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Jeanie Henry

House Judiciary	5/9/86	1:30 pm
"	5/9/86	7:00 pm

# Alaska State Legislature

CO-CHAIRMAN  
FINANCE COMMITTEE

907-465-3740



Senate

IAN FAIKS  
POUCH V  
CAPITOL BUILDING  
UNEAU, ALASKA 99811

TO: SENATE SELECT INTERIM COMMITTEE ON PROCUREMENT PRACTICES AND PROCEDURES

FROM: SENATOR JAM FAIKS

SUBJECT: MODEL PROCUREMENT CODE

DATE: AUGUST 28, 1985

In February of 1979, the Model Procurement Code for State and Local Governments was adopted by the American Bar Association's House of Delegates. The Code represents over five years of intensive effort directed by a Coordinating Committee which is a joint committee of the Section of Public Contract Law and the Section of Urban, State and Local Government Law.

The Model Procurement Code provides the framework for creating a complete purchasing system at any level of government. Specifically, the Code contains: (1) the statutory principles and policy guidance for managing and controlling the procurement of supplies, services, and construction for public purposes; (2) administrative and judicial remedies for the resolution of controversies relating to public contracts; and (3) a set of ethical standards governing public and private participants in the procurement process.

The following jurisdictions have adopted modified versions of the Code: Kentucky (1979), Arkansas (1979), Louisiana (1980), Utah (1980), Maryland (1981), South Carolina (1981), Colorado (1982), Indiana (1982), Virginia (1983), Territory of Guam (1983), New Mexico (1984), and Arizona (1984).

Local governments/agencies have also adopted versions of the Code, including: Knoxville, TN (1977), Jefferson City, KY Board of Education (1980), Anchorage, AK (1980), Eau Claire, WI (1980), Rome, GA (1980), Davenport, IA (1980), Louisville, KY (1981), Michigan Public Transit Association (1981), Seminole County, FL (1983), Rockville, MD (1983), Kansas City, KS (1983), Atlanta, GA (1983), and Boca Raton, FL (1984).

Attached is an article on the Code entitled "Recent Developments in State and Local Procurement: Implementation of the Model Procurement Code Picks Up Pace" which provides an overview.

RECENT DEVELOPMENTS IN STATE AND LOCAL PROCUREMENT:  
IMPLEMENTATION OF THE MODEL PROCUREMENT CODE PICKS UP PACE

Committee on State and Local Procurement Law

Larry C. Ethridge, Chairman

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## I. Introduction

Tightening the budgetary belts of state and local governments often results from one of two factors: cities, counties, and states find themselves hard pressed to obtain needed goods and services due to inefficient commitments of scarce tax funds; or, governmental bodies engaged in trimming down on account of budget shortfalls and seeking more efficient methods for obtaining goods and services under a structured and cohesive contracting system. The Model Procurement Code for State and Local Governments (hereinafter the "MPC"),<sup>1</sup> a joint undertaking of the ABA Sections of Public Contract Law, and Urban, State and Local Government Law, provides the framework for creating a complete purchasing system at any level of government. Purposefully drafted as a model, rather than a uniform purchasing law,<sup>2</sup> enacting jurisdictions have enjoyed considerable flexibility in adapting the MPC in a manner that conforms to the unique needs of their constituents. This article will update readers on implementation activities and litigation under the MPC, since it was first mentioned in The Urban Lawyer in the summer of 1979.<sup>3</sup> A general familiarity with the MPC is presumed, and it can easily be obtained by scanning the ABA approved document.

## II. Enactments

### A. States

The Coordinating Committee on A Model Procurement Code (hereinafter the "Coordinating Committee") cooperated with a number of Pilot Jurisdictions in the early development of the MPC's statutory language.<sup>4</sup> To date, eleven states have adopted

legislation based upon the MPC, flowing from its formal approval by the ABA House of Delegates on February 13, 1979.<sup>5</sup> By comparison, only two states (Pennsylvania and Massachusetts) had adopted the Uniform Commercial Code in the first six years of its "official" life after its release in September, 1951.<sup>6</sup>

The two most recent enactments of the MPC became effective in New Mexico and Arizona on November 1, 1984 and January 1, 1985, respectively.<sup>7</sup> A brief digest of these two adaptations will give the reader a flavor of the methods that states have utilized in tailoring the MPC to fit their needs. Both of these enactments reflect the Coordinating Committee's drafting philosophy that the MPC should be used as a "mirror", reflecting the strengths and weaknesses of existing procurement statutes and serving as a vehicle for codifying and updating them.

The New Mexico Procurement Code is not separated into distinct articles by subject matter, although its sections flow from one topical area to another in the basic sequence of the MPC. Definitions were placed under a single section, thus eliminating the need for cross-references; and, the state's existing procurement organization was retained with the Secretary of the General Services Department exercising administrative control over the procurement process. Competitive sealed bids are the favored method of source selection as in the MPC, with local exceptions for procurements under existing contracts and purchases from anti-poverty program businesses. Professional services are to be obtained primarily by competitive sealed

proposals, and the State Procurement Standards and Specifications Committee is charged with developing a list of acceptable brand name items in addition to standardized specifications. Various provisions of the MPC which were already covered by state law were not placed under the New Mexico Procurement Code (e.g., Article 5, Construction Management and Bonding Provisions; and Article 8, Supply Management). New Mexico's Code requires that bid protests be submitted within fifteen days of the occurrence giving rise to the protest rather than the MPC's thirty days, and bid protest resolution provisions do not include award of monetary damages or attorney's fees. New Mexico encourages contracting with small businesses as defined by dollar volume, but their Code makes no provision for minority or disadvantaged businesses as a function of the procurement process.<sup>3</sup>

The Arizona Procurement Code embraces many MPC provisions, and effects substantial changes in the way the state purchases goods and services. From the viewpoint of procurement organization, however, many entities are excluded from mandatory application of the Arizona Code, including: political subdivisions; the University Board of Regents; the Legislature; the Judicial Branch; the Lottery Commission; the State Transportation Board for Engineering and Construction Services; health care provider contracts; and, purchases of raw materials by Industries for the Blind and Correctional Enterprises. The current purchasing organization was retained, with the Director of the Department of Administration serving as both the purchasing policy maker and the chief procurement officer (the

MPC recommends separation of these duties). The Arizona source selection and contract formation provisions closely parallel those found in Article 3 of the MPC, which forms the heart of any purchasing system. One interesting feature of the Arizona Code is its prohibition against the use of competitive sealed proposals in the procurement of construction. Arizona's Article 5 is unique in that it covers not only architect-engineer and land surveying services, but it also includes the services of assayers, geologists and landscape architects. Price may be considered as a selection factor under certain circumstances in the procurement of these professional services, a significant variance from MPC provisions on point. The remedies section (Article 9) provides exclusive means for asserting a contract claim against the state under the Arizona Procurement Code. Finally, Arizona has not included provisions found in MPC Articles 11 and 12, with the exception that the state must comply with all federal assistance requirements.<sup>9</sup>

As can be seen, states have taken a very active role in adapting the Code for their use, supplementing and codifying existing statutes using the MPC as a baseline drafting guide. These efforts have been assisted by state and local bar groups and representatives of the sponsoring ABA Sections in many jurisdictions.

#### B. Local Enactments

Local enactments of MPC based legislation have proven most difficult to track, due in no small part to the multiplicity of local jurisdictions which have reviewed the Code in whole or

in part, and the lack of centrally staffed "clearing house" for processing such information. To date, at least seventeen local jurisdictions are known to have adopted the MPC.<sup>10</sup> Information or requests regarding local enactments should be directed to Professor Louis F. Del Duca, a member of the MPC Coordinating Committee and Director of the Model Procurement Code Annual Progress Report Project at Dickinson School of Law.<sup>11</sup>

### III. Litigation Survey

Billed as a "lawyer's relief act" early on by some in the purchasing community, MPC enactments have not spawned the tidal wave of lawsuits once predicted. Our initial litigation survey revealed that most of the reported cases have centered on the provisions of Articles 1, 3 and 9, with a lesser number of disputes arising under Articles 5, 8 and 12. As anticipated, the majority of cases reviewed have come from states in which the MPC has been in effect for some time, namely, Kentucky, Louisiana and Maryland (enactments effective in 1979, 1980, and 1981, respectively).<sup>12</sup> The remainder of this article will highlight these recent decisions or legislative refinements which have clarified, and in some cases confused, issues arising under MPC enactments. For ease of reference, the survey is arranged by MPC Articles, addressing the major issues as they have arisen thereunder each topical heading.

#### A. Article 1 -- General Provisions

Alternative B of MPC §1-104(3) (Local Application of this Code) authorizes, but does not require, political subdivisions to adopt any or all portions of the code, and the

Louisiana Procurement Code adopted this "optional" approach. In Council of the City of New Orleans v. Morial, et al.,<sup>13</sup> the Council members sought judicial clarification of their Charter provisions requiring competitive bidding on all contracts for construction, repairs, maintenance or services; with an express exception for the procurement of "professional services" as defined.<sup>14</sup> The question arose as to whether the administrative services required for a health care plan for city employees came within the bidding exemption for "professional services". Although the contract was entered into prior to the effective date of the Louisiana Procurement Code, the Morial court referred to that enactment's definitions of personal and professional services<sup>15</sup> (in effect at the time of appeal), in order to underscore its finding that since the services in question were primarily clerical in nature, competitive bidding would indeed be required for that contract.<sup>16</sup>

The Kentucky General Assembly, after originally enacting provisions of its Code for mandatory local application, later made the Kentucky Procurement Code optional for its local public agencies.<sup>17</sup> This significant change in local application did not occur without quite a bit of confusion, and the intervention of the State Attorney General. Two separate bills enacted in the 1980 Session were in direct conflict: the first bill enacted provided for optional applicability for local agencies and contained an "emergency" clause; whereas, the second bill which was approved by the Legislature a few weeks later required mandatory Code application for local governments, except

for the purchase of goods produced by convict labor.<sup>18</sup> Acting upon requests from the executive and legislative branches of government, the Attorney General issued an Opinion (OAG 30-279) which held that the earlier optional enactment should prevail because it dealt more specifically with public procurement, and because it contained an emergency clause which connoted legislative preference for its efficacy.<sup>19</sup> Thus, for those local units of government in Kentucky which do not choose to adopt the local application provisions of the state code (KRS 43A.345-460), the only requirement for public contracts is that those in excess of \$7,500.00 must be advertised (KRS 424.260). This situation has not been addressed directly by the Kentucky Courts to date, and it underscores the significance of the local application issue faced by each enacting state.

The "requirement of good faith" found in MPC §1-103 was tested in Millette Enterprises, Inc., et al. v. State Division of Administration, et al.,<sup>20</sup> wherein the Louisiana Court of Appeals concluded that the obligation of good faith could not be met in a situation where a state agency had predetermined the bidder to whom it would award a contract under the cloak of competitive bidding.<sup>21</sup> This case involved a situation where an Invitation for Bids (IFB) for insurance claims processing services was rewritten after the first round of bidding, and its revised qualifications provisions had been altered to favor the incumbent contractor. This case is of particular interest in that the court granted standing to a disappointed bidder in addition to the taxpayer who had also initiated the suit.

B. Article 3 -- Source Selection and Contract Formation.

A brief explanation of the source selection methods available under the MPC is in order at this point, for a newcomer to this area of the law could easily become lost in the confusing maze of procurement terminology. Indeed, standardization of the procurement vocabulary is but one of the many benefits provided by MPC adoption, for similar terms are often given vastly different meanings in the field.

The MPC contains a firmly stated preference for "competitive sealed bidding" as the primary source selection method pursuant to §3-201; and §3-202 (Competitive Sealed Bids) specifically provides for the contents of the Invitation for Bids (IFB),<sup>22</sup> public notice, bid acceptance and evaluation, and award of a contract to the lowest responsive and responsible bidder. The MPC lists the six following alternative source selection methods which may be used in appropriate situations after proper determinations have been made: competitive sealed proposals;<sup>23</sup> small purchases; sole source procurement; emergency procurement; professional services procurement as specified in §2-302; and, architect-engineer and land surveying services procurement.<sup>24</sup> Since an agency must assess the nature of the market for the goods and services it requires and then tailor its procurement methods to take advantage of these conditions in any given situation,<sup>25</sup> the MPC provides the necessary flexibility to obtain the universally desired goal of "performance purchasing" (optimum use of limited funds). Competitive sealed proposals, set forth

under MPC §3-203, may be utilized when competitive sealed bidding is either not practicable or not advantageous to the governmental body, following a written determination of the specific conditions authorizing the use of this innovative procurement method<sup>26</sup>, which is frequently employed for the procurement of high-technology goods and services.

Not surprisingly, MPC Article 3 has generated more litigation than any other Code Article. Under the competitive sealed bidding method, award of the contract shall be made "to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids",<sup>27</sup> with the term "responsive bidder" defined as "a person who has submitted a bid which conforms in all material respects to the invitation for bids."<sup>28</sup> The language of the Maryland Procurement Code is identical,<sup>29</sup> and in Kennedy Temporaries v. Comptroller of the Treasury<sup>30</sup> an unsuccessful bidder challenged the responsiveness of the bid submitted by the successful bidder on a contract for the provision of temporary personnel for processing state income tax returns. The unsuccessful bidder claimed that the winning bid was nonresponsive in that the amount of the bid bond submitted with the bid was insufficient, and that this factor required rejection of that otherwise low bid under state regulations. The Court of Special Appeals, in overruling this challenge to the award of the contract, held that under the Maryland Code a procurement officer had the authority to "give the bidder...an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid...or waive the

deficiency, whichever is to the advantage of the State."<sup>31</sup> Significantly, the court went on to find that the unsuccessful bidder had tendered a nonresponsive bid itself, since it had only submitted a letter of guarantee from its bank in lieu of the required bid bond.<sup>32</sup> Judge Wilner also found that the complainant had effectively waived its right to appeal for failure to properly follow statutory appellate requirements, and a thorough review of this interesting case is recommended to the reader.

In Bilongo v. Department of Health and Human Resources, Louisiana's Court of Appeals held that bids which substantially deviate from specifications are nonresponsive and thus void ab initio, but when the deviation is insubstantial, valid competitive bidding occurs.<sup>33</sup> The court stated that summary judgment was an improper means for resolving this case in that there was a question of fact as to whether Bilongo's bid for new construction leased space deviated substantially from the specifications in the IFB. The Bilongo court also upheld the public body's wide discretion in determining the "lowest responsible bidder", which would only be overturned if the determination were made in an arbitrary or capricious manner.

As previously stated, competitive sealed bidding is the preferred method of source selection under the MPC.<sup>34</sup> In Louisiana, political subdivisions are subject to State statutory provisions concerning acquisition of construction, architect-engineer and land surveying services, which are covered outside the State's Procurement Code in Louisiana Revised

Statutes §§38:2131.<sup>35</sup> Budd Construction Co., Inc. v. City of Alexandria<sup>36</sup> is illustrative of strict adherence to bid requirements. In that case, the court required the City of Alexandria to abide by its own precise rules in determining the lowest bidder. The contract in question was awarded to a company (Slocum) whose bid contained a conflict between a written unit price for cement and the same unit price set forth in figures. City regulations required that the written price prevail when such conflicts arose, which would have made the appellant Budd Construction Company's bid lower than Slocum's. The City Council, based on oral representations from Slocum to adhere to the lower price set forth in figures, voted 4-3 to accept that unit price from Slocum, thus making it the low bidder.<sup>37</sup> The Court of Appeals, in affirming the trial court's grant of a preliminary injunction to Budd, held that the city had acted arbitrarily in rejecting the lowest bid from Budd and had directly violated statutory provisions regarding bid award.<sup>38</sup> This decision also affirmed the standing of a disappointed bidder to maintain an action to enjoin the city from awarding a contract.

