1 commissioner shall notify the procurement officer in writing that the
2 time for submission of the comments has been extended and the date the
3 comments are due.

4 Sec. 36.30.610. DECISION WITHOUT HEARING. (a) The commissioner
5 of administration or the commissioner of transportation and public
6 facilities, as appropriate, shall dismiss a protest appeal before a
7 hearing is held if it is determined in writing that the appeal is
8 untimely under AS 36.30.590(a).

9 (b) The commissioner of administration or the commissioner of
10 transportation and public facilities, as appropriate, may issue a
11 decision on an appeal without a hearing if the appeal involves ques-
12 tions of law without genuine issues of fact.

13 Sec. 36.30.615. HEARING ON PROTEST APPEAL. A hearing on a
14 protest appeal shall be conducted in accordance with AS 36.30.670 and
15 regulations adopted by the commissioner.

16 Sec. 36.30.620. CONTRACT CONTROVERSIES. (a) A contractor shall
17 file a claim concerning a contract awarded under this chapter with the
18 procurement officer. The contractor shall certify that the claim is
19 made in good faith, that the supporting data are accurate and complete
20 to the best of the contractor's knowledge and belief, and that the
21 amount requested accurately reflects the contract adjustment for which
22 the contractor believes the state is liable.

23 (b) If a controversy asserted by a contractor concerning a
24 contract awarded under this chapter cannot be resolved by agreement,
25 the procurement officer shall, after receiving a written request by
26 the contractor for a decision, issue a written decision. The decision
27 shall be made no more than 90 days after receipt by the procurement
28 officer of all necessary information from the contractor. Failure of
29 the contractor to furnish necessary information to the procurement

1 officer constitutes a waiver of the claim. Before issuing the deci-
2 sion the procurement officer shall review the facts relating to the
3 controversy and obtain necessary assistance from legal, fiscal, and
4 other advisors.

5 (c) The time for issuing a decision under (b) of this section
6 may be extended for good cause by the commissioner of administrat. n,
7 or for a controversy involving a construction contract or procurement
8 for the state equipment fleet, the commissioner of transportation and
9 public facilities, if the controversy concerns an amount in excess of
10 \$50,000. The procurement officer shall notify the contractor in
11 writing that the time for the issuance of a decision has been extended
12 and of the date by which a decision shall be issued.

13 (d) The procurement officer shall furnish a copy of the decision
14 to the contractor by certified mail or other method that provides
15 evidence of receipt. The decision shall include a

- 16 (1) description of the controversy;
- 17 (2) reference to the pertinent contract provisions;
- 18 (3) statement of the agreed upon and disputed facts;
- 19 (4) statement of reasons supporting the decision; and
- 20 (5) statement substantially as follows:

21 "This is the final decision of the procurement officer.
22 This decision may be appealed to the commissioner of
23 (administration/transportation and public facilities).
24 If you appeal, you must file a written notice of appeal
25 with the commissioner within 14 days after you receive
26 this decision."

27 (e) If a decision is not made by the date it is due, the con-
28 tractor may proceed as if the procurement officer had issued a deci-
29 sion adverse to the contractor.

1 (f) If a controversy asserted by the state concerning a contract
2 awarded under this chapter cannot be resolved by agreement the matter
3 shall be immediately referred to the commissioner of administration or
4 the commissioner of transportation and public facilities, as appro-
5 priate.

6 Sec. 36.30.625. APPEAL ON A CONTRACT CONTROVERSY. (a) An
7 appeal from a decision of the procurement officer on a contract con-
8 troversy may be filed by the contractor with the commissioner of
9 administration, or for a controversy involving a construction contract
10 or procurement for the state equipment fleet, the commissioner of
11 transportation and public facilities. The appeal shall be filed
12 within 14 days after the decision is received by the contractor. The
13 contractor shall file a copy of the appeal with the procurement offi-
14 cer.

15 (b) An appeal shall contain a copy of the decision being ap-
16 pealed and identification of the factual or legal errors in the deci-
17 sion that form the basis for the appeal.

18 Sec. 36.30.630. HEARING ON A CONTRACT CONTROVERSY. (a) Except
19 as provided in (b) of this section, a hearing shall be conducted
20 according to AS 36.30.670 and regulations adopted by the commissioner
21 of administration on a contract controversy appealed to the commis-
22 sioner of administration or the commissioner of transportation and
23 public facilities or referred to either commissioner under AS 36.30.-
24 620(f).

25 (b) Within 15 days after receipt of an appeal on a contract
26 controversy the commissioner of administration or the commissioner of
27 transportation and public facilities, as appropriate, may adopt the
28 decision of the procurement officer as the final decision without a
29 hearing.

1 Sec. 36.30.632. DELEGATION. The commissioner of administration
2 and the commissioner of transportation and public facilities may
3 delegate responsibilities under AS 36.30.590 and 36.30.630 to the head
4 of the contracting agency.

5 Sec. 36.30.635. AUTHORITY TO DEBAR OR SUSPEND. (a) After
6 consultation with the using agency and the attorney general and after
7 a hearing conducted according to AS 36.30.670 and regulations adopted
8 by the commissioner of administration, the commissioner of administra-
9 tion or the commissioner of transportation and public facilities may
10 debar a person for cause from consideration for award of contracts.
11 Notice of a debarment hearing shall be provided in writing at least
12 seven days before the hearing. The debarment may not be for a period
13 of more than three years.

14 (b) The commissioner of administration or the commissioner of
15 transportation and public facilities, after consultation with the
16 using agency and the attorney general, may suspend a person from
17 consideration for award of contracts if there is probable cause for
18 debarment and compelling reasons require suspension to protect state
19 interests. The suspension may not be for a period exceeding three
20 months.

21 (c) The authority to debar or suspend shall be exercised in
22 accordance with regulations adopted by the commissioner of adminis-
23 tration.

24 Sec. 36.30.640. CAUSES FOR DEBARMENT OR SUSPENSION. The causes
25 for debarment or suspension include the following:

26 (1) conviction for commission of a criminal offense as an
27 incident to obtaining or attempting to obtain a public or private
28 contract or subcontract, or in the performance of the contract or
29 subcontract;

1 (2) conviction under state or federal statutes of embezzle-
2 ment, theft, forgery, bribery, falsification or destruction of re-
3 cords, receiving stolen property, or other offense indicating a lack
4 of business integrity or business honesty that currently and seriously
5 affects responsibility as a state contractor;

6 (3) conviction or civil judgment finding a violation under
7 state or federal antitrust statutes;

8 (4) violation of contract provisions of a character that is
9 regarded by the commissioner to be so serious as to justify debarment
10 action, such as

11 (A) knowing failure without good cause to perform in
12 accordance with the specifications or within the time limit
13 provided in the contract; or

14 (B) failure to perform or unsatisfactory performance
15 in accordance with the terms of one or more contracts, except
16 that failure to perform or unsatisfactory performance caused by
17 acts beyond the control of the contractor may not be considered
18 to be a basis for debarment;

19 (5) for violation of the ethical standards set out in law
20 or regulation;

21 (6) for a violation of this chapter punishable under
22 AS 36.30.930(2); and

23 (7) any other cause listed in regulations of the commis-
24 sioner determined to be so serious and compelling as to affect respon-
25 sibility as a state contractor, including debarment by another govern-
26 mental entity for a cause listed in the regulations.

27 Sec. 36.30.645. WRITTEN DETERMINATIONS. (a) The commissioner
28 of administration or the commissioner of transportation and public
29 facilities shall issue a written decision to debar or suspend. The

1 decision must

2 (1) state the reasons for the action taken; and

3 (2) inform the debarred person of rights to judicial appeal
4 or inform the suspended person of rights to administrative and judi-
5 cial appeal.

6 (b) A copy of the decision under (a) of this section shall be
7 mailed or otherwise furnished immediately to the debarred or suspended
8 person and any other intervening party.

9 Sec. 36.30.650. HEARING ON A SUSPENSION. (a) A person suspend-
10 ed under AS 36.30.635 is entitled to a hearing conducted according to
11 AS 36.30.670 and regulations adopted by the commissioner of adminis-
12 tration if the person files a written request for a hearing with the
13 commissioner of administration or the commissioner of transportation
14 and public facilities, as appropriate, within seven days after receipt
15 of the notice of suspension under AS 36.30.645.

16 (b) If a suspended person requests a hearing the commissioner of
17 administration or the commissioner of transportation and public facil-
18 ities, as appropriate, shall schedule a prompt hearing unless the
19 attorney general determines that a hearing at the proposed time is
20 likely to jeopardize an investigation. A hearing may not be delayed
21 longer than six months after notice of the suspension is provided
22 under AS 36.30.645.

23 Sec. 36.30.655. LIST OF PERSONS DEBARRED OR SUSPENDED. The
24 commissioner shall maintain a list of all persons debarred or suspend-
25 ed from consideration for award of contracts.

26 Sec. 36.30.660. REINSTATEMENT. (a) The commissioner of admin-
27 istration or the commissioner of transportation and public facilities
28 may at any time after a final decision to debar a person from consid-
29 eration for award of contracts reinstate the person after determining

1 that the cause for which the person was debarred no longer exists or
2 has been substantially mitigated.

3 (b) A debarred person may request reinstatement by submitting a
4 petition to the commissioner of administration or the commissioner of
5 transportation and public facilities supported by evidence showing
6 that the cause for debarment no longer exists or has been substantial-
7 ly mitigated.

8 (c) The commissioner of administration or the commissioner of
9 transportation and public facilities may require a hearing on a rein-
10 statement petition. A decision on reinstatement shall be made in
11 writing within seven days after a reinstatement petition is submitted.
12 The decision shall specify the factors on which it is based. A deci-
13 sion under this section is not subject to judicial appeal.

14 Sec. 36.30.665. LIMITED PARTICIPATION. The commissioner of
15 administration or the commissioner of transportation and public facil-
16 ities may permit a debarred person to participate in a contract on a
17 limited basis during the debarment period if the commissioner deter-
18 mines in writing that the participation is advantageous to the state.
19 The determination shall specify the factors on which it is based and
20 the limits imposed on the debarred person.

21 Sec. 36.30.670. HEARING PROCEDURES. (a) The commissioner of
22 administration or the commissioner of transportation and public facil-
23 ities shall act as a hearing officer or appoint a hearing officer for
24 a hearing conducted under this chapter. The hearing officer shall
25 arrange for a prompt hearing and notify the parties in writing of the
26 time and place of the hearing. The hearing shall be conducted in an
27 informal manner. The provisions of AS 44.62 (Administrative Procedure
28 Act) do not apply to a hearing conducted under this chapter.

29 (b) The hearing officer may

1 (1) hold prehearing conferences to settle, simplify, or
2 identify the issues in a proceeding, or to consider other matters that
3 may aid in the expeditious disposition of the proceeding;

4 (2) require parties to state their positions concerning the
5 various issues in the proceeding;

6 (3) require parties to produce for examination those rele-
7 vant witnesses and documents under their control;

8 (4) rule on motions and other procedural matters;

9 (5) regulate the course of the hearing and conduct of the
10 participants;

11 (6) establish time limits for submission of motions or
12 memoranda;

13 (7) impose appropriate sanctions against a person who fails
14 to obey an order of the hearing officer, including

15 (A) prohibiting the person from asserting or opposing
16 designated claims or defenses or introducing designated matters
17 into evidence;

18 (B) excluding all testimony of an unresponsive or
19 evasive witness; and

20 (C) excluding a person from further participation in
21 the hearing;

22 (8) take official notice of a material fact not appearing
23 in evidence, if the fact is among the traditional matters subject to
24 judicial notice;

25 (9) administer oaths or affirmations.

26 (c) A transcribed record of the hearing shall be made available
27 at cost to a party that requests it.

28 Sec. 36.30.675. RECOMMENDATION BY THE HEARING OFFICER. (a) If
29 the commissioner of administration or the commissioner of

1 transportation and public facilities is not acting as hearing officer,
2 the hearing officer shall recommend a decision to the commissioner
3 based on the evidence presented. The recommendation shall include
4 findings of fact and conclusions of law.

5 (b) The commissioner of administration or the commissioner of
6 transportation and public facilities may affirm, modify, or reject the
7 hearing officer's recommendation in whole or in part, may remand the
8 matter to the hearing officer with instructions, or take other appro-
9 priate action.

10 Sec. 36.30.680. FINAL DECISION BY THE COMMISSIONER. A decision
11 by the commissioner of administration or the commissioner of transpor-
12 tation and public facilities after a hearing under this chapter is
13 final. A decision shall be sent within 20 days after the hearing to
14 all parties by personal service or certified mail, except that a
15 decision by the commissioner of transportation and public facilities
16 involving procurement of construction shall be sent within 90 days
17 after the hearing to all parties by personal service or certified
18 mail.

19 Sec. 36.30.685. JUDICIAL APPEAL. (a) A final decision of the
20 commissioner of administration or the commissioner of transportation
21 and public facilities under AS 36.30.610, 36.30.635(a), 36.30.650, or
22 36.30.680 may be appealed to the superior court in accordance with the
23 Alaska Rules of Appellate Procedure.

24 (b) A final decision of the commissioner of administration or
25 the commissioner of transportation and public facilities under AS 36.-
26 30.630(b) may be appealed to the superior court for a trial de novo.

27 Sec. 36.30.687. MISREPRESENTATIONS AND FRAUDULENT CLAIMS. (a)
28 A person who makes or uses in support of a contract claim under this
29 chapter, a misrepresentation, or who practices or attempts to practice

1 a fraud, at any stage of proceedings relating to a procurement or
2 contract controversy under this chapter:

3 (1) forfeits all claims relating to that procurement or
4 contract; and

5 (2) is liable to the state for reimbursement of all sums
6 paid on the claim, for all costs attributable to review of the claim,
7 and for a civil penalty equal to the amount by which the claim is
8 misrepresented.

9 (b) The procurement officer, commissioner or court shall make
10 specific findings of misrepresentation, attempted fraud or fraud
11 before declaring a forfeiture under (a)(1) of this section.

12 (c) Suits to recover costs and penalties under (a)(2) of this
13 section must be commenced within six years after the discovery of the
14 misrepresentation, fraud, or attempted fraud.

15 (d) A person who in a matter relating to a procurement or a
16 contract controversy or claim under this chapter makes a misrepresen-
17 tation to the state through a trick, scheme, or device is guilty of a
18 class C felony.

19 (e) In this section, "misrepresentation" means a false or mis-
20 leading statement of material fact, or conduct intended to deceive or
21 mislead concerning material fact, whether it succeeds in deceiving or
22 misleading.

23 Sec. 36.30.690. EXCLUSIVE REMEDY. Notwithstanding AS 44.77 or
24 other law to the contrary, AS 36.30.560 - 36.30.699 and regulations
25 adopted under those sections provide the exclusive procedure for
26 asserting a claim against an agency arising in relation to a procure-
27 ment under this chapter.

28 Sec. 36.30.695. OTHER RULES OF PROCEDURE. The commissioner may
29 adopt by regulation additional rules of procedure providing for the

1 expeditious administrative review of all contract claims or contro-
2 versies, both before the contracting agency and through an appeal
3 heard de novo.

4 Sec. 36.30.699. DEFINITION. In AS 36.30.560 - 36.30.695, "in-
5 terested party" means an actual or prospective bidder or offeror whose
6 economic interest may be affected substantially and directly by the
7 issuance of a contract solicitation, the award of a contract, or the
8 failure to award a contract; whether an actual or prospective bidder
9 or offeror has an economic interest depends on the circumstances.

10 ARTICLE 9. INTERGOVERNMENTAL RELATIONS.

11 Sec. 36.30.700. COOPERATIVE PURCHASING AUTHORIZED. A public
12 procurement unit may either participate in, sponsor, conduct, or
13 administer a cooperative purchasing agreement for the procurement of
14 supplies, services, professional services, or construction with one or
15 more public procurement units or external procurement activities in
16 accordance with an agreement entered into between the participants.
17 Cooperative purchasing may include joint or multi-party contracts
18 between public procurement units and open-ended state public procure-
19 ment unit contracts that are made available to local public procure-
20 ment units.

21 Sec. 36.30.710. SALE, ACQUISITION, OR USE OF SUPPLIES BY A
22 PUBLIC PROCUREMENT UNIT. (a) A public procurement unit may sell to,
23 acquire from, or use any supplies belonging to another public procure-
24 ment unit or external procurement activity independent of the require-
25 ments of AS 36.30.060 and 36.30.100 - 36.30.260.

26 (b) A public procurement unit may enter into an agreement,
27 independent of the requirements of AS 36.30.060 and 36.30.100 - 36.-
28 30.260, with another public procurement unit or external procurement
29 activity for the cooperative use of supplies or services under the

1 terms agreed upon between the parties.

2 Sec. 36.30.720. JOINT USE OF FACILITIES. A public procurement
3 unit may enter into agreements for the common use or lease of ware-
4 housing facilities, capital equipment, and other facilities with
5 another public procurement unit or an external procurement activity
6 under the terms agreed upon between the parties.

7 Sec. 36.30.730. SUPPLY OF PERSONNEL, INFORMATION, AND TECHNICAL
8 SERVICES. (a) A public procurement unit may, upon written request
9 from another public procurement unit or external procurement activity,
10 provide personnel to the requesting public procurement unit or exter-
11 nal procurement activity. The public procurement unit or external
12 procurement activity making the request shall pay the public procure-
13 ment unit providing the personnel the direct and indirect cost of
14 furnishing the personnel, in accordance with an agreement between the
15 parties.

16 (b) The informational, technical, and other services of a public
17 procurement unit may be made available to another public procurement
18 unit or external procurement activity except that the requirements of
19 the public procurement unit tendering the services has precedence over
20 the requesting public procurement unit or external procurement activi-
21 ty. The requesting public procurement unit or external procurement
22 activity shall pay for the expenses of the services so provided, in
23 accordance with an agreement between the parties.

24 (c) Upon request, the commissioner may make available to public
25 procurement units or external procurement activities the following
26 services, among others:

- 27 (1) standard forms;
28 (2) printed manuals;
29 (3) product specifications and standards;

- 1 (4) quality assurance testing services and methods;
- 2 (5) qualified products lists;
- 3 (6) source information;
- 4 (7) common use commodities listings;
- 5 (8) supplier performance ratings;
- 6 (9) lists of persons debarred or suspended from considera-
- 7 tion for award of state contracts;
- 8 (10) forms for invitations for bids, requests for proposals,
- 9 instructions to bidders, general contract provisions, and other con-
- 10 tract forms; and
- 11 (11) contracts or published summaries of them, including
- 12 price and time of delivery information.

13 (d) The commissioner may provide the following technical ser-

14 vices, among others:

- 15 (1) development of product specifications;
- 16 (2) development of quality assurance test methods, includ-
- 17 ing receiving, inspection, and acceptance procedures;
- 18 (3) use of product testing and inspection facilities; and
- 19 (4) use of personnel training programs.

20 (e) The commissioner may enter into contractual arrangements and

21 publish a schedule of fees for the services provided under (c) and (d)

22 of this section.

23 Sec. 36.30.735. RESTRICTION ON CONTRACTING WITH OR EMPLOYING

24 EXPERTS ON RADIATION HAZARDS. (a) Except for the Department of

25 Health and Social Services, the Department of Labor, the Department of

26 Environmental Conservation, and the Department of Military and Veter-

27 ans' Affairs, a state agency may not

28 (1) contract, other than with the Department of Health and

29 Social Services, to have services performed that require expertise in

1 determining or reducing the hazards of radiation; or

2 (2) employ a person whose duties require expertise in
3 determining or reducing the hazards of radiation.

4 (b) In this section, "state agency" means a state department or
5 agency, whether in the legislative, judicial, or executive branch,
6 including such entities as the Alaska State Housing Authority, but not
7 including the University of Alaska, a municipality, or an agency of a
8 municipality or the Alaska State Housing Authority.

9 (c) In this section, "radiation" does not include radiation
10 emitted from a Federal Communications Commission licensed facility
11 emitting radiation of a wave length longer than one centimeter and an
12 average power output not exceeding two kilowatts.

13 Sec. 36.30.740. REVIEW OF PROCUREMENT REQUIREMENTS. To the
14 extent possible, the commissioner may collect information concerning
15 the type, cost, quality, and quantity of commonly used supplies,
16 equipment for the state fleet, services, or construction being pro-
17 cured or used by state public procurement units. The commissioner may
18 also collect this information from local public procurement units.
19 The commissioner may make this information available to a public
20 procurement unit upon request.

21 Sec. 36.30.750. CONTRACT CONTROVERSIES. (a) Under a coopera-
22 tive purchasing agreement, controversies arising between an adminis-
23 tering public procurement unit and its bidders, offerors, or contrac-
24 tors shall be resolved in accordance with AS 36.30.560 - 36.30.699.

25 (b) A local public procurement unit that is not subject to
26 AS 36.30.560 - 36.30.699 may enter into an agreement with another
27 local public procurement unit or external procurement activity to
28 establish procedures or use that unit's or activity's existing proce-
29 dures to resolve controversies with contractors, whether or not the

1 controversy arose under a cooperative purchasing agreement.

2 Sec. 36.30.790. DEFINITIONS. In AS 36.30.700 - 36.30.790

3 (1) "cooperative purchasing" means procurement conducted
4 by, or on behalf of, more than one public procurement unit, or by a
5 public procurement unit with an external procurement activity;

6 (2) "external procurement activity" means a buying orga-
7 nization not located in this state that, if located in this state,
8 would qualify as a public procurement unit; an agency of the United
9 States is an external procurement activity;

10 (3) "local public procurement unit" means a municipality or
11 other subdivision of the state or other entity that expends public
12 funds for the procurement of supplies, services, professional ser-
13 vices, and construction, and any nonprofit corporation operating a
14 charitable hospital;

15 (4) "public procurement unit" means either a local public
16 procurement unit or a state public procurement unit;

17 (5) "state public procurement unit" means the Department of
18 Administration and any other contracting agency of the state.

19 ARTICLE 10. GENERAL PROVISIONS.

20 Sec. 36.30.850. APPLICATION OF THIS CHAPTER. (a) This chapter
21 applies only to contracts solicited or entered into after January 1,
22 1987, unless the parties agree to its application to a contract solic-
23 ited or entered into before that date.

24 (b) This chapter applies to every expenditure of state funds
25 irrespective of their sources, including federal assistance except as
26 otherwise specified in AS 36.30.890, by the state, acting through an
27 agency, under a contract, except that this chapter does not apply to

28 (1) grants;

29 (2) contracts for professional witnesses to provide for

1 professional services or testimony relating to existing or probable
2 lawsuits in which the state is or may become a party;

3 (3) contracts of the University of Alaska where the work is
4 to be performed substantially by students enrolled in the university;

5 (4) contracts for medical doctors and dentists;

6 (5) acquisitions or disposals of real property or interest
7 in real property, except as provided in AS 36.30.080;

8 (6) disposals under AS 38.05;

9 (7) contracts for the preparation of ballots under AS 15.-
10 15.030;

11 (8) acquisitions or disposals of property and other con-
12 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
13 091;

14 (9) disposals of obsolete property under AS 19.05.060;

15 (10) disposals of obsolete material or equipment under
16 AS 35.20.060;

17 (11) agreements with providers of services under AS 47.07;
18 AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195, and 47.25.310;

19 (12) contracts of the Department of Fish and Game for
20 flights that involve specialized flying and piloting skills and are
21 not point-to-point;

22 (13) purchases of income-producing assets for the state
23 treasury or a public corporation of the state.

24 (c) Except for AS 36.30.700 - 36.30.790, this chapter does not
25 apply to contracts between two or more agencies, the state and its
26 political subdivisions, or the state and other governments.

27 (d) Nothing in this chapter or in regulations adopted under this
28 chapter prevents an agency or political subdivision from complying
29 with the terms and conditions of a grant, gift, bequest, cooperative

agreement or federal assistance agreement.

Sec. 36.30.860. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE. Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the Uniform Commercial Code (AS 45.01 - AS 45.09), the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this chapter.

Sec. 36.30.870. ADOPTION OF REGULATIONS. (a) Regulations under this chapter shall be adopted in accordance with the Administrative Procedure Act (AS 44.62).

(b) Regulations under this chapter applicable to procurements of construction or procurements for or disposal of property of the state equipment fleet shall be adopted by the commissioner of administration only after consultation with the commissioner of transportation and public facilities.

Sec. 36.30.880. REQUIREMENT OF GOOD FAITH. All parties involved in the negotiation, performance, or administration of state contracts shall act in good faith.

Sec. 36.30.890. FEDERAL ASSISTANCE. If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a regulation adopted under a provision of this chapter and a federal statute regulation, policy or requirement, the federal statute regulation, policy or requirement, shall prevail.

Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding preference for Alaska forest products, or AS 36.20.010 regarding preference to producers or dealers in Alaska except as provided in

1 AS 36.30.170(b) and (c).

2 Sec. 36.30.910. PURCHASES THROUGH GENERAL SERVICES ADMINISTRA-
3 TION. This chapter does not prevent purchasing through the general
4 services administration as provided by law.

5 Sec. 36.30.920. REPORTING OF ANTICOMPETITIVE PRACTICES. When
6 for any reason collusion or other anticompetitive practices are sus-
7 pected among bidders or offerors, a notice of the relevant facts shall
8 be transmitted to the attorney general by the person who suspects the
9 collusion or other anticompetitive practices.

10 Sec. 36.30.930. CIVIL AND CRIMINAL PENALTIES. The following
11 penalties apply to violations of this chapter:

12 (1) a person who contracts for or purchases supplies,
13 equipment for the state fleet, services, professional services, or
14 construction in a manner the person knows to be contrary to the re-
15 quirements of this chapter or the regulations adopted under this
16 chapter is liable for all costs and damages to the state arising out
17 of the violation;

18 (2) a person who intentionally or knowingly contracts for
19 or purchases supplies, equipment for the state fleet, services, pro-
20 fessional services, or construction under a scheme or artifice to
21 avoid the requirements of this chapter is guilty of a class C felony.

22 Sec. 36.30.940. ENFORCEMENT. The attorney general on behalf of
23 the state shall enforce the provisions of this chapter.

24 Sec. 36.30.950. SEVERABILITY. If any provision of this Act or
25 any application of this Act to any person or circumstance is held
26 invalid, the invalidity does not affect other provisions or
27 applications of this Act that can be given effect without the invalid
28 provision or application, and to this end the provisions of this Act
29 are declared severable.

1 Sec. 36.30.990. DEFINITIONS. In this chapter, unless the con-
2 text in which a term is used clearly requires a different meaning or a
3 different definition is prescribed for a particular provision,

4 (1) "agency" means a department, institution, board, com-
5 mission, division, authority, public corporation, the Alaska Pioneers'
6 Home, or other administrative unit of the executive branch of state
7 government, except for the University of Alaska, the Alaska State
8 Housing Authority and the Alaska Railroad Corporation; it does not
9 include a regional Native housing authority created under AS 18.-
10 55.996, or a regional electrical authority created under AS 18.57.020;

11 (2) "change order" means a written order signed by the
12 procurement officer, directing the contractor to make changes that the
13 changes clause of the contract authorizes the procurement officer to
14 order without the consent of the contractor;

15 (3) "commissioner" means the commissioner of the Department
16 of Administration;

17 (4) "competitive sealed bidding" means the procedure under
18 AS 36.30.100 - 36.30.190;

19 (5) "competitive sealed proposals" means the procedure
20 under AS 36.30.200 - 36.30.260;

21 (6) "construction" means the process of building, altering,
22 repairing, maintaining, improving, or demolishing a public highway,
23 structure, building, or other public improvement of any kind to real
24 property other than privately owned real property leased for the use
25 of agencies; it includes services and professional services relating
26 to planning and design required for the construction; it does not
27 include the routine operation of a public improvement to real property
28 nor does it include the construction of public housing;

29 (7) "contract" means all types of state agreements,

1 regardless of what they may be called, for the procurement or disposal
2 of supplies, equipment for the state fleet, services, professional
3 services, or construction;

4 (8) "contract modification" means a written alteration in
5 specifications, delivery point, rate of delivery, period of perfor-
6 mance, price, quantity, or other provisions of a contract accomplished
7 by mutual action of the parties to the contract;

8 (9) "department" means the Department of Administration;

9 (10) "grant" means property furnished by the state, whether
10 real or personal, designated by law, including an appropriation Act,
11 as a grant;

12 (11) "person" means a business, individual, union, commit-
13 tee, club, other organization, or group of individuals;

14 (12) "procurement" means buying, purchasing, renting, leas-
15 ing, or otherwise acquiring supplies, equipment for the state fleet,
16 services, or construction; it also includes functions that pertain to
17 the obtaining of a supply, equipment for the state fleet, service, or
18 construction, including description of requirements, selection and
19 solicitation of sources, preparation and award of contract, and all
20 phases of contract administration;

21 (13) "procurement officer" means a person authorized to
22 enter into and administer contracts for an agency and make written
23 determinations with respect to them; it also includes an authorized
24 representative of a procurement officer acting within the limits of
25 authority;

26 (14) "professional services" means professional, technical,
27 or consultant's services that are predominantly intellectual in char-
28 acter, result in the production of a report or the completion of a
29 task, and include analysis, evaluation, prediction, planning, or

1 recommendation:

2 (15) "services" means the furnishing of labor, time, or
3 effort by a contractor, not involving the delivery of a specific end
4 product other than reports that are merely incidental to the required
5 performance; it does not include employment agreements or collective
6 bargaining agreements;

7 (16) "supplies" means all property of an agency, including
8 equipment, materials, and insurance; it includes privately owned real
9 property leased for the use of agencies, such as office space, but
10 does not include the acquisition or disposition of other interests in
11 land.

12 Sec. 36.30.995. SHORT TITLE. This chapter may be cited as the
13 State Procurement Code.

14 * Sec. 3. AS 03.22.030 is amended to read:

15 Sec. 03.22.030. CENTER SITE, BUILDINGS AND EQUIPMENT. The
16 department shall obtain a site, either by donation, lease, or pur-
17 chase, and erect suitable buildings on the site, if they are needed
18 for the use of the plant materials center. The department shall also
19 acquire the agricultural land, scientific instruments and equipment
20 necessary to carry on the work of the center. Acquisition of scien-
21 tific instruments and equipment under this section is governed by
22 AS 36.30 (State Procurement Code).

23 * Sec. 4. AS 05.20.040 is amended to read:

24 Sec. 05.20.040 PERSONNEL TO INSPECT DEVICES. The department
25 shall designate a person qualified in experience and training as the
26 inspector of devices. The department may employ additional employees
27 as are necessary to administer this chapter. The inspector and the
28 employees may be hired on a temporary basis or borrowed from other
29 state departments or political subdivisions of the state, or the

1 department may contract with individuals or firms for the inspecting
2 service on an independent basis. The department shall prescribe the
3 salary or other remuneration for this service. Contracting under this
4 section is governed by AS 36.30 (State Procurement Code).