In Maryland, competitive bidding need not be used under a city's loan guarantee program for development or redevelopment, when the proposed project relates to a specific location owned or to be owned by the borrower.<sup>39</sup> The Court of Appeals also noted in Hughes v. Schaefer that the plaintiffs failed to elevate Baltimore's loan programs for redevelopment to the status of "public works," which would have required competitive acquisition

procedures and rendered the City of Baltimore's acts under this program invalid.

A recent Louisiana case involving MPC Article 3 is Daves v. State Division of Administration, Office of Risk Management,<sup>40</sup> construing a proposed multi-term contract for the state's liability insurance on its fleet of vehicles. Daves Insurance Agency was the lowest responsive bidder and was awarded a three-year contract, and the major issue presented to the court was whether the contract was subject to an annual adjustment of premiums. Under Louisiana law, automobile liability insurance policies cannot be issued on a level rate for a multiple-year term, but must be adjusted after the first year.<sup>41</sup> The First Circuit Court of Appeals held upon review of the administrative record that the State had no right to terminate the insurance contract in question or to contend that the bid fixed a level rate for the entire term of the contract, basing the latter finding on the fact that the bid from Daves expressly stated that it was subject to annual adjustments and the bid was accepted by the State with that understanding.<sup>42</sup> The Court significantly found that the State was not entitled to insert a unilateral cancellation clause in the insurance contract, and that either party could cancel the contract only for legal cause.

C. Article 5 -- Procurement of Construction, Architect-Engineer and Land Surveying Services

MPC §5-301 details the requirements for bid security bonds. Maryland's Procurement Code requires a bid bond of five percent of the total amount bid in excess of \$25,000, and "[i]f

the invitation for bids or request for proposals require that a bid bond be provided, a bidder or offeror that does not comply shall be rejected."<sup>43</sup> In the previously cited case of Kennedy Temporaries v. Comptroller of the Treasury,<sup>44</sup> a letter of guarantee pledging collateral to secure contract performance from an otherwise responsive bidder's bank, was held to be in noncompliance with statutory and regulator bid security requirements.<sup>45</sup>

D. Article 3 -- Supply Management

MPC §§3-201 contains broad language covering the sale or disposal of surplus supplies, said process located on the far end of the procurement spectrum. Kentucky's Model Procurement Code section dealing with the disposal of surplus property is not mandatory in requiring that agencies sell surplus goods in strict accordance with the Code's acquisition standards.<sup>46</sup> In accordance with the permissive nature of the section, the Kentucky Court of Appeals held in Ohio River Conversions v. City of Owensboro<sup>47</sup> that a city has wide discretion in accepting a lower offering price for the sale of a surplus facility (boat dock), when the buyer's use of the facility will be more beneficial to the citizenry than that of a buyer offering a higher price.<sup>48</sup> In this case, the higher bidder intended to remove the dock from the city, whereas the firm submitting a lower purchase price intended to continue to operate the dock in the City of Owensboro. The resulting benefit to its citizens was a legitimate overriding concern for the city in its award determination.<sup>49</sup>

E. Article 9 -- Legal and Contractual Remedies

MPC §§9-101 deals with the authority to resolve protested solicitations and awards. The MPC allows actual or prospective bidders fourteen days to submit a written protest to the Chief Procurement Officer. Maryland's Code requires that the protest to be filed within seven days,<sup>50</sup> and state officials are given no authority to waive this seven-day period.<sup>51</sup> A protest filed after the required time constitutes an implied waiver of the protestor's right to appeal to the State Board of Contract Appeals, which was one of the Court's findings in Kennedy Temporaries, supra.<sup>52</sup>

In Millette Enterprises, Inc. v. State Division of Administration,<sup>53</sup> the Louisiana Court of Appeals stated that the provisions of the Procurement code did not mandate that an aggrieved party completely exhaust its administrative remedies prior to seeking relief in the courts. The MPC and the Louisiana adaptation specifically state that an aggrieved person may protest to the appropriate procurement officer, and the Louisiana Court's finding underscored the permissive context of that statutory language.<sup>54</sup>

Several cases have arisen under MPC §9-401 (Waiver of Sovereign Immunity in Connection with Contracts), concerning the scope and extent of this very important provision. In Mass Transit Administration v. Granite Construction Co.,<sup>55</sup> the Maryland Court of Special Appeals held that the waiver of sovereign immunity for the Mass Transit Administration (MTA) applied only to contract claims based upon specific written

contract provisions, and that sovereign immunity was a complete bar to a contractor's claims based on unjust enrichment.<sup>56</sup> The dispute arose out of an ambiguity in contract drawings for the construction of a station for the Baltimore Rapid Transit System. A Granite Construction representative called the Project Engineer to inquire whether all gas line relocation work involved in the Project should be included in their bid. The MTA Engineer, after expressly stating to Granite that he was not the proper person to interpret the drawings, stated his personal and qualified opinion that the gas line work was to be done by Baltimore Gas and Electric Company and not the general contractor. Granite submitted a bid which did not include the gas line work, and MTA later estimated the omitted gas line work would cost approximately \$115,000 to complete.<sup>57</sup> The Court found no merit in Granite's claim for these additional funds upon its completion of all work based on the theory of unjust enrichment, since the contract terms and conditions specifically stated that oral explanations would not be binding on the State, and due to the fact that Granite executed the contract after it was aware that it was in fact required to do all of the gas line relocation work.<sup>58</sup> Significantly, the Court mentioned in its opinion that the amount for the work in question was less than one percent of the total contract amount.

Another case decided under MPA §9-401 was Maryland Port Administration v. C. J. Langenfelder & Son, Inc.,<sup>59</sup> wherein the Port Administration's contract with Langenfelder for dredging work in the Baltimore harbor contained a standard changes clause,

allowing the Administration to modify the scope of the work and provide Langenfelder with an "equitable adjustment" for any such changes. The Port Administration (MPA) initially refused to pay the increased costs associated with three requests from the contractor for "equitable adjustments," due to one MPA change order and two claims under the contract's "differing site conditions" clause. After a hearing, MPA paid the principal amount of two of the claims, but appealed the State Board of Contract Appeals' administrative decision on the other claim and all interest amounts awarded to the Baltimore City Court. Upon its review, the Maryland Court of Special Appeals held that the defense of sovereign immunity could not be used to bar the imposition of interest on a claim against the State, since the legislature only restricted the waiver of immunity to written contracts on actions filed within one year, and due to the fact that the statute only precluded punitive damages and not interest awards.<sup>60</sup> Similarly, the MPC expressly provides for the payment of interest "at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later."<sup>61</sup>

MPC §9-402 sets forth the time limitations for bringing court actions based on a jurisdiction's waiver of sovereign immunity in contract. The case of Bluegrass Concrete Construction Company v. Commonwealth<sup>62</sup> is illustrative of the confusion engendered by the application of this section in the states. The contractor's complaint in Bluegrass was dismissed by the Franklin Circuit Court for failure to timely file a complaint

based on additional expenses (\$8,211.48) incurred in completion of a State road project, although the contractor had sought to exhaust all administrative remedies prior to filing suit. At the time the contract was entered, the Kentucky Model Procurement Code required claims to be commenced "within one (1) year from the date of completion specified in the contract".<sup>53</sup> (Emphasis added). Upon review, the Court of Appeals found as fact that: May 15, 1980 was the date of completion of the project; June 30, 1982 was the date the Commonwealth (through the Commissioner of Highways) issued its final denial of Bluegrass' claim for additional compensation; and, September 9, 1982 was the date Bluegrass filed its complaint. The Court then held that under the express terms of the statute Bluegrass only had until May 15, 1981 in which to file its complaint (notwithstanding its attempt to seek all available administrative remedies), and ruled that the complaint was therefore properly dismissed. Although noting it was "unfortunate" that the contractor was misled by directives received from state officials, and that the result would have been different under the pre-Code statute, the Court nevertheless upheld the strict interpretation of this limitation statute.<sup>54</sup>

Of little solace to the contractor in Bluegrass, and in response to this Opinion, the Kentucky General Assembly has since amended its Code (§45A.260) to read as follows:

Limitations on claims. - (1) Any claim arising from a construction contract executed and administered by the transportation cabinet pursuant to the provisions of KRS Chapter 175, 176, 177 and 180 shall be commenced in Franklin Circuit Court within one (1) year from the time the Commonwealth has determined final pay quantities and

issues a final pay estimate to the contracting party, notifying him of its final determination, or from the receipt of a final adverse decision of the Commonwealth, whichever occurs later. [Emphasis Added]<sup>65</sup>

Under this amendment, June 30, 1982 would have been the measuring date for the one-year limitation, and the September 9, 1982 filing by the contractor in Bluegrass would have been timely.

F. Article 12 -- Ethics in Public Contracting.

The MPC states that, as a matter of policy, "[p]ublic employment is a public trust."<sup>66</sup> A breach of that trust occurs when public employees attempt to realize personal gain by the improper discharge of their duties.<sup>67</sup> Kentucky's Procurement Code contains virtually identical language.<sup>68</sup> In Buchignani v. Lexington-Fayette Urban County Government,<sup>69</sup> the County Jailer, an elected official under the Kentucky Constitution, was prohibited from operating a Detention Center Commissary for profit.<sup>70</sup> In addition to his official duties, the Jailer was paid for bookkeeping, fingerprinting, and photographing services performed as Director of Detention (a position created upon passage of the County's Urban Government Charter); and he also operated a prison Commissary, the profit from which he retained as compensation. Despite the fact that the profit was neither unreasonable nor excessive, and the fact that the operation of the Commissary contributed to the security of the Detention Center and thus the county; it was held that the jailer had technically breached the public trust through the for-profit Commissary activities conducted in addition to his Constitutional duties. Based on the defense of advice of counsel, the appellate

court reversed the imposition of monetary damages by the lower court, and directed a finding that the Jailer could not operate a Commissary for profit (while inviting "legislative initiative" in this area). The Kentucky Court of Appeals then held that the Jailer could contract with the County for duties not specifically related to his official duties, and upheld the contract for his services as Director of Detention.<sup>71</sup>

#### IV. Conclusion

The relatively few cases that have arisen under state adoptions of the Model Procurement Code are indicative of its success to date in accomplishing its stated purposes of injecting economy and efficiency into the procurement process.<sup>72</sup> The MPC has spawned debate, research and writing,<sup>73</sup> which have contributed significantly to the development of the body of law concerning state and local procurement. The MPC provides a workable model with which states and localities can and have drafted legislation to make budgetary belt-tightening a rewarding evolution, producing structured and efficient procurement systems in the process.

## FOOTNOTES

<sup>1</sup>The MODEL PROCUREMENT CODE FOR STATE AND LOCAL GOVERNMENTS (A.B.A., approved by the House of Delegates on February 13, 1979). The overall structure of MPC is as follows:

Article 1 -- General Provisions

Article 2 -- Procurement Organization

Article 3 -- Source Selection and Contract Formation

Article 4 -- Specifications

Article 5 -- Procurement of Construction,  
Architect-Engineer and Land Surveying Services

Article 6 -- Modification and Termination of Contracts  
for Supplies and Services

Article 7 -- Cost Principles

Article 8 -- Supply Management

Article 9 -- Legal and Contractual Remedies

Article 10 -- Intergovernmental Relations

Article 11 -- Assistance to Small and Disadvantaged  
Businesses; Federal Assistance or Contract Procurement  
Requirements

Article 12 -- Ethics in Public Contracting

<sup>2</sup>Falvey, Birnkrant, and Friedman, ABA Proposes  
Legislative Adoption of a Model Procurement Code for State and  
Local Governments, 11 Urb. Law. 481 (1979).

<sup>3</sup>Id.

<sup>4</sup>Among those Pilot Jurisdictions were: Commonwealth of Kentucky; State of Tennessee; State of New Mexico; State of Louisiana; State of Utah; Louisville, Kentucky; Knoxville,

Tennessee; Baltimore, Maryland; Detroit, Michigan; and, San Diego, California. A.B.A., The Model Procurement Code for State and Local Governments -- Format for Working Committee Use, p. vii (1979).

<sup>5</sup>Kentucky, Jan 1, 1979: Ky. Rev. Stat. Ann. §45A.005-45A.990 (Baldwin 1980 & Supp. 1984); Arkansas, July 1, 1979: Ark. Stat. Ann. §§14-113 to 14-115 (1979 & Supp. 1983); Louisiana, July 1, 1980: La. Rev. Stat. Ann. §§39:1551 to 39:1755 (West Supp. 1985); Utah, July 1, 1980: Utah Code Ann. §§63-56-1 to 63-56-73 (Supp. 1983); Maryland, July 1, 1981: Md. Code Ann. Art. 21, §101 to 9-215 (1981 & Supp. 1984); South Carolina, July 30, 1981: S.C. Code Ann. §§11-35-10 to 11-35-5270 (Law. Co-op. 1983 Supp. 1984); Colorado, Jan 1, 1982: Colo. Rev. Stat. §§24-91-101 to 24-112-101 (Supp. 1984); Indiana, Jan 1, 1982: Ind. Code Ann. §§4-13.4-1-1 to 4-13.4-9-5 (Burns 1982 & Supp. 1984); Virginia, Jan. 1, 1983: Va. Code §§11-35 to 11-30 (Supp. 1984); Territory of Guam, October 1, 1983: cite unavailable; New Mexico, Nov. 1, 1984: N.M. Stat. Ann. §§13-1-28 to 13-1-199 (Supp. 1984); Arizona, Dec. 31, 1985: Ariz. Rev. Stat. Ann. Tit. §§41-2501 to 41-2637 (Supp. 1984-1985).

<sup>6</sup>Epstein and Martin, A Short History of the Preparation and Enactment of the Uniform Commercial Code, 22 U. Miami L. Rev. 1, 5, 11 (1967). Kentucky, Connecticut, New Hampshire and Rhode Island adopted the U.C.C. between 1958 and 1960, with the balance of the states, except Louisiana, adopting the U.C.C. between 1961 and 1967. Id. at 11.

<sup>7</sup>N.M. Stat. Ann. §§13-1-28 to 13-1-199 (Supp. 1984);  
Ariz. Rev. Stat. Ann. §§41-2501 to 41-2637 (Supp. 1984-1985).

<sup>8</sup>A.B.A., New Directions in State and Local Purchasing:  
The ABA Model Procurement Code Implementation Workshop (pp.  
140-54, May 16, 1985).

<sup>9</sup>Id. at 156-65.

<sup>10</sup>The known local enacting jurisdictions are:  
Knoxville, Tennessee; Louisville, Kentucky; Jefferson County  
(Kentucky) Board of Education; Anchorage, Alaska; Eau Claire,  
Wisconsin; Rome, Georgia; Davenport, Iowa; Louisville, Kentucky;  
Michigan Public Transit Association; Seminole, Florida;  
Rockville, Maryland; Kansas City, Kansas; Atlanta, Georgia; Boca  
Raton, Florida; Lansing, Michigan; Greeley, Colorado; Richmond,  
Indiana; and Alexandria, Virginia. A.B.A., New Directions in  
State and Local Purchasing: The ABA Model Procurement Code  
Implementation Workshop (pp. 177-78, May 16, 1985).

<sup>11</sup>The Dickinson School of Law, 150 South College  
Street, Carlisle, Pennsylvania 17013, Tel. (717) 243-5529.  
Materials from the Model Procurement Code Implementation Workshop  
may be obtained from the above address at a cost of \$25.00.

<sup>12</sup>See, supra note 7.

<sup>13</sup>390 So.2d 1361 (La. App. 4th Cir. 1980).

<sup>14</sup>New Orleans Home Rule Charter §6-307(5), quoted in  
id. at 1362.

<sup>15</sup>La. Rev. Stat. §39:1484(15), (17) (West. Supp. 1985).

<sup>16</sup>Morial, supra, fn. 13 at 1365.

<sup>17</sup>See, Ethridge, Purchasing Predicament, Louisville Law Review, 30, 34 (Summer, 1980).

<sup>18</sup>Id. at 30-31.

<sup>19</sup>Id. at 32.

<sup>20</sup>417 So.2d 6 (La. Ct. App., 1982).

<sup>21</sup>Id. at 10.

<sup>22</sup>An invitation for bids is generally very specific as to the product sought. See Comment, Requests for Proposals in State Government Procurement, 130 U. Pa. Law Rev. 179, 184 (1981).

<sup>23</sup>Id. at 186. This method utilizes "Requests for Proposals" (RFP's), which are not extremely detailed in relation to objective selection criteria, and in which price is but one of the factors used in determining contract award.

<sup>24</sup>MPC §3-201(a)-(f).

<sup>25</sup>Comment, op. Cit. (see Footnote 22), at 137.

<sup>26</sup>MPC §3-203(1). Compare the MPC procedures with those of the Department of Defense: 1. Submission of technical proposals; evaluation; 2. Submission of cost proposals; evaluation; 3. Best and final offers submitted; selection of apparent winner; and 4. Negotiations with apparent winner; contract award. Smith, The New "Four Step Source Selection Procedure: Is the Solution Worse than the Problem?" 11 Pub. Cont. L. J. 322, 323 (1980).

<sup>27</sup>MPC §3-202(7).

<sup>28</sup>MPC §3-101(7)

<sup>29</sup>Md. Ann. Code Art. 21, §3-202 (1981 & Supp, 1984).

<sup>30</sup>57 Md. App. 22, 468 A.2d 1026 (1984).

<sup>31</sup>COMAR 21.06.02.03, quoted in 468 A.2d 1026, at 1030.

<sup>32</sup>468 A.2d at 1030, 1033.

<sup>33</sup>Bilongo v. Dep't of Health and Human Resources, 428 So.2d 1021, 1022 (La. App. 1st Cir. 1983) (question of fact whether bid for leasing new construction office space substantially conformed to bid requirements).

<sup>34</sup>See, supra, text accompanying note 24 and Millette Enterprises, p. 7.

<sup>35</sup>A.B.A. The Changing Face of Public Purchasing: The ABA Model Procurement Code and its Implementation 67-68 (1983).

<sup>36</sup>401 So.2d 1070 (La. App. 3rd Cir. 1981).

<sup>37</sup>Id. at 1078.

<sup>38</sup>Id. at 1081.

<sup>39</sup>Hughes v. Schaefer, 294 Md. 653, 452 A.2d 428, 434 (1982).

<sup>40</sup>459 So.2d 1255 (La. App. 1st Cir. 1984).

<sup>41</sup>Id. at 1258.

<sup>42</sup>Id. at 1258, 1259.

<sup>43</sup>Md. Ann. Code, Art. 21, §3-504(c) (Supp, 1984).

<sup>44</sup>57 Md. App. 22, 468 A.2d 1026 (1984).

<sup>45</sup>Id. at 1030, 1033.

<sup>46</sup>Ky. Rev. Stat. Ann. §45A.425 (Baldwin 1980 & Supp. 1984).

<sup>47</sup>663 S.W.2d 759 (Ky. App., 1984).

<sup>48</sup>Id. at 761.

<sup>49</sup>Id. at 760.

<sup>50</sup>Md. Ann. Code, Art. 21, §7-101(a2) (1981 & Supp. 1984).

<sup>51</sup>See Footnote 44, Kennedy Temporaries at 1035 (unsuccessful bidder's appeal to Board of Contract Appeals more than 15 days after receipt of rejection letter was untimely).

<sup>52</sup>Id. at 1036.

<sup>53</sup>417 So.2d 6 (La. App. 1st Cir. 1982).

<sup>54</sup>MPC §9-101(1); La. Rev. Stat. Ann. §39:1671.A (West. Supp. 1985).

<sup>55</sup>57 Md. Ct. App. 766, 471 A.2d 1121 (1984).

<sup>56</sup>Id. at 1129, quoting Md. Ann. Code Art. 21, §7-101.

<sup>57</sup>471 A.2d 1121, 1124 (1984).

<sup>58</sup>Id. at 1127, 1128. Cf. State Department of General Services v. Cherry Hill Sand & Gravel Co., Inc., 51 Md. App. 299, 443 A.2d 628 (1982) (prior oral statement admissible to prove terms of contract where contract not integrated and oral explanations not expressly precluded); see generally, State Department of General Services v. Roger E. Holtman & Associates, Ltd., 463 A.2d 803 (Md. App., 1983), (letter agreement, after effective date of statute waiving sovereign immunity, constituted separate contractual agreement protected by the statute despite its being labeled "extension" of earlier agreements).

<sup>59</sup>438 A.2d 1374 (Md. App. 1982).

<sup>60</sup>Id. at 1382; Md. Ann. Code Art. 21, §7-101-04 (1981).

<sup>61</sup>MPC §9-301.

<sup>62</sup>664 S.W.2d 936 (Ky. App. 1983).

<sup>63</sup>Id. at 937; Ky. Rev. Stat. Ann. §45A.260 (Baldwin 1980).

<sup>64</sup>Id. at 938. Accord. Kovachevich v. University of Louisville, 597 S.W.2d 621 (Ky. App. 1980) (discharged medical school faculty member failed to file action within statutory one year time limit).

<sup>65</sup>Ky. Rev. Stat. Ann. §45A.260 (Baldwin Supp. 1984).

<sup>66</sup>MPC §12-201.

<sup>67</sup>Id. §12-202-2(1).

<sup>68</sup>Ky. Rev. Stat. Ann. §45A.450(1) (Baldwin 1980 & Supp. 1984).

<sup>69</sup>632 S.W.2d 465 (Ky. App. 1982).

<sup>70</sup>Id. at 467.

<sup>71</sup>Id.

<sup>72</sup>MPC §1-101(2).

<sup>73</sup>See, e.g., A.B.A., Identifying and Prosecuting Fraud and Abuse in State and Local Contracting (1984).

HOUSE CS FOR CS FOR SENATE BILL NO. 341 (State Affairs)  
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 apparent low bidder 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 department of law.

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. 35.30.530. 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 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; or contracts of the department of fish and game for non-point-to-point flights requiring specialized flying and piloting skills.

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 governments.

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 administration 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, 1987, concerning procurements by state agencies during the first 6 months of 1987.

SECTION 66. The commissioner of administration shall adopt the regulations required under this chapter by January 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 January 1, 1987.

SENATE JUDICIARY COMMITTEE SUBSTITUTE  
SENATE BILL 341  
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 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 substantially equivalent to the procurement code.

Sec. 36.30.030. The administrative director of the court system must adopt procedures governing the procurement of supplies, services, professional services and construction by the judicial branch. The procedures shall be based upon the competitive principles established under the code, but may be adapted to the special needs of the judicial branch as determined by the administrator of courts.

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 48 hours after the opening of bids, each bidder 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 10% 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 preference also.

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. These provisions only apply to contracts negotiated by the executive branch.

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 is 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 department of law.

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. 35.30.530. 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 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; or contracts of the department of fish and game for non-point-to-point flights requiring specialized flying and piloting skills.

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 governments.

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 administration 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. 36.30.990. Definitions.

Sec. 36.30.995. This chapter may be cited as the State Procurement Code.

SECTION 3 through SECTION 66 amend other Alaska statutes to reflect the provisions of this chapter.

SECTION 67. The commissioner must report to the legislature by December 1, 1987, concerning procurements by state agencies during the first 6 months of 1987.

SECTION 68. The commissioner of administration shall adopt the regulations required under this chapter by January 1, 1987.

SECTION 69. This is the repealer section.

SECTION 70. Section 68 of this Act takes effect immediately.

SECTION 71. Except as provided in sec. 70, this Act takes effect January 1, 1987.

ALASKA CHAPTER

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

ON

PROCUREMENT PRACTICES AND PROCEDURES

SB 341



AGC-Alaska on behalf of our over 800 member firms appreciates the opportunity to comment on SB 341. Following our general comments are some more specific comments relating to particular sections of the bill.

In general, we applaud the legislature and drafters for using "The Model Procurement Code for State and Local Governments" published by the American Bar Association as a basis. The thousands of hours and different perspectives represented by that document cannot easily be duplicated. For the same reason deviations from the "Model Procurement Code" (MPC) should be scrutinized.

One deviation from the MPC of great concern to the AGC is the required naming of subcontractors at bid submittal. The impact of this proposed requirement would be substantial. Accordingly, we have addressed our concerns on that issue separately.

Another major deviation from the MPC is the elimination of the State Procurement Policy Office. As stated in the MPC commentary at page 9:

A major conceptual basis of the Code, the separation of policymaking and operational functions, is best achieved through the establishment of an independent policy body such as the [State] Procurement Policy Office suggested above. This Section provides for placement of the Policy Office either as an independent entity within the executive branch of the government or within an existing department of government such as General Services, Finance, or Administration. Placement in the executive branch as a separate entity is the preferred arrangement as it would further ensure the professional integrity of this important

policymaking body, and appropriately elevate the entire procurement process in the public sector.

Under the MPC it is the Policy Office's responsibility to promulgate regulations. Under the bill the Commissioner of Administration, i.e. central Procurement Officer will promulgate regulations.

The principal of vesting the regulatory function in a policy office without line authority over individual procurement actions is fundamental to the MPC. Elimination of the Policy Office no longer separates the policy making from the day to day operation of the procurement process.

Perhaps the most important aspect of procurement requiring the separation of procurement policy from day to day procurement operation is the promulgation of regulations providing for adjustments in price, time of performance or other contract provisions. Utilization of a state policy office can insure the development of fair construction contract provisions. Fair construction documents avoid litigation and encourage reputable contractors to bid projects. Often times, tunnel vision by unenlightened public procurement officials bring about contract provisions which unfairly allocate risk and increase litigation between the parties.

In drafting the MPC the drafters obviously discussed this problem and arrived at the solution expressed in MPC § 2-101 and § 5-401. Requiring the Procurement Policy Office to address contract provisions relating to changes, variations in estimated quantities and different site conditions provides for broad input on this important policy related contract provision. Accordingly,

AGC-Alaska recommends the creation of a Procurement Policy Office comprised of three members who have demonstrated sufficient business and professional experience. (See MPC § 2-101(1) & (2) [Alternative A]).

Our second comment relates to the overall structure of the bill. The MPC recognizes construction as unique to the procurement process and devotes a separate article (Article 5) to the procurement of construction and related services. The bill does not devote a separate article to construction; instead SB 341 normally prefaces an article as relating only to construction.

This is a mere difference of opinion in drafting techniques; however, the special attention devoted to construction procurement by the drafters of the MPC is lost in SB 341.

One other broad area bears discussion at this time. A significant portion of public construction in Alaska is procured with state dollars by political subdivisions of the state and other "grant" recipients. AGC-Alaska strongly recommends that this committee propose legislation requiring any grant or appropriation recipient to utilize procurement practices consistent with this Procurement Practices and Procedure Act and its regulations.

Section by Section Comments and Recommendations

Section 1 (Similar to MPC § 1-101)

Recommendation: Eliminate Subsection (9), [page 1, line 29, page 2, line 1-2]

Comment: AGC-Alaska fails to understand the rationale for the inclusion of affirmative action language in a procurement act. AGC-Alaska is opposed to any special preference procurement program based on race, size, sex, residency or any other factor irrelevant to the contractors ability to perform. The best way to ensure discriminatory free procurement is competitive sealed bidding. Any other method allows for possible discrimination.

Section 36.30.005 (Similar to MPC § 2-301) [page 2, line 6]

Recommendation: Modify by providing for a "Policy Office" as in the MPC additionally the bill should be modified to reflect this fundamental change.

Comment: See previous general comments on "Policy Office"

Section 36.30.015 [page 5, line 9]

Recommendation: Delete part of (e)

Comment: The Alaska Railroad Corporation should abide by the same procurement code and regulations as the rest of the state.

Section 36.30.020 and 36.30.030 [page 5, line 15-26]

Recommendation: Delete "construction." Add new section transferring authority to contract for construction of public works for legislature or court system to DOT/PF subject to this act and its regulations.

Comment: The court system and the legislature are not in the business of procuring construction and the function should be transferred to DOT/PF. This will avoid arguments over the "substantial similarity" of procedures adopted by legislative counsel or the Supreme Court.

Section 36.30.850 [page 51, line 20 "grants"]

Recommendation: Add new section requiring any grant or appropriation recipient to adopt procedures to govern the procurement of supplies and services that are substantially equivalent to the procedures prescribed by this chapter. Require DOT/PF to contract for construction of any public work for any grant recipient.

Comment: Procurement problems are not limited to state

government. If state dollars are spent by others then similar safeguards on procurement with those state dollars should be instituted.

Section 36.30.130 (Source MPC § 3.202(3)) [page 13, line 8-9]

Recommendation: Require publication in a statewide newspaper of general circulation calculated to reach prospective bidders.

Section 35.30.160 (Source MPC § 3-202(6)) [page 14, line 24-25]

Comment & Recommendation: AGC-Alaska fails to understand the qualifying language "unless the delay was due to an error of a state employee directly responsible for opening the bids" contained in (a). This may lead to increased bid protests and accordingly we recommend deleting the language.

Section 36.30.190 & 36.30.200 [page 16, line 8 & page 16, line 16]

Comment: AGC-Alaska contests that multistep sealed bidding and competitive sealed proposals should not be used for construction. The prohibition should be stated in the document.

Section 36.30.300 [page 22, line 3]

Recommendation: Add the following language "sole source procurements may not be used for construction."

Comment: Fairness and public accountability requires competitive bidding.

Section 36.30.430 (Source MPC § 5-401 & § 6-101) [page 28, line 19]

Comment and Recommendation 1: Many of the provisions of this section relate only to construction contracts. To avoid confusion the MPC separated construction contracts and supply and service contracts. See MPC § 5-401 and § 6-101. AGC-Alaska recommends following the separation utilized by the MPC.

Section 36.30.580 [page 33, line 23]

Recommendation: Advise protestant of right to appeal.

Section 36.30.590

Recommendation 1: [page 34, line 20] Utilize Procurement appeals Board rather than the commissioner. See MPC § 9-501.

Recommendation 2: [page 34, line 25] 5 days to file an appeal is too short; a minimum of 10 is recommended.

Section 36.30.620(b) [page 37, line 19]

Recommendation: 30 days instead of 90 days to issue a decision.

Comment: 30 days to issue decision is sufficient time.

Section 36.30.630-650 [page 39, line 10]

Recommendation 1: Appeal should be to Procurement Appeals Board.

Recommendation 2: Add remedies, interest, and waiver of sovereign immunity sections contained in MPC § 9-202; § 9-203, § 9-301, and § 9-401.1

HOUSE

COMMITTEE REPORT

(7)

Date referred: 5/2/86

FURTHER REFERRALS: FINANCE

DATE: \_\_\_\_\_

The JUDICIARY Committee has considered CSSB 341(Jud) am

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

and recommends:

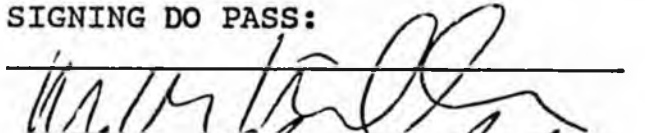
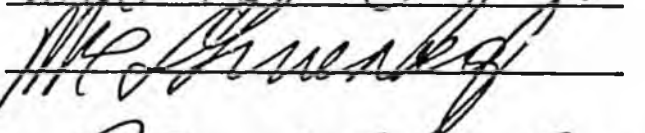
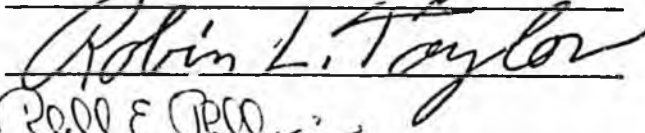
- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with \_\_\_\_\_  same title
- new title

and recommends \_\_\_\_\_

further referral to the \_\_\_\_\_ Committee

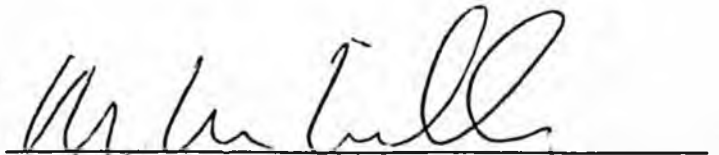
- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note

SIGNING DO PASS:

  
  
 Robin L. Taylor  
  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

SIGNING OTHER RECOMMENDATIONS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

  
 Chairman

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: 5/9/86

**REQUEST**

Bill/Resolution No. : HCS-CSSB-341 (Jud)  
 Title: State Procurement Practices  
and Procedures  
 Sponsor: Rules by Request  
 Requestor: House Judiciary  
 Date of Request: 5/9/86

**FISCAL DETAIL**

Agency Affected: University of Alaska  
 BRU: University of Alaska  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		0				
TRAVEL						
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

The Judiciary HCS delays the effective date until FY88, so the only implementation costs in FY87 are regulation drafting and hearings, which will be incorporated into the existing Board of Regents meeting schedule. There will be costs to administer the new provisions in FY88; these costs will be presented in the University's FY88 budget request.