5 * Sec. 5. AS 09.50.250 is amended to read:

6 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person
7 or corporation having a contract, quasi-contract, or tort claim
8 against the state may bring an action against the state in the superi-
9 or court. A person who may present the claim under AS 44.77 may not
10 bring an action under this section except as set out in AS 44.77.-
11 040(c). A person who may bring an action under AS 36.30.560 - 36.30.-
12 695 may not bring an action under this section except as set out in
13 AS 36.30.685. However, no action may be brought under this section if
14 the claim

15 (1) is an action for tort, and is based upon an act or
16 omission of an employee of the state, exercising due care, in the
17 execution of a statute or regulation, whether or not the statute or
18 regulation is valid; or is an action for tort, and based upon the
19 exercise or performance or the failure to exercise or perform a dis-
20 cretionary function or duty on the part of a state agency or an em-
21 ployee of the state, whether or not the discretion involved is abused;

22 (2) is for damages caused by the imposition or establish-
23 ment of a quarantine by the state;

24 (3) arises out of assault, battery, false imprisonment,
25 false arrest, malicious prosecution, abuse of process, libel, slander,
26 misrepresentation, deceit, or interference with contract rights.

27 * Sec. 6. AS 14.08.101 is amended to read:

28 Sec. 14.08.101. POWERS. A regional school board may

29 (1) sue and be sued;

1 (2) contract with the department, the Bureau of Indian
2 Affairs, or any other school district, agency, or regional board for
3 the provision of services, facilities, supplies or utilities;

4 (3) determine its own fiscal procedures including but not
5 limited to policies and procedures for the purchase of supplies and
6 equipment; the regional school boards are exempt from the Fiscal
7 Procedures Act (AS 37.05) and the State Procurement Code (AS 36.30);

8 (4) appoint, compensate and otherwise control all school
9 employees in accordance with this title; these employees are not
10 subject to the State Personnel Act (AS 39.25);

11 (5) adopt regulations governing organization, policies and
12 procedures for the operation of the schools;

13 (6) establish, maintain, operate, discontinue and combine
14 schools subject to the approval of the commissioner;

15 (7) recommend to the department projects for construction,
16 rehabilitation, and improvement of schools and education-related
17 facilities as specified in AS 14.11.010(a), and plan, design, and
18 construct the project when the responsibility for it is assumed under
19 AS 14.11.020;

20 (8) exercise those other functions that may be necessary
21 for the proper performance of its responsibilities;

22 (9) by resolution adopted by a majority of all the members
23 of the board and provided to the commissioner of the department,
24 assume ownership of all land and buildings used in relation to the
25 schools in the regional educational attendance area;

26 (10) provide housing for rental to teachers, by leasing
27 existing housing from a local agency or individual, or by entering
28 into contractual arrangements with a local agency or individual to
29 lease housing that will be constructed by the local agency or

1 individual for that purpose.

2 * Sec. 7. AS 16.05.050 is amended to read:

3 Sec. 16.05.050. POWERS AND DUTIES OF COMMISSIONER. The commis-
4 sioner has, but not by way of limitation, the following powers and
5 duties:

6 (1) assist the United States Fish and Wildlife Service in
7 the enforcement of federal laws and regulations pertaining to fish and
8 game;

9 (2) through the appropriate state agency and under the
10 provisions of AS 36.30 (State Procurement Code), acquire by gift,
11 purchase, or lease, or other lawful means, land, buildings, water,
12 rights-of-way, or other necessary or proper real or personal property
13 when the acquisition is in the interest of furthering an objective or
14 purpose of the department and the state;

15 (3) under the provisions of AS 36.30, design and construct
16 hatcheries, pipelines, rearing ponds, fishways, and other projects
17 beneficial for the fish and game resources of the state;

18 (4) accept money from any person under conditions requiring
19 the use of the money for specific purposes in the furtherance of the
20 protection, rehabilitation, propagation, preservation, or ~~investiga-~~
21 tion of the fish and game resources of the state or in settlement of
22 claims for damages to fish or game resources;

23 (5) collect, classify, and disseminate statistics, data and
24 information that, in the commissioner's discretion, will tend to
25 promote the purposes of this title except AS 16.51 and AS 16.52;

26 (6) capture, propagate, transport, buy, sell, or exchange
27 fish or game or eggs for propagating, scientific or stocking purposes;

28 (7) under the provisions of AS 36.30, provide public facil-
29 ities where necessary or proper to facilitate the taking of fish or

1 game, and enter into cooperative agreements with any person to effect
2 them;

3 (8) exercise administrative, budgeting, and fiscal powers;

4 (9) under the provisions of AS 36.30, construct, operate,
5 supervise, and maintain vessels used by the Department of Fish and
6 Game;

7 (10) authorize the holder of an interim-use permit under
8 AS 16.43 to engage on an experimental basis in commercial taking of a
9 fishery resource with vessel, gear, and techniques not presently
10 qualifying for licensing under this chapter in conformity with stand-
11 ards established by the Alaska Commercial Fisheries Entry Commission;

12 (11) not later than January 31 of each year, provide to the
13 commissioner of revenue the names of those fish and shellfish species
14 which the commissioner of fish and game designates as developing
15 commercial fish species for that calendar year; a fish or shellfish
16 species is a developing commercial fish species if, within a specified
17 geographical region,

18 (A) the optimum yield from the harvest of the species
19 has not been reached;

20 (B) a substantial portion of the allowable harvest of
21 the species has been allocated to fishing vessels of a foreign
22 nation; or

23 (C) a commercial harvest of the fish species has
24 recently developed;

25 (12) initiate or conduct research necessary or advisable to
26 carry out the purposes of this title except AS 16.51 and AS 16.52;

27 (13) enter into cooperative agreements with agencies of the
28 federal government, educational institutions, or other agencies or
29 organizations, when in the public interest, to carry out the purposes

1 of this title except AS 16.51 and AS 16.52.

2 * Sec. 8. AS 16.05.826(c) is amended to read:

3 (c) The department may contract to others the performance of the
4 department's responsibilities under this section. Contracting under
5 this subsection is governed by AS 36.30 (State Procurement Code),
6 except that a [A] contract may include provisions for advance payment
7 or reimbursement for services performed under the contract. All costs
8 incurred under this section may be paid from the fish and game fund.

9 * Sec. 9. AS 18.15.120 is amended to read:

10 Sec. 18.15.120. TUBERCULOSIS CONTROL PROGRAM AUTHORIZED. The
11 department may establish a comprehensive program for the control of
12 tuberculosis in the state, and may

13 (1) arrange means by which persons in the state may be
14 X-rayed to determine the presence of tuberculosis;

15 (2) establish necessary out-patient clinics for the care of
16 tuberculosis;

17 (3) encourage and promote the establishment of adequate
18 sanatorium facilities within the state to care for persons suffering
19 from tuberculosis and allied conditions;

20 (4) under the provisions of AS 36.30 (State Procurement
21 Code), obtain, by purchase or donation from surplus federal property
22 or otherwise, medical supplies and equipment useful in carrying out
23 this program and to allot or resell these supplies and equipment to
24 private institutions engaged by the department to carry out this
25 program;

26 (5) under the provisions of AS 36.30, contract with hos-
27 pitals, associations, or sanatorium qualified and equipped to give
28 adequate care inside or outside the state;

29 (6) employ necessary and trained personnel to carry out the

1 purposes of AS 18.15.120 - 18.15.140;

2 (7) pay the costs of care and incidental expenses for
3 residents of the state, in whole or in part, depending on the ability
4 of each patient to pay, and the temporary costs of care and transpor-
5 tation for nonresidents on the same basis until they can be trans-
6 ferred to their residence;

7 (8) enlist the cooperation of state and federal agencies
8 operating in the state for the furtherance of this program;

9 (9) establish standards in accordance with department
10 procedure for the care of tuberculars receiving treatment under
11 AS 18.15.120 - 18.15.140.

12 * Sec. 10. AS 19.05.020 is amended to read:

13 Sec. 19.05.020. REGULATIONS. The department shall adopt regu-
14 lations necessary to carry out the purpose of AS 19.05 - AS 19.25.
15 The regulations may not conflict with AS 36.30 (State Procurement
16 Code) or regulations adopted by the Department of Administration to
17 implement that chapter.

18 * Sec. 11. AS 19.05.080 is amended to read:

19 Sec. 19.05.080. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-
20 RIALS BY PURCHASE OR EMINENT DOMAIN. The department on behalf of the
21 state and as part of the cost of constructing or maintaining a highway
22 may purchase in the open market, acquire, take over, or condemn under
23 the right and power of eminent domain land in fee simple or easements
24 which it considers necessary for present public use, either temporary
25 or permanent, or which it considers necessary and reasonable for the
26 public use. By the same means, the department may obtain material,
27 including clay, gravel, sand, or rock, or the land necessary to obtain
28 material, including access to it. The department may acquire the land
29 or materials notwithstanding the fact that title to it is vested in

1 the state or a department, agency, commission or institution of the
2 state. Acquisition of materials by purchase in the open market under
3 this section is governed by AS 36.30 (State Procurement Code).

4 * Sec. 12. AS 19.10.160 is amended to read:

5 Sec. 19.10.160. STANDARD PLANS AND SPECIFICATIONS. The depart-
6 ment shall prepare and adopt uniform standard plans and specifications
7 for the establishment, construction and maintenance of highways in the
8 state. The department may amend the plans and specifications as it
9 considers advisable. The standards shall conform as closely as prac-
10 ticable to those adopted by the American Association of State Highway
11 and Transportation Officials.

12 * Sec. 13. AS 19.10.170(a) is amended to read:

13 (a) Except as provided in [AS 36.98 AND] AS 44.53.300, it is
14 [SHALL BE] the general policy of the state [DEPARTMENT] to require the
15 construction of all highways under bid contract in accordance with
16 AS 36.30 (State Procurement Code). However, subject to the provisions
17 of (b) of this section, when the estimated cost of a construction
18 project is less than \$100,000 or when it appears to be in the best
19 interests of the state, the department may perform the work notwith-
20 standing any other provisions of law.

21 * Sec. 14. AS 19.10.180 is repealed and reenacted to read:

22 Sec. 19.10.180. REQUEST FOR PUBLIC BIDS. Requests for public
23 bids are governed by AS 36.30 (State Procurement Code). The request
24 for public bids may require the contractor to furnish equipment,
25 labor, materials, and supplies for the project, or it may state that
26 the department will furnish the materials and supplies. If the de-
27 partment elects to provide materials and supplies for a project, it
28 shall do so at the time it adopts the construction program. The
29 department shall acquire these materials and supplies under AS 36.30

1 by requesting bids for them according to the class, type, and nature
2 of the materials and supplies. The contract for materials and sup-
3 plies may be awarded either upon the basis of delivery to the con-
4 struction project directly or to a central storehouse or storehouses
5 maintained by the department. Those materials and supplies so pur-
6 chased by the department may be delivered to the project site without
7 expense to the contractor, or it may sell them to the contractor at
8 cost and make the materials and supplies a part of the construction
9 cost.

10 * Sec. 15. AS 19.10.200 is repealed and reenacted to read:

11 Sec. 19.10.200. PROCEDURES FOR THE AWARD OF CONTRACTS. The
12 award of a contract for highway construction work is governed by
13 AS 36.30 (State Procurement Code), AS 19.05 - AS 19.25, and regula-
14 tions adopted under those laws.

15 * Sec. 16. AS 19.30.070 is amended to read:

16 Sec. 19.30.070. CONTRACTS FOR CONSTRUCTION OF ROADS. The
17 director of the division of lands may contract with private persons
18 for the construction of roads to and on state lands programmed for
19 surface disposal which are not more than six miles from existing roads
20 or highways. Contracts under this section are governed by AS 36.30
21 (State Procurement Code).

22 * Sec. 17. AS 19.30.080 is amended to read:

23 Sec. 19.30.080. CONSTRUCTION STANDARDS AND MAINTENANCE. An
24 access road constructed under AS 19.30.060 - 19.30.100 shall be of low
25 standard, not necessarily suitable for all weather use. The state is
26 not under obligation to maintain an access road constructed under AS
27 19.30.060 - 19.30.100. IF an access road is constructed outside a
28 municipality that has zoning ordinances, the right-of-way width for
29 the road shall be determined by the division of lands and the

1 Department of Transportation and Public Facilities. If an access road
2 is constructed within the boundaries of a municipality that has zoning
3 ordinances, the right-of-way width shall conform to the subdivision
4 control ordinances of the municipality. Contracts for the work on an
5 access road are governed by AS 36.30 (State Procurement Code) [SHALL
6 BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER QUALIFIED TO CONTRACT WITH
7 THE STATE].

8 * Sec. 18. AS 19.40.020(a) is amended to read:

9 (a) Subject to (b) of this section, the department may contract
10 in accordance with AS 36.30 for the construction of a secondary high-
11 way from the Yukon River to the Arctic Ocean. [THE DEPARTMENT MAY
12 REQUEST BIDS AND AWARD CONTRACTS FOR THE CONSTRUCTION OF THE HIGHWAY,
13 OR IT MAY ELECT TO DIRECTLY NEGOTIATE CONTRACTS FOR THE CONSTRUCTION
14 OF THE HIGHWAY IF IT APPEARS TO BE IN THE BEST INTERESTS OF THE
15 STATE.] The provisions of AS 36.10 govern in employment practices on
16 all work authorized by this chapter.

17 * Sec. 19. AS 19.60.010 is amended to read:

18 Sec. 19.60.010. ACQUISITION AND MAINTENANCE OF FERRY TERMINAL
19 FACILITIES. The department shall construct, purchase or lease ferry
20 terminal facilities at locations it selects for the loading and un-
21 loading of passengers and vehicles under their own power, on and off
22 ferries. The department shall repair and maintain these facilities.
23 Construction and purchasing under this section are governed by AS 36.-
24 30 (State Procurement Code).

25 * Sec. 20. AS 23.15.611(a) is amended to read:

26 (a) The department may [IS AUTHORIZED TO] participate in pro-
27 grams of manpower training if it finds they are necessary to meet the
28 occupational needs of the state. This authorization includes authori-
29 ty to execute on behalf of the state agreements or contracts which may

1 be necessary or desirable to enable the state to participate in a
2 program, to receive and expend all appropriate funds made available
3 for programs by the state or from other sources, to supervise the
4 expenditure of the funds and conduct of the programs by other public
5 and private agencies of the state, and to make the reports and certifi-
6 cates which are called for, and in cooperative arrangements with the
7 Department of Education. Contracts with private entities under this
8 subsection are governed by AS 36.30 (State Procurement Code).

9 * Sec. 21. AS 23.20.075(a) is amended to read:

10 (a) The department may acquire in the name of the state by term
11 purchase agreements based on competitive bids in accordance with
12 AS 36.30 (State Procurement Code) land and buildings upon terms and
13 conditions that [WHICH] are approved by the Bureau of Employment
14 Security of the United States, or its successor, for the purpose of
15 providing office space for the department at a place which the depart-
16 ment finds necessary and suitable.

17 * Sec. 22. AS 23.35.110 is amended to read:

18 Sec. 23.35.110. CONTRACTS FOR CARE. In carrying out this
19 chapter, the department may enter into contracts or other arrangements
20 with hospitals and doctors in the state for furnishing care on an
21 annual basis to persons entitled to benefits. Contracting under this
22 section is governed by AS 36.30 (State Procurement Code).

23 * Sec. 23. AS 24.55.275 is amended to read:

24 Sec. 24.55.275. CONTRACT PROCEDURES. The ombudsman shall adopt
25 by regulation procedures consistent with AS 36.30 [AS 24.23] to be
26 followed by the office of the ombudsman in contracting for services.
27 However, the procedure for requests for proposals does not apply to
28 contracts for investigations under AS 24.55.100.

29 * Sec. 24. AS 24.60.040(a) is amended to read:

1 (a) A person to whom this chapter applies may not be a party to
2 or have an interest in a state contract or lease unless the contract
3 or lease is let through competitive sealed bidding under AS 36.30
4 (State Procurement Code) [AS 37.05.230] or the total annual amount of
5 the state contract or lease is \$1,000 or less, or is a standardized
6 contract or lease which was developed under publicly established
7 guidelines and is generally available to the public at large, members
8 of a profession, occupation or group. A person has an interest in a
9 state contract or lease under this section if the person receives
10 direct or indirect financial benefits.

11 * Sec. 25. AS 26.05.230(a) is amended to read:

12 (a) Buildings and sites for armory purposes may be leased or
13 constructed, based upon location and size of units to be organized,
14 and shall be financed through state and federal appropriations or
15 both. These facilities may be made available by local communities or
16 by the cooperative arrangement between the state and the federal
17 government and any local community. Leasing and construction under
18 this subsection are governed by AS 36.30 (State Procurement Code).

19 * Sec. 26. AS 26.05.280 is amended to read:

20 Sec. 26.05.280. TRANSPORTATION, SUBSISTENCE, AND SUPPLIES.
21 There shall be provided by the state, transportation and subsistence
22 for all officers and enlisted persons who are ordered into active
23 service by the state for encampment, field duty, or other duty. Neces-
24 sary transportation, stores and subsistence for troops when ordered on
25 duty shall be contracted by the proper officers and paid for as other
26 military bills. Contracting under this section is governed by AS 36.-
27 30 (State Procurement Code).

28 * Sec. 27. AS 27.21.030 is amended to read:

29 Sec. 27.21.030. GENERAL POWERS: To accomplish the purposes of

1 this chapter, the commissioner may

2 (1) in accordance with the Administrative Procedure Act
3 (AS 44.62) adopt, amend, and enforce regulations pertaining to surface
4 coal mining and reclamation operations;

5 (2) issue permits;

6 (3) conduct hearings and conferences;

7 (4) issue orders requiring an operator to take the actions
8 necessary to comply with this chapter and the regulations adopted
9 under this chapter;

10 (5) issue orders modifying previous orders;

11 (6) after opportunity for a due process hearing, issue a
12 final order revoking the permit of an operator who has failed to
13 comply with an order of the commissioner to take action required by
14 this chapter or regulations adopted under this chapter;

15 (7) order the immediate cessation of all or part of a
16 surface coal mining and reclamation operation if the commissioner
17 finds that the operation or part of the operation creates an imminent
18 danger to the health or safety of the public or is causing or can
19 reasonably be expected to cause significant imminent harm to land,
20 air, or water resources, and, to the extent reasonably necessary to
21 eliminate or alleviate those conditions, take other action or make
22 changes in a permit, as provided in this chapter;

23 (8) hire and authorize the hiring of employees and private
24 contractors, subject to the conflict of interest provisions of this
25 chapter and subject to AS 36.30 (State Procurement Code), to assist in
26 carrying out the requirements of this chapter;

27 (9) enter and inspect a surface coal mining operation that
28 is subject to the provisions of this chapter to assure that the opera-
29 tion is in compliance with this chapter;

1 (10) conduct, encourage, request, and participate in
2 studies, surveys, investigations, research, experiments, training, and
3 demonstrations;

4 (11) prepare reports and require permittees to prepare
5 reports;

6 (12) accept, receive, and administer grants, gifts, or other
7 money made available for the purposes of this chapter regardless of
8 the source of the grants, gifts, or money;

9 (13) take the steps necessary to allow the state to partici-
10 pate to the fullest extent practicable in the abandoned mine land
11 program provided in Title IV of the Surface Mining Control and Recla-
12 mation Act of 1977, including engaged in any work and adopting, amend-
13 ing and enforcing regulations;

14 (14) take the actions necessary to establish and maintain
15 exclusive jurisdiction over surface coal mining and reclamation opera-
16 tions in the state under the provisions of the Surface Mining Control
17 and Reclamation Act of 1977, including making recommendations for
18 legislation to clarify or amend this chapter to conform with the terms
19 of the Surface Mining Control and Reclamation Act of 1977;

20 (15) contract with state agencies to obtain the professional
21 and technical services necessary to carry out the provisions of this
22 chapter;

23 (16) coordinate the review of applications and issuance of
24 permits for surface coal mining and reclamation operations with other
25 federal or state permit processes applicable to those operations;

26 (17) enter into cooperative agreements with the Secretary of
27 the United States Department of the Interior for the regulation of
28 surface coal mining operations on federal land in accordance with the
29 Surface Mining Control and Reclamation Act of 1977; and

1 (18) perform other duties required by this chapter.

2 * Sec. 28. AS 33.30.050 is amended to read:

3 Sec. 33.30.050. COMMISSIONER TO PROVIDE MEDICAL SERVICES. The
4 commissioner shall detail physicians, nurses, and psychiatrists, or
5 their aides, and laboratory technicians, employed by the department to
6 any prison facility where state prisoners are detained or confined,
7 for the purpose of furnishing necessary medical services, including
8 examinations for communicable and infectious diseases. However, if
9 medical services cannot be furnished by physicians, nurses, psychia-
10 trists, or their aides, and laboratory technicians, regularly employed
11 by the department, the commissioner may contract with private practi-
12 tioners located in the area of a prison facility to furnish these
13 services. The cost of contracted services shall be paid out of appro-
14 priations made to the department. Contracting for services under this
15 section is governed by AS 36.30 (State Procurement Code).

16 * Sec. 29. AS 33.30.062(a) is amended to read:

17 (a) The commissioner may enter into an agreement with a private-
18 ly operated correctional facility, but only if the facility is located
19 in the state and if the purpose of the agreement is to involve prison-
20 ers in a work or rehabilitation furlough program established under
21 this chapter, to provide necessary facilities under AS 33.30.282 -
22 33.30.288, or to confine prisoners convicted of a misdemeanor. An
23 [NOTWITHSTANDING AS 37.05.230(1)(B), AN] agreement awarded under this
24 subsection is governed by AS 36.30 (State Procurement Code) [SHALL BE
25 BASED ON COMPETITIVE BIDS].

26 * Sec. 30. AS 33.32.015(b) is amended to read:

27 (b) The commissioner of corrections may
28 (1) subject to AS 36.30 (State Procurement Code) [THE
29 FISCAL PROCEDURES ACT (AS 37.05)], use, purchase, lease, equip, and

1 maintain buildings, machinery, and other equipment, and may purchase
2 materials and enter into contracts, which may be necessary for the
3 correctional industries program;

4 (2) provide for prisoners to be employed in rendering
5 services and producing articles, materials, and supplies needed by a
6 state agency, a political subdivision of the state, an agency of the
7 federal government, other states or their political subdivisions, or
8 for use by nonprofit organizations;

9 (3) if the Correctional Industries Commission established
10 in AS 33.32.070 approves, employ prisoners to provide services or
11 products as needed by private industry if the services or products
12 have potential for contributing to the economy of the state and will
13 have minimal negative impact on an existing private industry or labor
14 force in the state.

15 * Sec. 31. AS 35.05.010 is amended to read:

16 Sec. 35.05.010. PLANNING AND CONSTRUCTION. The department is
17 responsible for the planning and construction of public works except
18 as provided for court facilities in AS 22.05.025. Contracts for
19 planning and construction of public works are governed by AS 36.30
20 (State Procurement Code).

21 * Sec. 32. AS 35.05.020 is amended to read:

22 Sec. 35.05.020. RULES AND REGULATIONS. The department shall
23 adopt [RULES AND] regulations that [WHICH] it considers necessary to
24 carry out the purpose of this title. The regulations may not conflict
25 with AS 36.30 (State Procurement Code) or the regulations adopted by
26 the Department of Administration under that chapter.

27 * Sec. 33. AS 35 is amended by adding a new section to read:

28 Sec. 35.10.195. CONFORMANCE WITH AS 36.30. The contractual
29 techniques for the procurement of labor, materials, and contractual

1 services under the policies developed under this chapter must conform
2 to the requirements of AS 36.30 (State Procurement Code).

3 * Sec. 34. AS 35.15.010(a) is amended to read:

4 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is
5 [SHALL BE] the general policy of the state [DEPARTMENT] to require the
6 construction of all public works under bid contract in accordance with
7 AS 36.30 (State Procurement Code). However, when the estimated cost
8 of a construction project is less than \$100,000, or when it appears to
9 be in the best interests of the state, the department may perform the
10 work, notwithstanding any other provisions of law. A complete record
11 shall be kept by the commissioner or the commissioner's designee of
12 all transactions entered into under this section including names of
13 employees involved in the transactions.

14 * Sec. 35. AS 35.15.020 is repealed and reenacted to read:

15 Sec. 35.15.020. REQUEST FOR PUBLIC BIDS. The solicitation of
16 bids for construction of public works is governed by AS 36.30 (State
17 Procurement Code). The request for bids may require the contractor to
18 furnish equipment, labor, materials, and supplies for the project, or
19 it may state that the department will furnish the materials and sup-
20 plies. If the department elects to provide materials and supplies for
21 a project, it shall make the election at the time it adopts the con-
22 struction program. The department shall acquire these materials and
23 supplies under AS 36.30 by requesting bids for them according to the
24 class, type, and nature of the materials and supplies. The contract
25 may be awarded either upon the basis of delivery to the construction
26 project directly or to a central storehouse or storehouses maintained
27 by the department. Those materials and supplies so purchased by the
28 department may be delivered to the project site without expense to the
29 contractor, or it may sell them to the contractor at cost and make the

1 materials and supplies a part of the construction cost.

2 * Sec. 36. AS 35.15.040 is repealed and reenacted to read:

3 Sec. 35.15.040. PROCEDURES FOR THE AWARD OF CONTRACTS. Award of
4 a contract for the construction of a public work shall comply with
5 this title, AS 36.30 (State Procurement Code), and the regulations
6 adopted under those laws.

7 * Sec. 37. AS 35.20.010 is amended to read:

8 Sec. 35.20.010. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-
9 RIALS BY PURCHASE OR EMINENT DOMAIN. The department, on behalf of the
10 state and as part of the cost of constructing or maintaining a public
11 work, may purchase in the open market, acquire, take over, or condemn
12 under the right and power of eminent domain land in fee simple or
13 easements which it considers necessary for present public use, either
14 temporary or permanent, or which it considers necessary and reasonable
15 for the public use. By the same means, the department may obtain
16 material including clay, gravel, sand, or rock, or the land necessary
17 to obtain the material, and the necessary land or easements to provide
18 access to it. The department may acquire the land or material not-
19 withstanding the fact that the title to it is in the state or a
20 department, agency, commission or institution of the state. Acquisi-
21 tion of material in the open market under this section is governed by
22 AS 36.30 (State Procurement Code).

23 * Sec. 38. AS 37.05 is amended by adding a new section to read:

24 Sec. 37.05.232. PETTY CASH ACCOUNTS. The department shall
25 determine the amount of the petty cash accounts needed by each state
26 agency and inspect the petty cash accounts at least once each year to
27 determine that the total plus amounts of receipts for unreplenished
28 disbursements is equal to the fixed sum of cash set aside. Shortages
29 in petty cash accounts are a personal liability of the responsible

1 head of the agency to whom the account is set aside. The department
2 shall adopt necessary regulations governing use and replenishment of
3 petty cash funds.

4 * Sec. 39. AS 37.05.316 is amended to read:

5 Sec. 37.05.316. GRANTS TO NAMED RECIPIENTS. When an amount is
6 appropriated or allocated to a department as a grant for a named
7 recipient that [WHICH] is not a municipality, the department to which
8 the appropriation or allocation is made shall promptly notify the
9 named recipient of the availability of the grant and request the named
10 recipient to submit a proposal to provide the goods or services speci-
11 fied in the appropriation act [, OR BOTH,] for which the appropriation
12 or allocation is made. At the same time, the department may issue a
13 request for proposals from other qualified persons to provide the same
14 goods or services [, OR BOTH,] in the same area. The department shall
15 award the grant to [CONTRACT WITH] the named recipient unless the
16 Office of the Governor, with due regard for the [ANY] local expertise
17 or experience of [AMONG] those making proposals, determines that an
18 award [OF THE CONTRACT] to a different party would better serve the
19 public interest. If the grant [CONTRACT] is awarded to a [ANOTHER]
20 party other than that named by the legislature, the basis of that
21 action shall be stated in writing at the time the grant is issued and
22 a copy of the written statement shall be sent to the Legislative
23 Budget and Audit Committee. A grant agreement must [CONTRACT SHALL]
24 be executed within 60 days after the effective date of the appro-
25 priation or allocation. [THE PURCHASE OF THE GOODS OR SERVICES, OR
26 BOTH, SHALL BE IN ACCORDANCE WITH AS 37.05.230(1)(B).]

27 * Sec. 40. AS 41.21.020(a) is amended to read:

28 (a) The Department of Natural Resources shall

29 (1) develop a continuing plan for the conservation and

1 maximum use in the public interest of the scenic, historic, archaeo-
2 logic, scientific, biological, and recreational resources of the
3 state;

4 (2) plan for and develop a system of state parks and recre-
5 ational facilities, to be established as the legislature authorizes
6 and directs;

7 (3) acquire by gift, purchase, or transfer from state or
8 federal agencies, or from individuals, corporations, partnerships or
9 associations, land necessary, suitable and proper for roadside, pic-
10 nic, recreational or park purposes;

11 (4) control, develop and maintain state parks and recrea-
12 tional areas;

13 (5) provide for the acquisition, care, control, supervi-
14 sion, improvement, development, extension and maintenance of public
15 recreational land, and make necessary arrangements, contracts or
16 commitments for the improvement and development of land acquired under
17 AS 41.21.010 - 41.21.040; contracting for improvement and development
18 under this paragraph is governed by AS 36.30 (State Procurement Code);

19 (6) adopt, in accordance with this section and the Adminis-
20 trative Procedure Act (AS 44.62), regulations governing the use and
21 designating incompatible uses within the boundaries of state park and
22 recreational areas to protect the property and to preserve the peace;

23 (7) cooperate with the United States and its agencies and
24 local subdivisions of the state to secure the effective supervision,
25 improvement, development, extension, and maintenance of state parks,
26 state monuments, state historical areas, and state recreational areas,
27 and secure agreements or contracts for the purpose of AS 41.21.010 -
28 41.21.040;

29 (8) encourage the organization of state public park and

1 recreational activities in the local political subdivisions of the
2 state;

3 (9) provide for consulting service designed to develop
4 local park and recreation facilities and programs;

5 (10) provide clearing-house services for other state agen-
6 cies concerned with park and recreation matters; and

7 (11) perform other duties as are prescribed by executive
8 order or by law;

9 (12) maintain memorials to Alaska veterans located in state
10 parks;

11 (13) adopt, in accordance with the Administrative Procedure
12 Act (AS 44.62), regulations governing the use of the Chena River State
13 Recreation Area and designating incompatible uses within the bound-
14 aries of the Chena River State Recreation Area in accordance with
15 AS 41.21.490.

16 * Sec. 41. AS 42.40.920(b) is amended to read:

17 (b) Unless specifically provided otherwise in this chapter, the
18 following laws do not apply to the operations of the corporation:

19 (1) AS 19;

20 (2) AS 30.15;

21 (3) AS 35;

22 (4) AS 36.30, except as specifically provided in AS 36.30

23 (State Procurement Code);

24 (5) AS 37.05;

25 (6) [(5)] AS 37.07;

26 (7) [(6)] AS 37.10.010 - 37.10.060;

27 (8) [(7)] AS 37.10.085;

28 (9) [(8)] AS 37.20;

29 (10) [(9)] AS 37.25;

1 (11) [(10)] AS 38;

2 (12) [(11)] AS 44.62.040 - 44.62.320.

3 * Sec. 42. AS 44.21.310(a) is amended to read:

4 (a) The telecommunications divisions, as directed by the deputy
5 commissioner, shall

6 (1) advise the governor on matters of policy and comprehensive
7 state planning for telecommunications services;

8 (2) make an annual report to the governor and to the legis-
9 lature on the activities of the telecommunications divisions;

10 (3) coordinate, manage, and supervise state programs in
11 telecommunications, including the management of those telecommunica-
12 tion services for the state obtained from common carriers and from the
13 communications industry;

14 (4) when requested, provide technical and consulting assis-
15 tance to the executive, judicial, and legislative branches of state
16 government, to the University of Alaska, and to private noncommercial
17 entities which request that assistance in facility procurement and
18 leasing and in identifying long-range goals and objectives for the
19 state and its political subdivisions in all aspects of telecommunica-
20 tions, including public, educational, and instructional telecommunica-
21 tions;

22 (5) prepare and maintain a state comprehensive telecommu-
23 nications development plan to further state telecommunications devel-
24 opment and to meet state telecommunications needs and prepare and
25 maintain a comprehensive inventory of all state communications facil-
26 ities;

27 (6) whenever feasible, procure services from private enter-
28 prise or certified and franchised utilities and contract for the
29 construction, management, operation and maintenance of

1 telecommunications systems, and develop a procurement policy
2 consistent with AS 36.30 (State Procurement Code) [UNDER
3 AS 37.05.010 - 37.05.410]; the procurement policy must seek to achieve
4 the maximum benefit to the public, and methods of procurement,
5 including lease, purchase, rental, or combinations of lease, purchase,
6 and rental, must be selected on the basis of factors such as the ratio
7 of long-range costs versus benefits, life cycle costing, and the costs
8 to the communications industry to the extent that these costs may
9 affect local and long distance basic telephone rates; procurement,
10 contracting, construction, and maintenance under this paragraph is
11 governed by AS 36.30;

12 (7) provide information and assistance to state agencies to
13 promote governmental coordination and unity in the preparation of
14 agency plans and programs involving the use of telecommunications;

15 (8) apply for and accept federal and private money, proper-
16 ty, or assistance, that may be appropriated, granted, or otherwise
17 made available to the telecommunications divisions and use and dis-
18 burse money and property for purposes consistent with AS 44.21.300 -
19 44.21.330 and AS 44.21.256 - 44.21.290, subject to reasonable limita-
20 tions imposed by the grantor;

21 (9) participate with other governmental units in planning,
22 and assist local governments and governmental conferences and councils
23 in the state in planning and coordinating their activities relating to
24 telecommunications;

25 (10) provide for the orderly transition to new telecommu-
26 nications services and systems by state agencies;

27 (11) serve as a clearinghouse for information, data, and
28 other materials which may be necessary or helpful to federal, state,
29 or local governmental agencies in the development of telecommunication

1 systems;

2 (12) coordinate their services and activities with those of
3 other state departments and agencies to the fullest extent possible to
4 avoid unnecessary duplication; and

5 (13) provide that all activities of the telecommunications
6 divisions are responsive to state statutes and regulations, and to the
7 regulations and rulings of the Federal Communications Commission.

8 * Sec. 43. AS 44.19.144(b) is amended to read:

9 (b) The director may

10 (1) with the written concurrence of the governor, enter
11 into contracts and subcontracts on behalf of the state to carry out
12 the provisions of AS 44.19.141 - 44.19.152; contracting under this
13 paragraph is governed by AS 36.30 (State Procurement Code);

14 (2) act for the state in the initiation, investigation,
15 evaluation of or participation in any program relative to the stated
16 purpose of AS 44.19.141 - 44.19.152 which may involve more than one
17 government or governmental unit;

18 (3) on behalf of the state, accept and expend any gifts or
19 grants made to the state with the approval of the governor where such
20 gifts or grants were made for the purposes of furthering the objec-
21 tives of the office.

22 * Sec. 44. AS 44.33.300 is amended to read:

23 Sec. 44.33.300. WAIVER OF CERTAIN PROVISIONS. When the gover-
24 nor has by proclamation declared an area impacted by an economic
25 disaster, the following provisions regarding public contracts may be
26 waived to the extent specified in the proclamation:

27 (1) the requirement of a contractor's bond as prescribed in
28 AS 36.25.010 may be waived if the contract amount does not exceed
29 \$100,000;

1 (2) the public bid requirements as contained in AS 19.10.-
2 170, AS [19.10.190,] 19.30.191(b), AS 35.15.010 - 35.15.020, and
3 AS 36.30 (State Procurement Code) [AND AS 35.15.010 - 35.15.030] may
4 be waived if the contract is to be performed by a contractor whose
5 principal office is in the designated area and the contract amount
6 does not exceed \$50,000;

7 (3) the general policy to require all construction to be
8 under bid contract as contained in AS 19.10.170, AS 35.15.010, and
9 AS 36.30 (State Procurement Code) may be waived if the contract is to
10 be performed by the state, another governmental entity, or a nonprofit
11 entity.

12 * Sec. 45. AS 44.47.250 is amended by adding a new subsection to read:

13 (c) Contracts with persons or nongovernmental entities under
14 this section are governed by AS 36.30.

15 * Sec. 46. AS 44.47.490(a) is amended to read:

16 (a) The director may establish field offices under this chapter,
17 may hire one or more lending officers, and, under AS 36.30 (State
18 Procurement Code), may contract for the services of

19 (1) real property appraisers who are familiar with rural
20 construction; and

21 (2) engineers who are familiar with engineering problems in
22 arctic and subarctic regions.

23 * Sec. 47. AS 44.47.730(a) is amended to read:

24 (a) The commissioner shall contract for a study of the feasibil-
25 ity of establishing a borough in the unorganized borough by following
26 the procedures under AS 36.30 (State Procurement Code) [SET OUT IN
27 AS 36.98]. The commissioner shall include terms in the contract that
28 provide for

29 (1) public participation in the preparation of the study;

1 (2) completion of the study not later than June 30 of the
2 third year after the year the contract is executed.

3 * Sec. 48. AS 44.62.175(a) is amended to read:

4 (a) The lieutenant governor shall publish or contract for the
5 publication of the Alaska Administrative Journal. The journal shall
6 be published weekly. The journal must include

7 (1) notices of proposed actions given under AS 44.62.-
8 190(a);

9 (2) notices of state agency meetings required under AS 44.-
10 62.310(e), even if the meeting has been held;

11 (3) notices of solicitations to bid issued under AS 36.30.-
12 130 [AS 37.05.230];

13 (4) notices of state agency requests for proposals issued
14 under AS 18.55.255, 18.55.320; [AS 19.10.190; AS 19.40.020; AS 35.15.-
15 030; AS 36.98.030; AS 37.05.230,] AS 37.05.315(d); AS 38.05.120; and
16 AS 43.40.010;

17 (5) executive orders and administrative orders issued by
18 the governor;

19 (6) written delegations of authority made by the governor
20 or the head of a principal department under AS 44.17.010;

21 (7) the text or a summary of the text of a regulation or
22 order of repeal of a regulation for which notice is given under AS
23 44.62.190(a), including an emergency regulation or repeal whether or
24 not it has taken effect;

25 (8) a summary of the text of recently issued formal opin-
26 ions and memoranda of advice of the attorney general; and

27 (9) a list of vacancies on boards, commissions, and other
28 bodies whose members are appointed by the governor.

29 * Sec. 49. AS 44.71.010 is amended to read:

1 Sec. 44.71.010. DISPOSITION OF OBSOLETE OR SURPLUS STATE PROP-
2 ERTY. The Department of Administration shall take possession of
3 obsolete or surplus property of the state for which there is no imme-
4 diate or prospective use, except abandoned or obsolete school build-
5 ings and other school property. It shall also take possession of
6 property remaining in the control of a commission or board of the
7 state government after the commission or board stops functioning. The
8 Department of Administration shall sell, lease, license, or dispose of
9 the property on the terms it considers for the best interests of the
10 state in conformance with regulations adopted under AS 36.30 (State
11 Procurement Code).

12 * Sec. 50. AS 44.77.010(a) is amended to read:

13 (a) Except as provided in (d) of this section, every [EVERY]
14 claim for reimbursement for money expended, or for compensation for
15 labor, materials, or supplies furnished, or services given to or for
16 the state, whether based on a contract or on a ratification, shall be
17 promptly presented to the appropriate administrative or executive
18 officer for approval and payment.

19 * Sec. 51. AS 44.77.010 is amended by adding a new subsection to read:

20 (d) A claim that is governed by AS 36.30.560 - 36.30.699 is not
21 governed by this chapter.

22 * Sec. 52. AS 44.85.120 is amended to read:

23 Sec. 44.85.120. CARE AND CUSTODY OF BONDS. The bond bank
24 authority, in accordance with AS 36.30 (State Procurement Code), may
25 enter into agreements or contracts with a bank, trust company, banking
26 or financial institution inside or outside the state as may be neces-
27 sary, desirable or convenient, in the opinion of the bond bank author-
28 ity, for rendering services in connection with the care, custody or
29 safekeeping of municipal bonds or other investments held or owned by

1 the bond bank authority, for rendering services in connection with the
2 payment or collection of amounts payable as to principal or interest,
3 and for rendering services in connection with the delivery to the bond
4 bank authority of municipal bonds or other investments purchased by it
5 or sold by it, and to pay the cost of those services. The bond bank
6 authority may also, in connection with any of the services to be
7 rendered by a bank, trust company or banking or financial institution
8 as to the custody and safekeeping of its municipal bonds or invest-
9 ments, require security in the form of collateral bonds, surety agree-
10 ments or security agreements in such form and amount as, in the opin-
11 ion of the bond bank authority, is necessary or desirable.

12 * Sec. 53. AS 44.99.001 is amended to read:

13 Sec. 44.99.001. ADMINISTRATION OF HIGHWAY SAFETY PROGRAM. The
14 governor may contract and do all other things necessary on behalf of
15 this state under 23 U.S.C. 401-404 (Highway Safety Act of 1966), and
16 may cooperate with interested persons and agencies to effectuate the
17 purposes of that Act. Contracting under this section is governed by
18 AS 36.30 (State Procurement Code). The governor may designate a
19 person to serve as the governor's highway safety representative;
20 however, the governor is the official in this state having the ulti-
21 mate responsibility for dealing with the federal government with
22 respect to programs and activities under the Federal Highway Safety
23 Act of 1966. The governor shall coordinate the activities relating to
24 highway safety of state departments, agencies and subdivisions and of
25 the Governor's Commission on Transportation Safety established in
26 AS 44.19.190.

27 * Sec. 54. AS 46.04.090(a) is amended to read:

28 (a) The department, when feasible, shall enter into contracts
29 with persons or private organizations to provide the personnel,

1 equipment, or other services or supplies which may be required to
2 carry out this chapter. Contracts under this section are governed by
3 AS 36.30 (State Procurement Code). When private contracting is not
4 feasible, the department may establish and maintain at ports, harbors,
5 or other locations in the state, the cleanup personnel, equipment, and
6 supplies which, in its judgment, are necessary to carry out this
7 chapter.

8 * Sec. 55. AS 46.07.040(a) is amended to read:

9 (a) The commissioner shall provide for the construction of
10 facilities under this chapter, and is authorized to provide for the
11 construction by contract or through grants to public agencies or
12 private nonprofit organizations, or otherwise. A [NO] contribution
13 toward the cost of the construction of a facility may not be required
14 from its users. Construction under this section by contract is gov-
15 erned by AS 36.30 (State Procurement Code).

16 * Sec. 56. AS 46.15.020(a) is amended to read:

17 (a) The commissioner shall exercise all those powers and do all
18 those acts necessary to carry out the provisions and objectives of
19 this chapter. The commissioner may

20 (1) subject to AS 36.30 (State Procurement Code), enter
21 into contractual agreements necessary to carry out the provisions of
22 this chapter including agreements with federal, state and local agen-
23 cies;

24 (2) apply for, accept, administer and expend grants, gifts,
25 and loans from the federal government and any other public or private
26 sources for the purposes of this chapter, and adopt procedures and do
27 acts not otherwise restricted by law which are necessary to qualify
28 the state to receive grants, gifts and loans;

29 (3) establish a division of water in the Department of

1 Natural Resources and assign to that division the responsibility for
2 carrying out the provisions of this chapter.

3 * Sec. 57. AS 47.05.015(c) is amended to read:

4 (c) A contract authorized under this section is exempt from the
5 competitive bid requirements of AS 36.30 (State Procurement Code)
6 [AS 37.05.230]. In awarding a contract under this section the depart-
7 ment shall [PUBLISH A] request [FOR] proposals in accordance with
8 regulations of the Department of Administration under AS 36.30 (State
9 Procurement Code) [DEPARTMENT].

10 * Sec. 58. AS 47.30.350(a) is amended to read:

11 (a) The department shall

12 (1) develop and submit to the Surgeon General of the United
13 States Public Health Service a comprehensive program for the con-
14 structing and equipping of hospitals and other facilities for the
15 examination, observation, care, and treatment of the mentally ill;

16 (2) develop and submit to the Surgeon General plans and
17 specifications for the constructing and equipping of the hospitals and
18 other facilities;

19 (3) construct and equip the hospitals and other facilities
20 in accordance with the program, plans, and specifications approved by
21 the Surgeon General; construction and equipping under this paragraph
22 is governed by AS 36.30 (State Procurement Code);

23 (4) cooperate, coordinate, and contract, wherever indicated
24 and desirable, with other state boards, departments and agencies, and
25 agencies of the United States in the construction program, and hire
26 necessary personnel and enter into contracts with private individuals
27 and companies, to the end that the hospitals and other facilities are
28 constructed in the most economical and expeditious manner; contracting
29 and construction under this section are governed by AS 36.30 (State

1 Procurement Code).

2 * Sec. 59. AS 47.30.660 is amended to read:

3 Sec. 47.30.660. POWERS AND DUTIES OF DEPARTMENT. The depart-
4 ment is the mental health authority of the state and shall

5 (1) administer a comprehensive program for the prevention
6 of mental illness and the care and treatment of the mentally ill,
7 including inpatient and outpatient care and treatment and the procure-
8 ment of services of specialists or other persons on a contractual or
9 other basis;

10 (2) take the actions and undertake the obligations which
11 are necessary to participate in federal grants-in-aid programs and
12 accept federal or other financial aid from whatever sources for the
13 study, examination, care, and treatment of the mentally ill;

14 (3) administer AS 47.30.660 - 47.30.915;

15 (4) designate, operate, and maintain treatment facilities
16 equipped and qualified to provide inpatient and outpatient care and
17 treatment for the mentally ill;

18 (5) provide for the placement of mentally ill patients in
19 designated treatment facilities;

20 (6) enter into arrangements with governmental agencies for
21 the care or treatment of the mentally ill in facilities of the govern-
22 mental agencies in the state or in another state;

23 (7) enter into contracts with treatment facilities for the
24 custody and care or treatment of the mentally ill; contracts under
25 this paragraph are governed by AS 36.30 (State Procurement Code);

26 (8) enter into contracts which incorporate safeguards
27 consistent with AS 47.30.660 - 47.30.915 and the preservation of the
28 civil rights of the patients with another state for the custody and
29 care or treatment of patients previously committed from this state

1 under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd
2 Session, 70 Stat. 709;

3 (9) prescribe the form of applications, records, reports,
4 requests for release, and consents to medical or psychological treat-
5 ment required by AS 47.30.660 - 47.30.915;

6 (10) require reports from the head of a treatment facility
7 concerning the care of patients;

8 (11) visit each treatment facility at least annually to
9 review methods of care or treatment for patients;

10 (12) investigate complaints made by a patient or an inter-
11 ested party on behalf of a patient;

12 (13) delegate upon mutual agreement to another officer or
13 agency of it, or a political subdivision of the state, or a treatment
14 facility designated, any of the duties and powers imposed upon it by
15 AS 47.30.660 - 47.30.915; and

16 (14) adopt regulations to implement the provisions of
17 AS 47.30.660 - 47.30.915.

18 * Sec. 60. AS 47.35.010(a) is amended to read:

19 (a) The department may

20 (1) license and supervise boarding homes, foster homes,
21 group homes, nurseries, institutions caring for children and foster
22 homes, group homes and institutions caring for dependent adults;

23 (2) investigate and supervise licensees;

24 (3) enforce the standards established by it;

25 (4) contract with private or municipal agencies to investi-
26 gate and make recommendations to the department for the licensing and
27 supervision of boarding homes, foster homes, group homes, nurseries,
28 institutions caring for children and foster homes, group homes and
29 institutions caring for dependent adults under procedures and

standards of operation established by the department; contracts with private agencies under this paragraph are governed by AS 36.30 (State Procurement Code).

* Sec. 61. AS 47.37.030 is amended to read:

Sec. 47.37.030. POWERS OF OFFICE. The office may

(1) plan, establish, and maintain treatment programs as appropriate;

(2) make contracts and award grants necessary or incidental to the performance of its duties and the execution of its powers, including contracts with and grants to public and private agencies, organizations, and individuals, to pay them for services rendered or furnished to alcoholics or intoxicated persons; to the maximum extent possible, contracts and grants shall be for a period of two years; contracts under this paragraph are governed by AS 36.30 (State Procurement Code);

(3) solicit and accept for use a gift of money or property or a grant of money, services, or property from the federal government, the state, or a political subdivision of it or a private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for a grant;

(4) administer or supervise the administration of the provisions relating to alcoholics and intoxicated persons of any state plan submitted for federal funding under federal health, welfare, or treatment legislation;

(5) coordinate its activities and cooperate with alcoholism programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local, or private agencies for the treatment of alcoholics and intoxicated persons and for the common advancement of alcoholism programs in this and other states;

1 (6) keep records and engage in research and the gathering
2 of relevant statistics;

3 (7) do other acts necessary to implement the authority
4 expressly granted to it;

5 (8) acquire, hold, or dispose of real property or any
6 interest in it, and construct, lease, or otherwise provide treatment
7 facilities for alcoholics and intoxicated persons; however, the office
8 shall encourage local initiative, involvement and financial participa-
9 tion under grants-in-aid whenever possible in preference to the con-
10 struction or operation of facilities directly by the office; contract-
11 ing and construction under this paragraph are governed by AS 36.30
12 (State Procurement Code).

13 * Sec. 62. AS 47.37.130(g) is amended to read:

14 (g) The office may contract for the use of any facility as an
15 approved public treatment facility if the coordinator, subject to the
16 regulations of the department, considers this an effective and econom-
17 ical course to follow. Contracting under this subsection is governed
18 by AS 36.30 (State Procurement Code).

19 * Sec. 63. AS 47.40.041(b) is amended to read:

20 (b) Notices published by the department concerning the opening
21 of the application process for a grant award shall specify the geo-
22 graphical area in which services are needed, the type of services, the
23 number of beds anticipated to be needed, the maximum number of days of
24 care, and any other requirements established by the department.
25 Grants authorized under this section are exempt from AS 36.30 (State
26 Procurement Code) [THE COMPETITIVE BID REQUIREMENTS OF AS 37.05.230].

27 * Sec. 64. AS 47.90.010(a) is amended to read:

28 (a) The commissioner, in consultation with state and local
29 government agencies, community groups, and groups concerned with

1 displaced homemakers, may

2 (1) contract with eligible private profit and nonprofit
3 corporations for multipurpose service centers for displaced home-
4 makers; contracting under this paragraph is governed by AS 36.30
5 (State Procurement Code); and

6 (2) coordinate existing state programs for displaced home-
7 makers.

8 * Sec. 65. REPORT. By December 1, 1988, the commissioner of adminis-
9 tration and the commissioner of transportation and public facilities shall
10 report to the legislature concerning procurements by state agencies during
11 fiscal year 1987. The report must include

12 (1) the records prepared under AS 36.30.510(4);

13 (2) recommendations for changes in AS 36.30 or other laws based
14 on implementation of AS 36.30 in those 12 months; and

15 (3) a description of any matters that involved litigation con-
16 cerning AS 36.30 during those 12 months.

17 * Sec. 66. REGULATIONS DEADLINE. The regulations required under
18 AS 36.30 as added by sec. 2 of this Act, shall be adopted by July 1, 1987
19 and shall be effective on that date. Regulations adopted under laws
20 repealed in sec. 67 of this Act become ineffective July 1, 1987.

21 * Sec. 67. REPEALER. The following laws are repealed: AS 14.40.340;
22 AS 19.10.190, 19.10.210; AS 24.23; AS 35.15.030, 35.15.050; AS 36.20.010;
23 AS 36.98; AS 37.05.220, 37.05.230, 37.05.231, 37.05.240, 37.05.250, 37.-
24 05.260, 37.05.270, 37.05.280, 37.05.290, 37.05.400(2) and (3); AS 44.65;
25 AS 44.77.010(c); and AS 47.90.010(c).

26 * Sec. 68. Section 66 of this Act takes effect immediately in accor-
27 dance with AS 01.10.070(c).

28 * Sec. 69. Except as provided in sec. 68, this Act takes effect July 1,
29 1987.

A M E N D M E N T

Offered in the HOUSE

By the Finance Committee

TO: HCS CSSB 341 (Judiciary)

Page 15, line 21:

Delete "The"

Insert "Notwithstanding an Alaska product preference under AS 36.30.-
322 - 36.30.338, the"

Page 24, after line 6, insert the following new sections:

"ARTICLE 5. PREFERENCE FOR ALASKA PRODUCTS.

Sec. 36.30.322. USE OF LOCAL FOREST PRODUCTS. (a) Only timber, lumber, and manufactured lumber products originating in this state from local forests may be procured by an agency or used in construction projects of an agency unless the commissioner of commerce and economic development certifies that the manufacturers and suppliers who have notified the commissioner of commerce and economic development of their willingness to manufacture or supply Alaska forest products

(1) have been given reasonable notice of the forest product needs of the procurement or project; and

(2) are unable to supply the products at a cost that is within seven percent of the price offered by a manufacturer or supplier of non-Alaska forest products.

(b) The provisions of AS 36.30.326 - 36.30.332 do not apply to procurements of timber, lumber, and manufactured lumber products or

the use of those items in construction projects of an agency.

Sec. 36.30.324. USE OF ALASKA PRODUCTS. Alaska products shall be used whenever practicable in procurements for an agency.

Sec. 36.30.326. CONTRACT SPECIFICATIONS. Contract specifications for a procurement for an agency must include a provision that a bidder or offeror that designates in a bid or proposal the use of Alaska products identified in the specifications will receive the preference granted under AS 36.15.328 in the evaluation of the bid or proposal if the designated Alaska products meet the contract specifications.

Sec. 36.30.328. GRANT OF PREFERENCE. In the evaluation of a bid or proposal for a procurement for an agency, a bid or offer that designates the use of Alaska products identified in the contract specifications and designated as Class I, Class II, or Class III state products under AS 36.30.332 is decreased by the percentage of the value of the designated Alaska products under AS 36.30.332.

Sec. 36.30.330. PENALTY FOR FAILING TO USE DESIGNATED PRODUCTS.
(a) If a successful bidder or offeror who designates the use of an Alaska product in a bid or proposal for a procurement for an agency fails to use the designated product for a reason within the control of the successful bidder or offeror, each payment under the contract shall be reduced according to the following schedule:

- (1) for a Class I designated Alaska product - four percent;
- (2) for a Class II designated Alaska product - six percent;
- (3) for a Class III designated Alaska product - eight percent.

(b) A person is not a responsible bidder or offeror if, in the preceding three years, the person has twice designated the use of an Alaska product in a bid or proposal for a procurement for an agency and has each time failed to use the designated Alaska product for reasons within the control of the bidder or offeror.

(c) The procurement officer shall report to the commissioner of commerce and economic development each contractor penalized under (a) of this section. The commissioner of commerce and economic development shall maintain a list of contractors determined not to be responsible bidders under (b) of this section.

Sec. 36.30.332. CLASSIFICATION OF ALASKA PRODUCTS. (a) The commissioner of commerce and economic development shall adopt regulations establishing the value added in the state for materials and supplies produced or manufactured in the state that are used in a state procurement and shall publish a list of the products annually. A supplier may request inclusion of its product on the appropriate list.

(b) Materials and supplies with value added in the state that are

(1) more than 25 percent and less than 50 percent of the manufacturer's quoted price is a Class I product;

(2) 50 percent or more and less than 75 percent of the manufacturer's quoted price is a Class II product; and

(3) 75 percent or more of a manufacturer's quoted price is a Class III product.

(c) In a bid or proposal evaluation a

- (1) Class I product is given a three percent preference;
- (2) Class II product is given a five percent preference;

and

- (3) Class III product is given a seven percent preference.

Sec. 36.30.334. IDENTIFICATION OF ALASKA PRODUCTS. An agency may identify specific Alaska products for use in making a procurement.

Sec. 36.30.336. APPLICATION. Notwithstanding other provisions of AS 36.30, AS 36.30.322 - 36.30.338 apply to all procurements subject to AS 36.30, except as provided in AS 36.30.322(b).

Sec. 36.30.338. DEFINITIONS. In AS 36.30.322 - 36.30.338

- (1) "Alaska product" means a product produced or manufactured in the state if the value added in the state is not less than 25 percent of the quoted price of the manufacturer;

- (2) "product" means materials or supplies but does not include gravel and asphalt;

- (3) "produced or manufactured" means processing, developing, or making an item into a new item with a distinct character and use through the application within the state of materials, labor, skill, or other services."

Renumber the following Articles accordingly.

Page 91, line 18:

After" 35.15.050;" insert "AS 36.20.010;"

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 341 (Fin)
 Title : Act relating to state procurement practices & procedures

Sponsor : Rules by Request
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept of Administration
 BRU : General Services & Supply

Components : Purchasing

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		350.0	367.5	385.9	405.2	425.4

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		350.0	367.5	385.9	405.2	425.4
FEDERAL FUNDS						
OTHER						
TOTAL		350.0	367.5	385.9	405.2	425.4

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Senator Jan Faiks, Co-chairman
 Division : Senate Finance Committee

Phone : 465-4523
 Date : 4/1/86

Approved by Commissioner : _____
 Agency : _____

Date : _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Cook ✓
5/9/86

Original sponsor: Rules Committee
By Request

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 341 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state procurement practices and
7 procedures; and providing for an effective date."

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

9 * Section 1. PURPOSE. This Act shall be construed and applied to
10 promote its underlying purposes and policies. The underlying purposes and
11 policies of this Act are to

12 (1) simplify, clarify, and modernize the law governing pro-
13 curement by the state;

14 (2) establish consistent procurement principles for all branches
15 of state government;

16 (3) provide for increased public confidence in the procedures
17 followed in state procurement;

18 (4) ensure the fair and equitable treatment of all persons who
19 deal with the procurement system of the state;

20 (5) provide increased economy in state procurement activities
21 and maximize to the fullest extent practicable the purchasing value of
22 state funds;

23 (6) foster effective broad-based competition within the free
24 enterprise system;

25 (7) provide safeguards for the maintenance of a procurement
26 system of quality and integrity;

27 (8) permit the continued development of state procurement prac-
28 tices and policies; and

29 (9) eliminate and prevent discrimination in state contracting

1 because of race, religion, color, national origin, sex, age, marital sta-
2 tus, pregnancy, parenthood, handicap, or political affiliation.

3 * Sec. 2. AS 36 is amended by adding a new chapter to read:

4 CHAPTER 30. STATE PROCUREMENT CODE.

5 ARTICLE 1. ORGANIZATION OF STATE PROCUREMENT.

6 Sec. 36.30.005. CENTRALIZATION OF PROCUREMENT AUTHORITY. (a)
7 Except as otherwise provided, all rights, powers, duties, and author-
8 ity relating to the procurement of supplies, services, and profes-
9 sional services, and the control over supplies, services, and profes-
10 sional services vested in or exercised by an agency on January 1,
11 1987, are transferred to the commissioner of administration and to the
12 chief procurement officer. Authority granted under this subsection
13 shall be exercised in accordance with this chapter.

14 (b) Except as otherwise provided, all rights, powers, duties,
15 and authority relating to the procurement of construction and procure-
16 ments of equipment or services for the state equipment fleet and the
17 control over construction of state facilities and the state equipment
18 fleet vested in or exercised by an agency on January 1, 1987, are
19 transferred to the commissioner of transportation and public
20 facilities, subject to regulations adopted by the commissioner of
21 administration. Notwithstanding AS 44.71.010, authority relating to
22 disposals from the state equipment fleet is vested in the the
23 commissioner of transportation and public facilities, subject to
24 regulations adopted by the commissioner of administration. Authority
25 granted under this subsection shall be exercised in accordance with
26 this chapter.

27 (c) Notwithstanding other provisions of law, all rights, powers,
28 duties, and authority relating to the procurement of supplies, servi-
29 ces, professional services, and construction and the disposal of

1 supplies for the University of Alaska are transferred to the Board of
2 Regents. To the maximum extent possible, authority granted under this
3 subsection shall be exercised in accordance with this chapter. The
4 Board of Regents shall adopt regulations under this subsection that
5 are substantially equivalent to the regulations adopted by the commis-
6 sioner of administration to implement this chapter. For the purposes
7 of this subsection, unless the context otherwise requires, in this
8 chapter

9 (1) "agency" means a subunit of the University of Alaska;

10 (2) "attorney general" means the president of the
11 University of Alaska;

12 (3) "chief procurement officer" means a person designated
13 by the president of the University of Alaska whose qualifications are
14 substantially equivalent to those provided in AS 36.30.010(a);

15 (4) "commissioner," "commissioner of administration," or
16 "commissioner of transportation and public facilities" means the Board
17 of Regents or the president of the University of Alaska if so
18 designated by the Board of Regents by regulations adopted under this
19 subsection;

20 (5) "department" means the University of Alaska.

21 Sec. 36.30.010. CHIEF PROCUREMENT OFFICER. (a) The commis-
22 sioner shall appoint to the partially exempt service the chief pro-
23 curement officer of the state. The chief procurement officer must
24 have at least five years of prior experience in public procurement,
25 including large scale procurement of supplies, services, or profes-
26 sional services, and must be a person with demonstrated executive and
27 organizational ability. The chief procurement officer may be removed
28 by the commissioner only for cause. The term of office of the chief
29 procurement officer is four years.