Prepared by: Brian Rogers Phone: 474-7593  
 Division: University of Alaska Date: 5/9/86

Approved by Commissioner: [Signature] for Sherman Carter Date: 5/9/86  
 Agency: University of Alaska

Distribution (by Agency preparing fiscal note):

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

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date May 1, 1986

**REQUEST**

Bill/Resolution No. : HCS-CSSB-341  
 Title : An Act relating to state procurement practices and procedures; eff. date  
 Sponsor : Rules/Governor  
 Requestor : \_\_\_\_\_  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : University of Alaska  
 BRU : Statewide Programs  
 \_\_\_\_\_  
 Components : \_\_\_\_\_  
 \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		59.8	62.8	65.9	69.2	72.7
TRAVEL		3.0	3.2	3.3	3.5	3.7
CONTRACTUAL		114.9	120.7	126.7	133.0	139.7
SUPPLIES		0.0	0.0	0.0	0.0	0.0
EQUIPMENT		14.6	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>192.3</b>	<b>186.7</b>	<b>195.9</b>	<b>205.7</b>	<b>216.1</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND		192.3	186.7	195.9	205.7	216.1
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		<b>192.3</b>	<b>186.7</b>	<b>195.9</b>	<b>205.7</b>	<b>216.1</b>

**POSITIONS :**

FULL-TIME		2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

See attached.

Prepared by : Brian Rogers  
 Division : University of Alaska

Phone : 474-593  
 Date : May 1, 1986

Approved by Commissioner : [Signature]  
 Agency : University of Alaska

Date : May 1, 1986

Distribution (by Agency preparing fiscal note) :

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

HCS-SB-341

Analysis for impacts on University of Alaska of HCS-SB-341

Personal Services

One procurement clerk - Range 75	\$ 26,582
One clerk/typist - Range 72	20,114
<u>Staff Benefits</u>	<u>13,075</u>
Total	\$ 59,771

Travel

\$ 3,000

Contractual

Legal services - regulations, procedures	\$ 17,500
Advertising	
est. 300 additional bids @ \$275/3 papers	82,500
Telephone	2,200
Reproduction/postage	
<u>Additional costs for all RFPs</u>	<u>12,500</u>
Total	\$114,900

Equipment

Associated with new positions	\$ 5,800
<u>Computer equipment/software</u>	<u>8,800</u>
Total	\$ 14,600

Total	\$192,271
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# 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						
<b>TOTAL OPERATING</b>		350.0	367.5	385.9	405.2	425.4

CAPITAL						
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REVENUE						
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND		350.0	367.5	385.9	405.2	425.4
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		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)

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**  
 Bill/Resolution NCS SB 341 (Jud)  
 Title: State Procurement Practices  
 \_\_\_\_\_  
 Sponsor: Rules Committee  
 Requestor: Interim Comm. on Procurement  
 Date of Request: 1/16/86

**FISCAL DETAIL**  
 Agency Affected: Public Safety  
 BRU: Administration  
 \_\_\_\_\_  
 Components : \_\_\_\_\_  
 \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 36	FY 37	FY 38	FY 39	FY 90	FY 91
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING : (Thousands of Dollars)**

	FY 36	FY 37	FY 38	FY 39	FY 90	FY 91
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

	FY 36	FY 37	FY 38	FY 39	FY 90	FY 91
FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by: Sid LaMonica, Administrative Officer Phone: 465-4328  
 Division: Public Safety Date: 1/15/86

Approved by Commissioner: [Signature] Date: 1-22-86  
 Agency: Public Safety

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

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

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : CS SB 341 (Jud)  
 Title : Act relating to state  
procurement practices & procedures  
 \_\_\_\_\_  
 Sponsor : Rules by Request  
 Requestor : \_\_\_\_\_  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : Dept of Transportation  
and Public Facilities  
 BRU : \_\_\_\_\_  
 Components : \_\_\_\_\_  
 \_\_\_\_\_

**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						
<b>TOTAL OPERATING</b>		0	0	0	0	0
<b>CAPITAL</b>		0	0	0	0	0
<b>REVENUE</b>		0	0	0	0	0

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		0	0	0	0	0

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : Senator Jan Faiks, Co-chairman *Jan Faiks* Phone : 4654523  
 Division : Senate Finance Committee *Jan Faiks* Date : \_\_\_\_\_  
 Approved by Commissioner : \_\_\_\_\_ Date : \_\_\_\_\_  
 Agency : \_\_\_\_\_

Distribution (by Agency preparing fiscal note) :

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

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

**FISCAL DETAIL**

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

Agency Affected : Dept of Environmental  
 BRU : Conservation

Sponsor : Rules by Request  
 Requestor : \_\_\_\_\_  
 Date of Request : \_\_\_\_\_

Components : \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**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						
<b>TOTAL OPERATING</b>		0	0	0	0	0
<b>CAPITAL</b>		0	0	0	0	0
<b>REVENUE</b>		0	0	0	0	0

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		0	0	0	0	0

**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)

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : CS SB 341 (Jud)  
 Title : Act relating to state  
 \_\_\_\_\_  
 Sponsor : Rules by Request  
 Requestor : \_\_\_\_\_  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : Dept of Natural Resources  
BRU: Management & Administration  
 \_\_\_\_\_  
 Components : Administrative Services  
 \_\_\_\_\_

**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		0	0	0	0	0

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : Senator Jan Faiks, Co-chairman Phone : 465-4523  
 Division : Senate Finance Committee Date : 4/1/86

Approved by Commissioner : \_\_\_\_\_ Date : \_\_\_\_\_  
 Agency : \_\_\_\_\_

Distribution (by Agency preparing fiscal note) :

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

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

**FISCAL DETAIL**

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

Agency Affected: Dept of Administration  
 BRU: Div of Admin Services

Sponsor: Rules by Request  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

Components: Administrative Services

**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						
<b>TOTAL OPERATING</b>		0	0	0	0	0
<b>CAPITAL</b>		0	0	0	0	0
<b>REVENUE</b>		0	0	0	0	0

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		0	0	0	0	0

**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)

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

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

**FISCAL DETAIL**

Agency Affected: Commerce & Economic Dev  
 BRU: Alaska State Housing Authority

Sponsor Rules by Request \_\_\_\_\_  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

Components: Housing Management  
 \_\_\_\_\_  
 \_\_\_\_\_

**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						
<b>TOTAL OPERATING</b>		0	0	0	0	0
<b>CAPITAL</b>		0	0	0	0	0
<b>REVENUE</b>		0	0	0	0	0

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		0	0	0	0	0

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by: Senator Jan Faiks, Co-chairman Phone: 465-4523  
 Division: Senate Finance Committee Date: 4/1/86

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: \_\_\_\_\_

Distribution (by Agency preparing fiscal note):

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

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : CSSB 341 (Jud)  
 Title : Act relating to state  
procurement practices & procedures  
 Sponsor : Rules by Request  
 Requestor : \_\_\_\_\_  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: Community & Regional Affairs  
 BRU: Local Govt Assistance;  
Child Assistance, Disolated  
Homemakers, Admin & Support  
 Components: Grants Admin, Child Care,  
Disolated Homemakers,  
Admin Services

**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						
<b>TOTAL OPERATING</b>		0	0	0	0	0
<b>CAPITAL</b>		0	0	0	0	0
<b>REVENUE</b>		0	0	0	0	0

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		0	0	0	0	0

**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: 4/17/86

Approved by Commissioner: \_\_\_\_\_  
 Agency: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: CSSB 341 (Jud) am  
 Title: "An Act relating to state procure-  
ment practices and procedures; and  
providing for an effective date."  
 Sponsor: Rules Committee by Request  
 Requestor: House State Affairs  
 Date of Request: 4/18/86

**FISCAL DETAIL**

Agency Affected: Public Safety  
 BRU: DPS Administration  
 \_\_\_\_\_  
 Components : \_\_\_\_\_  
 \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 36	FY 37	FY 38	FY 39	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

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

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Reviewing the definition given for "sole source procurements", it appears that this Department would need to write more RFP's. It does not require an additional person; however, the overall service response time to the field Divisions will be affected.

Prepared by: Sid LaMonica

Phone: 465-4328

Division: Administrative Services

Date: 4/18/86

Approved by Commissioner: [Signature]

Date: 4/18/86

Agency: Public Safety

**Distribution (by Agency preparing fiscal note):**

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

DEPARTMENT OF PUBLIC SAFETY  
POSITION PAPER - CSSB 341 (Jud)am

SUPPORT

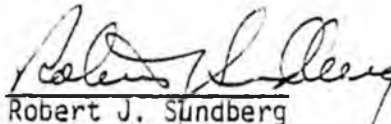
April 18, 1986

CSSB 341 (Jud)am - An Act relating to state procurement practices and procedures; and providing for an effective date."

The intent of the bill is to standardize procurement practices throughout State government.

The bill will accomplish the above intent by clearly indicating what is required of State government and by establishment of a Chief Procurement Officer to oversee the procurement operation.

Reviewing the definition given for "sole source procurements", it appears that this department would need to write more RFPs. It does not require an additional person; however, the overall service response time to the field Divisions will be affected.

  
Robert J. Sundberg

May 7, 1986

Lee C. Warnock  
813 'D' Street  
Anchorage, AK 99501

Honorable Senator Patrick Rodey  
Chairman Senate Judiciary Committee  
Pouch V  
Juneau, AK 99811

Subject: SENATE BILL 341, STATE PROCUREMENT PROCEDURES

Dear Senator Rodey,

Thank you for sending me a copy of your proposed state procurement legislation. I have read most of the proposed legislation and make my comments accordingly. Unfortunately, due to the press of business, I have not been as timely returning my comments as I had planned. Please forgive my tardiness.

In discussions with members of your staff, I learned Senate Bill 341 is approaching finalization in the House Judiciary Committee and therefore will copy the Chairman of that committee with my comments. Also, by copy of this letter I will make my concerns known to other members of the House and Senate Judiciary Committees, and my Senator and Representatives.

It would appear Senate Bill 341 has received a great deal of effort and energy in order to establish uniform procurement procedures for Alaska. I support uniform procurement procedures for Alaska and recognize their need but feel SB 341 should receive additional work and review prior to enactment. SB 341 appears to follow The Model Procurement Code for State and Local Governments published by the Public Contract Law section of the American Bar Association. While this is a good starting point, I feel that due to Alaskan conditions, Alaska should perhaps look to the Federal Acquisition Regulations (FAR) as a more appropriate body of uniform procedures for procurement. The Federal Acquisition Regulations are a time tested, and court tested body of rules, regulations and procedures that if followed should provide Alaska the best procurement at minimal cost with the least bureaucracy. Some of the provisions within FAR are inappropriate to Alaska and should not be considered; and, where conditions unique to Alaska are not covered by FAR, SB 341 should provide accordingly. Notwithstanding the Senate Procurement Committee's great effort in this proposed legislation, I recommend suspending any further attempts of passage until at such time as SB 341 can be returned

Senator Patrick Rodey  
May 7, 1986  
Page 2 of 2

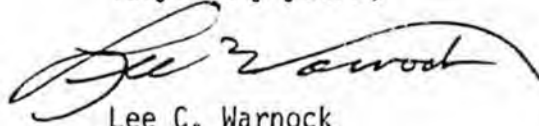
to the Senate Procurement Committee for improvement along the lines of FAR and my attached critique.

I understand several agencies and organizations are now taking active opposition to this proposed legislation and feel those comments should be considered as well.

I will endeavor to review the remainder of this bill as time permits. Acknowledging the shortness of the legislative schedule, and recognizing the legislature has bills of greater importance requiring enactment and in view of the concerns I and others have raised; I strongly request and recommend the summer of 1986 be used to refine SB 341 for future enactment.

The favor of your kind attention in postponing any action on SB 341 will be greatly appreciated and will be of even greater benefit to Alaska.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lee C. Warnock", written in dark ink.

Lee C. Warnock

Attachment

cc: Governor William Sheffield  
Senator Tim Kelly - Vice Chairman  
Senator Jan Faiks  
Senator Rick Halford  
Senator Robert Ziegler Sr.  
Senator Mitch Abood  
Representative Mike Miller - Chairman  
Representative John Sund - Vice Chairman  
Representative Robin Taylor  
Representative Don Clocksin  
Representative Fritz Pettyjohn  
Representative Randy Phillips  
Representative Drue Pearce  
Representative Alyce Hanley  
Hayden Kaden  
Keylend Svendsen  
Lynn Collins

ANALYSIS OF SENATE BILL 341  
(by page by line)

Page 3, line 22. Define "cause" or reference Alaska statutes where cause is defined.

Page 4, lines 1 thru 12. Perhaps it would be more appropriate for Alaska to "procure or contract" with a corporation that specializes in this type of service, to do these services for Alaska. Competitive proposals could be solicited for these services which should offer the state the most efficient and inexpensive operation for this type of work.

Page 5, line 26, Section 36.30.040. Procurement Regulations. What agency has oversight to insure these regulations are fair and appropriate so that legal challenges and their attendant costs are avoided?

Page 7, line 7, Section 36.30.050. Lists of Contractors. This appears to create a new layer of bureaucracy within Alaska. Can we afford it? Why are lists of contractors necessary? How will the costs of creating the lists be controlled so Alaska gets the best service for the least cost? If the lists are for the benefit of the state, why charge a fee? Why would contractors pay a fee to be on lists when advertisement for public work will come their way through other sources without a fee?

Page 9, line 12. How shall notice be given?

Page 10, line 18, Section 36.30.115. Subcontractors. This section is apparently intended to eliminate bid shopping and/or bid peddling, which most contractors would agree to, providing every one conforms to it. Why not have the contractors submit with their bids, a list of proposed subcontractors, which to a certain extent can eliminate bid shopping and bid peddling? However, be advised that due to all sorts of reasons, business arrangements can change after a bid has been awarded. Why would the State want to be policeman in this area of public contracting? Let the contracting industry police themselves by establishing a bid depository.

Page 11, line 3. This precludes project insurance policies obtained by the prime contractor and portioned to subcontractors. Failure to allow this type of insurance program on state projects will increase the cost for state work.

Page 11, line 6. This is an impossibility for Alaska. I question why the State would involve itself in the business relationships between contractor and subcontractor. The prime contractor is responsible for the performance of his subcontractor and a procurement officer should not be involved with the determination of the responsibility of a bidder based upon his subcontractors. Define responsibility as used here or reference Alaska statutes that define responsibility.

Reference subsections C, D, and E. Lower tiered specialty subcontractors highly efficient due to their specialization are prevented from working on State projects by this language and thus Alaska fails to gain the most competitive price.

Page 12, line 19. Define "adequate public notice". Thirty day advance notice of public notice of invitation to bid would disseminate information about forthcoming work over a broader market and thus offer Alaska the best prices through enhanced competition. Inclusion of state liability for damages in subsection B removes the inherent risks of bidding and contracting from the contractor and places the risks squarely on Alaska; a practice I recommend not be done in view of present budget concerns. This would create a welfare state for contractors inefficient at bidding but proficient at filing claims against the State for damages incurred during the bidding process.