1 (b) Except as otherwise specifically provided in this chapter,
2 the chief procurement officer shall

3 (1) procure or supervise the procurement of all supplies,
4 services, and professional services needed by an agency;

5 (2) exercise general supervision and control over all
6 inventories of supplies belonging to an agency and prescribe the
7 manner in which supplies shall be purchased, delivered, stored, and
8 distributed;

9 (3) prescribe the time, manner, authentication, and form of
10 making requisitions for supplies and services;

11 (4) sell, trade, transfer between agencies, or otherwise
12 dispose of surplus, obsolete, or unused supplies and make proper
13 adjustments in the accounts of agencies concerned;

14 (5) establish and maintain programs for the inspection,
15 testing, and acceptance of supplies and services and the testing of
16 samples submitted with bids;

17 (6) prescribe standard forms for bids and contracts; and

18 (7) provide for other matters that may be necessary to
19 carry out the provisions of this chapter and the regulations adopted
20 under this chapter.

21 Sec. 36.30.015. EXECUTIVE BRANCH AGENCIES. (a) The commis-
22 sioner of transportation and public facilities may delegate to another
23 agency the authority to contract for construction. Before delegating
24 authority to an agency under this subsection, the commissioner of
25 transportation and public facilities shall make a written determina-
26 tion that the agency is capable of implementing the delegated author-
27 ity. Notwithstanding delegation of authority under this subsection,
28 contracts for construction are governed by this chapter and regula-
29 tions adopted by the commissioner of administration under this

1 chapter.

2 (b) The commissioner of administration may delegate to an agency
3 the authority to contract for and manage services, professional servi-
4 ces, and supplies. Notwithstanding delegation of authority under this
5 subsection, an agency's exercise of the authority is governed by this
6 chapter and regulations adopted by the commissioner under this chap-
7 ter. Before delegating authority to an agency under this subsection,
8 the commissioner shall make a written determination that the agency is
9 capable of implementing the delegated authority.

10 (c) The commissioner of administration may not delegate the
11 authority to dispose of supplies or the authority to adopt regulations
12 under this chapter.

13 (d) An agency may not contract for the services of legal counsel
14 without the approval of the attorney general.

15 (e) The boards of directors of the Alaska Railroad Corporation
16 and the Alaska State Housing Authority shall adopt procedures to
17 govern the procurement of supplies, services, professional services,
18 and construction by the corporation. The procedures must be
19 substantially equivalent to the procedures prescribed in this chapter
20 and in regulations adopted under this chapter.

21 Sec. 36.30.020. LEGISLATURE. The Legislative Council shall
22 adopt and publish procedures to govern the procurement of supplies,
23 services, professional services, and construction by the legislative
24 branch. The procedures must be based on the competitive principles
25 consistent with this chapter and must be adapted to the special needs
26 of the legislative branch as determined by the Legislative Council.

27 Sec. 36.30.030. COURT SYSTEM. The administrative director of
28 courts shall adopt and publish procedures to govern the procurement of
29 supplies, services, professional services, and construction by the

1 judicial branch. The procedures must be based on the competitive
2 principles consistent with this chapter and must be adapted to the
3 special needs of the judicial branch as determined by the administra-
4 tor of courts.

5 Sec. 36.30.040. PROCUREMENT REGULATIONS. (a) The commissioner
6 shall adopt regulations governing the procurement, management, and
7 control of supplies, services, professional services and construction
8 by agencies. The commissioner may audit and monitor the implementa-
9 tion of the regulations and the requirements of this chapter with
10 respect to using agencies.

11 (b) The commissioner shall adopt regulations pertaining to the
12 following:

13 (1) suspension, debarment, and reinstatement of prospective
14 bidders and contractors;

15 (2) bid protests;

16 (3) conditions and procedures for the procurement of per-
17 ishables and items for resale;

18 (4) conditions and procedures for the use of source selec-
19 tion methods authorized by this chapter, including sole source pro-
20 curements, emergency procurements, and small procurements;

21 (5) the opening or rejection of bids and offers, and waiver
22 of informalities in bids and offers;

23 (6) confidentiality of technical data and trade secrets
24 submitted by actual or prospective bidders or offerors;

25 (7) partial, progressive, and multiple awards;

26 (8) storerooms and inventories, including determination of
27 appropriate stock levels and the management of agency supplies;

28 (9) transfer, sale or other disposal of supplies;

29 (10) definitions and classes of contractual services and

1 procedures for acquiring them;

2 (11) providing for conducting price analysis;

3 (12) use of payment and performance bonds in connection with
4 contracts for supplies, services, and construction;

5 (13) guidelines for use of cost principles in negotiations,
6 adjustments, and settlements;

7 (14) conditions under which an agency may use the services
8 of an employment program as defined under AS 36.30.100(c);

9 (15) a bidder's or offeror's duties under AS 36.30.115 and
10 36.30.210; and

11 (16) the elimination and prevention of discrimination in
12 state contracting because of race, religion, color, national origin,
13 sex, age, marital status, pregnancy, parenthood, handicap, or politi-
14 cal affiliation.

15 Sec. 36.30.050. LISTS OF CONTRACTORS. (a) The commissioner
16 shall establish and maintain lists of persons who desire to provide
17 supplies, services, professional services, or construction services to
18 the state.

19 (b) A person who desires to be on a list shall submit to the
20 commissioner evidence of a valid Alaska business license together with
21 a biennial fee established by regulation in an amount reasonably
22 calculated to pay the costs of administering this section. A con-
23 struction contractor shall also submit a valid certificate of regis-
24 tration issued under AS 08.18. The commissioner, by regulation, may
25 require submission of additional information.

26 (c) The lists may be used by the chief procurement officer or an
27 agency when issuing invitations to bid or requests for proposals under
28 this chapter. The lists may be used by the Legislative Council, the
29 court system, the Alaska State Housing Authority, and the Alaska

1 Railroad Corporation.

2 (d) The lists shall be used in providing notice of intent to
3 make a small procurement to Alaska bidders as defined under AS 36.30.-
4 170(c). A procurement officer who intends to make a procurement under
5 AS 36.30.320 shall request names from the appropriate list and the
6 department shall furnish names of Alaska bidders on a rotating basis
7 from the list in response to each request.

8 Sec. 36.30.060. SPECIFICATIONS. (a) The commissioner shall
9 adopt regulations governing the preparation, revision, and content of
10 specifications for supplies, services, professional services, and
11 construction required by an agency. The commissioner shall monitor
12 the use of these specifications.

13 (b) Specifications for construction of highways must conform as
14 closely as practicable to those adopted by the American Association of
15 State Highway and Transportation Officials.

16 (c) The commissioner may obtain expert advice and assistance
17 from personnel of using agencies in the development of specifications.
18 Specifications must promote overall economy for the purposes intended
19 and encourage competition in satisfying the state's needs, and may not
20 be unduly restrictive. The requirements of this subsection regarding
21 the purposes and nonrestrictiveness of specifications apply to all
22 specifications, including those prepared by architects, engineers,
23 designers, and other professionals.

24 (d) In this section, "specification" means a description of the
25 physical or functional characteristics, or of the nature of a supply,
26 service, professional service, or construction project; it may include
27 requirements for licensing, inspecting, testing, and delivery.

28 Sec. 36.30.070. SUPPLY MANAGEMENT. The commissioner shall adopt
29 regulations governing the

- 1 (1) management of supplies during their entire life cycle;
2 (2) sale, lease, or disposal of surplus supplies by public
3 auction, competitive sealed bidding, or other appropriate method;
4 (3) purchase of surplus supplies by an employee of the
5 using or disposing agency; and
6 (4) transfer of excess supplies.

7 Sec. 36.30.080. LEASES. (a) The department shall lease space
8 for the use of the state or an agency wherever it is necessary and
9 feasible, subject to compliance with the requirements of this chapter.
10 A lease may not provide for a period of occupancy greater than 40
11 years. An agency requiring office, warehouse, or other space shall
12 lease the space through the department.

13 (b) The department may enter into lease-financing agreements,
14 including lease-purchase agreements and agreements related to the
15 issuance of certificates of participation. A lease-financing agree-
16 ment must provide that lease payments are subject to annual appropria-
17 tion.

18 (c) If the department intends to enter into a lease or lease-
19 financing agreement with an annual rent to the state anticipated to
20 exceed \$1,000,000, the department shall provide notice to the legisla-
21 ture. The notice must include the anticipated annual lease obligation
22 amount and the anticipated total construction, acquisition, or other
23 costs of the project. The department may not enter into an agreement
24 under this subsection unless the project has been approved by the
25 legislature by law. An appropriation for the project does not consti-
26 tute approval of the project for purposes of this subsection.

27 ARTICLE 2. COMPETITIVE SEALED BIDDING.

28 Sec. 36.30.100. GENERAL POLICY. (a) Except as otherwise pro-
29 vided in this chapter, or unless specifically exempted by law, an

1 agency contract shall be awarded by competitive sealed bidding.

2 (b) Competitive sealed bidding is not required

3 (1) when the commissioner determines in writing that food,
4 clothing, or medical supplies, or materials for use in laboratory or
5 medical studies may be purchased otherwise to the best advantage of
6 the state;

7 (2) when rates are fixed by law or ordinance and no
8 competitive alternative exists;

9 (3) for the purchase of products or services manufactured
10 or provided by an employment program;

11 (4) for the purchase of products or services provided by
12 the correctional industries program established under AS 33.32;

13 (5) for professional services; or

14 (6) for concessions operated on state property.

15 (c) In this section "employment program" means a nonprofit
16 program to increase employment opportunities for individuals with
17 physical or mental disabilities that constitute substantial handicaps
18 to employment.

19 Sec. 36.30.110. INVITATION TO BID. (a) When competitive sealed
20 bidding is used, the procurement officer shall issue an invitation to
21 bid. It must include a time, place and date by which the bid must be
22 received, purchase description, and a description of all contractual
23 terms and conditions applicable to the procurement.

24 (b) When responding to the invitation to bid, the bidder shall
25 supply evidence of the bidder's valid Alaska business license. A
26 bidder for a construction contract shall also submit evidence of the
27 bidder's registration under AS 08.18.

28 Sec. 36.30.115. SUBCONTRACTORS. (a) Within 24 hours after
29 opening of bids, the two apparent low bidders shall submit a list of

1 the subcontractors the bidders propose to use in the performance of
2 the contract. The list shall include the name and location of the
3 place of business for each subcontractor and evidence of the subcon-
4 tractor's valid Alaska business license. A bidder for a construction
5 contract shall also submit evidence of each subcontractor's registra-
6 tion under AS 08.18.

7 (b) A bidder may replace a listed subcontractor if the subcon-
8 tractor

- 9 (1) fails to comply with AS 08.18;
10 (2) files for bankruptcy or becomes insolvent;
11 (3) fails to execute a contract with the bidder involving
12 performance of the work for which the subcontractor was listed;
13 (4) fails to obtain bonding;
14 (5) fails to obtain insurance acceptable to the state;
15 (6) fails to perform the contract with the bidder involving
16 work for which the subcontractor was listed;
17 (7) must be substituted in order for the prime contractor
18 to satisfy required federal affirmative action requirements;
19 (8) refuses to agree or abide with the bidder's labor
20 agreement; or
21 (9) is determined by the procurement officer not to be a
22 responsible bidder.

23 (c) If a bidder fails to list a subcontractor or lists more than
24 one subcontractor for the same portion of work and the value of that
25 work is in excess of half of one percent of the total bid, the bidder
26 shall be considered to have agreed to perform that portion of work
27 without the use of a subcontractor and to have represented the bidder
28 to be qualified to perform that work.

29 (d) A bidder who attempts to circumvent the requirements of this

1 section by listing as a subcontractor another contractor who, in turn,
2 sublets the majority of the work required under the contract violates
3 this section.

4 (e) If a contract is awarded to a bidder who violates this
5 section, the purchasing officer may

6 (1) cancel the contract; or

7 (2) after notice and a hearing, assess a penalty on the
8 bidder in an amount that does not exceed 10 percent of the value of
9 the subcontract at issue.

10 Sec. 36.30.120. BID SECURITY. (a) Bid security shall be re-
11 quired for all competitive sealed bidding for construction contracts
12 when the price is estimated by the procurement officer to exceed an
13 amount established by regulation of the commissioner. Bid security on
14 construction contracts under the amount set by the commissioner may be
15 required when the circumstances warrant. Bid security may be required
16 for competitive sealed bidding for contracts for supplies, services,
17 or professional services in accordance with regulations of the commis-
18 sioner when needed for the protection of the state.

19 (b) Bid security must be a bond provided by a surety company
20 authorized to do business in the state or otherwise supplied in a form
21 satisfactory to the commissioner. Bid security must be in an amount
22 equal to at least

23 (1) 10 percent of the amount of the bid if the bid does not
24 exceed \$100,000; or

25 (2) 10 percent of the first \$100,000 and five percent of
26 the amount of the bid over \$100,000 if the bid exceeds \$100,000 up to
27 a maximum of \$200,000 in security.

28 (c) When the invitation to bid requires security, the procure-
29 ment officer shall reject a bid that does not comply with the bid

1 security requirement unless, in accordance with regulations, the
2 officer determines that the bid fails to comply in a nonsubstantial
3 manner with the security requirements.

4 Sec. 36.30.130. PUBLIC NOTICE OF INVITATION TO BID. (a) The
5 procurement officer shall give adequate public notice of the invita-
6 tion to bid at least 21 days before the date for the opening of bids.
7 If a determination is made in writing that a shorter notice period is
8 necessary for a particular bid, the 21-day period may be shortened.
9 The determination shall be made by the chief procurement officer for
10 bids for supplies, services, or professional services. The determina-
11 tion shall be made by the commissioner of transportation and public
12 facilities for bids for construction or acquisition of property for
13 the state equipment fleet. Notice shall be published in the Alaska
14 Administrative Journal. The time and manner of notice must be in
15 accordance with regulations adopted by the commissioner of adminis-
16 tration. When practicable, notice may include

17 (1) publication in a newspaper calculated to reach prospec-
18 tive bidders;

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

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

23 (b) Failure to comply with the notice requirements of this
24 section does not invalidate a bid or the award of a contract. If the
25 state fails to substantially comply with the requirements of (a) of
26 this section, the state is liable for damages caused by that failure.

27 Sec. 36.30.140. BID OPENING. (a) The procurement officer shall
28 open bids publicly in the presence of one or more witnesses at the
29 time and place designated in the invitation to bid. The amount of

1 each bid and other relevant information that is specified by regula-
2 tion of the commissioner, together with the name of each bidder, shall
3 be recorded.

4 (b) The information recorded under (a) of this section is open
5 to public inspection as soon as practicable before the notice of
6 intent to award a contract is given under AS 36.30.365. The bids are
7 not open for public inspection until ~~later~~ the notice of intent to
8 award a contract is given. To the extent the bidder designates and
9 the procurement officer concurs, trade secrets and other proprietary
10 data contained in a bid document are confidential.

11 Sec. 36.30.150. BID ACCEPTANCE AND BID EVALUATION. (a) Bids
12 shall be unconditionally accepted without alteration or correction,
13 except as authorized in AS 36.30.160. The procurement officer shall
14 evaluate bids based on the requirements set out in the invitation to
15 bid, which may include criteria to determine acceptability such as
16 inspection, testing, quality, delivery, and suitability for a parti-
17 cular purpose. The criteria that will affect the bid price and be
18 considered in evaluation for award must be objectively measurable,
19 such as discounts, transportation costs, and total or life cycle
20 costs. The invitation to bid must set out the evaluation criteria to
21 be used. Criteria may not be used in bid evaluation if they are not
22 set out in the invitation to bid.

23 (b) A contract based on total or life cycle costs may be awarded
24 only when the chief procurement officer or, for construction contracts
25 or procurements for the state equipment fleet, the commissioner of
26 transportation and public facilities, determines in writing at the
27 time of contract solicitation that the contract promotes overall
28 economy for the purposes intended, encourages competition, is not
29 unduly restrictive, and is in the best interests of the state.

1 Sec. 36.30.160. LATE BIDS; CORRECTION OR WITHDRAWAL OF BIDS;
2 CANCELLATION OF AWARDS. (a) Bids received after the bid due date and
3 time indicated on the invitation to bid may not be accepted unless the
4 delay was due to an error of the contracting agency.

5 (b) Correction or withdrawal of inadvertently erroneous bids
6 before or after bid opening, or cancellation of awards or contracts
7 based on bid mistakes may be permitted in accordance with regulations
8 adopted by the commissioner. After bid opening, changes in bid prices
9 or other provisions of bids prejudicial to the interest of the state
10 or fair competition may not be permitted. Except as otherwise provid-
11 ed by regulation, a decision to permit the correction or withdrawal of
12 a bid, or to cancel an award or contract based on a bid mistake, shall
13 be supported by a written determination made by the procurement offi-
14 cer. If a bidder is permitted to withdraw a bid before award, an
15 action may not be maintained against the bidder or the bid security.

16 Sec. 36.30.170. CONTRACT AWARD AFTER BIDS. (a) Except as
17 provided in (b) of this section, the procurement officer shall award a
18 contract based on the solicited bids with reasonable promptness by
19 written notice to the lowest responsible and responsive bidder whose
20 bid conforms in all material respects to the requirements and criteria
21 set out in the invitation to bid.

22 (b) The procurement officer shall award a contract based on
23 solicited bids to the lowest responsible and responsive Alaska bidder
24 if the bid is not more than five percent higher than the lowest non-
25 resident bidder's. In this subsection, "Alaska bidder" means a person
26 who

27 (1) holds a current Alaska business license;

28 (2) submits a bid for goods, services, or construction
29 under the name as appearing on the person's current Alaska business

1 license;

2 (3) has maintained a place of business within the state
3 staffed by the bidder or an employee of the bidder for a period of six
4 months immediately preceding the date of the bid;

5 (4) is incorporated or qualified to do business under the
6 laws of the state, is a sole proprietorship, and the proprietor is a
7 resident of the state or is a partnership, and all partners are resi-
8 dents of the state; and

9 (5) if a joint venture, is composed entirely of ventures
10 that qualify under (1) - (4) of this subsection.

11 (c) If a bidder qualifies under (b) of this section as an Alaska
12 bidder, is offering services through an employment program as defined
13 under AS 36.30.100(c), and is the lowest responsible and responsive
14 bidder with a bid that is not more than 10 percent higher than the
15 lowest bid of a nonresident, the procurement officer shall award the
16 contract to that bidder.

17 Sec. 36.30.190. MULTI-STEP SEALED BIDDING. When it is con-
18 sidered impractical to initially prepare a definitive purchase de-
19 scription to support an award based on price, the procurement officer
20 may issue an invitation to bid requesting the submission of unpriced
21 technical offers to be followed by an invitation to bid limited to the
22 bidders whose offers are determined to be technically qualified under
23 the criteria set out in the first solicitation.

24 ARTICLE 3. COMPETITIVE SEALED PROPOSALS.

25 Sec. 36.30.200. CONDITIONS FOR USE. (a) Except as otherwise
26 provided in this chapter, or unless specifically exempted by law, an
27 agency contract shall be awarded by competitive sealed proposals if it
28 is not awarded by competitive sealed bidding. Construction may only
29 be procured by competitive sealed proposals if the conditions under

1 (c) of this section are met.

2 (b) The commissioner may provide by regulation that it is either
3 not practicable or not advantageous to the state to procure specified
4 types of supplies, services, or construction by competitive sealed
5 bidding that would otherwise be procured by that method. When the
6 chief procurement officer, or for construction contracts or procure-
7 ments for the state equipment fleet, the commissioner of transporta-
8 tion and public facilities, determines in writing that the use of
9 competitive sealed bidding is either not practicable or not advanta-
10 geous to the state, a contract may be entered into by competitive
11 sealed proposals in accordance with the regulations. When it is
12 determined that it is practicable but not advantageous to use competi-
13 tive sealed bidding, the chief procurement officer or commissioner of
14 transportation and public facilities shall specify with particularity
15 the basis for the determination.

16 (c) When the chief procurement officer determines that it is
17 advantageous to the state, a procurement officer may issue a request
18 for proposals requesting the submission of offers to provide con-
19 struction in accordance with a design provided by the offeror. The
20 request for proposals shall require that each proposal submitted
21 contain a single price that includes the design/build.

22 Sec. 36.30.210. REQUEST FOR PROPOSALS. (a) A request for
23 competitive sealed proposals must contain the date, time and place for
24 delivering proposals, a specific description of the supplies, con-
25 struction, services, or professional services to be provided under the
26 contract, and the terms under which the supplies, construction, ser-
27 vices, or professional services are to be provided. The request shall
28 require the offeror to submit evidence of the offeror's valid Alaska
29 business license and, no later than the date by which proposals must

1 be received, to list subcontractors the offeror proposes to use in the
2 performance of the contract. The list shall include the name and
3 location of the place of business for each subcontractor and evidence
4 of the subcontractor's valid Alaska business license. An offeror for
5 a construction contract shall also submit evidence of the offeror's
6 registration under AS 08.18 and evidence of registration for each
7 listed subcontractor.

8 (b) A request for proposals must contain that information neces-
9 sary for an offeror to submit a proposal or contain references to any
10 information that cannot reasonably be included with the request. The
11 request must provide a description of the factors that will be con-
12 sidered by the procurement officer when evaluating the proposals
13 received, including the relative importance of price and other evalu-
14 ation factors.

15 (c) Notice of a request for proposals shall be given in accor-
16 dance with procedures under AS 36.30.130. The procurement officer may
17 use additional means considered appropriate to notify prospective
18 offerors of the intent to enter into a contract through competitive
19 sealed proposals.

20 (d) The provisions of AS 36.30.115(b) - (e) apply to competitive
21 sealed proposals.

22 Sec. 36.30.220. STANDARD OVERHEAD RATE. (a) An agency that
23 provides services to another agency under a contract covered by this
24 chapter shall establish a standard overhead rate. If an agency sub-
25 mits a proposal in response to a request for competitive sealed pro-
26 posals, the agency must include its standard overhead rate within its
27 proposal.

28 (b) In this section, "standard overhead rate" means a charge
29 established for services and professional services from an agency that

1 is designed to compensate the agency for administration and support
2 services incidentally provided with the services contracted for.

3 Sec. 36.30.230. TREATMENT OF PROPOSALS. The procurement officer
4 shall open proposals so as to avoid disclosure of contents to compet-
5 ing offerors during the process of negotiation. A register of pro-
6 posals containing the name and address of each offeror shall be pre-
7 pared in accordance with regulations adopted by the commissioner. The
8 register and the proposals are open for public inspection after the
9 notice of intent to award a contract is issued under AS 36.30.365. To
10 the extent that the offeror designates and the procurement officer
11 concurs, trade secrets and other proprietary data contained in the
12 proposal documents are confidential.

13 Sec. 36.30.240. DISCUSSION WITH RESPONSIBLE OFFERORS AND REVI-
14 SIONS TO PROPOSALS. As provided in the request for proposals, and
15 under regulations adopted by the commissioner, discussions may be
16 conducted with responsible offerors who submit proposals determined to
17 be reasonably susceptible of being selected for award for the purpose
18 of clarification to assure full understanding of, and responsiveness
19 to, the solicitation requirements. Offerors reasonably susceptible of
20 being selected for award shall be accorded fair and equal treatment
21 with respect to any opportunity for discussion and revision of pro-
22 posals, and revisions may be permitted after submissions and before
23 the award of the contract for the purpose of obtaining best and final
24 offers. In conducting discussions, the procurement officer may not
25 disclose information derived from proposals submitted by competing
26 offerors. AS 44.62.310 does not apply to meetings with offerors under
27 this section.

28 Sec. 36.30.250. AWARD OF CONTRACT. (a) The procurement officer
29 shall award a contract under competitive sealed proposals to the

1 responsible and responsive offeror whose proposal is determined in
2 writing to be the most advantageous to the state taking into consid-
3 eration price and the evaluation factors set out in the request for
4 proposals. Other factors and criteria may not be used in the evalu-
5 ation. The contract file must contain the basis on which the award is
6 made.

7 (b) In determining whether a proposal is advantageous to the
8 state, the procurement officer shall take into account, in accordance
9 with regulations of the commissioner, whether the offeror qualifies as
10 an Alaskan bidder under AS 36.30.170(b) or is offering the services of
11 an employment program as defined in AS 36.30.100(c).

12 Sec. 36.30.260. CONTRACT EXECUTION. A contract awarded under
13 competitive sealed proposals must contain

14 (1) the amount of the contract stated on its first page;

15 (2) the date for the supplies to be delivered or the dates
16 for construction, services, or professional services to begin and be
17 completed;

18 (3) a description of the supplies, construction, services,
19 or professional services to be provided; and

20 (4) certification by the project director for the contract-
21 ing agency, the head of the contracting agency, or a designee that
22 sufficient funds are available in an appropriation to be encumbered
23 for the amount of the contract.

24 Sec. 36.30.270. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING
25 CONTRACTS. (a) Notwithstanding conflicting provisions of AS 36.30.-
26 100 - 36.30.260, a procurement officer shall negotiate a contract for
27 an agency with the most qualified and suitable firm or person of
28 demonstrated competence for architectural, engineering, or land
29 surveying services. The procurement officer shall award a contract

1 for those services at fair and reasonable compensation as determined
2 by the procurement officer, after consideration of the estimated value
3 of the services to be rendered, and the scope, complexity, and
4 professional nature of the services. When determining the most
5 qualified and suitable firm or person, the procurement officer shall
6 consider the

7 (1) proximity to the project site of the office of the firm
8 or person unless federal law prohibits this factor from being
9 considered in the awarding of the contract; and

10 (2) employment practices of the firm or person with regard
11 to women and minorities.

12 (b) If negotiations with the most qualified and suitable firm or
13 person under (a) of this section are not successful, the procurement
14 officer shall negotiate a contract with other qualified firms or
15 persons of demonstrated competence, in order of public ranking. The
16 procurement officer may reject all or part of a proposal.

17 (c) This section does not apply to contracts awarded in a
18 situation of public necessity if the procurement officer certifies in
19 writing that a situation of public necessity exists.

20 (d) Notwithstanding the other provisions of this section, a
21 procurement officer may include price as an added factor in selecting
22 architectural, engineering, and land surveying services when, in the
23 judgment of the procurement officer, the services required are repeti-
24 tious in nature, and the scope, nature, and amount of services re-
25 quired are thoroughly defined by measurable and objective standards to
26 reasonably enable firms or persons making proposals to compete with a
27 clear understanding and interpretation of the services required. In
28 order to include price as a factor in selection, a majority of the
29 persons involved by the procurement officer in evaluation of the

1 proposals must be registered in the state to perform architectural,
2 engineering, or land surveying services.

3 (e) This section does not apply to a contract that incorporates
4 both design services and construction.

5 ARTICLE 4. OTHER PROCUREMENT METHODS.

6 Sec. 36.30.300. SOLE SOURCE PROCUREMENTS. (a) A contract may
7 be awarded for supplies, services, professional services, or construc-
8 tion without competitive sealed bidding, competitive sealed proposals,
9 or other competition in accordance with regulations adopted by the
10 commissioner of administration. A contract may be awarded under this
11 section only when the chief procurement officer or, for construction
12 contracts or procurements for the state equipment fleet, the commis-
13 sioner of transportation and public facilities determines in writing
14 that there is only one source for the required procurement or con-
15 struction. A sole source procurement may not be awarded if a rea-
16 sonable alternative source exists. The written determination must
17 include findings of fact that support by clear and convincing evidence
18 the determination that only one source exists. The authority to make
19 the determination required by this subsection may not be delegated.

20 (b) The using agency shall submit written evidence to support a
21 sole source determination. The commissioner of administration or the
22 commissioner of transportation and public facilities, as appropriate,
23 may also require the submission of cost or pricing data in connection
24 with an award under this section.

25 (c) The procurement officer shall negotiate with the single
26 supplier, to the extent practicable, to obtain a contract advantageous
27 to the state.

28 (d) Procurement requirements may not be artificially divided,
29 fragmented, aggregated or structured so as to constitute a purchase

1 under this section or to circumvent the source selection procedures
2 required by AS 36.30.100 - 36.30.270.

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

16 Sec. 36.30.320. SMALL PROCUREMENTS. (a) A procurement for
17 supplies, services, or construction that does not exceed an aggregate
18 dollar amount of \$5,000 may be made in accordance with regulations
19 adopted by the commissioner for small procurements.

20 (b) A contract for professional services that does not exceed
21 \$25,000 may be made under regulations adopted by the commissioner for
22 small procurements, except that an agency may not contract for the
23 services of legal counsel without the approval of the attorney
24 general.

25 (c) Small procurements need not be made through competitive
26 sealed bidding or competitive sealed proposals but shall be made with
27 competition that is practicable under the circumstances.

28 (d) Procurement requirements may not be artificially divided or
29 fragmented so as to constitute a purchase under this section or to

1 circumvent the source selection procedures required by AS 36.30.100 -
2 36.30.270.

3 (e) The procurement officer shall give adequate public notice of
4 intent to make a procurement under this section in accordance with
5 regulations adopted by the commissioner. Notices shall also be pro-
6 vided to those Alaska bidders designated by the commissioner under
7 AS 36.30.050(d).

8 ARTICLE 5. CONTRACT FORMATION AND MODIFICATION.

9 Sec. 36.30.340. REVIEW AND APPROVAL BY THE ATTORNEY GENERAL.

10 If a contract contains a term that is in conflict with a state
11 standard form contract term or if a standard term is deleted or
12 modified by a term that is not standard, the contract must be reviewed
13 by the Attorney General and approved as to form.

14 Sec. 36.30.350. BID CANCELLATION, REJECTION. An invitation to
15 bid, a request for proposals, or other solicitation may be cancelled
16 or any or all bids or proposals may be rejected in whole or in part or
17 the date for opening bids or proposals may be delayed when it is in
18 the best interests of the state in accordance with regulations adopted
19 by the commissioner. The reasons for cancellation, rejection, or
20 delay in opening bids or proposals shall be made part of the contract
21 file.

22 Sec. 36.30.360. DETERMINATION OF RESPONSIBILITY. (a) A written
23 determination of responsibility of a bidder or offeror shall be made
24 by the procurement officer in accordance with regulations adopted by
25 the commissioner. The unreasonable failure of a bidder or offeror to
26 promptly supply information in connection with an inquiry with respect
27 to responsibility is grounds for a determination of nonresponsibility
28 with respect to the bidder or offeror.

29 (b) Information furnished by a bidder or offeror under (a) of

1 this section is confidential and may not be disclosed without prior
2 written consent by the bidder or offeror.

3 Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESI-
4 DENT. If the procurement officer awards a contract to a person who
5 does not reside or maintain a place of business in the state and if
6 the supplies, services, professional services, or construction that is
7 the subject of the contract could have been obtained from sources in
8 the state, the procurement officer shall issue a written statement
9 explaining the basis of the award. The statement required under this
10 section shall be kept in the contract file.