Page 13, line 12, Section 36.30.140. Bid Opening. Lack of immediate public disclosure of projects within the public domain, serves no purpose except to establish an air of secrecy and distrust of the procurement procedures. A fact which this proposed legislation is intended to eliminate in the wake of the Fairbanks state office building lease. Failure to immediately disclose bid results and to offer public bid documents for review eliminates the policing aspects of the industry in the areas of responsiveness and responsibility. Further, it is contrary to the concept of 'government in the open' and review of government actions effecting the public domain. Likewise, I believe this section will increase the likelihood of bid protests and attendant litigation expenses. While the State contemplates issuance of notice of intent to award, others will allege through the courts that certain bidders should be disqualified and as a result, the courts will be forced to intervene and disclose the bid results, thus making a shambles of this section of the proposed legislation. In short, the public interest is not served by secrecy of bid openings involving public money.

Page 14, line 15, section 36.30.160. Late Bids; Correction or Withdrawal of Bids; Cancellation of Awards. Opportunities for correction of ones bid are entirely inappropriate unless held to the stringent tests established within the Federal Acquisition Regulations or the Defense Acquisition Regulations (DAR). Other state and federal organizations, such as the Corp of Engineers, have had to deal with similar conditions and their experience and strict procedures should be followed here. The proposed language will provide innumerable opportunities for protests and litigation, all of which are expensive wastes of time and money. By allowing corrections, the contracting agency prevents the self-regulating aspects of the contracting industry from eliminating those who are not responsive. It could be alleged during the process of bid correction that collusion or conspiracy existed between the contracting agency and the correcting contractor. At line 28, the State attempts to eliminate the cold cruel world of contracting by allowing a

bidder to withdraw his bid without jeopardizing his bid security. This is counterproductive to Alaska's interest and will allow frivolous bidders to walk away at their whim without penalty. Why require a bid bond at all?

Page 15, Section 36.30.170. Contract Award After Bids. The proposed ten percent Local Business Enterprise (LBE) incentive is inappropriate if Alaska intends to require the best possible product for the lowest possible price. In this period of budget concern, can Alaska really afford to pay ten percent more for its work when the budget is in the hundreds of millions? Language as currently written between lines 12 and 23 of this subsection precludes corporations having done business in Alaska for many years from being considered as an Alaskan bidder even though they have Alaskan interests at heart but are incorporated in another state. Language intended to assure Alaska corporations bidding on Alaska work and hiring Alaskans does not necessarily guarantee the latter will follow if they can move people up from the lower 48 and still spend less than the ten percent advantage developed at bid opening. Further, for projects such as Bradley Lake, Red Dog Mine, or a North Slope gas pipeline to energize the railbelt and provide export for the state; world class corporations would be precluded from participating in such projects by this proposed language. This would prevent the best minds, procedures and efficiencies from participating in these projects, thus making it difficult for Alaska to get the best possible return for its participatory investment.

Page 16, line 6. How shall this be determined?

Page 16, line 27. Define "specify with particularity".

Page 17, line 13. Why not submit with proposal?

Page 18, Section 36.30.220. Standard Overhead Rate. This subsection allows state agencies to compete against private business, especially if the agency's overhead is low because it is subsidized by state funds. If this language is to remain within this proposed legislation, then the overhead rates should be established by an outside agency independent of the contracting agency, thus insuring impartiality. In my opinion the proposed language precludes any incentive for efficiency and thus precludes private industry, enhances bureaucracy and prevents the state from getting the best product for the least amount of money.

Page 18, line 25. What penalties shall be imposed upon employees for disclosing confidential contents of proposals?

Page 23, line 14, Subsection D. What penalties shall be levied for those who artificially subdivide or fragment procurement?

Page 24, line 12. Define "promptly".

Page 25, line 19, Subsection 2. Define "is adequate to allocate costs in accordance with generally accepted accounting principles".

Page 26, Section 36.30.400. Cost or Pricing Data. If Alaska really wants honest adherence and fair settlement of change orders or contract modifications, it must include in its bidding documents and conformed contracts the tools for insuring proper cost or pricing data. Again, I suggest the procurement legislation take into account the provisions of DAR or FAR. Both sets of procurement regulations have time tested procedures for dealing with pricing change orders or contract modifications. As written the proposed legislation indicates all contractors will have to reveal their proprietary pricing and production details in order to gain a contract. Such disclosure will eliminate the desire for Alaskan work and thus only the most inefficient, expensive contractors will be interested in doing work because their cost and pricing data will not be proprietary.

Cost and pricing data submitted for use as comparison against engineers estimates for the purpose of settlement of change orders is worthless unless the data is comparable. Estimators preparing pricing data must be looking at the same scope of work in the same way. The significant portions of work must be broken down by the same relative comparative categories such as labor, materials, equipment, subcontractors, overhead and profit. Further credit change orders are not addressed by this proposed legislation. Without these fundamental tools in place within the bid or contract documents, modification and/or change order settlement will not be timely and the window of opportunity for the most advantageous settlement will be lost. Unsettled modifications or change orders result in disputes becoming claims which add expensive legal fees for both sides to the direct cost of the change. If Alaska becomes strangled by a bureaucracy that frustrates settlement of changes, less honorable individuals may feel the need to 'get even' and the price of work will rise accordingly. Based upon my years of experience, I believe Alaska would be best served by streamlining administrative procedures for inclusion in bid documents so contractors know that specific, timely relief will be offered for changes. Further, I believe Alaska should prepare procedures and/or legislation that incorporate the best of The Contract Disputes Act of 1978 into their procurement code. In addition, How should an audit be conducted? Under what guidelines? Again, may I suggest DAR and FAR be consulted.

Page 27, line 13. Define "adequate".

Page 28, lines 14 and 15. Who shall have administrative review of this procedure? While it's true most contracts go through a legal and technical review for adequacy under the law and sound engineering principles, an administrative review of the contract is also necessary. Alaska's best interests are often overlooked and the cost of administering a contract

is higher than necessary in the absence of an administrative plan for managing the contract.

Page 29, Sections 36.30.470 and 36.30.480. Such an ambiguous procedure creates an impossibility for contracting agencies to settle change orders taking advantage of any contractor's competitive pricing opportunity.

Page 32, Article 7, Legal and Contractual Remedies, Section 36.30.560 through Section 36.30.615. The proposed bid protest procedure is both convoluted and bureaucratic. In my opinion it enhances an atmosphere of unnecessary litigation with overlapping areas of bureaucracy that place various elements of state contracting agencies in the position of prosecutor, judge and jury, which by all legislation creates numerous conflicts of interest within the public domain and will strangle contracting agencies attempting to perform public work.

Page 35, line 4. Who shall determine confidentiality of material?

Page 36, section 36.30.610. Decision Without Hearing. What if the protest from the very beginning was frivolous and the State's time, energy and money were wasted by this protest? This proposed legislation should protect Alaska from this type of needless expense.

Page 37, section 36.30.620. Contract Controversies. As previously mentioned, Alaska should utilize some language similar to the 1978 Contract Disputes Act. This would require contractors to submit and certify that all information and pricing data given as part of a contract controversy was in fact all there was and nothing further was needed for rendering a decision. This would prevent frivolous claims and limit wasteful and unproductive legal expenses for Alaska. Further, should the contractor submit a certified claim and be found either frivolous or fraudulent, Alaska would then have remedies for recovery of its expenses for dealing with the previously certified claim later found frivolous or fraudulent.

Alaska should identify and define what was considered to be frivolous or fraudulent. This may sound rather harsh for the contractor, however, such disputes legislation has responsibilities for Alaska as well. It would prevent contracting agencies from delaying behind vague language such as "all information necessary" in providing an opinion on the contractor's claim. It was precisely due to ambiguous procedures by Federal contracting agencies that the Contract Disputes Act of 1978 was created. Currently this section does not indicate contractors will be dealt with fairly.

Page 42, line 20. Define "substantially mitigated".

Page 44, line 22. Define "appropriate action".

STATE OF ALASKA  
THE LEGISLATURE

FOURTH FLOOR STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 21, 1986

TO: THE HONORABLE KATIE HURLEY  
CHAIRMAN, HOUSE STATE AFFAIRS COMMITTEE

FROM: Warren W. Endicott, Executive Director *WWE*

SUBJECT: Amend CSSB 341(Jud)am

This is to request amendment of CSSB 341(Jud)am, "The State procurement code" as it pertains to the Legislature.

Because of time constraints in the legislative branch and cost savings by not always using the State contract award, it is requested that the language in AS 36.30.020 be amended as follows:

"Sec. 36.30.020. LEGISLATURE. The Legislative Council shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the legislature, legislators, and legislative agencies and committees. The procedures must be based on the competitive principles established under this chapter and must be adapted to the special needs of the legislative branch as determined by the Legislative Council [substantially equivalent to the procedures prescribed in this chapter]."

WWE: mm

A M E N D M E N T S

CSSB 341 (Jud) am

#1

Page 10, line 20 through Page 12, line 1:

Delete all material

#2

Page 15, line 26-28:

Delete:

"(4) is incorporated under the laws of the state, is a sole proprietorship, and the proprietor is a resident of the state or is a partnership, and all partners are residents of the state; and"

#3

Page 16, line 8:

Add a new subsection (d)

"(d) The provisions of (b) of this section do not apply to construction contracts for highways and public works if the construction contract exceeds \$5,000."

#4

Page 51, line 20:

Delete:

"(1) grants;"

Re-number following sections accordingly.

#6

Page 54, Line 20:

After the word "for" Delete:

"the University of Alaska,"

#7

Page 54, Line 21:

After the word "Authority" Delete:

"and the Alaska Railroad Corporation;"

Amendment CSSB 341

P. 52, after line 6, add a new item (13) to read:

(13) acquisitions or contracts by utilities who operate and maintain state facilities under contract with the Alaska Power Authority.



# Ombudsman

John B. Chenoweth

October 21, 1985

Senator Jan Faiks, Chair  
Senate Select Committee on Procurement Practices  
1024 West Sixth Avenue  
Anchorage, Alaska 99501

Dear Senator Faiks:

This letter is by way of response to Senator Josephson's August 30 invitation to comment from experience to the Select Committee on the ombudsman's office's experience with procurement-related matters.

As my September 10 letter indicated, I undertook review of pertinent complaints. That review considered more than 400 complaints filed with the ombudsman's office and closed since 1980. The review grouped the procurement-related complaints received among six general categories:

- competitive bidding generally;
- leasing;
- sole source procurement;
- bid waivers;
- bid award and professional service contract award appeals; and
- professional services contracting.

Our impressions about the public's principal concerns for the state's procurement process and our general recommendations to the committee about public contracting concerns are set out below. An accompanying appendix provides supplementary information as to the statistical basis of the complaints received and examined and a summary of significant complaints which have been received.

Alaska's statutes make a basic distinction between "procurement" (AS 37.05.220 - 37.05.280) and "professional services contracting" (AS 36.98). The information based on examination of complaints received by this office is reported following that distinction. A third section collects and reports material common to both broad categories. I trust that this is a form useful to the committee's deliberations.

State of Alaska

Reply to:

- 3201 C Street, Suite 608  
Anchorage, Alaska 99503  
(907) 278-4011
- Pouch W0  
Juneau, Alaska 99811  
(907) 485-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

In the main, my concerns go to the contract issuance process and the clarity of that process to the public. The experience of this office suggests that, while the procurement-related statutes should be closely examined and the contracting process clarified, within some fairly well defined limits the revision should allow agencies to enjoy a measure of discretion in contract award and management. The public interest requires, however, that agencies which are provided that discretion shall explain their decisions.

This document does not treat contract-related subject matter in detail. No legislation you may consider will answer all questions or objections which the public will raise. I have tried to identify the key points which legislation which you have or will have under consideration should address. The points set out below are those which I believe the public has indicated to be as particularly deficient (based on an examination of the number of complaints filed and a review of investigations completed) or those which I believe should be addressed in order to provide a procedurally-complete contracting system.

#### Procurement (Competitive bidding and related techniques):

In this letter, I reserve the use of the term "procurement" to cover contract award process authorized by the state's Fiscal Procedures Act (and similar authority applicable to the legislative and judicial branches, and the University of Alaska) as distinguished from professional services contracting.

The common thread running through the overwhelming number of the procurement-related complaints filed with the ombudsman's offices is that key elements of the process are unfair. Broadly speaking, those allegations of unfairness seem to be most often directed to the following:

A. Procurement procedures are unclear or uncertain, resulting in an award of a contract which is allegedly improper;

B. Agencies improperly use, and the Department of Administration erroneously allows use of, "bid waiver," "brand name," "sole source," and "negotiated contract" procurement techniques in situations which, the public suggests, are properly subject to competitive bid;

C. The process by which the issuing agency evaluates and accepts or rejects bids and by which the issuing agency determines whether the low bid has been submitted by the lowest responsible bidder is uncertain;

D. The appeal mechanism relating to award of competitive bids does not permit a review of the merits;

E. The legislature should determine by law the contracting authority and procedures which may be exercised by the Legislative Affairs Agency (and associated agencies, including this office), the administration of the Alaska Court System, and the University of Alaska system. It should provide by law an outline of contracting systems intended to safeguard the interests of the agencies and the rights of bidders and aggrieved bidders, thereafter allowing the agencies opportunity to implement and make certain their respective contracting authorities.

## II

### Professional Services Contracting:

Though the number of complaints filed with respect to professional services contracts (AS 36.98) has fallen substantially since the legislature's comprehensive revision of state law covering professional services contracts in 1982, elements of professional services contracting still raises significant questions. In the intervening years, the public has raised objections or presented complaints generally as follows:

A. Exceptions which the agencies have been able to implement in their use of "professional services" contracting;

B. In framing and offering requests for proposals in contemplation of a professional services contract, agencies handle RFP's improperly;

C. In evaluating requests for proposals, agencies have erred;

D. The appeal process applicable to professional services contracting discourages or does not permit fair evaluation of grievances of unsuccessful responders on their merits; and

E. Exception of the Department of Transportation and Public Facilities from oversight by the Department of Administration essentially precludes uniformity of contracting within the executive branch; no professional services contracting process is specifically identified in law for the University of Alaska. Additionally, the committee may wish to consider whether to extend the provisions of

AS 36.98 to regional educational attendance areas or, alternatively, to require the commissioner of education to assure that all school districts have in place a professional services contracting process.

III

Considerations applicable to both categories:

The public's complaints and our own work on them suggest other facets of public contracting--both procurement and professional services related--which is deserving of the committee's attention:

- A. Contracts are awarded to firms who are not qualified to do business in Alaska at the time of contract award;
- B. The use of contract extensions or continuations is not well regulated;
- C. Nonprofit firms operated with public support and government agencies compete for public contract work at an advantage to firms in the private sector;
- D. State law covering public release of information contained in the documents submitted in response to invitations to bid or requests for proposals is unclear;
- E. State law is too uncertain as to certain ethical concerns involving state officials or employees responsible for contracts who are related by blood or marriage to, who have a financial or associational interest in, or who are former employees of a firm submitting a bid or responding to an RFP.

Each of these is deserving of brief explanation or example.

I

A. Competitive Bidding. Without doubt, a major factor contributing to public objection to the state's contracting practices is the public's (and prospective contractors') lack of familiarity with specifics of applicable contracting practices. A significant part of the work of the office in the area of public contracting has been to work with aggrieved bidders to explain--so far as we are able to obtain information about particulars--specific questions or concerns.

The public's difficulties arise, I suggest to you, from

(1) the incomplete and rather haphazard form of the state's general procurement statute;

(2) the dearth of meaningful regulations to implement, interpret and make specific the procurement system;

(3) the maintenance of contracting systems by the other departments tied back to the Department of Administration by only the loosest of bonds; and

(4) the separate procurement processes used by the legislature and judiciary, and the University.

For someone with no more than occasional exposure to it, Alaska's procurement system is not an easy process to understand. To the owner of a small business, the process is characterized by confusion. Contracting within the executive branch typically involves two departments--the issuing agency and the Department of Administration.

Despite a good effort by the Division of General Services and Supply to prepare a comprehensive volume explaining purchasing and procurement in an effort to develop some uniformity in the system, at the start of the term of the current administration, Commissioner Rudd reemphasized that the process of advertising and awarding contracts would be decentralized through a system of "delegations of purchasing authority" and individual "internal departmental policy and procedures manuals." While this approach to management of the state's procurement process in the executive branch is generally consistent with current AS 37.05.220, the absence of a generally uniform system of procedures to which the public may have easy access is, to my mind, the source of a significant portion of the misunderstanding, frustration, and complaint about the process.

So that, as a general matter, the public may better understand, use, and have confidence in the state's procurement system, and so that the legislature and its committee staffs may more readily evaluate individual procurement decisions, the committee can and should:

(1) revise the applicable provisions of the "Purchasing" article of the state's Fiscal Procedures Act--Administration refers to this as the "Uniform Purchasing Act"--to establish a uniform system, applicable to all agencies, with few (if any) exceptions;

(2) strictly and specifically limit exceptions to the competitive bid process;

-- where exceptions are authorized based on a proposed dollar amount for a contract, the exception should have a reasonable basis documented in the legislative history of the bill;

-- where exception is made for any other reason, they should be authorized and approved only if consistent with identified standards of evaluation;

(3) require one agency--probably the Department of Administration--to implement, interpret, or make specific the re-enacted provisions in a way that is uniformly applicable;

(4) recast the procurement system in a way that does not rely procedurally on "delegations of authority" and internal "procedure manuals;" because procurement affects the public, it should be made a public process: a description of the procurement process applicable to all agencies should be adopted into the Alaska Administrative Code in accordance with the Administrative Procedure Act.

Secondly, in any revision of the "Purchasing" article of the Fiscal Procedures Act, specific attention should be given to a number of key facets that have been the basis of significant complaints to this office that are not now carefully prescribed by law:

(1) the issuing agency should be required to identify and describe evaluation procedures and performance criteria before bids are solicited;

(2) bid specifications or criteria should be certain, not vague, and direct vendor involvement in the development of specifications should be prevented;

(3) sufficient time should be allowed for bid submissions; and

(4) agency decisions concerning the disposition of bids should be promptly communicated to all bidders;

3. Alternative procurement procedures. The committee should undertake a careful review of the statutes authorizing alternative procurement techniques. In this category I place the use of "negotiated contracts" (AS 37.05.230(2)), "bid waiver" (AS 37.05.220(2) and AS 37.05.230(1); AS 35.05.040(3)), "brand name", and "sole source" (AS 37.05.230(2); AS 35.05.040(9)) techniques.

Use of these techniques has given rise to one of the largest categories of complaints involving procurement practices. Typically, the complaints are submitted by prospective competitors who learn of the contract award only after the fact. Our experience has been that the agencies often fail to document, or incompletely explain, the reasons for using one or another of these techniques. Our experience has also

been that the Department of Administration's Contract Review Committee, which passes on these submissions with a recommendation to the commissioner or her designee, is little more than a rubber stamp--indeed, the committee typically operates with a rubber stamp--that does little to effectively check on the appropriateness of these exceptional situations.

Surely there is a legitimate place for exceptions within a government procurement system. But the legislature should act to assure that the use of these techniques is confined to uncommon situations.

I suggest to the committee that no method of internal review and recommendation can be as effective as public scrutiny; simply stated, the legislature should provide a system by which the public may have the opportunity to better understand and be able to evaluate these authorized exceptions and their use.

To that end, my recommendations to the committee are these:

(1) The committee should reconsider the "best interest of the state" standard. Agencies relying on that standard, or on any standard which the committee may substitute for it, should not be allowed to proceed merely by concluding that a use of the proposed exception is in the "best interest of the state." Rather, the agency should demonstrate and document, in advance of contract award, exactly how the state's interests are to be best served by the proposed decision.

(2) Unless an exception is clearly required by an emergency condition--and here I have in mind the qualifying definition of AS 44.62.270--the intention of an agency to enter into a contract based on a "sole source," "brand name," or "bid waiver" exception should be publicly advertised for not less than, say, 10 to 14 days preceding contract award; advertisement or publication of notice to award in the Alaska Administrative Journal (AS 44.62.175) may well be sufficient for purposes of public review without incurring to the state substantial additional costs of publication.

C. Low bidder versus lowest responsible bidder. A third common category of complaint to this office arises when an agency fails to award a contract to the low bidder. Under current law, the award of contract is made to the "lowest responsible bidder," and the determination of the identity of the "lowest responsible bidder" rests with the issuing agency. The applicable statute is AS 37.05.240(a). Typically, in the instances we have examined, the agency has reason to withhold the bid award, citing factors which it believes renders the low bidder "nonresponsible."

Investigation of several complaints suggests, however, that there are shortcomings in the process by which the issuing agency evaluates bids and determines that the "low bidder" and "lowest responsible bidder" are not synonymous. Where, for example, failure to award to the low bidder turns on a question of unit price, failure to meet qualifications specified in the bid invitation documents, failure to provide a bond, or other bid-related factor, these can be objectively reviewed, and we usually find no merit in the complainant's grievance. If, however, the agency's decision not to award to the low bidder is based on more subjective factors--the agency's evaluation of the bidder's past performance and reputation, estimated capabilities, or financial capacity--our review necessarily involves an examination of the veracity of these factors and whether the agency has appropriately applied them.

The committee's revision of the "Procurement" article should assure that, in circumstances in which the agency decides to find a low bidder or bidders "nonresponsive" and to award to another party, the issuing agency provides to the low bidder, to the lowest responsible bidder, and to anyone who may have an interest in the outcome, a complete statement of the basis for the agency's decision to find a bidder or bidders "nonresponsive." That notice should be given in advance of, or simultaneously with, bid award. The legislation should require strict adherence to the provision: if the agency fails to provide a complete statement at the time required, award of the bid should be disallowed.

D. Appeal procedures. It has been my experience that complainants approach the office of the ombudsman to protest bid awards because they do not know that 2 AAC 15.100 provides opportunity for administrative appeal or because they were unable to use 2 AAC 15.100 because of its requirement of prompt (i.e. five day) protest. Save only for the five day requirement (imposed by AS 37.05.240(a)), the appellate process available to disgruntled bidders is wholly a product of regulation, without specific statutory direction.

While I have no specific criticism of the agency's handling of complaints on appeal--and, indeed, the process, when it works, seems to provide sound and timely decisions--in this review, the committee should consider the sufficiency and effectiveness of the current appeal procedure. It should, to my mind, determine either to spell out, in statute, specific procedures for appeal or, alternatively, direct and require one agency (probably the Department of Administration) to fashion a comprehensive appeal mechanism containing such safeguards as the committee may find necessary.

In any event, the committee should reconsider the time limit in which the aggrieved bidder must submit the appeal and the content of what is to be submitted: five days is simply not sufficient time to aggrieved bidders to gather and submit information sufficient to allow the department to review these matters on their merits.

E. Procurement processes applicable to state government agencies outside the executive branch. Significant numbers of procurement-related complaints have been filed against the University of Alaska system. Investigation of them is almost always a significant exercise, largely because of the few references available to guide the investigator. The authority of the university system to contract substantially independently of the Department of Administration rests, in statute, on the thin thread of AS 14.40.340, a statute which directs only that the "competitive bid practices set forth in AS 37.05.230 apply to the University." University officials themselves are without direction as to whether any other procurement elements of the Purchasing article of the State Fiscal Procedures Act apply. Hence, the University's approach to contracting is independent of other executive branch units. Surely in a system that mandates adherence to competitive bidding, the legislature should act to assure that state statutes establishing the university system either impose or otherwise assure that the University of Alaska has developed a comprehensive, uniform, and procedurally sound purchasing procedure.

So far as I have been able to determine, the legislative branch acts without the benefit or constraints of any body of legislatively-enacted procurement law. There is a fine irony, then, that for the period under consideration few complaints have been lodged against contracting practices of the line agencies of the legislative branch, and even fewer against the Court System. The same suggestion applicable to the university system should be understood, however, to apply to these.

## II

### Professional services contracting:

Fewer significant problems seem to attend the issuance and performance of professional services contracts. The enactment of AS 36.98 and the department's subsequent adoption of pertinent regulations in 2 AAC 17 (17 AAC 7 for professional services contracts issued by the Department of Transportation and Public Facilities) has provided a sound general procedural basis. In the main, the complaints we have received have been directed at the substantive decisions made in conjunction with the process rather than against the process itself. The legislature's enactment of AS 36.98 and the departments' efforts directed at improving professional services contracting have been useful in reducing the number of complaints.

A. Exceptions which the agencies have developed to the proper use of "professional services" contracting. In the 1982 enactment covering contracts let for professional services, the term "professional services" is defined as

. . . professional, technical, or consultant's services that are predominantly intellectual in character and that

(A) include analysis, evaluation, prediction, planning, or recommendation; and

(B) result in the production of a report or the completion of a task.

Complaints reaching this office call into question the strict applicability of the professional service contract requirements to certain professions which cannot be readily evaluated through an RFP. The specific complaints relate to attorneys' services--principally contracts issued by the Department of Law and the University of Alaska--and raise a question as to whether there should be created an exception to the professional services contracting statute for services of professionals using a limited solicitation process where the interests of the state demonstrably so require.

3. The framing and offering of requests for proposals. A fair number of complaints received since mid-1982 have called into question agency compliance with the offering requirements of AS 36.98 and related regulations (2 AAC 17 and 17 AAC 7). Typical challenges have had to do with failure to circulate an RFP to a complainant, provision of insufficient time to respond to an RFP ("quick deadlines"), and the sufficiency of the information provided about the RFP on which an interested party could depend. Applicable statute (AS 36.98.030) and regulation (2 AAC 17) require that the manner of solicitation by an agency must be consistent with law but, beyond that, the issuing agency has latitude to solicit. Our evaluation has usually been on the basis of the reasonableness of the agency's actions, and we have generally upheld agency decisions.

C. The agencies' evaluation of requests for proposals. Since 1982, the process by which the agencies conduct the evaluation of RFPs has stimulated complaints to the ombudsman. Elements of these complaints have included requests that this office

- determine and report the identity of the evaluators;
- pass upon the qualifications of the evaluators;
- determine whether selection criteria were properly applied;
- consider and evaluate the quality of the successful proposal; and
- criticize agencies for their use of "outside" evaluators (i.e. contractors to or third parties not employed by the agency).

We have generally looked to the record of evaluation--to the extent we are able to find one--to determine whether there has been substantial compliance by the agency.

While I cannot ask the legislature to consider additional provisions that would rigidly bind the way in which agencies complete their evaluations, it would surely be useful--and I would encourage the committee to consider--amending AS 36.98 specifically to require that the records of the evaluators be put in useful form and be retained. Since review of proposals is typically conducted and discussed by an ad hoc committee, I believe the legislature should be clear in indicating whether the state's Open Meeting Law should apply to these deliberations.

One rather apparent shortcoming, though not yet the subject of an investigation, is the tendency of agencies to minimize or eliminate "cost" as a significant evaluation variable. The committee may want to consider amending the evaluation provisions of AS 36.98.040 in some way to specify that contract "cost" may not be ignored or omitted as a substantial variable in the preparation and evaluation of RFPs.

D. The appeal process requirements discourage fair evaluation of grievances on their merits. A recent series of complaints calls into question 2 AAC 7.050's provision that an appeal must be filed within five days. The regulation parallels a statutory provision in the procurement statute.

Consistent with my philosophy of operation of the ombudsman's office, an agency should act on appeal to evaluate the merits of its own performance. For the reasons indicated in the preceding provision covering procurement, the committee should extend the appeal provision and should set the limitation by statute.

E. Exceptions and exclusions. I want to say again that the legislature's enactment of AS 36.98 has gone a long way to improve professional services contracting. Guided by the Department of Administration, the bulk of state agencies seem to have improved performance in this area.

The exception made in law for separate treatment by the Department of Transportation and Public Facilities should, in my judgment, based on that agency's handling of a vast number of professional services contracts, be reconsidered, and the department brought under the umbrella of the Department of Administration.

There has come to this office's attention one or two instances of alleged deficiencies in the award of professional services contracts by regional educational areas. The committee may want to act to have the commissioner of education assure that school districts generally have in place some rational means of assuring proper preparation, solicitation, evaluation, award, and appeal of these contracts.

## III

In this last category I discuss five general contract-related complaint subjects tangential to the principal categories. All appear to me to warrant legislative attention.

A. Prospective contractors not qualified to conduct business. An oft-repeated grievance by unsuccessful competitors is that the successful party was not qualified to do business in Alaska at the time the bid or proposal was submitted. Investigation can readily determine whether the successful party was qualified by virtue of having a business license and, as applicable, being incorporated or authorized to do business as a corporation.

State law does not require qualification until the time the contract is executed. As qualification is somewhat nominal, the committee may wish to require, by law, the determination that a bidder (or respondent to an RFP) is non-responsive if the individual or firm is not qualified to do business in the state at the time of submission of the bid or proposal. Thereafter, implementation would require all bidders or respondents to list their credential in their submissions.

B. Contract extensions or continuations. A growing number of complaints calls into question the constraints (or, more properly, the lack of constraints) on agencies which propose to extend or continue an existing contract. Renewal options are in derogation of competitive bidding or reissuance of an RFP. While their use is accepted as a matter of sound public contract administration, they are regulated not by statute or regulation, but usually arise out of option clauses in existing contracts (or require securing a "bid waiver" if no option exists). I am particularly struck by the number of contracts to which our attention is called in which the period for which an option may be renewed greatly exceeds the duration of the contract for the period for which originally executed.

The committee should consider whether specific provision by which an agency other than the contracting agency (or some other independent review process) examines and approves (or comments on) a proposed extension or continuation. Again, since the extension process is itself an exception to the norm, as with the recommendation I have made for all exceptions to competitive bids, extensions or continuations should be justified by the requesting agency and should be publicized in the Alaska Administrative Journal.

C. Nonprofit firms and government agencies competing with private sector business. This topic covers a mix of concerns which have been brought to our attention at one time or another. The complaints have a common source--private sector firms who believe, correctly or otherwise, that firms and individuals supported by the public sector--non-profit corporations or government entities themselves--enjoy a competitive advantage in the award of public contracts. The subject has arisen with

reference to both competitive bid and professional service contract awards.

Broadly speaking, there is some basis to suggest that these objections are credible, though little evidence to conclusively determine whether the state's interests are well served by the applicable statutory provisions on which they are based. I call it to your attention as a kind of complaint which probably deserves legislative attention though it may not now warrant any attempt at correction.

D. Disclosure of bid documents and bid submissions. A fair number of complaints to the office addresses the largely uncertain question of whether draft invitations to bid are public documents and whether bid submissions should, in whole or in part, be made public at the time of bid award.

The legislature should decide the matter, clearly indicating whether or not these are public documents and, if they are, at what point they should be made public. This may be no more than revising the penultimate sentence of AS 37.05.240(a) to apply generally to all competitive bid situations and making clear that, whatever is decided, the determination is generally applicable to all agency procurement efforts.

E. Ethics considerations. Because the award of professional services contracts depends on the agency's evaluation of solicitations, this office has received an unusual number of complaints alleging or suggesting existence of a conflict of interest (or apparent conflict of interest) between, on the one hand, persons preparing the requests or evaluating the materials submitted and, on the other, competitors of the complainant. Typical situations cited include instances of alleged collusion involving persons with relationship by blood or marriage, persons having common financial or associational interests, and individuals formerly employed by the agency now part of a firm responding to an RFP (or vice versa) in which intangible factors may weigh heavily. We can and do investigate to determine if the factual situation giving rise to the conflict or apparent conflict is as alleged and have critically examined evaluations and the evaluation process to determine whether there was an effect.

At this point, where the committee's attention is focussed on its two major subjects--public contracting and ethics--I respectfully urge addition of some body of law that essentially describes permitted or prohibited relationships that may have an effect on contract evaluation and award.