11 Sec. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT. At least
12 10 days before the formal award of a contract under this chapter the
13 procurement officer shall provide to each bidder or offeror notice of
14 intent to award a contract. The notice shall conform to regulations
15 adopted by the commissioner.

16 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of
17 this section, any type of contract that will promote the best inter-
18 ests of the state may be used, except that the use of a cost-plus-
19 a-percentage-of-cost contract is prohibited. A cost-reimbursement
20 contract may be used only when a determination is made in writing by
21 the procurement officer that a cost-reimbursement contract is likely
22 to be less costly to the state than any other type or that it is
23 impracticable to obtain the supplies, services, professional services,
24 or construction required except under a cost-reimbursement contract.

25 Sec. 36.30.380. APPROVAL OF ACCOUNTING SYSTEM. Except for a
26 contract awarded through competitive sealed bidding or a firm fixed-
27 price contract, a contract type may not be used unless it has been
28 determined in writing by the procurement officer that the proposed
29 contractor's accounting system

1 (1) will permit timely development of all necessary cost
2 data in the form required by the specific contract type contemplated;
3 and

4 (2) is adequate to allocate costs in accordance with gen-
5 erally accepted accounting principles.

6 Sec. 36.30.390. MULTI-TERM CONTRACTS. (a) Unless otherwise
7 provided by law, a contract for supplies, services, or professional
8 services may be entered into for any period of time considered to be
9 in the best interests of the state provided the term of the contract
10 and conditions of renewal or extension, if any, are included in the
11 solicitation and funds are available for the first fiscal period at
12 the time of contracting. Payment and performance obligations for
13 succeeding fiscal periods shall be subject to the availability and
14 appropriation of funds for them.

15 (b) Before using a multi-term contract, the procurement officer
16 shall determine in writing that

17 (1) estimated requirements cover the period of the contract
18 and are reasonably firm and continuing; and

19 (2) the contract will serve the best interests of the state
20 by encouraging effective competition or otherwise promoting economies
21 in state procurement.

22 (c) When funds are not appropriated or otherwise made available
23 to support continuation of performance in a subsequent fiscal period,
24 the contract shall be cancelled. The contractor may only be reim-
25 bursed for the reasonable value of any nonrecurring costs incurred but
26 not amortized in the price of the supplies, services, or professional
27 services delivered under the contract that are not otherwise recover-
28 able. The cost of cancellation may be paid from any appropriations
29 available for these purposes.

1 Sec. 36.30.400. COST OR PRICING DATA. (a) Before an award of a
2 contract or a change order or contract modification, the contractor or
3 prospective contractor shall submit cost and pricing data. The con-
4 tractor or prospective contractor shall certify that, to the best of
5 the contractor's or prospective contractor's knowledge and belief, the
6 data submitted is accurate, complete, and current as of a mutually
7 determined specified date and will continue to be accurate and com-
8 plete during the performance of the contract.

9 (b) When a contractor becomes aware of a situation that may form
10 the basis of a claim for compensation that exceeds the amount desig-
11 nated as the base amount of the contract and before performing addi-
12 tional work or supplying additional materials, the contractor shall
13 submit cost and pricing data on the additional work or materials. The
14 contractor shall certify that, to the best of the contractor's knowl-
15 edge and belief, the data submitted is accurate, complete, and current
16 and is the actual cost to the contractor of performing the additional
17 work or supplying the additional materials.

18 (c) A contract, change order, or contract modification under
19 which a certificate is required under (a) or (b) of this section must
20 contain a provision that the price to the state, including the con-
21 tractor's profit or fee, will be adjusted to exclude any significant
22 sums by which the state finds that the price is increased because the
23 cost or pricing data furnished by the contractor or prospective con-
24 tractor is inaccurate, incomplete, or not current as of the date
25 agreed upon by the parties.

26 (d) The requirements of (a) of this section do not apply when
27 (1) the contract price is based on adequate price competi-
28 tion;

29 (2) the contract price is set by law or regulation; or

1 (3) it is determined by the procurement officer in writing
2 and in accordance with regulations adopted by the commissioner that
3 the requirements of (a) of this section may be waived, and the reasons
4 for waiver are stated.

5 Sec. 36.30.410. RIGHT TO INSPECT PLANT. The state may, at
6 reasonable times, inspect the part of the plant or place of business
7 of a contractor or subcontractor that is related to the performance of
8 a contract awarded or to be awarded by an agency.

9 Sec. 36.30.420. RIGHT TO AUDIT RECORDS. (a) The state may, at
10 reasonable times and places, audit the books and records of a person
11 who has submitted cost or pricing data under AS 36.30.400 to the extent
12 that the books and records relate to the cost or pricing data. A person
13 who receives a contract, change order, or contract modification for
14 which cost or pricing data is required, shall maintain books and
15 records that relate to the cost or pricing data for three years
16 after the date of final payment under the contract, unless a shorter
17 period is authorized in writing by the commissioner.

18 (b) The state may audit the books and records of a contractor or
19 subcontractor to the extent that the books and records relate to the
20 performance of the contract or subcontract. Books and records shall
21 be maintained by the contractor for a period of three years after the
22 date of final payment under the prime contract and by the subcontractor
23 for a period of three years after the date of final payment under
24 the subcontract, unless a shorter period is authorized in writing by
25 the commissioner.

26 Sec. 36.30.430. STANDARD MODIFICATION CLAUSES FOR CONTRACTS.
27 (a) The commissioner shall adopt regulations permitting the inclusion
28 of clauses providing for adjustments in prices, time of performance,
29 or other contract provisions as appropriate.

1 (b) The commissioner shall adopt regulations permitting or
2 requiring the inclusion in state contracts of clauses providing for
3 appropriate remedies and covering the following subjects:

- 4 (1) liquidated damages;
5 (2) specified excuses for delay or nonperformance;
6 (3) termination of the contract for default; and
7 (4) termination of the contract in whole or in part for the
8 convenience of the state.

9 Sec. 36.30.460. MODIFICATION OF STANDARD CLAUSES. The procure-
10 ment officer or the head of a contracting agency may vary the clauses
11 adopted under AS 36.30.430 for inclusion in a particular state con-
12 tract if the

13 (1) variations are supported by a written determination
14 that states the circumstances justifying the variation; and

15 (2) approval required by AS 36.30.340 is obtained.

16 Sec. 36.30.470. FISCAL RESPONSIBILITY. A contract modification,
17 change order, or contract price adjustment under a construction con-
18 tract in excess of an amount established by regulation of the commis-
19 sioner is subject to prior written certification by the fiscal officer
20 of the agency responsible for funding the project or the contract, or
21 other official responsible for monitoring and reporting upon the
22 status of the costs of the total project budget or contract budget, as
23 to the effect of the contract modification, change order, or adjust-
24 ment in contract price on the total project budget or the total con-
25 tract budget. If the certification of the fiscal officer or other
26 responsible official discloses a resulting increase in the total
27 project budget or the total contract budget, the procurement officer
28 may not approve the contract modification, change order, or adjustment
29 in contract price unless sufficient funds are available, or the scope

1 of the project or contract is adjusted to permit the degree of com-
2 pletion that is feasible within the total project budget or total
3 contract budget as it existed before the contract modification, change
4 order, or adjustment in contract price under consideration. A con-
5 tract modification change order, or adjustment in contract that is
6 signed by both parties and has been reasonably relied on by a contrac-
7 tor, is presumed to be valid even if the provisions of this section
8 have not been met.

9 Sec. 36.30.480. COST PRINCIPLE REGULATIONS. The commissioner
10 shall adopt regulations setting out cost principles that shall be used
11 to determine the allowability of incurred costs for the purpose of
12 reimbursing costs under contract provisions that provide for the
13 reimbursement of costs. If a written determination is approved at a
14 level above the procurement officer, the cost principles may be modi-
15 fied by contract.

16 ARTICLE 6. PROCUREMENT RECORDS AND REPORTS.

17 Sec. 36.30.500. RETENTION OF PROCUREMENT RECORDS. Procurement
18 records shall be retained and disposed of in accordance with records
19 retention guidelines and schedules approved by the state archivist.
20 Retained documents shall be made available to the attorney general or
21 a designee upon request and proper receipt.

22 Sec. 36.30.510. RECORDS OF CONTRACTS AWARDED UNDER COMPETITIVE
23 SEALED PROPOSALS. A contract file open for public inspection shall be
24 kept by the commissioner and the contracting agency for each contract
25 awarded under competitive sealed proposals. The file kept by the
26 commissioner shall contain a summary of the information in the file of
27 the contracting agency. The file kept by the contracting agency must
28 contain

29 (1) a copy of the contract;

1 (2) the register of proposals prepared under AS 36.30.230
2 and a copy of each proposal submitted; and

3 (3) the written determination to award the contract pre-
4 pared under AS 36.30.250.

5 Sec. 36.30.520. RECORDS OF SOLE SOURCE AND EMERGENCY PROCURE-
6 MENTS. (a) The commissioner shall maintain for a minimum of five
7 years a record listing all sole source procurement contracts made
8 under AS 36.30.300 and emergency procurements made under AS 36.30.310.
9 The record must contain

10 (1) each contractor's name;

11 (2) the amount and type of each contract; and

12 (3) a listing of the supplies, services, professional
13 services, or construction procured under each contract.

14 (b) The Department of Transportation and Public Facilities and
15 any agency to whom the commissioner of administration or the commis-
16 sioner of transportation and public facilities has delegated procure-
17 ment authority under AS 36.30.015 shall, by October 1 of each year,
18 submit to the commissioner of administration records of the type
19 specified in (a) of this section. The commissioner of administration
20 shall maintain these records as required by (a) of this section.

21 Sec. 36.30.530. PUBLIC ACCESS TO PROCUREMENT INFORMATION.
22 Procurement information is public except as otherwise provided by law.

23 Sec. 36.30.540. REPORT TO LEGISLATURE. Beginning with Decem-
24 ber 1, 1989, the commissioner shall biennially report to the legisla-
25 ture concerning procurements by agencies. The report must include

26 (1) the records maintained by the commissioner under
27 AS 36.30.510 and the records maintained under AS 36.30.520(a) for the
28 previous two fiscal years;

29 (2) recommendations for changes in this chapter or other

1 laws based on implementation of this chapter in the previous two
2 fiscal years;

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

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

11 (5) a list of procurements made under this chapter from
12 state sources during the previous two fiscal years together with the
13 total number of procurement contracts entered into during that period
14 with state contractors and the total value of these contracts; this
15 paragraph does not apply to procurements made under AS 36.30.320.

16 ARTICLE 7. LEGAL AND CONTRACTUAL REMEDIES.

17 Sec. 36.30.560. FILING OF A PROTEST. An interested party may
18 protest the award of a contract, the proposed award of a contract, or
19 a solicitation for supplies, services, professional services, or
20 construction by an agency. The protest shall be filed with the pro-
21 curement officer of the contracting agency in writing and include the
22 following information:

23 (1) the name, address, and telephone number of the pro-
24 tester;

25 (2) the signature of the protester or the protester's
26 representative;

27 (3) identification of the contracting agency and the solici-
28 tation or contract at issue;

29 (4) a detailed statement of the legal and factual grounds

1 of the protest, including copies of relevant documents; and

2 (5) the form of relief requested.

3 Sec. 36.30.565. TIME FOR FILING A PROTEST. (a) A protest based
4 upon alleged improprieties in a solicitation involving competitive
5 sealed bidding that are apparent before the bid opening shall be filed
6 before the bid opening. A protest based on alleged improprieties in a
7 solicitation involving competitive sealed proposals that are apparent

8 (1) before the due date for receipt of initial proposals
9 shall be filed before that due date;

10 (2) after the due date for receipt of initial proposals
11 shall be filed before the next due date for receipt of adjusted pro-
12 posals that occurs after the improprieties are apparent.

13 (b) In situations not covered under (a) of this section, pro-
14 tests shall be filed within 10 days after a notice of intent to award
15 the contract is issued by the procurement officer.

16 (c) If the protester shows good cause, the procurement officer
17 of the contracting agency may consider a filed protest that is not
18 timely.

19 Sec. 36.30.570. NOTICE OF A PROTEST. The procurement officer
20 shall immediately give notice of a protest filed under AS 36.30.565 to
21 the contractor if a contract has been awarded or, if no award has been
22 made, to all interested parties.

23 Sec. 36.30.575. STAY OF AWARD. If a protest is filed the award
24 may be made unless the procurement officer of the contracting agency
25 determines in writing that a

26 (1) reasonable probability exists that the protest will be
27 sustained; or

28 (2) stay of the award is not contrary to the best interests
29 of the state.

1 Sec. 36.30.580. DECISION BY THE PROCUREMENT OFFICER. (a) The
2 procurement officer of the contracting agency shall issue a written
3 decision containing the basis of the decision within 14 days after a
4 protest has been filed. A copy of the decision shall be furnished to
5 the protester by certified mail or other method that provides evidence
6 of receipt.

7 (b) The time for a decision may be extended up to 26 days for
8 good cause by the commissioner of administration, or for protests
9 involving construction or procurements for the state equipment fleet,
10 the commissioner of transportation and public facilities. If an
11 extension is granted, the procurement officer shall notify the pro-
12 tester in writing of the date the decision is due.

13 (c) If a decision is not made by the date it is due, the pro-
14 tester may proceed as if the procurement officer had issued a decision
15 adverse to the protester.

16 Sec. 36.30.585. PROTEST REMEDIES. (a) If the procurement
17 officer sustains a protest in whole or in part, the procurement offi-
18 cer shall implement an appropriate remedy.

19 (b) In determining an appropriate remedy, the procurement offi-
20 cer shall consider the circumstances surrounding the solicitation or
21 procurement including the seriousness of the procurement deficiencies,
22 the degree of prejudice to other interested parties or to the integri-
23 ty of the procurement system, the good faith of the parties, the
24 extent the procurement has been accomplished, costs to the agency and
25 other impacts on the agency of a proposed remedy, and the urgency of
26 the procurement to the welfare of the state.

27 Sec. 36.30.590. APPEAL ON A PROTEST. (a) An appeal from a
28 decision of a procurement officer on a protest may be filed by the
29 protester with the commissioner of administration, or for protests

1 involving construction or procurements for the state equipment fleet,
2 the commissioner of transportation and public facilities. An appeal
3 shall be filed within five days after the decision is received by the
4 protester. The protester shall file a copy of the appeal with the
5 procurement officer.

6 (b) An appeal must contain the information required under
7 AS 36.30.560. In addition, the appeal must include

8 (1) a copy of the decision being appealed; and

9 (2) identification of the factual or legal errors in the
10 decision that form the basis for the appeal.

11 Sec. 36.30.595. NOTICE OF A PROTEST APPEAL. (a) The procure-
12 ment officer shall immediately give notice of an appeal filed under
13 AS 36.30.590 to the contractor if a contract has been awarded or, if
14 no award has been made, to all interested parties.

15 (b) The commissioner of administration or the commissioner of
16 transportation and public facilities, as appropriate, shall, on re-
17 quest, furnish a copy of the appeal to a person notified under (a) of
18 this section, except that confidential material shall be deleted from
19 the copy.

20 Sec. 36.30.600. STAY OF AWARD DURING PROTEST APPEAL. If a
21 protest appeal is filed before a contract is awarded and the award was
22 stayed under AS 36.30.575, the filing of the appeal automatically
23 continues the stay until the commissioner of administration or the
24 commissioner of transportation and public facilities, as appropriate,
25 makes a written determination that the award of the contract without
26 further delay is necessary to protect substantial interests of the
27 state.

28 Sec. 36.30.605. PROTEST REPORT. (a) The procurement officer of
29 the contracting agency shall file a complete report on the protest and

1 decision with the commissioner of administration or the commissioner
2 of transportation and public facilities, as appropriate, within seven
3 days after a protest appeal is filed. The procurement officer shall
4 furnish a copy of the report to the protester and to interested par-
5 ties that have requested a copy of the appeal under AS 36.30.595(b).

6 (b) The procurement officer may request an extension of time to
7 prepare the protest report. The request must be in writing listing
8 the reasons for the request. The commissioner of administration or
9 the commissioner of transportation and public facilities, as appropri-
10 ate, shall respond to the request in writing. If an extension is
11 granted, the commissioner shall list the reasons for granting the
12 extension and indicate the date the protest report is due. The com-
13 missioner shall notify the protester in writing that the time for
14 submission of the report has been extended and the date the report is
15 due.

16 (c) The protester may file comments on the protest report with
17 the commissioner of administration or the commissioner of transporta-
18 tion and public facilities, as appropriate, within seven days after
19 the report is received. The protester shall provide copies of the
20 comments to the procurement officer and to interested parties that
21 have requested a copy of the appeal under AS 36.30.595(b).

22 (d) The protester may request an extension of time to prepare
23 the comments on the protest report. The request must be in writing
24 listing the reasons for the request. The commissioner of administra-
25 tion or the commissioner of transportation and public facilities, as
26 appropriate, shall respond to the request in writing. If an extension
27 is granted, the commissioner shall list the reasons for granting the
28 extension and indicate the date the comments are due. The commission-
29 er shall notify the procurement officer in writing that the time for

1 submission of the comments has been extended and the date the comments
2 are due.

3 Sec. 36.30.610. DECISION WITHOUT HEARING. (a) The commissioner
4 of administration or the commissioner of transportation and public
5 facilities, as appropriate, shall dismiss a protest appeal before a
6 hearing is held if it is determined in writing that the appeal is
7 untimely under AS 36.30.590(a).

8 (b) The commissioner of administration or the commissioner of
9 transportation and public facilities, as appropriate, may issue a
10 decision on an appeal without a hearing if the appeal involves ques-
11 tions of law without genuine issues of fact.

12 Sec. 36.30.615. HEARING ON PROTEST APPEAL. A hearing on a
13 protest appeal shall be conducted in accordance with AS 36.30.670 and
14 regulations adopted by the commissioner.

15 Sec. 36.30.620. CONTRACT CONTROVERSIES. (a) A contractor shall
16 file a claim concerning a contract awarded under this chapter with the
17 procurement officer. The contractor shall certify that the claim is
18 made in good faith, that the supporting data are accurate and complete
19 to the best of the contractor's knowledge and belief, and that the
20 amount requested accurately reflects the contract adjustment for which
21 the contractor believes the state is liable.

22 (b) If a controversy asserted by a contractor concerning a
23 contract awarded under this chapter cannot be resolved by agreement,
24 the procurement officer shall, after receiving a written request by
25 the contractor for a decision, issue a written decision. The decision
26 shall be made no more than 90 days after receipt by the procurement
27 officer of all necessary information from the contractor. Failure of
28 the contractor to furnish necessary information to the procurement
29 officer constitutes a waiver of the claim. Before issuing the

1 decision the procurement officer shall review ~~the~~ facts relating to
2 the controversy and obtain necessary assistance from legal, fiscal,
3 and other advisors.

4 (c) The time for issuing a decision under (b) of this section
5 may be extended for good cause by the commissioner of administration,
6 or for a controversy involving a construction contract or procurement
7 for the state equipment fleet, the commissioner of transportation and
8 public facilities, if the controversy concerns an amount in excess of
9 \$50,000. The procurement officer shall notify the contractor in
10 writing that the time for the issuance of a decision has been extended
11 and of the date by which a decision shall be issued.

12 (d) The procurement officer shall furnish a copy of the decision
13 to the contractor by certified mail or other method that provides
14 evidence of receipt. The decision shall include a

- 15 (1) description of the controversy;
- 16 (2) reference to the pertinent contract provisions;
- 17 (3) statement of the agreed upon and disputed facts;
- 18 (4) statement of reasons supporting the decision; and
- 19 (5) statement substantially as follows:

20 "This is the final decision of the procurement officer.

21 This decision may be appealed to the commissioner of
22 (administration/transportation and public facilities).

23 If you appeal, you must file a written notice of appeal
24 with the commissioner within 14 days after you receive
25 this decision."

26 (e) If a decision is not made by the date is due, the con-
27 tractor may proceed as if the procurement officer had issued a deci-
28 sion adverse to the contractor.

29 (f) If a controversy asserted by the state concerning a contract

1 awarded under this chapter cannot be resolved by agreement the matter
2 shall be immediately referred to the commissioner of administration or
3 the commissioner of transportation and public facilities, as appro-
4 priate.

5 Sec. 36.30.625. APPEAL ON A CONTRACT CONTROVERSY. (a) An
6 appeal from a decision of the procurement officer on a contract con-
7 troversy may be filed by the contractor with the commissioner of
8 administration, or for a controversy involving a construction contract
9 or procurement for the state equipment fleet, the commissioner of
10 transportation and public facilities. The appeal shall be filed
11 within 14 days after the decision is received by the contractor. The
12 contractor shall file a copy of the appeal with the procurement offi-
13 cer.

14 (b) An appeal shall contain a copy of the decision being ap-
15 pealed and identification of the factual or legal errors in the deci-
16 sion that form the basis for the appeal.

17 Sec. 36.30.630. HEARING ON A CONTRACT CONTROVERSY. (a) Except
18 as provided in (b) of this section, a hearing shall be conducted
19 according to AS 36.30.670 and regulations adopted by the commissioner
20 of administration on a contract controversy appealed to the commis-
21 sioner of administration or the commissioner of transportation and
22 public facilities or referred to either commissioner under AS 36.30.-
23 620(f).

24 (b) Within 15 days after receipt of an appeal on a contract
25 controversy the commissioner of administration or the commissioner of
26 transportation and public facilities, as appropriate, may adopt the
27 decision of the procurement officer as the final decision without a
28 hearing.

29 Sec. 36.30.632. DELEGATION. The commissioner of administration

1 and the commissioner of transportation and public facilities may
2 delegate responsibilities under AS 36.30.590 and 36.30.630 to the head
3 of the contracting agency.

4 Sec. 36.30.635. AUTHORITY TO DEBAR OR SUSPEND. (a) After
5 consultation with the using agency and the attorney general and after
6 a hearing conducted according to AS 36.30.670 and regulations adopted
7 by the commissioner of administration, the commissioner of administra-
8 tion or the commissioner of transportation and public facilities may
9 debar a person for cause from consideration for award of contracts.
10 Notice of a debarment hearing shall be provided in writing at least
11 seven days before the hearing. The debarment may not be for a period
12 of more than three years.

13 (b) The commissioner of administration or the commissioner of
14 transportation and public facilities, after consultation with the
15 using agency and the attorney general, may suspend a person from
16 consideration for award of contracts if there is probable cause for
17 debarment and compelling reasons require suspension to protect state
18 interests. The suspension may not be for a period exceeding three
19 months.

20 (c) The authority to debar or suspend shall be exercised in
21 accordance with regulations adopted by the commissioner of adminis-
22 tration.

23 Sec. 36.30.640. CAUSES FOR DEBARMENT OR SUSPENSION. The causes
24 for debarment or suspension include the following:

25 (1) conviction for commission of a criminal offense as an
26 incident to obtaining or attempting to obtain a public or private
27 contract or subcontract, or in the performance of the contract or
28 subcontract;

29 (2) conviction under state or federal statutes of

1 embezzlement, theft, forgery, bribery, falsification or destruction of
2 records, receiving stolen property, or other offense indicating a lack
3 of business integrity or business honesty that currently and seriously
4 affects responsibility as a state contractor;

5 (3) conviction or civil judgment finding a violation under
6 state or federal antitrust statutes;

7 (4) violation of contract provisions of a character that is
8 regarded by the commissioner to be so serious as to justify debarment
9 action, such as

10 (A) knowing failure without good cause to perform in
11 accordance with the specifications or within the time limit
12 provided in the contract; or

13 (B) failure to perform or unsatisfactory performance
14 in accordance with the terms of one or more contracts, except
15 that failure to perform or unsatisfactory performance caused by
16 acts beyond the control of the contractor may not be considered
17 to be a basis for debarment;

18 (5) for violation of the ethical standards set out in law
19 or regulation;

20 (6) for a violation of this chapter punishable under
21 AS 36.30.930(2); and

22 (7) any other cause listed in regulations of the commis-
23 sioner determined to be so serious and compelling as to affect respon-
24 sibility as a state contractor, including debarment by another govern-
25 mental entity for a cause listed in the regulations.

26 Sec. 36.30.645. WRITTEN DETERMINATIONS. (a) The commissioner
27 of administration or the commissioner of transportation and public
28 facilities shall issue a written decision to debar or suspend. The
29 decision must

- 1 (1) state the reasons for the action taken; and
2 (2) inform the debarred person of rights to judicial appeal
3 or inform the suspended person of rights to administrative and judi-
4 cial appeal.

5 (b) A copy of the decision under (a) of this section shall be
6 mailed or otherwise furnished immediately to the debarred or suspended
7 person and any other intervening party.

8 Sec. 36.30.650. HEARING ON A SUSPENSION. (a) A person suspend-
9 ed under AS 36.30.635 is entitled to a hearing conducted according to
10 AS 36.30.670 and regulations adopted by the commissioner of adminis-
11 tration if the person files a written request for a hearing with the
12 commissioner of administration or the commissioner of transportation
13 and public facilities, as appropriate, within seven days after receipt
14 of the notice of suspension under AS 36.30.645.

15 (b) If a suspended person requests a hearing the commissioner of
16 administration or the commissioner of transportation and public facil-
17 ities, as appropriate, shall schedule a prompt hearing unless the
18 attorney general determines that a hearing at the proposed time is
19 likely to jeopardize an investigation. A hearing may not be delayed
20 longer than six months after notice of the suspension is provided
21 under AS 36.30.645.

22 Sec. 36.30.655. LIST OF PERSONS DEBARRED OR SUSPENDED. The
23 commissioner shall maintain a list of all persons debarred or suspend-
24 ed from consideration for award of contracts.

25 Sec. 36.30.660. REINSTATEMENT. (a) The commissioner of admin-
26 istration or the commissioner of transportation and public facilities
27 may at any time after a final decision to debar a person from consid-
28 eration for award of contracts reinstate the person after determining
29 that the cause for which the person was debarred no longer exists or

1 has been substantially mitigated.

2 (b) A debarred person may request reinstatement by submitting a
3 petition to the commissioner of administration or the commissioner of
4 transportation and public facilities supported by evidence showing
5 that the cause for debarment no longer exists or has been substantial-
6 ly mitigated.

7 (c) The commissioner of administration or the commissioner of
8 transportation and public facilities may require a hearing on a rein-
9 statement petition. A decision on reinstatement shall be made in
10 writing within seven days after a reinstatement petition is submitted.
11 The decision shall specify the factors on which it is based. A deci-
12 sion under this section is not subject to judicial appeal.

13 Sec. 36.30.665. LIMITED PARTICIPATION. The commissioner of
14 administration or the commissioner of transportation and public facil-
15 ities may permit a debarred person to participate in a contract on a
16 limited basis during the debarment period if the commissioner deter-
17 mines in writing that the participation is advantageous to the state.
18 The determination shall specify the factors on which it is based and
19 the limits imposed on the debarred person.

20 Sec. 36.30.670. HEARING PROCEDURES. (a) The commissioner of
21 administration or the commissioner of transportation and public facil-
22 ities shall act as a hearing officer or appoint a hearing officer for
23 a hearing conducted under this chapter. The hearing officer shall
24 arrange for a prompt hearing and notify the parties in writing of the
25 time and place of the hearing. The hearing shall be conducted in an
26 informal manner. The provisions of AS 44.62 (Administrative Procedure
27 Act) do not apply to a hearing conducted under this chapter.

28 (b) The hearing officer may

29 (1) hold prehearing conferences to settle, simplify, or

1 identify the issues in a proceeding, or to consider other matters that
2 may aid in the expeditious disposition of the proceeding;

3 (2) require parties to state their positions concerning the
4 various issues in the proceeding;

5 (3) require parties to produce for examination those rele-
6 vant witnesses and documents under their control;

7 (4) rule on motions and other procedural matters;

8 (5) regulate the course of the hearing and conduct of the
9 participants;

10 (6) establish time limits for submission of motions or
11 memoranda;

12 (7) impose appropriate sanctions against a person who fails
13 to obey an order of the hearing officer, including:

14 (A) prohibiting the person from asserting or opposing
15 designated claims or defenses or introducing designated matters
16 into evidence;

17 (B) excluding all testimony of an unresponsive or
18 evasive witness; and

19 (C) excluding a person from further participation in
20 the hearing;

21 (8) take official notice of a material fact not appearing
22 in evidence, if the fact is among the traditional matters subject to
23 judicial notice;

24 (9) administer oaths or affirmations.

25 (c) A transcribed record of the hearing shall be made available
26 at cost to a party that requests it.

27 Sec. 36.30.675. RECOMMENDATION BY THE HEARING OFFICER. (a) If
28 the commissioner of administration or the commissioner of transporta-
29 tion and public facilities is not acting as hearing officer, the

1 hearing officer shall recommend a decision to the commissioner based
2 on the evidence presented. The recommendation shall include findings
3 of fact and conclusions of law.

4 (b) The commissioner of administration or the commissioner of
5 transportation and public facilities may affirm, modify, or reject the
6 hearing officer's recommendation in whole or in part, may remand the
7 matter to the hearing officer with instructions, or take other appro-
8 priate action.

9 Sec. 36.30.680. FINAL DECISION BY THE COMMISSIONER. A decision
10 by the commissioner of administration or the commissioner of transpor-
11 tation and public facilities after a hearing under this chapter is
12 final. A decision shall be sent within 20 days after the hearing to
13 all parties by personal service or certified mail, except that a
14 decision by the commissioner of transportation and public facilities
15 involving procurement of construction shall be sent within 90 days
16 after the hearing to all parties by personal service or certified
17 mail.

18 Sec. 36.30.685. JUDICIAL APPEAL. (a) A final decision of the
19 commissioner of administration or the commissioner of transportation
20 and public facilities under AS 36.30.610, 36.30.635(a), 36.30.650, or
21 36.30.680 may be appealed to the superior court in accordance with the
22 Alaska Rules of Appellate Procedure.

23 (b) A final decision of the commissioner of administration or
24 the commissioner of transportation and public facilities under AS 36.-
25 30.630(b) may be appealed to the superior court for a trial de novo.

26 Sec. 36.30.687. MISREPRESENTATIONS AND FRAUDULENT CLAIMS. (a)
27 A person who makes or uses in support of a contract claim under this
28 chapter, a misrepresentation, or who practices or attempts to practice
29 a fraud, at any stage of proceedings relating to a procurement or

1 contract controversy under this chapter:

2 (1) forfeits all claims relating to that procurement or
3 contract; and

4 (2) is liable to the state for reimbursement of all sums
5 paid on the claim, for all costs attributable to review of the claim,
6 and for a civil penalty equal to the amount by which the claim is
7 misrepresented.

8 (b) The procurement officer, commissioner or court shall make
9 specific findings of misrepresentation, attempted fraud or fraud
10 before declaring a forfeiture under (a)(1) of this section.