Senator Jan Faiks

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October 21, 1985

Thank you for the opportunity to respond. If I may assist further in your deliberations, please contact me.

Sincerely,

John B. Chenoweth  
Cmoudsman

JBC:pjc  
Enclosures

APPENDIX:

1. Methodology: Our review examined and considered 434 complaints filed with the ombudsman's office and closed between January, 1980, and September 30, 1985. The review grouped the procurement-related complaints received among the general categories outlined in the letter. The largest single category of these complaints--an estimated 60 - 65%--involved complaints generally relating to competitive bidding practices. In lesser numbers, the complaints filed with my office involved concerns relating to professional services contracting, exceptions to competitive bidding, appeals, and a variety of other grievances and concerns loosely identified under leasing and purchasing.

2. Trends and indicators: As you might expect, the bulk of the competitive bid-related complaints were filed against the executive branch agencies principally responsible for contract award--the Departments of Administration (78 complaints), Transportation & Public Facilities (68 complaints), and, surprisingly, Commerce & Economic Development (38 complaints). Apart from the executive branch agencies directly covered by AS 37.05.220 - 37.05.280, the University of Alaska accounted for an additional 28 complaints.

The professional services-related complaints were less numerous and more widely scattered (though the same four agencies listed immediately above topped the list). Most noteworthy, in my judgment, is the significant reduction of professional services related complaints since enactment of the 1982 provision (Ch. 144, SLA 1982, now AS 36.98). The tallies are:

1980	19 complaints closed
1981	13 complaints closed
1982	12 complaints closed
1983	15 complaints closed
1984	6 complaints closed
1985 to-date	<u>2</u> complaints closed
	67 complaints closed

This downward trend in professional services contracting complaints filed with this office at least suggests that the adoption of comprehensive legislation on that subject has answered many of the original objections of the complainants and provided an effective means of internal review of these problems.

For both categories, Court System (6 complaints), Legislative branch (4 complaints), and REAA-related (7 complaints) procurement grievances account for an insignificant portion of the total.

3. Some examples of specific complaints received:

I

Procurement (Competitive bidding and related techniques):

A. Competitive Bidding.

The so-called Uniform Purchasing Act was enacted in 1955. Apart from the 1982 effort to better describe authorized professional services contracting requirements (which, themselves, constituted an exception to the Uniform Purchasing Act), recent legislative amendments to the Act have not been significant. Through 30 years of use, the lead agency, the Department of Administration, has had ample opportunity to identify and develop procedures and definitions by which the Purchasing Act's provisions may be consistently applied. But the department's efforts to lay down a body of law that would apply to other agencies and which might provide explain to the public interested in contracting with the state has not been particularly helpful. Except for provisions covering bid rejection and appeals, the regulations relating to competitive bidding, 2 AAC 15, add little to the public's understanding of how the issuing agency and the Department of Administration may be expected to perform, and what standards may be applied to measure that performance.

Agency purchasing significantly depends upon a system of "delegations of purchasing authority" and agency "administrative manuals." See, in this regard, memo of January 10, 1983, of former Director of General Services and Supply George Elgee. This is consistent with AS 37.05.220 giving to the Department of Administration authority to prescribe purchasing and leasing arrangements and standards for use by themselves and by other agencies.

However, this system in essence requires that those who conduct the state's procurement business, those who have an interest in doing business with the state--and those who may have to check on how that business is entered into--try to gain an understanding of how more than a dozen agencies shall conduct their affairs. Moreover, it is far from certain to many how the University of Alaska system "fits" into Purchasing Act requirements, and there is, so far as we have been able to determine, nothing to cover contracting by the legislative and judicial branches.

The nadir of this system of interagency "authority delegations" is perhaps best illustrated by Ombudsman Complaint 461-0400, a complaint against the Division of Parks of the Department of Natural Resources.

October 21, 1985

The complainant called to seek an explanation as to how the division had avoided seeking a competitive bid in conjunction with gravelling operations. Investigation suggested that a delegation of authority (Administration to Transportation and Public Facilities) supporting a master contract for vehicle and equipment rental had been inappropriately applied to support the Natural Resource division's subsequent acquisition and use of a vehicle. One was left with the impression that Administration's delegations of authority to its sister agencies were fairly flexibly interpreted by those agencies to help themselves (and third agencies), and would be stretched so far as necessary or convenient to defeat the competitive elements of the procurement statute if that suited the purpose of the agency securing the delegation. Among the line agencies dependent upon the grace and favor of the Department of Administration to secure their procurement authorities, the Uniform Purchasing Act had become, if you please, state government's in-house version of the shell game.

Under such a loosely-organized and -operated system, I am truly surprised that we have not received more complaints.

The relatively small number of complaints is probably due, in the main, to the good efforts of the Division of General Services and Supply in trying to provide a measure of order to competitive procurement. The most useful commentary to current Alaska practices is that division's own Administrative Manual covering purchasing. I commend that volume to the committee's attention.

Complaints to my office generally relating to competitive bidding have spanned the range of procurement practices, running from purchase requisition, through conduct of the process, making of exceptions, and handling of appeals, to claims of unethical practices and improper influence in the planning and evaluation process. My letter highlights topics in which I think the competitive process is particularly weak or to which the committee may wish to give attention for other reasons indicated.

1. The first involves the sufficiency of the issuing agency's planning and evaluation procedures. Some complainants have come to the office--typically, after their bids have been rejected as "non-responsive"--claiming that the process followed was significantly flawed, to their detriment. Investigation by this office suggests that, in virtually all such cases, the "Invitation to Bid" was the critical document, and that the problem of concern to the complainant lay in the issuing agency's failure to provide sound specifications as to what was required. While the statutes and regulations are silent, the Division of General Services and Supply's own guidelines on the point are useful:

Specifications [of goods to be bid] are one of the most important elements of the purchasing process. Specifications communicate what is required or desired, and are the primary basis on which bids are

awarded. Specifications should be clearly understandable, open, and unrestrictive.

...  
[The division] must insure the specification that finally accompanies the bid is not restrictive and does not call for features or for a level of quality not needed for the item's intended use.

A fair reading and application of these principles might have avoided such complaints as F81-0811 and three others, a 1981 challenge to the now-defunct energy audit program, in which, among other assertions, the complainants presented valid allegations in which information pertinent to the bid process and criteria on which the bids were to be evaluated were not fully disclosed.

2. A second objection goes to a lack of time. Complainants have raised the question of the amount of time which a prospective bidder should have to evaluate a bid invitation, clarify questions, and prepare and submit a complete bid. In F80-0004, for example, the complainant alleged that, following a major alteration to a bid, the issuing agency did not extend the deadline for receipt of bids to provide sufficient time to revise the submission, and in F80-0904 and others, the complainants asserted they had been given insufficient time to prepare responses to requests for land clearing contracts. On the opposite side, in F79-0945, the complainant objected to an extension of time after competitors advised the issuing agency that they could not meet an existing submission deadline.

In the absence of any standard covering time allowed for bid preparation and submission extensions, with rare exceptions, complaints claiming lack of sufficient time are typically found "unsupported." The committee should consider language covering minimal offering periods or otherwise establish a "reasonable" time period for bidder's consideration of invitations to bid, and should consider the matter of extensions and notification of those extensions to interested parties.

3. The last topic covers, generally, communication of decisions made with respect to bids to the bidders.

Some number of complaints cover situations in which bidders are not advised as to the successful bid, thereby precluding possible appeal.

There is also the situation in which all competitive bids are rejected. Competitive bids may be rejected and the invitation to bid set aside. The statute (AS 37.05.240) is silent on notification of this decision--one that is typically made, or should be made, in the event that issuing agency contemplates negotiation of contract for which an invitation to bid was previously let. So, for example, complaints A81-0782, J81-0346, A82-0753, A83-1021, and J83-0340 all raised questions relating to improper cancellation of invitations to bid and, in some, questions of sufficiency of notice were raised.

Our complaints notwithstanding, those who have prepared and submitted bids only to have the issuing agency decline to award on the basis of competitive bid may have a claim against the state. AS 44.77.010(c). King v. ASHA, 633 P. 2d 256 (1981). Accordingly, the committee should give careful consideration of the state's obligation to inform competing contractors of the decision in these situations.

#### B. Exceptional procedures.

A number of complaints raised questions about an agency's use of "bid waiver," "brand name product," or "sole source contract." Complaints covering this topic are consistent, and the situations which have been directed to our attention suggest that this topic is one of significance.

1. Our experience strongly suggests, first, the need to build better checks against the writing of unnecessarily "tight" bid specs to cut off or reduce opportunity for competition. Some examples should serve to illustrate.

Companion complaints J80-0312 and J82-0289 examined the decision of the Department of Fish and Game to use specific brands of incubators purchased outside the competitive bidding process. Investigation of the first confirmed use of the sole source purchasing technique--requiring a specific brand (for which the agency had no data on which to base a justification and no evidence of evaluation) of hatchery incubator be installed by the contractor; the agency sought to avoid evaluation of the exception by running the request through as part of construction of the facility, that is, as an adjunct of a capital improvement. Just when we thought the agency understood its obligations under the purchasing provisions of the Fiscal Procedures Act, it tried again. At that point, our only "weapon"--one hardly adequate, in my view, to assure that the matter would not be encountered a third time--was to review and refine the purchasing authority delegations to the Department of Fish and Game of the two lead departments.

The issue in a pair of unrelated complaints, A80-0189 and F84-0490, involved the use of bid specifications that, in the case of the former, designated by brand name and, in the latter, unreasonably restricted competition (essentially allowing only one product to qualify) without being based on a valid technical reason. As to both, the agencies accepted and agreed to implement, at the level of their individual policies and procedures, standards to address specifications that would not wrongly limit or eliminate competition by relying on designated brand names or by imposing unreasonable restriction or specifications in a competitive bid.

In A83-01059, I challenged the University of Alaska's reliance on brand names (rather than performance criteria) for acquisition of a library security system. University officials defended, contending that use of or reliance on brand names is a well-established means of procurement.

2. Our experience suggests, too, the significance of a well documented bid file during an independent review of a purchasing decision. Unrelated investigations A84-0605, A80-0528 and A80-0189 well illustrate the contrast.

In the first, filed against the Division of Mental Health and Developmental Disabilities, investigation was able to show that, for guard services at API, the division had demonstrated that a sole source exception would well serve the interests of the state, had secured necessary approvals in advance, and had otherwise proceeded in a procedurally correct manner. We found the complaint "unsupported."

I also found "unsupported" the objections made to the Department of Transportation and Public Facilities' award of a street light service contract in A80-0528. The lights in question were situated in downtown Anchorage and interspersed with street lights on roads for which the Municipality had responsibility. The matter had been thoroughly researched and reviewed by attorneys, who had found a reasonable basis for the state's decision.

A80-0189, by contrast, involving purchases by the Department of Transportation and Public Facilities restricted to a particular brand of heavy-duty tractor, was based on an outdated preference for that particular brand that had not been independently reviewed or verified; past preference, in other words, governed the direction of then-current purchasing practice, until the purchase of one kind of vehicle became an ingrained habit. We criticized the agency and secured from them a commitment to draft a written policy covering limitations on bid specifications.

3. By law (AS 37.05.220(2)) an agency may negotiate a contract if it finds that it is in the best interests of the state. An "authority to negotiate" is a prerequisite.

ATNs and negotiated contracts have contributed their share of problems, notably those which are authorized after a public competitive bid advertisements in which all bids are rejected. We can usually examine and explain that.

What we can't explain, and what the committee should give attention to, is the absence of any statutory or regulatory framework suggesting when an ATN is proper and when it has been properly issued, and the scope and duration of the authority granted under the ATN. So, for example, there is the complaint occasionally presented raising a question as to whether an approved ATN retains a long-term validity and whether an agency was improperly depending on an approved ATN to meet one set of circumstances when those circumstances have demonstrably changed.

There is, I suggest, no more critical examination which the committee can give--no more essential steps that it can direct to improvement of state contracting procedures--than this matter of administratively-authorized exceptions to competitive bidding. This week, for example, I expect to conclude an investigation (A85-0941)

contesting the decision of a department to award a sole source contract, in which the Division Director Bob Link and Professional Services Contract Specialist Vincent Isturis are reported to have advised the investigator that the department cannot check requests for alternative procurement methods submitted by state agencies and must take each department's word that it has "demonstrated" that a sole source is appropriate.

In the absence of any effort to make an independent determination that "alternative procurement" is in order, how can the public be expected to have any confidence in the current procurement system? The committee should develop both clear standards and a public review process in this area.

C. Low bidder versus lowest responsible bidder.

This is not a complaint that we often receive. One example may well be the land clearing contract example (F80-0904 and others) mentioned above also raised questions concerning the eventual award of contracts to parties not submitting the low bids. In another, A83-0881, the Department of Administration's own Division of Telecommunication Services awarded a contract to other than the low bidder and neglected to advise bidders of their right to appeal, thereby cutting off challenges to the contract award. Our recommendations urged, among others, adoption of an appeal process and the development of related policies which would contribute to improved handling of bids.

Despite a relatively low volume of complaints, this is an area with potential abuse. Statute (AS 37.05.240(a)) and regulation (2 AAC 15.040 and 2 AAC 15.060) authorize award of a bid to a responsible bidder and withholding of a bid from one who is deemed non-responsible. One regulation, 2 AAC 15.040, authorizes the division to exercise discretion in the matter, but our experience, in the limited number of complaints that have raised a claim of unreasonable rejection, suggests that the reasons justifying the exercise discretion are not documented.

In my judgment, the committee should

-- set down the standards against which a bidder may be found non-responsible; if determination of standards is delegated to an agency, the standards should be set out in regulation; and

-- require determinations of non-responsibility to be fully documented; documentation should include a brief, albeit comprehensive, explanation of how the bidder or the bidder's submission does not comply with one or more of the identified standards.

### D. Appeals.

An appeal process for competitive bids and for alternative procurement is authorized by statute (AS 37.05.240(a)) and implemented by regulation (2 AAC 15.100). Unlike professional services contracting, described in II below, the five day limit for taking appeals in procurement-related matters is a creature of the statute.

The system in place effectively precludes, in my judgment, a review of an appeal on its merits. See discussion in II(D) below.

### E. Procurement processes applicable to state government agencies outside the executive branch.

This topic is intended to speak briefly to University, legislative and judicial branch procurement. As to the latter two, I have no suggestions but, by analogy to the professional services contract enactment (Ch. 144, SLA 1982), the legislature should consider--or may want the Legislative Council to consider and recommend--some range of procurement enactments covering the legislature's own acquisitions.

No single investigation prompts inclusion of this recommendation. The recommendation is empirically based: through the 5- year period considered, the University of Alaska was the source of a significant number (28) of complaints.

Despite the University's preparation and recent presentation to the committee of tidy summary books (implying that the procurement and decision review processes of the University are well established and well recognized), a review of the complaints received by this office suggests that there is a fair degree of confusion among administrators as to what rules do apply.

All of the objections noted hereinabove to contracts awarded under the Uniform Purchasing Act have probably, at one time or another, been filed against the University. So, for example:

-- In A80-0850, a complainant charged that University officials had failed to award a bid to the lowest bidder and had altered applicable bid specs on which the award was eventually made.

-- In F81-0630, the University awarded a telephone system contract to one vendor when use of a multi-step competitive bidding procedure, sometimes used by other executive branch agencies, would have accommodated a competitive procurement.

-- In F81-1049, the complainant charged the University with, among other things, unfair denial of a subcontract award in which contract specifications were narrow, drawn without opportunity for complainant's company to provide

evidence of "equal or better" equipment that might be substituted. Finding the complaint "unsupported," the office nevertheless asked University officials to commit themselves to an examination and development of a substitute system of procurement, emphasizing development and use of broader specifications uniformly applicable to all contracts which it proposed to let. University officials rejected the recommendation, indicating that Facilities and Planning staff were simply too busy to make major changes in a system which they believed was adequate.

-- In A82-0938, investigation supported complainant's assertion that University employees had circumvented competitive bid practices through use of subjectively evaluated bid specs.