11 (c) Suits to recover costs and penalties under (a)(2) of this
12 section must be commenced within six years after the discovery of the
13 misrepresentation, fraud, or attempted fraud.

14 (d) A person who in a matter relating to a procurement or a
15 contract controversy or claim under this chapter makes a misrepresen-
16 tation to the state through a trick, scheme, or device is guilty of a
17 class C felony.

18 (e) In this section, "misrepresentation" means a false or mis-
19 leading statement of material fact, or conduct intended to deceive or
20 mislead concerning material fact, whether it succeeds in deceiving or
21 misleading.

22 Sec. 36.30.690. EXCLUSIVE REMEDY. Notwithstanding AS 44.77 or
23 other law to the contrary, AS 36.30.560 - 36.30.699 and regulations
24 adopted under those sections provide the exclusive procedure for
25 asserting a claim against an agency arising in relation to a procure-
26 ment under this chapter.

27 Sec. 36.30.695. OTHER RULES OF PROCEDURE. The commissioner may
28 adopt by regulation additional rules of procedure providing for the
29 expeditious administrative review of all contract claims or

1 controversies, both before the contracting agency and through an
2 appeal heard de novo.

3 Sec. 36.30.699. DEFINITION. In AS 36.30.560 - 36.30.695, "in-
4 terested party" means an actual or prospective bidder or offeror whose
5 economic interest may be affected substantially and directly by the
6 issuance of a contract solicitation, the award of a contract, or the
7 failure to award a contract; whether an actual or prospective bidder
8 or offeror has an economic interest depends on the circumstances.

9 ARTICLE 8. INTERGOVERNMENTAL RELATIONS.

10 Sec. 36.30.700. COOPERATIVE PURCHASING AUTHORIZED. A public
11 procurement unit may either participate in, sponsor, conduct, or
12 administer a cooperative purchasing agreement for the procurement of
13 supplies, services, professional services, or construction with one or
14 more public procurement units or external procurement activities in
15 accordance with an agreement entered into between the participants.
16 Cooperative purchasing may include joint or multi-party contracts
17 between public procurement units and open-ended state public procure-
18 ment unit contracts that are made available to local public procure-
19 ment units.

20 Sec. 36.30.710. SALE, ACQUISITION, OR USE OF SUPPLIES BY A
21 PUBLIC PROCUREMENT UNIT. (a) A public procurement unit may sell to,
22 acquire from, or use any supplies belonging to another public procure-
23 ment unit or external procurement activity independent of the require-
24 ments of AS 36.30.060 and 36.30.100 - 36.30.260.

25 (b) A public procurement unit may enter into an agreement,
26 independent of the requirements of AS 36.30.060 and 36.30.100 - 36.-
27 30.260, with another public procurement unit or external procurement
28 activity for the cooperative use of supplies or services under the
29 terms agreed upon between the parties.

1 Sec. 36.30.720. JOINT USE OF FACILITIES. A public procurement
2 unit may enter into agreements for the common use or lease of ware-
3 housing facilities, capital equipment, and other facilities with
4 another public procurement unit or an external procurement activity
5 under the terms agreed upon between the parties.

6 Sec. 36.30.730. SUPPLY OF PERSONNEL, INFORMATION, AND TECHNICAL
7 SERVICES. (a) A public procurement unit may, upon written request
8 from another public procurement unit or external procurement activity,
9 provide personnel to the requesting public procurement unit or exter-
10 nal procurement activity. The public procurement unit or external
11 procurement activity making the request shall pay the public procure-
12 ment unit providing the personnel the direct and indirect cost of
13 furnishing the personnel, in accordance with an agreement between the
14 parties.

15 (b) The informational, technical, and other services of a public
16 procurement unit may be made available to another public procurement
17 unit or external procurement activity except that the requirements of
18 the public procurement unit tendering the services has precedence over
19 the requesting public procurement unit or external procurement activi-
20 ty. The requesting public procurement unit or external procurement
21 activity shall pay for the expenses of the services so provided, in
22 accordance with an agreement between the parties.

23 (c) Upon request, the commissioner may make available to public
24 procurement units or external procurement activities the following
25 services, among others:

- 26 (1) standard forms;
27 (2) printed manuals;
28 (3) product specifications and standards;
29 (4) quality assurance testing services and methods;

- 1 (5) qualified products lists;
2 (6) source information;
3 (7) common use commodities listings;
4 (8) supplier performance ratings;
5 (9) lists of persons debarred or suspended from considera-
6 tion for award of state contracts;
7 (10) forms for invitations for bids, requests for proposals,
8 instructions to bidders, general contract provisions, and other con-
9 tract forms; and
10 (11) contracts or published summaries of them, including
11 price and time of delivery information.

12 (d) The commissioner may provide the following technical ser-
13 vices, among others:

- 14 (1) development of product specifications;
15 (2) development of quality assurance test methods, includ-
16 ing receiving, inspection, and acceptance procedures;
17 (3) use of product testing and inspection facilities; and
18 (4) use of personnel training programs.

19 (e) The commissioner may enter into contractual arrangements and
20 publish a schedule of fees for the services provided under (c) and (d)
21 of this section.

22 Sec. 36.30.735. RESTRICTION ON CONTRACTING WITH OR EMPLOYING
23 EXPERTS ON RADIATION HAZARDS. (a) Except for the Department of
24 Health and Social Services, the Department of Labor, the Department of
25 Environmental Conservation, and the Department of Military and Veter-
26 ans' Affairs, a state agency may not

27 (1) contract, other than with the Department of Health and
28 Social Services, to have services performed that require expertise in
29 determining or reducing the hazards of radiation; or

1 (2) employ a person whose duties require expertise in
2 determining or reducing the hazards of radiation.

3 (b) In this section, "state agency" means a state department or
4 agency, whether in the legislative, judicial, or executive branch,
5 including such entities as the Alaska State Housing Authority, but not
6 including the University of Alaska, a municipality, or an agency of a
7 municipality or the Alaska State Housing Authority.

8 (c) In this section, "radiation" does not include radiation
9 emitted from a Federal Communications Commission licensed facility
10 emitting radiation of a wave length longer than one centimeter and an
11 average power output not exceeding two kilowatts.

12 Sec. 36.30.740. REVIEW OF PROCUREMENT REQUIREMENTS. To the
13 extent possible, the commissioner may collect information concerning
14 the type, cost, quality, and quantity of commonly used supplies,
15 equipment for the state fleet, services, or construction being pro-
16 cured or used by state public procurement units. The commissioner may
17 also collect this information from local public procurement units.
18 The commissioner may make this information available to a public
19 procurement unit upon request.

20 Sec. 36.30.750. CONTRACT CONTROVERSIES. (a) Under a coopera-
21 tive purchasing agreement, controversies arising between an adminis-
22 tering public procurement unit and its bidders, offerors, or contrac-
23 tors shall be resolved in accordance with AS 36.30.560 - 36.30.699.

24 (b) A local public procurement unit that is not subject to
25 AS 36.30.560 - 36.30.699 may enter into an agreement with another
26 local public procurement unit or external procurement activity to
27 establish procedures or use that unit's or activity's existing proce-
28 dures to resolve controversies with contractors, whether or not the
29 controversy arose under a cooperative purchasing agreement.

1 Sec. 36.30.790. DEFINITIONS. In AS 36.30.700 - 36.30.790

2 (1) "cooperative purchasing" means procurement conducted
3 by, or on behalf of, more than one public procurement unit, or by a
4 public procurement unit with an external procurement activity;

5 (2) "external procurement activity" means a buying orga-
6 nization not located in this state that, if located in this state,
7 would qualify as a public procurement unit; an agency of the United
8 States is an external procurement activity;

9 (3) "local public procurement unit" means a municipality or
10 other subdivision of the state or other entity that expends public
11 funds for the procurement of supplies, services, professional ser-
12 vices, and construction, and any nonprofit corporation operating a
13 charitable hospital;

14 (4) "public procurement unit" means either a local public
15 procurement unit or a state public procurement unit;

16 (5) "state public procurement unit" means the Department of
17 Administration and any other contracting agency of the state.

18 ARTICLE 9. GENERAL PROVISIONS.

19 Sec. 36.30.850. APPLICATION OF THIS CHAPTER. (a) This chapter
20 applies only to contracts solicited or entered into after January 1,
21 1987, unless the parties agree to its application to a contract solic-
22 ited or entered into before that date.

23 (b) This chapter applies to every expenditure of state funds
24 irrespective of their sources, including federal assistance except as
25 otherwise specified in AS 36.30.890, by the state, acting through an
26 agency, under a contract, except that this chapter does not apply to

27 (1) grants;

28 (2) contracts for professional witnesses to provide for
29 professional services or testimony relating to existing or probable

1 lawsuits in which the state is or may become a party;

2 (3) contracts of the University of Alaska where the work is
3 to be performed substantially by students enrolled in the university;

4 (4) contracts for medical doctors and dentists;

5 (5) acquisitions or disposals of real property or interest
6 in real property, except as provided in AS 36.30.080;

7 (6) disposals under AS 38.05;

8 (7) contracts for the preparation of ballots under AS 15.-
9 15.030;

10 (8) acquisitions or disposals of property and other con-
11 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
12 091;

13 (9) disposals of obsolete property under AS 19.05.060;

14 (10) disposals of obsolete material or equipment under
15 AS 35.20.060;

16 (11) agreements with providers of services under AS 47.07;
17 AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195, and 47.25.310;

18 (12) contracts of the Department of Fish and Game for
19 flights that involve specialized flying and piloting skills and are
20 not point-to-point;

21 (13) purchases of income-producing assets for the state
22 treasury or a public corporation of the state.

23 (c) Except for AS 36.30.700 - 36.30.790, this chapter does not
24 apply to contracts between two or more agencies, the state and its
25 political subdivisions, or the state and other governments.

26 (d) Nothing in this chapter or in regulations adopted under this
27 chapter prevents an agency or political subdivision from complying
28 with the terms and conditions of a grant, gift, bequest, cooperative
29 agreement or federal assistance agreement.

1 Sec. 36.30.860. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLIC-
2 ABLE. Unless displaced by the particular provisions of this chapter,
3 the principles of law and equity, including the Uniform Commercial
4 Code (AS 45.01 - AS 45.09), the law merchant, and law relative to
5 capacity to contract, agency, fraud, misrepresentation, duress, coer-
6 cion, mistake, or bankruptcy shall supplement the provisions of this
7 chapter.

8 Sec. 36.30.870. ADOPTION OF REGULATIONS. (a) Regulations under
9 this chapter shall be adopted in accordance with the Administrative
10 Procedure Act (AS 44.62).

11 (b) Regulations under this chapter applicable to procurements of
12 construction or procurements for or disposal of property of the state
13 equipment fleet shall be adopted by the commissioner of administration
14 only after consultation with the commissioner of transportation and
15 public facilities

16 Sec. 36.30.880. REQUIREMENT OF GOOD FAITH. All parties involved
17 in the negotiation, performance, or administration of state contracts
18 shall act in good faith.

19 Sec. 36.30.890. FEDERAL ASSISTANCE. If a procurement involves
20 the expenditure of federal funds or federal assistance and there is a
21 conflict between a provision of this chapter or a regulation adopted
22 under a provision of this chapter and a federal statute regulation,
23 policy or requirement, the federal statute regulation, policy or
24 requirement, shall prevail.

25 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
26 does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding
27 preference for Alaska forest products, or AS 36.20.010 regarding
28 preference to producers or dealers in Alaska except as provided in
29 AS 36.30.170(b) and (c).

1 Sec. 36.30.910. PURCHASES THROUGH GENERAL SERVICES ADMINISTRA-
2 TION. This chapter does not prevent purchasing through the general
3 services administration as provided by law.

4 Sec. 36.30.920. REPORTING OF ANTICOMPETITIVE PRACTICES. When
5 for any reason collusion or other anticompetitive practices are sus-
6 pected among bidders or offerors, a notice of the relevant facts shall
7 be transmitted to the attorney general by the person who suspects the
8 collusion or other anticompetitive practices.

9 Sec. 36.30.930. CIVIL AND CRIMINAL PENALTIES. The following
10 penalties apply to violations of this chapter:

11 (1) a person who contracts for or purchases supplies,
12 equipment for the state fleet, services, professional services, or
13 construction in a manner the person knows to be contrary to the re-
14 quirements of this chapter or the regulations adopted under this
15 chapter is liable for all costs and damages to the state arising out
16 of the violation;

17 (2) a person who intentionally or knowingly contracts for
18 or purchases supplies, equipment for the state fleet, services, pro-
19 fessional services, or construction under a scheme or artifice to
20 avoid the requirements of this chapter is guilty of a class C felony.

21 Sec. 36.30.940. ENFORCEMENT. The attorney general on behalf of
22 the state shall enforce the provisions of this chapter.

23 Sec. 36.30.950. SEVERABILITY. If any provision of this Act or
24 any application of this Act to any person or circumstance is held
25 invalid, the invalidity does not affect other provisions or
26 applications of this Act that can be given effect without the invalid
27 provision or application, and to this end the provisions of this Act
28 are declared severable.

29 Sec. 36.30.990. DEFINITIONS. In this chapter, unless the

1 context in which a term is used clearly requires a different meaning
2 or a different definition is prescribed for a particular provision,

3 (1) "agency" means a department, institution, board, com-
4 mission, division, authority, public corporation, the Alaska Pioneers'
5 Home, or other administrative unit of the executive branch of state
6 government, except for the University of Alaska, the Alaska State
7 Housing Authority and the Alaska Railroad Corporation; it does not
8 include a regional Native housing authority created under AS 18.-
9 55.996, or a regional electrical authority created under AS 18.57.020;

10 (2) "change order" means a written order signed by the
11 procurement officer, directing the contractor to make changes that the
12 changes clause of the contract authorizes the procurement officer to
13 order without the consent of the contractor;

14 (3) "commissioner" means the commissioner of the Department
15 of Administration;

16 (4) "competitive sealed bidding" means the procedure under
17 AS 36.30.100 - 36.30.190;

18 (5) "competitive sealed proposals" means the procedure
19 under AS 36.30.200 - 36.30.260;

20 (6) "construction" means the process of building, altering,
21 repairing, maintaining, improving, or demolishing a public highway,
22 structure, building, or other public improvement of any kind to real
23 property other than privately owned real property leased for the use
24 of agencies; it includes services and professional services relating
25 to planning and design required for the construction; it does not
26 include the routine operation of a public improvement to real property
27 nor does it include the construction of public housing;

28 (7) "contract" means all types of state agreements, regard-
29 less of what they may be called, for the procurement or disposal of

1 supplies, equipment for the state fleet, services, professional servi-
2 ces, or construction;

3 (8) "contract modification" means a written alteration in
4 specifications, delivery point, rate of delivery, period of perfor-
5 mance, price, quantity, or other provisions of a contract accomplished
6 by mutual action of the parties to the contract;

7 (9) "department" means the Department of Administration;

8 (10) "grant" means property furnished by the state, whether
9 real or personal, designated by law, including an appropriation Act,
10 as a grant;

11 (11) "person" means a business, individual, union, commit-
12 tee, club, other organization, or group of individuals;

13 (12) "procurement" means buying, purchasing, renting, leas-
14 ing, or otherwise acquiring supplies, equipment for the state fleet,
15 services, or construction; it also includes functions that pertain to
16 the obtaining of a supply, equipment for the state fleet, service or
17 construction, including description of requirements, selection and
18 solicitation of sources, preparation and award of contract, and all
19 phases of contract administration;

20 (13) "procurement officer" means a person authorized to
21 enter into and administer contracts for an agency and make written
22 determinations with respect to them; it also includes an authorized
23 representative of a procurement officer acting within the limits of
24 authority;

25 (14) "professional services" means professional, technical,
26 or consultant's services that are predominantly intellectual in char-
27 acter, result in the production of a report or the completion of a
28 task, and include analysis, evaluation, prediction, planning, or
29 recommendation;

1 (15) "services" means the furnishing of labor, time, or
2 effort by a contractor, not involving the delivery of a specific end
3 product other than reports that are merely incidental to the required
4 performance; it does not include employment agreements or collective
5 bargaining agreements;

6 (16) "supplies" means all property of an agency, including
7 equipment, materials, and insurance; it includes privately owned real
8 property leased for the use of agencies, such as office space, but
9 does not include the acquisition or disposition of other interests in
10 land.

11 Sec. 36.30.995. SHORT TITLE. This chapter may be cited as the
12 State Procurement Code.

13 * Sec. 3. AS 03.22.030 is amended to read:

14 Sec. 03.22.030. CENTER SITE, BUILDINGS AND EQUIPMENT. The
15 department shall obtain a site, either by donation, lease, or pur-
16 chase, and erect suitable buildings on the site, if they are needed
17 for the use of the plant materials center. The department shall also
18 acquire the agricultural land, scientific instruments and equipment
19 necessary to carry on the work of the center. Acquisition of scien-
20 tific instruments and equipment under this section is governed by
21 AS 36.30 (State Procurement Code).

22 * Sec. 4. AS 05.20.040 is amended to read:

23 Sec. 05.20.040. PERSONNEL TO INSPECT DEVICES. The department
24 shall designate a person qualified in experience and training as the
25 inspector of devices. The department may employ additional employees
26 as are necessary to administer this chapter. The inspector and the
27 employees may be hired on a temporary basis or borrowed from other
28 state departments or political subdivisions of the state, or the
29 department may contract with individuals or firms for the inspecting

1 service on an independent basis. The department shall prescribe the
2 salary or other remuneration for this service. Contracting under this
3 section is governed by AS 36.30 (State Procurement Code).

4 * Sec. 5. AS 09.50.250 is amended to read:

5 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person
6 or corporation having a contract, quasi-contract, or tort claim
7 against the state may bring an action against the state in the superi-
8 or court. A person who may present the claim under AS 44.77 may not
9 bring an action under this section except as set out in AS 44.77.-
10 040(c). A person who may bring an action under AS 36.30.560 - 36.30.-
11 695 may not bring an action under this section except as set out in
12 AS 36.30.685. However, no action may be brought under this section if
13 the claim

14 (1) is an action for tort, and is based upon an act or
15 omission of an employee of the state, exercising due care, in the
16 execution of a statute or regulation, whether or not the statute or
17 regulation is valid; or is an action for tort, and based upon the
18 exercise or performance or the failure to exercise or perform a dis-
19 cretionary function or duty on the part of a state agency or an em-
20 ployee of the state, whether or not the discretion involved is abused;

21 (2) is for damages caused by the imposition or establish-
22 ment of a quarantine by the state;

23 (3) arises out of assault, battery, false imprisonment,
24 false arrest, malicious prosecution, abuse of process, libel, slander,
25 misrepresentation, deceit, or interference with contract rights.

26 * Sec. 6. AS 14.08.101 is amended to read:

27 Sec. 14.08.101. POWERS A regional school board may

28 (1) sue and be sued;

29 (2) contract with the department, the Bureau of Indian

1 Affairs, or any other school district, agency, or regional board for
2 the provision of services, facilities, supplies or utilities;

3 (3) determine its own fiscal procedures including but not
4 limited to policies and procedures for the purchase of supplies and
5 equipment; the regional school boards are exempt from the Fiscal
6 Procedures Act (AS 37.05) and the State Procurement Code (AS 36.30);

7 (4) appoint, compensate and otherwise control all school
8 employees in accordance with this title; these employees are not
9 subject to the State Personnel Act (AS 39.25);

10 (5) adopt regulations governing organization, policies and
11 procedures for the operation of the schools;

12 (6) establish, maintain, operate, discontinue and combine
13 schools subject to the approval of the commissioner;

14 (7) recommend to the department projects for construction,
15 rehabilitation, and improvement of schools and education-related
16 facilities as specified in AS 14.11.010(a), and plan, design, and
17 construct the project when the responsibility for it is assumed under
18 AS 14.11.020;

19 (8) exercise those other functions that may be necessary
20 for the proper performance of its responsibilities;

21 (9) by resolution adopted by a majority of all the members
22 of the board and provided to the commissioner of the department,
23 assume ownership of all land and buildings used in relation to the
24 schools in the regional educational attendance area;

25 (10) provide housing for rental to teachers, by leasing
26 existing housing from a local agency or individual, or by entering
27 into contractual arrangements with a local agency or individual to
28 lease housing that will be constructed by the local agency or indi-
29 vidual for that purpose.

1 * Sec. 7. AS 16.05.050 is amended to read:

2 Sec. 16.05.050. POWERS AND DUTIES OF COMMISSIONER. The commis-
3 sioner has, but not by way of limitation, the following powers and
4 duties:

5 (1) assist the United States Fish and Wildlife Service in
6 the enforcement of federal laws and regulations pertaining to fish and
7 game;

8 (2) through the appropriate state agency and under the
9 provisions of AS 36.30 (State Procurement Code), acquire by gift,
10 purchase, or lease, or other lawful means, land, buildings, water,
11 rights-of-way, or other necessary or proper real or personal property
12 when the acquisition is in the interest of furthering an objective or
13 purpose of the department and the state;

14 (3) under the provisions of AS 36.30, design and construct
15 hatcheries, pipelines, rearing ponds, fishways, and other projects
16 beneficial for the fish and game resources of the state;

17 (4) accept money from any person under conditions requiring
18 the use of the money for specific purposes in the furtherance of the
19 protection, rehabilitation, propagation, preservation, or investiga-
20 tion of the fish and game resources of the state or in settlement of
21 claims for damages to fish or game resources;

22 (5) collect, classify, and disseminate statistics, data and
23 information that, in the commissioner's discretion, will tend to
24 promote the purposes of this title except AS 16.51 and AS 16.52;

25 (6) capture, propagate, transport, buy, sell, or exchange
26 fish or game or eggs for propagating, scientific or stocking purposes;

27 (7) under the provisions of AS 36.30, provide public facil-
28 ities where necessary or proper to facilitate the taking of fish or
29 game, and enter into cooperative agreements with any person to effect

1 them;

2 (8) exercise administrative, budgeting, and fiscal powers;

3 (9) under the provisions of AS 36.30, construct, operate,
4 supervise, and maintain vessels used by the Department of Fish and
5 Game;

6 (10) authorize the holder of an interim-use permit under
7 AS 16.43 to engage on an experimental basis in commercial taking of a
8 fishery resource with vessel, gear, and techniques not presently
9 qualifying for licensing under this chapter in conformity with stand-
10 ards established by the Alaska Commercial Fisheries Entry Commission;

11 (11) not later than January 31 of each year, provide to the
12 commissioner of revenue the names of those fish and shellfish species
13 which the commissioner of fish and game designates as developing
14 commercial fish species for that calendar year; a fish or shellfish
15 species is a developing commercial fish species if, within a specified
16 geographical region,

17 (A) the optimum yield from the harvest of the species
18 has not been reached;

19 (B) a substantial portion of the allowable harvest of
20 the species has been allocated to fishing vessels of a foreign
21 nation; or

22 (C) a commercial harvest of the fish species has
23 recently developed;

24 (12) initiate or conduct research necessary or advisable to
25 carry out the purposes of this title except AS 16.51 and AS 16.52;

26 (13) enter into cooperative agreements with agencies of the
27 federal government, educational institutions, or other agencies or
28 organizations, when in the public interest, to carry out the purposes
29 of this title except AS 16.51 and AS 16.52.

1 * Sec. 8. AS 16.05.826(c) is amended to read:

2 (c) The department may contract to others the performance of the
3 department's responsibilities under this section. Contracting under
4 this subsection is governed by AS 36.30 (State Procurement Code),
5 except that a [A] contract may include provisions for advance payment
6 or reimbursement for services performed under the contract. All costs
7 incurred under this section may be paid from the fish and game fund.

8 * Sec. 9. AS 18.15.120 is amended to read:

9 Sec. 18.15.120. TUBERCULOSIS CONTROL PROGRAM AUTHORIZED. The
10 department may establish a comprehensive program for the control of
11 tuberculosis in the state, and may

12 (1) arrange means by which persons in the state may be
13 X-rayed to determine the presence of tuberculosis;

14 (2) establish necessary out-patient clinics for the care of
15 tuberculosis;

16 (3) encourage and promote the establishment of adequate
17 sanatorium facilities within the state to care for persons suffering
18 from tuberculosis and allied conditions;

19 (4) under the provisions of AS 36.30 (State Procurement
20 Code), obtain, by purchase or donation from surplus federal property
21 or otherwise, medical supplies and equipment useful in carrying out
22 this program and to allot or resell these supplies and equipment to
23 private institutions engaged by the department to carry out this
24 program;

25 (5) under the provisions of AS 36.30, contract with hos-
26 pitals, associations, or sanatorium qualified and equipped to give
27 adequate care inside or outside the state;

28 (6) employ necessary and trained personnel to carry out the
29 purposes of AS 18.15.120 - 18.15.140;

1 (7) pay the costs of care and incidental expenses for
2 residents of the state, in whole or in part, depending on the ability
3 of each patient to pay, and the temporary costs of care and transpor-
4 tation for nonresidents on the same basis until they can be trans-
5 ferred to their residence;

6 (8) enlist the cooperation of state and federal agencies
7 operating in the state for the furtherance of this program;

8 (9) establish standards in accordance with department
9 procedure for the care of tuberculars receiving treatment under
10 AS 18.15.120 - 18.15.140.

11 * Sec. 10. AS 19.05.020 is amended to read:

12 Sec. 19.05.020. REGULATIONS. The department shall adopt regu-
13 lations necessary to carry out the purpose of AS 19.05 - AS 19.25.
14 The regulations may not conflict with AS 36.30 (State Procurement
15 Code) or regulations adopted by the Department of Administration to
16 implement that chapter.

17 * Sec. 11. AS 19.05.080 is amended to read:

18 Sec. 19.05.080. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-
19 RIALS BY PURCHASE OR EMINENT DOMAIN. The department on behalf of the
20 state and as part of the cost of constructing or maintaining a highway
21 may purchase in the open market, acquire, take over, or condemn under
22 the right and power of eminent domain land in fee simple or easements
23 which it considers necessary for present public use, either temporary
24 or permanent, or which it considers necessary and reasonable for the
25 public use. By the same means, the department may obtain material,
26 including clay, gravel, sand, or rock, or the land necessary to obtain
27 material, including access to it. The department may acquire the land
28 or materials notwithstanding the fact that title to it is vested in
29 the state or a department, agency, commission or institution of the

1 state. Acquisition of materials by purchase in the open market under
2 this section is governed by AS 36.30 (State Procurement Code).

3 * Sec. 12. AS 19.10.160 is amended to read:

4 Sec. 19.10.160. STANDARD PLANS AND SPECIFICATIONS. The depart-
5 ment shall prepare and adopt uniform standard plans and specifications
6 for the establishment, construction and maintenance of highways in the
7 state. The department may amend the plans and specifications as it
8 considers advisable. The standards shall conform as closely as prac-
9 ticable to those adopted by the American Association of State Highway
10 and Transportation Officials.

11 * Sec. 13. AS 19.10.170(a) is amended to read:

12 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is
13 [SHALL BE] the general policy of the state [DEPARTMENT] to require the
14 construction of all highways under bid contract in accordance with
15 AS 36.30 (State Procurement Code). However, subject to the provisions
16 of (b) of this section, when the estimated cost of a construction
17 project is less than \$100,000 or when it appears to be in the best
18 interests of the state, the department may perform the work notwith-
19 standing any other provisions of law.

20 * Sec. 14. AS 19.10.180 is repealed and reenacted to read:

21 Sec. 19.10.180. REQUEST FOR PUBLIC BIDS. Requests for public
22 bids are governed by AS 36.30 (State Procurement Code). The request
23 for public bids may require the contractor to furnish equipment,
24 labor, materials, and supplies for the project, or it may state that
25 the department will furnish the materials and supplies. If the de-
26 partment elects to provide materials and supplies for a project, it
27 shall do so at the time it adopts the construction program. The
28 department shall acquire these materials and supplies under AS 36.30
29 by requesting bids for them according to the class, type, and nature

1 of the materials and supplies. The contract for materials and sup-
2 plies may be awarded either upon the basis of delivery to the con-
3 struction project directly or to a central storehouse or storehouses
4 maintained by the department. Those materials and supplies so pur-
5 chased by the department may be delivered to the project site without
6 expense to the contractor, or it may sell them to the contractor at
7 cost and make the materials and supplies a part of the construction
8 cost.

9 * Sec. 15. AS 19.10.200 is repealed and reenacted to read:

10 Sec. 19.10.200. PROCEDURES FOR THE AWARD OF CONTRACTS. The
11 award of a contract for highway construction work is governed by
12 AS 36.30 (State Procurement Code), AS 19.05 - AS 19.25, and regula-
13 tions adopted under those laws.

14 * Sec. 16. AS 19.30.070 is amended to read:

15 Sec. 19.30.070. CONTRACTS FOR CONSTRUCTION OF ROADS. The
16 director of the division of lands may contract with private persons
17 for the construction of roads to and on state lands programmed for
18 surface disposal which are not more than six miles from existing roads
19 or highways. Contracts under this section are governed by AS 36.30
20 (State Procurement Code).

21 * Sec. 17. AS 19.30.080 is amended to read:

22 Sec. 19.30.080. CONSTRUCTION STANDARDS AND MAINTENANCE. An
23 access road constructed under AS 19.30.060 - 19.30.100 shall be of low
24 standard, not necessarily suitable for all weather use. The state is
25 not under obligation to maintain an access road constructed under AS
26 19.30.060 - 19.30.100. If an access road is constructed outside a
27 municipality that has zoning ordinances, the right-of-way width for
28 the road shall be determined by the division of lands and the Depart-
29 ment of Transportation and Public Facilities. If an access road is

1 constructed within the boundaries of a municipality that has zoning
2 ordinances, the right-of-way width shall conform to the subdivision
3 control ordinances of the municipality. Contracts for the work on an
4 access road are governed by AS 36.30 (State Procurement Code) [SHALL
5 BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER QUALIFIED TO CONTRACT WITH
6 THE STATE].

7 * Sec. 18. AS 19.40.020(a) is amended to read:

8 (a) Subject to (b) of this section, the department may contract
9 in accordance with AS 36.30 for the construction of a secondary high-
10 way from the Yukon River to the Arctic Ocean. [THE DEPARTMENT MAY
11 REQUEST BIDS AND AWARD CONTRACTS FOR THE CONSTRUCTION OF THE HIGHWAY,
12 OR IT MAY ELECT TO DIRECTLY NEGOTIATE CONTRACTS FOR THE CONSTRUCTION
13 OF THE HIGHWAY IF IT APPEARS TO BE IN THE BEST INTERESTS OF THE
14 STATE.] The provisions of AS 36.10 govern in employment practices on
15 all work authorized by this chapter.

16 * Sec. 19. AS 19.60.010 is amended to read:

17 Sec. 19.60.010. ACQUISITION AND MAINTENANCE OF FERRY TERMINAL
18 FACILITIES. The department shall construct, purchase or lease ferry
19 terminal facilities at locations it selects for the loading and un-
20 loading of passengers and vehicles under their own power, on and off
21 ferries. The department shall repair and maintain these facilities.
22 Construction and purchasing under this section are governed by AS 36.-
23 30 (State Procurement Code).

24 -* Sec. 20. AS 23.15.611(a) is amended to read:

25 (a) The department may [IS AUTHORIZED TO] participate in pro-
26 grams of manpower training if it finds they are necessary to meet the
27 occupational needs of the state. This au~~thor~~ization includes authori-
28 ty to execute on behalf of the state agreements or contracts which may
29 be necessary or desirable to enable the state to participate in a

1 program, to receive and expend all appropriate funds made available
2 for programs by the state or from other sources, to supervise the
3 expenditure of the funds and conduct of the programs by other public
4 and private agencies of the state, and to make the reports and certifi-
5 cates which are called for, and in cooperative arrangements with the
6 Department of Education. Contracts with private entities under this
7 subsection are governed by AS 36.30 (State Procurement Code).

8 * Sec. 21. AS 23.20.075(a) is amended to read:

9 (a) The department may acquire in the name of the state by term
10 purchase agreements based on competitive bids in accordance with
11 AS 36.30 (State Procurement Code) land and buildings upon terms and
12 conditions that [WHICH] are approved by the Bureau of Employment
13 Security of the United States, or its successor, for the purpose of
14 providing office space for the department at a place which the depart-
15 ment finds necessary and suitable.

16 * Sec. 22. AS 23.35.110 is amended to read:

17 Sec. 23.35.110. CONTRACTS FOR CARE. In carrying out this
18 chapter, the department may enter into contracts or other arrangements
19 with hospitals and doctors in the state for furnishing care on an
20 annual basis to persons entitled to benefits. Contracting under this
21 section is governed by AS 36.30 (State Procurement Code).

22 * Sec. 23. AS 24.55.275 is amended to read:

23 Sec. 24.55.275. CONTRACT PROCEDURES. The ombudsman shall adopt
24 by regulation procedures consistent with AS 36.30 [AS 24.23] to be
25 followed by the office of the ombudsman in contracting for services.
26 However, the procedure for requests for proposals does not apply to
27 contracts for investigations under AS 24.55.100.

28 * Sec. 24. AS 24.60.040(a) is amended to read:

29 (a) A person to whom this chapter applies may not be a party to

1 or have an interest in a state contract or lease unless the contract
2 or lease is let through competitive sealed bidding under AS 36.30
3 (State Procurement Code) [AS 37.05.230] or the total annual amount of
4 the state contract or lease is \$1,000 or less, or is a standardized
5 contract or lease which was developed under publicly established
6 guidelines and is generally available to the public at large, members
7 of a profession, occupation or group. A person has an interest in a
8 state contract or lease under this section if the person receives
9 direct or indirect financial benefits.

10 * Sec. 25. AS 26.05.230(a) is amended to read:

11 (a) Buildings and sites for armory purposes may be leased or
12 constructed, based upon location and size of units to be organized,
13 and shall be financed through state and federal appropriations or
14 both. These facilities may be made available by local communities or
15 by the cooperative arrangement between the state and the federal
16 government and any local community. Leasing and construction under
17 this subsection are governed by AS 36.30 (State Procurement Code).

18 * Sec. 26. AS 26.05.280 is amended to read:

19 Sec. 26.05.280. TRANSPORTATION, SUBSISTENCE, AND SUPPLIES.
20 There shall be provided by the state, transportation and subsistence
21 for all officers and enlisted persons who are ordered into active
22 service by the state for encampment, field duty, or other duty. Neces-
23 sary transportation, stores and subsistence for troops when ordered on
24 duty shall be contracted by the proper officers and paid for as other
25 military bills. Contracting under this section is governed by AS 36.-
26 30 (State Procurement Code).

27 * Sec. 27. AS 27.21.030 is amended to read:

28 Sec. 27.21.030. GENERAL POWERS. To accomplish the purposes of
29 this chapter, the commissioner may

1 (1) in accordance with the Administrative Procedure Act
2 (AS 44.62) adopt, amend, and enforce regulations pertaining to surface
3 coal mining and reclamation operations;

4 (2) issue permits;

5 (3) conduct hearings and conferences;

6 (4) issue orders requiring an operator to take the actions
7 necessary to comply with this chapter and the regulations adopted
8 under this chapter;

9 (5) issue orders modifying previous orders;

10 (6) after opportunity for a due process hearing, issue a
11 final order revoking the permit of an operator who has failed to
12 comply with an order of the commissioner to take action required by
13 this chapter or regulations adopted under this chapter;

14 (7) order the immediate cessation of all or part of a
15 surface coal mining and reclamation operation if the commissioner
16 finds that the operation or part of the operation creates an imminent
17 danger to the health or safety of the public or is causing or can
18 reasonably be expected to cause significant imminent harm to land,
19 air, or water resources, and, to the extent reasonably necessary to
20 eliminate or alleviate those conditions, take other action or make
21 changes in a permit, as provided in this chapter;

22 (8) hire and authorize the hiring of employees and private
23 contractors, subject to the conflict of interest provisions of this
24 chapter and subject to AS 36.30 (State Procurement Code), to assist in
25 carrying out the requirements of this chapter;

26 (9) enter and inspect a surface coal mining operation that
27 is subject to the provisions of this chapter to assure that the opera-
28 tion is in compliance with this chapter;

29 (10) conduct, encourage, request, and participate in

1 studies, surveys, investigations, research, experiments, training, and
2 demonstrations;

3 (11) prepare reports and require permittees to prepare
4 reports;

5 (12) accept, receive, and administer grants, gifts, or other
6 money made available for the purposes of this chapter regardless of
7 the source of the grants, gifts, or money;

8 (13) take the steps necessary to allow the state to partici-
9 pate to the fullest extent practicable in the abandoned mine land
10 program provided in Title IV of the Surface Mining Control and Recla-
11 mation Act of 1977, including engaged in any work and adopting, amend-
12 ing and enforcing regulations;

13 (14) take the actions necessary to establish and maintain
14 exclusive jurisdiction over surface coal mining and reclamation opera-
15 tions in the state under the provisions of the Surface Mining Control
16 and Reclamation Act of 1977, including making recommendations for
17 legislation to clarify or amend this chapter to conform with the terms
18 of the Surface Mining Control and Reclamation Act of 1977;

19 (15) contract with state agencies to obtain the professional
20 and technical services necessary to carry out the provisions of this
21 chapter;

22 (16) coordinate the review of applications and issuance of
23 permits for surface coal mining and reclamation operations with other
24 federal or state permit processes applicable to those operations;

25 (17) enter into cooperative agreements with the Secretary of
26 the United States Department of the Interior for the regulation of
27 surface coal mining operations on federal land in accordance with the
28 Surface Mining Control and Reclamation Act of 1977; and

29 (18) perform other duties required by this chapter.

1 * Sec. 28. AS 33.30.050 is amended to read:

2 Sec. 33.30.050. COMMISSIONER TO PROVIDE MEDICAL SERVICES. The
3 commissioner shall detail physicians, nurses, and psychiatrists, or
4 their aides, and laboratory technicians, employed by the department to
5 any prison facility where state prisoners are detained or confined,
6 for the purpose of furnishing necessary medical services, including
7 examinations for communicable and infectious diseases. However, if
8 medical services cannot be furnished by physicians, nurses, psychia-
9 trists, or their aides, and laboratory technicians, regularly employed
10 by the department, the commissioner may contract with private practi-
11 tioners located in the area of a prison facility to furnish these
12 services. The cost of contracted services shall be paid out of appro-
13 priations made to the department. Contracting for services under this
14 section is governed by AS 36.30 (State Procurement Code).

15 * Sec. 29. AS 33.30.062(a) is amended to read:

16 (a) The commissioner may enter into an agreement with a private-
17 ly operated correctional facility, but only if the facility is located
18 in the state and if the purpose of the agreement is to involve prison-
19 ers in a work or rehabilitation furlough program established under
20 this chapter, to provide necessary facilities under AS 33.30.282 -
21 33.30.288, or to confine prisoners convicted of a misdemeanor. An
22 [NOTWITHSTANDING AS 37.05.230(1)(B), AN] agreement awarded under this
23 subsection is governed by AS 36.30 (State Procurement Code) [SHALL BE
24 BASED ON COMPETITIVE BIDS].

25 * Sec. 30. AS 33.32.015(b) is amended to read:

26 (b) The commissioner of corrections may
27 (1) subject to AS 36.30 (State Procurement Code) [THE
28 FISCAL PROCEDURES ACT (AS 37.05)], use, purchase, lease, equip, and
29 maintain buildings, machinery, and other equipment, and may purchase

1 materials and enter into contracts, which may be necessary for the
2 correctional industries program;

3 (2) provide for prisoners to be employed in rendering
4 services and producing articles, materials, and supplies needed by a
5 state agency, a political subdivision of the state, an agency of the
6 federal government, other states or their political subdivisions, or
7 for use by nonprofit organizations;

8 (3) if the Correctional Industries Commission established
9 in AS 33.32.070 approves, employ prisoners to provide services or
10 products as needed by private industry if the services or products
11 have potential for contributing to the economy of the state and will
12 have minimal negative impact on an existing private industry or labor
13 force in the state.

14 * Sec. 31. AS 35.05.010 is amended to read:

15 Sec. 35.05.010. PLANNING AND CONSTRUCTION. The department is
16 responsible for the planning and construction of public works except
17 as provided for court facilities in AS 22.05.025. Contracts for
18 planning and construction of public works are governed by AS 36.30
19 (State Procurement Code).

20 * Sec. 32. AS 35.05.020 is amended to read:

21 Sec. 35.05.020. RULES AND REGULATIONS. The department shall
22 adopt [RULES AND] regulations that [WHICH] it considers necessary to
23 carry out the purpose of this title. The regulations may not conflict
24 with AS 36.30 (State Procurement Code) or the regulations adopted by
25 the Department of Administration under that chapter.

26 * Sec. 33. AS 35 is amended by adding a new section to read:

27 Sec. 35.10.195. CONFORMANCE WITH AS 36.30. The contractual
28 techniques for the procurement of labor, materials, and contractual
29 services under the policies developed under this chapter must conform

1 to the requirements of AS 36.30 (State Procurement Code).

2 * Sec. 34. AS 35.15.010(a) is amended to read:

3 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is
4 [SHALL BE] the general policy of the state [DEPARTMENT] to require the
5 construction of all public works under bid contract in accordance with
6 AS 36.30 (State Procurement Code). However, when the estimated cost
7 of a construction project is less than \$100,000, or when it appears to
8 be in the best interests of the state, the department may perform the
9 work, notwithstanding any other provisions of law. A complete record
10 shall be kept by the commissioner or the commissioner's designee of
11 all transactions entered into under this section including names of
12 employees involved in the transactions.

13 * Sec. 35. AS 35.15.020 is repealed and reenacted to read:

14 Sec. 35.15.020. REQUEST FOR PUBLIC BIDS. The solicitation of
15 bids for construction of public works is governed by AS 36.30 (State
16 Procurement Code). The request for bids may require the contractor to
17 furnish equipment, labor, materials, and supplies for the project, or
18 it may state that the department will furnish the materials and sup-
19 plies. If the department elects to provide materials and supplies for
20 a project, it shall make the election at the time it adopts the con-
21 struction program. The department shall acquire these materials and
22 supplies under AS 36.30 by requesting bids for them according to the
23 class, type, and nature of the materials and supplies. The contract
24 may be awarded either upon the basis of delivery to the construction
25 project directly or to a central storehouse or storehouses maintained
26 by the department. Those materials and supplies so purchased by the
27 department may be delivered to the project site without expense to the
28 contractor, or it may sell them to the contractor at cost and make the
29 materials and supplies a part of the construction cost.

1 * Sec. 36. AS 35.15.040 is repealed and reenacted to read:

2 Sec. 35.15.040. PROCEDURES FOR THE AWARD OF CONTRACTS. Award of
3 a contract for the construction of a public work shall comply with
4 this title, AS 36.30 (State Procurement Code), and the regulations
5 adopted under those laws.

6 * Sec. 37. AS 35.20.010 is amended to read:

7 Sec. 35.20.010. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-
8 RIALS BY PURCHASE OR EMINENT DOMAIN. The department, on behalf of the
9 state and as part of the cost of constructing or maintaining a public
10 work, may purchase in the open market, acquire, take over, or condemn
11 under the right and power of eminent domain land in fee simple or
12 easements which it considers necessary for present public use, either
13 temporary or permanent, or which it considers necessary and reasonable
14 for the public use. By the same means, the department may obtain
15 material including clay, gravel, sand, or rock, or the land necessary
16 to obtain the material, and the necessary land or easements to provide
17 access to it. The department may acquire the land or material not-
18 withstanding the fact that the title to it is in the state or a
19 department, agency, commission or institution of the state. Acquisi-
20 tion of material in the open market under this section is governed by
21 AS 36.30 (State Procurement Code).

22 * Sec. 38. AS 37.05 is amended by adding a new section to read:

23 Sec. 37.05.232. PETTY CASH ACCOUNTS. The department shall
24 determine the amount of the petty cash accounts needed by each state
25 agency and inspect the petty cash accounts at least once each year to
26 determine that the total plus amounts of receipts for unreplenished
27 disbursements is equal to the fixed sum of cash set aside. Shortages
28 in petty cash accounts are a personal liability of the responsible
29 head of the agency to whom the account is set aside. The department

1 shall adopt necessary regulations governing use and replenishment of
2 petty cash funds.

3 * Sec. 39. AS 37.05.316 is amended to read:

4 Sec. 37.05.316. GRANTS TO NAMED RECIPIENTS. When an amount is
5 appropriated or allocated to a department as a grant for a named
6 recipient that [WHICH] is not a municipality, the department to which
7 the appropriation or allocation is made shall promptly notify the
8 named recipient of the availability of the grant and request the named
9 recipient to submit a proposal to provide the goods or services speci-
10 fied in the appropriation act [, OR BOTH,] for which the appropriation
11 or allocation is made. At the same time, the department may issue a
12 request for proposals from other qualified persons to provide the same
13 goods or services [, OR BOTH,] in the same area. The department shall
14 award the grant to [CONTRACT WITH] the named recipient unless the
15 Office of the Governor, with due regard for the [ANY] local expertise
16 or experience of [AMONG] those making proposals, determines that an
17 award [OF THE CONTRACT] to a different party would better serve the
18 public interest. If the grant [CONTRACT] is awarded to a [ANOTHER]
19 party other than that named by the legislature, the basis of that
20 action shall be stated in writing at the time the grant is issued and
21 a copy of the written statement shall be sent to the Legislative
22 Budget and Audit Committee. A grant agreement must [CONTRACT SHALL]
23 be executed within 60 days after the effective date of the appro-
24 priation or allocation. [THE PURCHASE OF THE GOODS OR SERVICES, OR
25 BOTH, SHALL BE IN ACCORDANCE WITH AS 37.05.230(1)(B).]

26 * Sec. 40. AS 41.21.020(a) is amended to read:

27 (a) The Department of Natural Resources shall

28 (1) develop a continuing plan for the conservation and
29 maximum use in the public interest of the scenic, historic,

1 archaeologic, scientific, biological, and recreational resources of
2 the state;

3 (2) plan for and develop a system of state parks and recre-
4 ational facilities, to be established as the legislature authorizes
5 and directs;

6 (3) acquire by gift, purchase, or transfer from state or
7 federal agencies, or from individuals, corporations, partnerships or
8 associations, land necessary, suitable and proper for roadside, pic-
9 nic, recreational or park purposes;

10 (4) control, develop and maintain state parks and recrea-
11 tional areas;

12 (5) provide for the acquisition, care, control, supervi-
13 sion, improvement, development, extension and maintenance of public
14 recreational land, and make necessary arrangements, contracts or
15 commitments for the improvement and development of land acquired under
16 AS 41.21.010 - 41.21.040; contracting for improvement and development
17 under this paragraph is governed by AS 36.30 (State Procurement Code);

18 (6) adopt, in accordance with this section and the Adminis-
19 trative Procedure Act (AS 44.62), regulations governing the use and
20 designating incompatible uses within the boundaries of state park and
21 recreational areas to protect the property and to preserve the peace;

22 (7) cooperate with the United States and its agencies and
23 local subdivisions of the state to secure the effective supervision,
24 improvement, development, extension, and maintenance of state parks,
25 state monuments, state historical areas, and state recreational areas,
26 and secure agreements or contracts for the purpose of AS 41.21.010 -
27 41.21.040;

28 (8) encourage the organization of state public park and
29 recreational activities in the local political subdivisions of the

1 state;

2 (9) provide for consulting service designed to develop
3 local park and recreation facilities and programs;

4 (10) provide clearing-house services for other state agen-
5 cies concerned with park and recreation matters; and

6 (11) perform other duties as are prescribed by executive
7 order or by law;

8 (12) maintain memorials to Alaska veterans located in state
9 parks;

10 (13) adopt, in accordance with the Administrative Procedure
11 Act (AS 44.52), regulations governing the use of the Chena River State
12 Recreation Area and designating incompatible uses within the bound-
13 aries of the Chena River State Recreation Area in accordance with
14 AS 41.21.490.

15 * Sec. 41. AS 42.40.920(b) is amended to read:

16 (b) Unless specifically provided otherwise in this chapter, the
17 following laws do not apply to the operations of the corporation:

18 (1) AS 19;

19 (2) AS 30.15;

20 (3) AS 35;

21 (4) AS 36.30, except as specifically provided in AS 36.30

22 (State Procurement Code);

23 (5) AS 37.05;

24 (6) [(5)] AS 37.07;

25 (7) [(6)] AS 37.10.010 - 37.10.060;

26 (8) [(7)] AS 37.10.085;

27 (9) [(8)] AS 37.20;

28 (10) [(9)] AS 37.25;

29 (11) [(10)] AS 38;

1 (12) [(11)] AS 44.62.040 - 44.62.320.

2 * Sec. 42. AS 44.21.310(a) is amended to read:

3 (a) The telecommunications divisions, as directed by the deputy
4 commissioner, shall

5 (1) advise the governor on matters of policy and comprehen-
6 sive state planning for telecommunications services;

7 (2) make an annual report to the governor and to the legis-
8 lature on the activities of the telecommunications divisions;

9 (3) coordinate, manage, and supervise state programs in
10 telecommunications, including the management of those telecommunica-
11 tion services for the state obtained from common carriers and from the
12 communications industry;

13 (4) when requested, provide technical and consulting assis-
14 tance to the executive, judicial, and legislative branches of state
15 government, to the University of Alaska, and to private noncommercial
16 entities which request that assistance in facility procurement and
17 leasing and in identifying long-range goals and objectives for the
18 state and its political subdivisions in all aspects of telecommunica-
19 tions, including public, educational, and instructional telecommunica-
20 tions;

21 (5) prepare and maintain a state comprehensive telecommu-
22 nications development plan to further state telecommunications devel-
23 opment and to meet state telecommunications needs and prepare and
24 maintain a comprehensive inventory of all state communications facil-
25 ities;

26 (6) whenever feasible, procure services from private enter-
27 prise or certified and franchised utilities and contract for the
28 construction, management, operation and maintenance of telecommunica-
29 tions systems, and develop a procurement policy consistent with

1 AS 36.30 (State Procurement Code) [UNDER AS 37.05.010 - 37.05.410];
2 the procurement policy must seek to achieve the maximum benefit to the
3 public, and methods of procurement, including lease, purchase, rental,
4 or combinations of lease, purchase, and rental, must be selected on
5 the basis of factors such as the ratio of long-range costs versus
6 benefits, life cycle costing, and the costs to the communications
7 industry to the extent that these costs may affect local and long
8 distance basic telephone rates; procurement, contracting, construc-
9 tion, and maintenance under this paragraph is governed by AS 36.30;

10 (7) provide information and assistance to state agencies to
11 promote governmental coordination and unity in the preparation of
12 agency plans and programs involving the use of telecommunications;

13 (8) apply for and accept federal and private money, proper-
14 ty, or assistance, that may be appropriated, granted, or otherwise
15 made available to the telecommunications divisions and use and dis-
16 burse money and property for purposes consistent with AS 44.21.300 -
17 44.21.330 and AS 44.21.256 - 44.21.290, subject to reasonable limita-
18 tions imposed by the grantor;

19 (9) participate with other governmental units in planning,
20 and assist local governments and governmental conferences and councils
21 in the state in planning and coordinating their activities relating to
22 telecommunications;

23 (10) provide for the orderly transition to new telecommu-
24 nications services and systems by state agencies;

25 (11) serve as a clearinghouse for information, data, and
26 other materials which may be necessary or helpful to federal, state,
27 or local governmental agencies in the development of telecommunication
28 systems;

29 (12) coordinate their services and activities with those of

1 other state departments and agencies to the fullest extent possible to
2 avoid unnecessary duplication; and

3 (13) provide that all activities of the telecommunications
4 divisions are responsive to state statutes and regulations, and to the
5 regulations and rulings of the Federal Communications Commission.

6 * Sec. 43. AS 44.19.144(b) is amended to read:

7 (b) The director may

8 (1) with the written concurrence of the governor, enter
9 into contracts and subcontracts on behalf of the state to carry out
10 the provisions of AS 44.19.141 - 44.19.152; contracting under this
11 paragraph is governed by AS 36.30 (State Procurement Code);

12 (2) act for the state in the initiation, investigation,
13 evaluation of or participation in any program relative to the stated
14 purpose of AS 44.19.141 - 44.19.152 which may involve more than one
15 government or governmental unit;

16 (3) on behalf of the state, accept and expend any gifts or
17 grants made to the state with the approval of the governor where such
18 gifts or grants were made for the purposes of furthering the objec-
19 tives of the office.

20 * Sec. 44. AS 44.33.300 is amended to read:

21 Sec. 44.33.300. WAIVER OF CERTAIN PROVISIONS. When the gover-
22 nor has by proclamation declared an area impacted by an economic
23 disaster, the following provisions regarding public contracts may be
24 waived to the extent specified in the proclamation:

25 (1) the requirement of a contractor's bond as prescribed in
26 AS 36.25.010 may be waived if the contract amount does not exceed
27 \$100,000;

28 (2) the public bid requirements as contained in AS 19.10.-
29 170, AS [19.10.190,] 19.30.191(b), AS 35.15.010 - 35.15.020, and

1 AS 36.30 (State Procurement Code) [AND AS 35.15.010 - 35.15.030] may
2 be waived if the contract is to be performed by a contractor whose
3 principal office is in the designated area and the contract amount
4 does not exceed \$50,000;

5 (3) the general policy to require all construction to be
6 under bid contract as contained in AS 19.10.170, AS 35.15.010, and
7 AS 36.30 (State Procurement Code) may be waived if the contract is to
8 be performed by the state, another governmental entity, or a nonprofit
9 entity.

10 * Sec. 45. AS 44.47.250 is amended by adding a new subsection to read:

11 (c) Contracts with persons or nongovernmental entities under
12 this section are governed by AS 36.30.

13 * Sec. 46. AS 44.47.490(a) is amended to read:

14 (a) The director may establish field offices under this chapter,
15 may hire one or more lending officers, and, under AS 36.30 (State
16 Procurement Code), may contract for the services of

17 (1) real property appraisers who are familiar with rural
18 construction; and

19 (2) engineers who are familiar with engineering problems in
20 arctic and subarctic regions.

21 * Sec. 47. AS 44.47.730(a) is amended to read:

22 (a) The commissioner shall contract for a study of the feasibil-
23 ity of establishing a borough in the unorganized borough by following
24 the procedures under AS 36.30 (State Procurement Code) [SET OUT IN
25 AS 36.98]. The commissioner shall include terms in the contract that
26 provide for

27 (1) public participation in the preparation of the study;

28 (2) completion of the study not later than June 30 of the
29 third year after the year the contract is executed.

1 * Sec. 48. AS 44.62.175(a) is amended to read:

2 (a) The lieutenant governor shall publish or contract for the
3 publication of the Alaska Administrative Journal. The journal shall
4 be published weekly. The journal must include

5 (1) notices of proposed actions given under AS 44.62.-
6 190(a);

7 (2) notices of state agency meetings required under AS 44.-
8 62.310(e), even if the meeting has been held;

9 (3) notices of solicitations to bid issued under AS 36.30.-
10 130 [AS 37.05.230];

11 (4) notices of state agency requests for proposals issued
12 under AS 18.55.255, 18.55.320; [AS 19.10.190; AS 19.40.020; AS 35.15.-
13 030; AS 36.98.030; AS 37.05.230,] AS 37.05.315(d); AS 38.05.120; and
14 AS 43.40.010;

15 (5) executive orders and administrative orders issued by
16 the governor;

17 (6) written delegations of authority made by the governor
18 or the head of a principal department under AS 44.17.010;

19 (7) the text or a summary of the text of a regulation or
20 order of repeal of a regulation for which notice is given under AS
21 44.62.190(a), including an emergency regulation or repeal whether or
22 not it has taken effect;

23 (8) a summary of the text of recently issued formal opin-
24 ions and memoranda of advice of the attorney general; and

25 (9) a list of vacancies on boards, commissions, and other
26 bodies whose members are appointed by the governor.

27 * Sec. 49. AS 44.71.010 is amended to read:

28 Sec. 44.71.010. DISPOSITION OF OBSOLETE OR SURPLUS STATE PROP-
29 ERTY. The Department of Administration shall take possession of

1 obsolete or surplus property of the state for which there is no imme-
2 diate or prospective use, except abandoned or obsolete school build-
3 ings and other school property. It shall also take possession of
4 property remaining in the control of a commission or board of the
5 state government after the commission or board stops functioning. The
6 Department of Administration shall sell, lease, license, or dispose of
7 the property on the terms it considers for the best interests of the
8 state in conformance with regulations adopted under AS 36.30 (State
9 Procurement Code).

10 * Sec. 50. AS 44.77.010(a) is amended to read:

11 (a) Except as provided in (d) of this section, every [EVERY]
12 claim for reimbursement for money expended, or for compensation for
13 labor, materials, or supplies furnished, or services given to or for
14 the state, whether based on a contract or on a ratification, shall be
15 promptly presented to the appropriate administrative or executive
16 officer for approval and payment.

17 * Sec. 51. AS 44.77.010 is amended by adding a new subsection to read:

18 (d) A claim that is governed by AS 36.30.560 - 36.30.699 is not
19 governed by this chapter.

20 * Sec. 52. AS 44.85.120 is amended to read:

21 Sec. 44.85.120. CARE AND CUSTODY OF BONDS. The bond bank
22 authority, in accordance with AS 36.30 (State Procurement Code), may
23 enter into agreements or contracts with a bank, trust company, banking
24 or financial institution inside or outside the state as may be neces-
25 sary, desirable or convenient, in the opinion of the bond bank author-
26 ity, for rendering services in connection with the care, custody or
27 safekeeping of municipal bonds or other investments held or owned by
28 the bond bank authority, for rendering services in connection with the
29 payment or collection of amounts payable as to principal or interest,

1 and for rendering services in connection with the delivery to the bond
2 bank authority of municipal bonds or other investments purchased by it
3 or sold by it, and to pay the cost of those services. The bond bank
4 authority may also, in connection with any of the services to be
5 rendered by a bank, trust company or banking or financial institution
6 as to the custody and safekeeping of its municipal bonds or invest-
7 ments, require security in the form of collateral bonds, surety agree-
8 ments or security agreements in such form and amount as, in the opin-
9 ion of the bond bank authority, is necessary or desirable.

10 * Sec. 53. AS 44.99.001 is amended to read:

11 Sec. 44.99.001. ADMINISTRATION OF HIGHWAY SAFETY PROGRAM. The
12 governor may contract and do all other things necessary on behalf of
13 this state under 23 U.S.C. 401-404 (Highway Safety Act of 1966), and
14 may cooperate with interested persons and agencies to effectuate the
15 purposes of that Act. Contracting under this section is governed by
16 AS 36.30 (State Procurement Code). The governor may designate a
17 person to serve as the governor's highway safety representative;
18 however, the governor is the official in this state having the ulti-
19 mate responsibility for dealing with the federal government with
20 respect to programs and activities under the Federal Highway Safety
21 Act of 1966. The governor shall coordinate the activities relating to
22 highway safety of state departments, agencies and subdivisions and of
23 the Governor's Commission on Transportation Safety established in
24 AS 44.19.190.

25 * Sec. 54. AS 46.04.090(a) is amended to read:

26 (a) The department, when feasible, shall enter into contracts
27 with persons or private organizations to provide the personnel, equip-
28 ment, or other services or supplies which may be required to carry out
29 this chapter. Contracts under this section are governed by AS 36.30

1 (State Procurement Code). When private contracting is not feasible,
2 the department may establish and maintain at ports, harbors, or other
3 locations in the state, the cleanup personnel, equipment, and supplies
4 which, in its judgment, are necessary to carry out this chapter.

5 * Sec. 55. AS 46.07.040(a) is amended to read:

6 (a) The commissioner shall provide for the construction of
7 facilities under this chapter, and is authorized to provide for the
8 construction by contract or through grants to public agencies or
9 private nonprofit organizations, or otherwise. A [NO] contribution
10 toward the cost of the construction of a facility may not be required
11 from its users. Construction under this section by contract is gov-
12 erned by AS 36.30 (State Procurement Code).

13 * Sec. 56. AS 46.15.020(a) is amended to read:

14 (a) The commissioner shall exercise all those powers and do all
15 those acts necessary to carry out the provisions and objectives of
16 this chapter. The commissioner may

17 (1) subject to AS 36.30 (State Procurement Code), enter
18 into contractual agreements necessary to carry out the provisions of
19 this chapter including agreements with federal, state and local agen-
20 cies;

21 (2) apply for, accept, administer and expend grants, gifts,
22 and loans from the federal government and any other public or private
23 sources for the purposes of this chapter, and adopt procedures and do
24 acts not otherwise restricted by law which are necessary to qualify
25 the state to receive grants, gifts and loans;

26 (3) establish a division of water in the Department of
27 Natural Resources and assign to that division the responsibility for
28 carrying out the provisions of this chapter.

29 * Sec. 57. AS 47.05.015(c) is amended to read:

1 (c) A contract authorized under this section is exempt from the
2 competitive bid requirements of AS 36.30 (State Procurement Code)
3 [AS 37.05.230]. In awarding a contract under this section the depart-
4 ment shall [PUBLISH A] request [FOR] proposals in accordance with
5 regulations of the Department of Administration under AS 36.30 (State
6 Procurement Code) [DEPARTMENT].

7 * Sec. 58. AS 47.30.350(a) is amended to read:

8 (a) The department shall

9 (1) develop and submit to the Surgeon General of the United
10 States Public Health Service a comprehensive program for the con-
11 structing and equipping of hospitals and other facilities for the
12 examination, observation, care, and treatment of the mentally ill;

13 (2) develop and submit to the Surgeon General plans and
14 specifications for the constructing and equipping of the hospitals and
15 other facilities;

16 (3) construct and equip the hospitals and other facilities
17 in accordance with the program, plans, and specifications approved by
18 the Surgeon General; construction and equipping under this paragraph
19 is governed by AS 36.30 (State Procurement Code);

20 (4) cooperate, coordinate, and contract, wherever indicated
21 and desirable, with other state boards, departments and agencies, and
22 agencies of the United States in the construction program, and hire
23 necessary personnel and enter into contracts with private individuals
24 and companies, to the end that the hospitals and other facilities are
25 constructed in the most economical and expeditious manner; contracting
26 and construction under this section are governed by AS 36.30 (State
27 Procurement Code).

28 * Sec. 59. AS 47.30.660 is amended to read:

29 Sec. 47.30.660. POWERS AND DUTIES OF DEPARTMENT. The

1 department is the mental health authority of the state and shall

2 (1) administer a comprehensive program for the prevention
3 of mental illness and the care and treatment of the mentally ill,
4 including inpatient and outpatient care and treatment and the procure-
5 ment of services of specialists or other persons on a contractual or
6 other basis;

7 (2) take the actions and undertake the obligations which
8 are necessary to participate in federal grants-in-aid programs and
9 accept federal or other financial aid from whatever sources for the
10 study, examination, care, and treatment of the mentally ill;

11 (3) administer AS 47.30.660 - 47.30.915;

12 (4) designate, operate, and maintain treatment facilities
13 equipped and qualified to provide inpatient and outpatient care and
14 treatment for the mentally ill;

15 (5) provide for the placement of mentally ill patients in
16 designated treatment facilities;

17 (6) enter into arrangements with governmental agencies for
18 the care or treatment of the mentally ill in facilities of the govern-
19 mental agencies in the state or in another state;

20 (7) enter into contracts with treatment facilities for the
21 custody and care or treatment of the mentally ill; contracts under
22 this paragraph are governed by AS 36.30 (State Procurement Code);

23 (8) enter into contracts which incorporate safeguards
24 consistent with AS 47.30.660 - 47.30.915 and the preservation of the
25 civil rights of the patients with another state for the custody and
26 care or treatment of patients previously committed from this state
27 under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd
28 Session, 70 Stat. 709;

29 (9) prescribe the form of applications, records, reports,

1 requests for release, and consents to medical or psychological treat-
2 ment required by AS 47.30.660 - 47.30.915;

3 (10) require reports from the head of a treatment facility
4 concerning the care of patients;

5 (11) visit each treatment facility at least annually to
6 review methods of care or treatment for patients;

7 (12) investigate complaints made by a patient or an inter-
8 ested party on behalf of a patient;

9 (13) delegate upon mutual agreement to another officer or
10 agency of it, or a political subdivision of the state, or a treatment
11 facility designated, any of the duties and powers imposed upon it by
12 AS 47.30.660 - 47.30.915; and

13 (14) adopt regulations to implement the provisions of
14 AS 47.30.660 - 47.30.915.

15 * Sec. 60. AS 47.35.010(a) is amended to read:

16 (a) The department may

17 (1) license and supervise boarding homes, foster homes,
18 group homes, nurseries, institutions caring for children and foster
19 homes, group homes and institutions caring for dependent adults;

20 (2) investigate and supervise licensees;

21 (3) enforce the standards established by it;

22 (4) contract with private or municipal agencies to investi-
23 gate and make recommendations to the department for the licensing and
24 supervision of boarding homes, foster homes, group homes, nurseries,
25 institutions caring for children and foster homes, group homes and
26 institutions caring for dependent adults under procedures and stan-
27 dards of operation established by the department; contracts with
28 private agencies under this paragraph are governed by AS 36.30 (State
29 Procurement Code).

1 * Sec. 61. AS 47.37.030 is amended to read:

2 Sec. 47.37.030. POWERS OF OFFICE. The office may

3 (1) plan, establish, and maintain treatment programs as
4 appropriate;

5 (2) make contracts and award grants necessary or incidental
6 to the performance of its duties and the execution of its powers,
7 including contracts with and grants to public and private agencies,
8 organizations, and individuals, to pay them for services rendered or
9 furnished to alcoholics or intoxicated persons; to the maximum extent
10 possible, contracts and grants shall be for a period of two years;
11 contracts under this paragraph are governed by AS 36.30 (State Pro-
12 curement Code);

13 (3) solicit and accept for use a gift of money or property
14 or a grant of money, services, or property from the federal govern-
15 ment, the state, or a political subdivision of it or a private source,
16 and do all things necessary to cooperate with the federal government
17 or any of its agencies in making an application for a grant;

18 (4) administer or supervise the administration of the
19 provisions relating to alcoholics and intoxicated persons of any state
20 plan submitted for federal funding under federal health, welfare, or
21 treatment legislation;

22 (5) coordinate its activities and cooperate with alcoholism
23 programs in this and other states, and make contracts and other joint
24 or cooperative arrangements with state, local, or private agencies for
25 the treatment of alcoholics and intoxicated persons and for the common
26 advancement of alcoholism programs in this and other states;

27 (6) keep records and engage in research and the gathering
28 of relevant statistics;

29 (7) do other acts necessary to implement the authority

1 expressly granted to it;

2 (8) acquire, hold, or dispose of real property or any
3 interest in it, and construct, lease, or otherwise provide treatment
4 facilities for alcoholics and intoxicated persons; however, the office
5 shall encourage local initiative, involvement and financial participa-
6 tion under grants-in-aid whenever possible in preference to the con-
7 struction or operation of facilities directly by the office; contract-
8 ing and construction under this paragraph are governed by AS 36.30
9 (State Procurement Code).

10 * Sec. 62. AS 47.37.130(g) is amended to read:

11 (g) The office may contract for the use of any facility as an
12 approved public treatment facility if the coordinator, subject to the
13 regulations of the department, considers this an effective and econom-
14 ical course to follow. Contracting under this subsection is governed
15 by AS 36.30 (State Procurement Code).

16 * Sec. 63. AS 47.40.041(b) is amended to read:

17 (b) Notices published by the department concerning the opening
18 of the application process for a grant award shall specify the geo-
19 graphical area in which services are needed, the type of services, the
20 number of beds anticipated to be needed, the maximum number of days of
21 care, and any other requirements established by the department.
22 Grants authorized under this section are exempt from AS 36.30 (State
23 Procurement Code) [THE COMPETITIVE BID REQUIREMENTS OF AS 37.05.230].

24 -* Sec. 64. AS 47.90.010(a) is amended to read:

25 (a) The commissioner, in consultation with state and local
26 government agencies, community groups, and groups concerned with
27 displaced homemakers, may

28 (1) contract with eligible private profit and nonprofit
29 corporations for multipurpose service centers for displaced

1 homemakers; contracting under this paragraph is governed by AS 36.30
2 (State Procurement Code); and

3 (2) coordinate existing state programs for displaced home-
4 makers.

5 * Sec. 65. REPORT. By December 1, 1988, the commissicner of adminis-
6 tration and the commissioner of transportation and public facilities shall
7 report to the legislature concerning procurements by state agencies during
8 fiscal year 1987. The report must include

9 (1) the records prepared under AS 36.30.510(4);

10 (2) recommendations for changes in AS 36.30 or other laws based
11 on implementation of AS 36.30 in those 12 months; and

12 (3) a description of any matters that involved litigation con-
13 cerning AS 36.30 during those 12 months.

14 * Sec. 66. REGULATIONS DEADLINE. The regulations required under
15 AS 36.30 as added by sec. 2 of this Act, shall be adopted by July 1, 1987
16 and shall be effective on that date. Regulations adopted under laws
17 repealed in sec. 67 of this Act become ineffective July 1, 1987.

18 * Sec. 67. REPEALER. The following laws are repealed: AS 14.40.340;
19 AS 19.10.190, 19.10.210; AS 24.23; AS 35.15.030, 35.15.050; AS 36.98;
20 AS 37.05.220, 37.05.230, 37.05.231, 37.05.240, 37.05.250, 37.05.260, 37.-
21 05.270, 37.05.280, 37.05.290, 37.05.400(2) and (3); AS 44.65; AS 44.77.-
22 010(c); and AS 47.90.010(c).

23 * Sec. 68. Section 66 of this Act takes effect immediately in accor-
24 dance with AS 01.10.070(c).

25 * Sec. 69. Except as provided in sec. 68, this Act takes effect July 1,
26 1987.

HOUSE CS FOR CS FOR SENATE BILL NO. 341 (Judiciary)

An Act relating to state procurement practices and procedures and providing for an effective date.

History of the Bill

Senate Resolution 6 established the Senate Select Interim Committee on Procurement Practices and Procedures.

Procurement Committee:

8 Statewide Public hearings
Mailing list over 250
Task force of State Procurement Personnel held numerous work sessions

SB 341

Based on the Model Procurement Code which has been adopted by 13 other states
The Model Procurement Code was modified to address Alaska's needs
Senate Judiciary Committee held 7 hearings
Senate Finance Committee held 2 hearings
House State Affairs held 4 hearings
House Judiciary held 3 hearings

24 TOTAL PUBLIC HEARINGS HELD SINCE SEPTEMBER

BENEFITS UNDER THE BILL

Comprehensive, concise law
Exceptional guidelines for the development of solicitations and evaluation of bids and proposals
A clear, comprehensive and uniform appeals procedure which will benefit vendors
Noncompetitive procurement methods such as sole source contracts will be limited and must be supported by written justification
Bill creates a procurement system that addresses the deficiencies of the existing system.

HOUSE CS FOR CS FOR SENATE BILL NO. 341 (Judiciary)
SECTIONAL ANALYSIS

(Unless otherwise indicated, "commissioner" means commissioner of administration)

SECTION 1. The purposes of the act are outlined to include: simplification, clarification, modernization of the laws; consistency among the branches of government; increased public confidence; fair and equitable treatment of all vendors; increased economy in state procurement; broad-based competition; safeguards for the maintenance of a procurement system of quality and integrity; and elimination and prevention of discrimination in state contracting.

SECTION 2. A new chapter is added to AS 36 entitled "State Procurement Code."

Article 1. Organization of State Procurement.

Sec. 36.30.005. Centralization of procurement of supplies and services for state agencies is under the authority of the commissioner of administration and the chief procurement officer. Procurement of construction and procurements to or disposals from the state equipment fleet and the control over construction and the state equipment fleet is under the commissioner of transportation and public facilities.

The University of Alaska is subject to the requirements of SB 341, but has independent administrative authority and the ability to issue its own regulations implementing the chapter in conformance with state APA requirements.

Sec. 36.30.010. The chief procurement officer is selected by the commissioner; is responsible for procurement of supplies and services for agencies in the executive branch; is a partially exempt employee; must have a minimum of 5 years in public procurement; and may be removed by the commissioner only for cause. The term of office of the Chief Procurement Officer is 4 years. Duties of the Chief Procurement Officer are enumerated.

Sec. 36.30.015. The commissioner of transportation and public facilities may delegate to another agency the authority to contract for construction, after written determination has been made that the agency is capable of implementing the delegated authority. The commissioner of administration may delegate to an agency the authority to contract for its own supplies and services after a written

determination has been made that the agency is capable of implementing the delegated authority.

The authority to adopt regulations or dispose of surplus supplies may not be delegated. Agency contracts for the services of legal counsel must be approved by the department of law.

The Board of Directors of the Alaska Railroad Corporation and the Alaska State Housing Authority must adopt procedures substantially equivalent to the procurement code and regulations adopted by the commissioner.

Sec. 36.30.020. Legislative Council must adopt procedures which are based on the competitive principles consistent with this chapter.

Sec. 36.30.030. The administrative director of the court system must adopt procedures which are based on the competitive principles consistent with this chapter.

Sec. 36.30.040. Procurement regulations must be adopted by the commissioner.

Sec. 36.30.050. A list of persons who desire to provide supplies, services or construction items to the state will be established and maintained by the commissioner. Evidence of a valid Alaska business license and a statement of the contractor's qualifications must be submitted to be included on the list. Construction contractors must also submit a valid certificate of registration. A biennial fee will be charged to offset the cost of administering the list. The list may be used by the state agencies in providing notice of intent to make small purchases.

Sec. 36.30.060. Specification regulations must be adopted by the commissioner. Specifications must promote overall economy for the purposes intended, encourage competition in satisfying the state's needs, and may not be unduly restrictive.

Sec. 36.30.070. Supply management is under the authority of the commissioner and regulations must be adopted which govern management of supplies, surplus supplies and transfer of excess supplies.

Sec. 36.30.080. The department shall lease necessary space, and contract for the lease of space for the use of the state or an agency. A lease or contract for a lease may not be for a period of occupancy greater than 40 years. The department may enter into lease-financing agreements, which are subject to annual appropriation. If the department intends to enter into a lease or lease financing agreement with an annual rent anticipated to

exceed \$1,000,000, notice must be provided the legislature for approval.

Article 2. Competitive Sealed Bidding.

Sec. 36.30.100. Competitive sealed bidding is the preferred method of contracting. Competitive sealed bidding is not required for certain purchases, including professional services, which are itemized.

Sec. 36.30.110. When competitive sealed bidding is used, an invitation to bid is issued which must include the date by which the bid must be received, purchase description, and all contractual terms and conditions. Subcontractors must be listed. Evidence of a valid Alaska business license for all bidders and subcontractors must be submitted when responding to the ITB. A bidder for construction contracts must also submit evidence of the bidder's registration under AS 08.18 and evidence of registration for each listed subcontractor.

Sec. 36.30.115. Within 24 hours after the opening of bids, the two apparent low bidders shall submit a list of the subcontractors the bidder proposes to use in the performance of the contract. Conditions under which a bidder may substitute a subcontractor are listed. A bidder who violates this section may either have the contract cancelled, or after notice and a hearing, be assessed a penalty in an amount not exceeding 10% of the value of the subcontract at issue.

Sec. 36.30.120. Bid security shall be required for all competitive sealed bidding for construction contracts which exceed an amount established by regulation. Bid security may be required for other types of supplies and services.

Sec. 36.30.130. Public notice of the ITB must be provided 21 days before the date for the opening of the bid, unless otherwise determined in writing by the chief procurement officer, or the commissioner of transportation and public facilities for construction or state equipment bids. Notice of solicitations must be published in the Alaska Administrative Journal. The state is liable for failing to substantially comply with the notice requirements of this section.

Sec. 36.30.140. Bid opening must be public, in the presence of witnesses, and relevant information must be recorded, which is open to public inspection. The bids are not open for public inspection until after a notice of intent to award a contract has been issued.

Sec. 36.30.150. The procurement officer must evaluate bids based on the requirements set out in the ITB. The criteria used for the evaluation of an award must be objectively measurable. Criteria may not be used in bid evaluation if they are not set out in the ITB.

A contract based on total or life cycle costs may be awarded only when the chief procurement officer or the commissioner of transportation and public facilities determines in writing that the contract promotes overall economy for the purposes intended, encourages competition, is not unduly restrictive, and is in the best interest of the state.

Sec. 36.30.160. Bids received after the bid due date indicated on the ITB may not be accepted unless the delay was due to an error of the contracting agency.

Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on bid mistakes shall be permitted in accordance with regulations and supported by written justification.

Sec. 36.30.170. Awards to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the ITB shall be promptly made. The Alaska bidder preference is expanded to apply to all construction contracts. The lowest responsible and responsive Alaskan bidder with a bid not more than 5% higher than the lowest bid of a nonresident shall be awarded the contract. An Alaskan bidder who qualifies as an "employment program" shall be given a 10% preference.

Sec. 36.30.190. Multi-step sealed bidding is allowed when it is considered impractical to initially prepare a definitive purchase description to support an award based on price. Unpriced technical offers are submitted, followed by an ITB limited to the bidders whose offers are determined to be technically qualified under the criteria established.

Article 3. Competitive Sealed Proposals.

Sec. 36.30.200. Contracts may be awarded by competitive sealed proposals when the chief procurement officer, or the commissioner of transportation and public facilities for construction and state equipment fleet contracts, determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state.

Sec. 36.30.210. Request for proposals must contain the same information required for ITBs. The same notice provisions for ITBs apply for RFPs. An offeror must list the subcontractors within 48 hours after the date by which the proposals must be received. The same duties of bidders under ITBs apply to competitive sealed proposals.

Sec. 36.30.220. Standard overhead rate established by agencies and applicable to contracts for supplies and services, must be included in a RFP.

Sec. 36.30.230. Proposals are to be opened in a manner which avoids disclosure of contents to competing offerors during the process of negotiation. A register of proposals containing the name and address of each offeror shall be prepared and open for public inspection after the the notice of intent to award a contract is issued.

Sec. 36.30.240. Discussions with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, may be conducted for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and before the award for the purpose of obtaining best and final offers. These discussions are exempted from the Alaska Open Meetings law.

Sec. 36.30.250. A contract under competitive sealed proposals shall be awarded to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price, the evaluation factors set out in the RFP, and whether the offeror qualifies as an Alaskan Bidder or is offering the services of an employment program.

Sec. 36.30.260. A contract awarded under competitive sealed proposals must contain: the amount of the contract; the date for supplies to be delivered or the term for services to be performed; a description of the services or supplies contracted for; and a certification that sufficient funds are available for the amount of the contract.

Sec. 36.30.270. Special procedures apply to contracts awarded to architects, engineers, and land surveyors.

Article 4. Other Procurement Methods.

Sec. 36.30.300. Sole source procurements may only be awarded if it is determined in writing that there is only one source for the required supply, service or construction. A sole source procurement may not be approved if a reasonable alternative source exists.

Sec. 36.30.310. Emergency procurements may be authorized under emergency conditions when there exists a threat to public health, welfare, or safety, and procurement through competitive sealed bids or competitive sealed proposals is impracticable, or contrary to the public interest, or to protect public or private property. A written determination of the basis for the emergency and for the selection of the particular contractor must be provided.

Sec. 36.30.320. Small procurements which do not exceed an aggregate amount of \$5,000 shall be made with competition that is practicable under the circumstances. A contract for professional services that does not exceed \$25,000 may be made in accordance with regulations adopted by the commissioner. Notice of small procurements shall be provided to Alaskan bidders designated by the commissioner under section 36.30.050(d).

Article 5. Contract Formation and Modification.

Sec. 36.30.340. If a contract contains a term that is in conflict with a state standard form contract term or if a standard term is deleted or modified by a term that is not standard, the contract must be approved by the Attorney General.

Sec. 36.30.350. Solicitations may be cancelled or any bids or proposals may be rejected, in whole or in part, or the date for opening bids or proposals may be delayed as may be specified in the solicitation, when it is in the best interest of the state. The reasons for cancellation, rejection, or delay in opening bids or proposals shall be made part of the contract file.

Sec. 36.30.360. A written determination of responsibility of a bidder or offeror shall be made by the procurement officer.

Sec. 36.30.362. The procurement officer must issue a written statement explaining the reasons a contract was awarded to a person who does not reside or maintain a place of business in Alaska, if the supplies, services, professional services or construction could have been obtained from in-state sources.

Sec. 36.30.365. At least 10 days before the formal award of a contract the procurement officer shall provide to

each bidder or offeror notice of intent to award a contract.

Sec. 36.30.370. Any type of contract that will promote the best interests of the state may be used, except that the use of a cost-plus-a-percentage-of cost contract is prohibited.

Sec. 36.30.380. Except with respect to contracts awarded through competitive sealed bidding or firm fixed-price contracts, a contract type may not be used unless it has been approved in writing by the procurement officer.

Sec. 36.30.390. Unless otherwise provided by law, multi-term contracts are permitted, but subject to availability and appropriation of funds. Written determination must support multi-term contracts.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal periods, the contract shall be cancelled. The contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred, but not amortized in the price of the supplies or services delivered under the contract that are not otherwise recoverable.

Sec. 36.30.400. Cost or pricing data must be submitted and certified by contractors. This does not apply when: the contract price is based on adequate price competition; the contract price is set by law or regulation; or it is determined in writing that the requirements of this section are waived and the reasons for waiver are stated in writing.

Sec. 36.30.410. The state has the right to inspect the plant or place of business of a contractor or subcontractor that is related to the performance of a contract awarded or to be awarded by the state.

Sec. 36.30.420. The state may audit books and records of a person who has submitted cost or pricing data or receives a contract.

Sec. 36.30.430. The commissioner shall adopt regulations permitting the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions, and appropriate remedies.

Sec. 36.30.460. Standard clauses in state contract may be modified if supported by a written determination that states the circumstances justifying the variation.

Sec. 36.30.470. If the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget or the total contract budget, the procurement officer may not execute the contract modification, change order, or adjustment in contract price unless sufficient funds are available, or the scope of the project or contract is adjusted to permit the degree of completion that is feasible within the total project budget or total contract budget as it existed before the contract modification, change order, or adjustment in contract price.

Sec. 36.30.480. Cost principle regulations shall be adopted.

Article 6. Procurement Records and Reports.

Sec. 36.30.500. Procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the state archivist.

Sec. 36.30.510. A contract file open for public inspection must be kept by the commissioner and the contracting agency for each contract awarded under competitive sealed proposals. The file kept by the commissioner shall contain a summary of the information in the file of the contracting agency.

Sec. 36.30.520. The commissioner shall maintain for at least 5 years a record listing all sole source and emergency procurement contracts. An agency which has delegated procurement authority shall by October 1, of each year, submit records of all sole source and emergency procurement contracts to the commissioner.

Sec. 36.30.530. Procurement information is public except as otherwise provided by law.

Sec. 36.30.540. The commissioner shall biennially report to the legislature concerning procurements by agencies.

Article 7. Legal and Contractual Remedies.

Sec. 36.30.560. An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for goods, services or construction. The protest shall be filed with the procurement officer of the contracting agency in writing and must contain specified items.

Sec. 36.30.565. Time deadlines for filing protests are specified.

Sec. 36.30.570. Notice of a protest shall immediately be given to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

Sec. 36.30.575. If a protest is filed before a contract is awarded, the award may be made unless the procurement officer of the contracting agency determines in writing that: a reasonable probability exists that the protest will be sustained; or stay of the award is not contrary to the best interests of the state.

Sec. 36.30.580. A written decision by the procurement officer of the contracting agency shall be issued within 14 days after a protest has been filed, unless the time is extended up to 26 days for good cause. Notice shall be sent to the protester. If a decision is not made by the due date, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

Sec. 36.30.585. If the procurement officer sustains a protest the procurement officer shall implement an appropriate remedy.

Sec. 36.30.590. An appeal from a decision of a procurement officer on a protest must be filed with the appropriate commissioner within 5 days after the decision is received by the protester.

Sec. 36.30.595. The procurement officer shall immediately give notice of an appeal to the contractor if a contract has been awarded, or, if no award has been made, to all interested parties.

Sec. 36.30.600. If a protest appeal is filed before a contract is awarded and the award was stayed, the filing of the appeal automatically continues the stay until the commissioner of administration or transportation and public facilities makes a written determination that the award of the contract is necessary to protect substantial interests of the state.

Sec. 36.30.605. The procurement officer of the contracting agency shall file a complete report on the protest and decision with the commissioner of administration or transportation and public facilities within 7 days after a protest appeal is filed. The protester and all interested parties that have requested a copy of the appeal shall be furnished one. The protester may file comments on the protest report within 7 days after the report is received. Extensions may be granted.

Sec. 36.30.610. The commissioner of administration or transportation and public facilities shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely. The

appropriate commissioner may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.

Sec. 36.30.615. A hearing on a protest appeal shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.620. If a controversy, asserted by a contractor, concerning a contract awarded under this chapter cannot be resolved by agreement, the procurement officer shall, after receiving a written request by the contractor, issue a written decision no more than 90 days after receipt of all necessary information from the contractor, unless the due date is extended for good cause.

The decision shall be sent to the contractor. If a decision is not made by the due date, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor. If a controversy asserted by the state concerning a contract awarded cannot be resolved by agreement, the matter shall be immediately referred to the commissioner of administration or transportation and public facilities.

Sec. 36.30.625. An appeal from a decision of the procurement officer on a contract controversy may be filed by the contractor with the commissioner of administration or transportation and public facilities. The appeal shall be filed within 14 days after the decision is received by the contractor.

Sec. 36.30.630. A hearing on a contract controversy appealed to the commissioner or referred to the commissioner shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.632. The commissioners of administration and transportation and public facilities may delegate responsibilities under Sec. 36.30.590 and Sec. 36.30.630 to the head of the contracting agency.

Sec. 36.30.635. The commissioners of administration and transportation and public facilities may debar or suspend a person from consideration for award of contracts. Notice and opportunity for a hearing are specified.

Sec. 36.30.640. Causes for debarment or suspension are enumerated.

Sec. 36.30.645. The commissioners of administration and transportation and public facilities shall issue a written decision to debar or suspend.

Sec. 36.30.650. A person suspended is entitled to a hearing if the person files a written request for a hearing within 7 days after receipt of the notice of suspension.

Sec. 36.30.655. The commissioner shall maintain a list of all persons debarred or suspended from consideration for award of contracts.

Sec. 36.30.660. The commissioner of administration or the commissioner of transportation and public facilities may, at any time after a final decision to debar a person, reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

A debarred person may request reinstatement. A hearing may be held on a reinstatement petition. A decision on reinstatement shall be made in writing within 7 days after a reinstatement petition is submitted. A decision under this section is not subject to judicial appeal.

Sec. 36.30.665. The commissioner of administration or transportation and public facilities may permit a debarred person to participate in a contract on a limited basis during the debarment period.

Sec. 36.30.670. The commissioner of administration or transportation and public facilities shall act as a hearing officer or appoint a hearing officer for a hearing conducted under this chapter. The provisions of the Administrative Procedure Act do not apply to a hearing conducted under this chapter. The authority of a hearing officer is outlined.

Sec. 36.30.675. If the commissioner of administration or transportation and public facilities is not acting as a hearing officer, the hearing officer shall recommend a decision to the appropriate commissioner based on the evidence presented. The recommendation shall include findings of fact and conclusions of law. The appropriate commissioner may affirm, modify or reject the hearing officer's recommendation or take any other appropriate action.

Sec. 36.30.680. A decision by the commissioner of administration is final, and shall be sent within 20 days after a hearing to all parties. A decision by the commissioner of transportation and public facilities involving procurement of construction shall be sent within 90 days after the hearing.

Sec. 36.30.685. A final decision of the commissioner of administration or transportation and public facilities may

be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure.

Sec. 36.30.687. Civil and criminal sanctions are outlined for misrepresentations and fraudulent claims.

Sec. 36.30.690. This chapter and the regulations adopted under it are the exclusive procedures for asserting a claim against the state or an agency arising in relation to a procurement conducted under this chapter.

Sec. 36.30.695. The commissioner of administration may adopt by regulation additional rules of procedure.

Sec. 36.30.699. The definition of interested party is given.

Article 8. Intergovernmental Relations.

Sec. 36.30.700. Cooperative purchasing is authorized between public procurement units or external procurement activities in accordance with an agreement entered into between the participants.

Sec. 36.30.710. Sale, acquisition, or use of supplies among public procurement units or with external procurement activity may be done independent of certain requirements of this chapter.

Sec. 36.30.720. Joint use of facilities is allowable.

Sec. 36.30.730. A public procurement unit may provide personnel, information and technical services to a requesting public procurement unit or external procurement activity.

Sec. 36.30.735. Current Alaska law on restrictions of contracting with or employing experts on radiation hazards is retained.

Sec. 36.30.740. The commissioner may collect information concerning supplies, services or construction being procured or used by state public procurement units.

Sec. 36.30.750. Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with this chapter.

Sec. 36.30.790. Definitions for this article are provided.

Article 9. General Provisions.

Sec. 36.30.850. This chapter applies to contracts solicited or entered into after January 1, 1987, unless the parties agree to its application to a contract solicited or entered into before that date. This chapter applies to the disposal of state supplies and every expenditure of public funds irrespective of their sources, except as specified in AS 36.30.915.

This chapter does not apply to: grants; contracts for professional witnesses; contracts of the University of Alaska where the work is to be performed substantially by enrolled students; contracts for medical doctors and dentists; contracts for the purchase of residential child care services under AS 47.40; disposals of land or interest in land; disposals under AS 38.05; contracts for the preparation of ballots under AS 15.15.030; acquisitions or disposals of property and other contracts relating to airports; acquisitions of real property or disposals of obsolete property under AS 19.05.060, 19.05.100, 19.05.110 or 19.05.120; disposals of obsolete material or equipment under AS 35.20.060; leases of ferry terminal facilities under AS 19.60.010; contracts of the department of fish and game for non-point-to-point flights requiring specialized flying and piloting skills; or purchases of income-producing assets for the state treasury or a public corporation of the state.

Except for AS 36.30.700-36.30.895, this chapter does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other entities.

Sec. 36.30.860. Unless displaced by the particular provision of this chapter, all other principles of law and equity shall supplement the provisions of this chapter.

Sec. 36.30.870. Regulations under this chapter shall be adopted in accordance with the Administrative Procedure Act. Regulations applicable to procurements of construction or procurements for or disposal of property of the state equipment fleet shall be adopted by the commissioner of administration only after consultation with the commissioner of transportation and public facilities.

Sec. 36.30.880. This chapter requires all parties involved in the negotiation, performance, or completion of state contracts to act in good faith.

Sec. 36.30.890. If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a

regulation adopted under a provision, the federal statute or regulation shall prevail.

Sec. 36.30.900. This chapter does not modify, amend, or alter laws regarding preference for Alaska forest products or preference to producers or dealers in Alaska, except as provided in AS 36.30.170(b) and (c).

Sec. 36.30.910. This chapter does not prevent purchasing through the general services administration as provided by law.

Sec. 36.30.920. Suspected anticompetitive practices are to be reported to the attorney general.

Sec. 36.30.930. In addition to penalties prescribed for unethical conduct, civil and criminal penalties are provided for violations of this chapter.

Sec. 36.30.940. The attorney general on behalf of the state shall enforce the provisions of this chapter.

Sec. 36.30.950. Severability clause is included.

Sec. 36.30.990. Definitions.

Sec. 36.30.995. This chapter may be cited as the State Procurement Code.

SECTION 3 through SECTION 64 amend other Alaska statutes to reflect the provisions of this chapter.

SECTION 65. The commissioner must report to the legislature by December 1, 1988, concerning procurements by state agencies during the fiscal year 1987.

SECTION 66. The commissioner of administration shall adopt the regulations required under this chapter by July 1, 1987.

SECTION 67. This is the repealer section.

SECTION 68. Section 66 of this Act takes effect immediately.

SECTION 69. Except as provided in sec. 68, this Act takes effect July 1, 1987.