-- The complainant in A84-0292 withdrew a complaint that the University was improperly relying on a "prehearing" to determine whether a formal hearing would be granted on complainant's appeal of denial of bid award, notwithstanding that absence of such a procedure in University procedures.

-- In the complaint identified as F84-0686, the complainant, who apparently did not understand the distinction between competitive bidding and professional services contracting, asked the office to review University contracting processes applicable to materials testing.

-- In F85-0545, a complaint which the complainant was advised to file as an appeal, the complainant challenged the University's award of a supply contract to an out-of-state firm notwithstanding the statutory bidder preference provision.

The confusion in University contractual processes is compounded for all of us--except, perhaps, the handful of University officials who work with the system on a daily basis--by the absence of any reference to procurement through competitive contracting except by the inclusion of the Uniform Purchasing Act by reference appearing in AS 14.40.340.

There is a need, in my judgment, for the legislature to give its attention to University contracting so that University officials and those who deal or want to deal with the University system as vendors may better understand both the legal basis for and the procedures applicable to the University's procurement system.

Professional services contracting:A. Applicability of "professional services" contracting.

On the whole, the distinction between professional services contracts and the procurement provisions applicable to goods and supplies is distinct. There have been very few complaints since 1982 in which the complaint suggests that the issuing agency has confused its choice of method.

Several open complaints raise the question as to whether agencies have improperly made or used exceptions to the professional services contracting process to secure certain professionals' services. In testimony at your recent Fairbanks hearing, University officials suggested the need for an exception for attorneys, physicians and dentists. The Department of Law has adopted and follows its own procedures for acquiring the services of "outside counsel" to secure special legal services. (See memo of January 2, 1985, from Administrative Services Division Director Richard Pegues to the Contract Review Committee). These exceptions appear to depend upon the agencies' interpretation of the "sole source" exception of AS 36.98.030(d)(1) and, as exceptions, are themselves subject to criticism for abuse. The committee would be well advised to consider the problems presented by University officials and the Department of Law--there may be others--but any exception drawn to meet their expressions of concern following the "sole source" exception of AS 36.98.030(d)(1) should require that the issuing agency document the basis of its decision.

As I have suggested with respect to issuance of contracts under the "alternative procedures" provisions in the procurement section (i 3 above), the legislature may want to require that contracts issued under any exception created for special classes of professionals be publicly reported by the issuing agency. Public reporting would serve the useful purpose of determining whether the agency is following a pattern of awarding contracts to a limited number of professionals.

A comparable situation exists as to use of architects, engineers, and construction managers' services for which the Department of Transportation and Public Facilities regularly issues contracts. Before proceeding in this area, the committee would be well advised to ascertain how that department has proceeded to engage the services of these professionals, the past record of securing these services under contract, and the amounts of these contracts. The record of activity by that department should be instructive on this issue.

B. The framing and offering of requests for proposals.

The discussion in the letter reflects our experience based on various complaints filed with the office. The following are typical:

A61-0839 and 082-0471. Unrelated complaints filed against different agencies in which the

complainants asserted that submission of responses to request for proposals within 10 days of their publication was unreasonable.

J82-0511: The complainant contended that an agency's decision to require a response to an RFP within one week was unreasonable.

F83-1105: In a complaint against the Department of Corrections, the complainant--a competitor for a halfway house contract--contended that the financial report of and other information about a contract facility's halfway house operations essential for his preparation for a response to an RFP was not available for review.

F83-1500: The complainants asserted an improper professional services contract award predicated in part on his assertion that the needs of the agency were not specifically described in the RFP.

J83-0683: In this complaint, filed against the Department of Transportation and Public Facilities arising out of award of a professional services contract in conjunction with the Governor's Mansion renovation, the complainant charged, among other things, that the department misused its authority to award a contract of \$25,000 or less directly.

A84-0920: The complainant asserted that the agency was inefficient in providing information relating to award of a contract based on an RFP.

C. The agencies' evaluations of requests for proposals.

The discussion in the letter under this section also reflects our experience with complainants' concerns. Some examples include:

A82-0158 and A82-0165: In this pair of related complaints, the complainants charged that the successful bid was not responsive to the published request for proposals and that the contract award was influenced by a person not employed by state government who had a conflict of interest with one of the persons submitting the proposal.

A82-1223: The complainant charged, among other things, that the selection review process was improper because the evaluators were not qualified to review the proposals received and because information critical to a proper appeal (release of information about the evaluators and their rating sheets) was not timely provided.

F82-1293: This complaint was predicated upon complainant's learning that one evaluator of a five member team misjudged all submissions because he had used an evaluation form different than the one used by the four others.

F83-0928: The complainants charged, among other things, that an RFP was inadequate and that the selection committee lacked the technical expertise adequate to the task of conducting an evaluation of proposals received. (The issuing agency subsequently declined to accept a response or award a contract.)

F85-0994: Among other concerns, the complainants charged error in the ranking and selection of proposals. (The complaint was discontinued when an appeal was filed.)

D. The appeal process requirements discourage fair evaluation of grievances on their merits.

A "review process" for professional services contracts is required by law. AS 36.98.070.

The handling of three recent complaints, Ombudsman Complaints A85-0910, A85-0951, and A85-0957 illustrate one element of the problem which typically arises with respect to professional services contracting but which may have applicability to procurement as well.

Briefly summarized, the three complaints giving rise to this petition are these:

A85-0951:

The contract award was made July 1. The complainant claims the notice of award was received by the aggrieved respondent on July 3. The notice of award made available to the investigator is dated July 1, and contains the subject of the request, date, ATN number, contracting officer, a short notice, the successful bidder, and the names and addresses of all other respondents.

There was no information about the basis for the award. The notice states:

. . . This abstract of responses is final notice of award of contract(s) if no amendment is subsequently issued by the State and if no appeal of the award(s) stated hereon is received from an aggrieved respondent during the five days following the date of this abstract.

Saturdays, Sundays, and other legal holidays excluded.

The complainant called the contracting office, learned some of the basis for the decision informally over the phone, and mailed his appeal, dated July 8. According to Commissioner Eleanor Andrews's letter of rejection, it was received by Administration on July 15. That letter stated:

2 AAC 17.050 provides that for an appeal to be considered, it must be received within five (5) working days following the notice of award. In this instance, your appeal had to be received by close of business on July 9, 1985.

For the reason that your appeal was not received in a timely fashion, I must reject your appeal as provided in 2 AAC 17.050(d).

A85-0957:

The notice of award, dated July 1, arrived by regular mail on Saturday, July 6. The complainant states that on Monday, July 8, the aggrieved respondent requested pertinent information from the Department of Corrections, the agency letting the contracting. This information was received from the department on July 10, and an appeal was hand-delivered to the Department of Administration on July 12.

The response from the commissioner's office reported that the appeal was dated July 11 and received July 12, and therefore rejected as untimely.

A85-0910:

The aggrieved respondent appealed the award of RFP 86-0031 on June 25; the department received the appeal within the prescribed five days of the award of the contract. Commissioner Andrews advised that you were rejecting the appeal for "lack of specificity," stating to the aggrieved party:

. . . You have not taken issue with the specific scores assigned to either proposal in any area of evaluation nor have you provided any specifics concerning where or why you feel yours was the better proposal.

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The strict application of 2 AAC 17.050 does not afford an aggrieved respondent a fair opportunity to be heard. It is apparent from looking at the three examples cited that five days is not sufficient time for an aggrieved respondent to:

- (1) receive pertinent information about the basis for the contract award (this information is usually sent to the respondent by mail);
- (2) prepare the required detailed reasons for appeal; and
- (3) submit the appeal in writing to the department.

Aggrieved bidders are placed in the position of having to either submit a late or an incomplete appeal.

Investigation culminated in my submitting a petition for the Amendment of 2 AAC 17.050 to Commissioner Andrews. My petition asked the department to delete the five day requirement for appeals of 2 AAC 17.050(a) and to insert new language as deemed appropriate by the department. The substituted language should either prescribe a more reasonable (longer) period of time by which the aggrieved respondent may appeal or, alternatively, provide for a two stage process whereby notice of the appeal must be given to the department prior to one deadline and additional time provided by which the aggrieved respondent may submit the required detailed reasons for the appeal.

In petitioning, I cited the three complaints, each of which alleged that the five day requirement of 2 AAC 17.050 was unfair. I believed that these three appeals may very well raise substantive issues about the selection processes used by the awarding department. In fact, the commissioner had so indicated in at least one of the rejections of the complainant's appeals. The effect of the strict application of the provisions of the regulation cited has precluded the department from addressing potentially important questions about the award of professional services contracts.

An appeal system should not be allowed to produce extensive delays in every contract award. However, the Alaska Legislature clearly contemplated appeal pursuant to AS 36.98.070. At least as to these three complainants, the effect of the five day rule has undercut the intended result that there be an opportunity for appeal, by rejecting appeals that are filed in good faith within a reasonable amount of time without opportunity to further consider their merits.

Because I perceived the current regulation as unfair to aggrieved respondents, and because it was apparent that substantive issues are not being considered by the department due to the overly restrictive language of 2 AAC 17.050, it would clearly be in the interest of both the State and future aggrieved respondents to amend the regulation.

I urged the department to act to initiate essential changes in the appeal process in order to improve the opportunity that process provides

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to permit a reasonable review of contract awards for professional services. I saw no other check within the executive branch to assure that awards are not made on improper grounds and urged prompt action on the request.

Commissioner Andrews rejected the petition:

This will acknowledge receipt of your letter of August 15, 1985, petitioning under AS 44.62.220 for a modification to 2 AAC 17.050.

I would agree that the appeal process for professional services contracts, and more specifically the five-day rule, should be reviewed for possible modification. I feel, however, that to go to public hearing now is premature. This department is currently advertising through an RFP for a study of State procurement practices. The final report of that study will not be available until December 15, 1985. A Senate committee is currently examining the State's procurement practices and Executive Branch ethics. We have been advised that the legislature intends to completely rewrite the procurement laws (which includes the appeal process). Although, as stated earlier, the procedure needs to be reviewed, to spend the two to three months necessary to change the regulations now and then have to do it again in a few months to be consistent with legislative changes and study recommendations, appears to be not in the State's best interest at this time. The current regulations have been in effect since 1982, and a few months delay to assure coordination with other interests considering changes to the law and regulation appears to me to be the preferred method of progress.

As it considers matters of appeals, the committee may want to give attention to the scope of review.

In material prepared for an April, 1984, seminar, former Ombudsman Frank Flavin directed attention to the lack of a viable appeals process. "The grievance procedures for [the Department of Transportation and Public Facilities] and [the Department of Administration]," Flavin noted,

are limited to a determination . . . whether the award of the contested contract was made in accordance with applicable statutes and prescribed procedures. . . . 17 AAC 07.050 and 2 AAC 17.050. Consequently, the review is procedural rather than substantive and precludes a total review of all facts which may establish an abuse of discretion.

[The departments] have limited themselves to a review as narrow as a judicial review instead of a full administrative hearing on all factors within 'administrative expertise.'

Flavin also noted that judicial relief in these situations was rather unlikely:

Review of professional services contracting will undoubtedly follow that for regular bidding and is consequently limited to questions of law. The court will not substitute its judgment for that of the administrative agency. Since professional services contracting by nature is more subjective than regular bidding, available judicial relief is extremely limited. [Citations omitted.]

Complaints to the office raise questions about appeals.

#### E. Exceptions and exclusions.

The separate status for administration and management of professional services contracting by the Department of Transportation and Public Facilities arises out of the definition of "commissioner" in AS 36.98.080(1). The committee should consider the award of contracts by the department's experience in awarding and managing contracts under the exception established in the 1982 statute.

The professional services contracting statutes incorporate the University of Alaska under AS 36.98 by virtue of the definition of "state agency" in AS 36.98.080(5). University officials have indicated they seek an exception from the filing requirement. If an exception is provided, the committee and legislature should assure that the university has in place a professional services contracting process fully sufficient to maintain the credibility of the professional services contracting process and of public confidence in that process.

REAA professional services contracting practices were highlighted in F83-0392. Investigation disclosed that, notwithstanding a clear requirement in the procedures adopted by the school board, district administrators awarded a contract for a needs assessment study without prior approval of the board. At the conclusion of the investigation, the omission was reported to the board.

### III

#### A. Prospective contractors not qualified to conduct business.

Current state law (AS 37.05.230(5)) pertinent to competitive bidding requires only that a person or firm hold a current Alaska business license to take advantage of the "Alaska bidder" preference. Otherwise, the determination of whether a bidder is a responsible bidder

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as regards the bidder's "compliance with state laws" (AS 37.05.-240(a)(3)) may be made by the issuing agency at the time of bid evaluation.

Although complaints in this category are not numerous, they recur with some regularity. Typically submitted by aggrieved or disgruntled bidders or respondents, the complaints appear to be prompted by a rather common expectation that persons and firms who respond to invitations to bid or requests for proposals should be qualified to engage in business in Alaska (i.e. licensed under AS 43.70 to do business in the state) at the time of submission of the bid or response.

This office's typical response to these complaints is to advise the complainant of the requirements of AS 37.05.230(a) and the interpretation and application of AS 43.70 and decline the complaint. See, in this regard, Ombudsman Complaints A81-0250 (complaint filed against the Business License Section of the Department of Revenue for failure to enforce requirements against prospective contractors), F81-1243 (University awarded renovation contract to firm which could not show evidence of a business license or a contractor's license), A82-0239 (challenging the award of a contract by the Division of Vocational Education, Department of Education, to a person who had no business license), and A83-0616 (questioning the Department of Transportation and Public Facilities' award of a contract to a bidder who did not hold a business license at the time of bid submission). The consistency with which the complaint is filed, however, suggests that the legislature may want to conform state law to what are apparently widely held, albeit mistaken, expectations regarding a person's or firm's qualification to respond to a bid invitation or RFP.

### 3. Contract extensions or continuations.

In the recent receipt of several open complaints, we have observed public displeasure in the tendency of some agencies to avoid or circumvent the contract award process for purchases under the Fiscal Procedures Act (including office space leases) and, to a lesser extent, professional services through the use of contract continuations and extensions. The subject deserves the committee's attention.

Speaking to extensions, the Department of Administration's own purchasing regulations advised:

Where contract terms include a renewal option, that option may be exercised without re-bidding or a bid waiver. (A bid waiver is necessary to negotiate a renewal if no options exist.) The existence of a renewal option does not imply we must renew, it is simply an option which can be exercised if it is in the best interests of the State. The conditions of exercising the option are limited to the option clause. [Emphasis added.]

...

In its review of procurement practices, the committee should consider the trend or tendency of agencies to

(1) add a provision, often no more than as a matter of boilerplate (in a range of agency-initiated documents--including, but not limited to, grants awarded and managed under other provisions of the Fiscal Procedures Act) to authorize contract extension or continuation options;

(2) include contract extension or continuation option provisions that authorize contract extension for periods as long or longer than the period of performance for the original contract on which the extension is based; and

(3) extend or continue existing contracts under a contract renewal without evaluating whether extension or continuation is "in the best interests of the State."

Since extension or continuation under an existing contract is an alternative to contract award through competitive bid or examination and award on the basis of RFPs, the committee should, in my judgment, establish some general rules as to when and how an agency may opt to extend or continue a contract.

On a related matter: AS 36.98.010(1) establishes that the provisions of AS 36.98 apply only to contracts of more than \$25,000, and AS 37.05.230 sets its own exceptions for small contracts. In complaints filed with this office examining the renovation of the Governor's Mansion and in Ombudsman Complaint J85-0202, complainants' allegations included the observation that the limitations were routinely, and improperly, being circumvented through the device of contract amendment or contract extension. Indeed, the evidence supported this. In the instance of the Mansion contract, the Department of Transportation and Public Facilities--following what, as I understand, has become routine practice, issued a \$25,000 contract, then proceeded to continue and extend it. In J85-0202, an emergency contract for septic collection disposals let by the Department of Corrections under authority of AS 37.05.230(3), the "emergency" was continued and the contract reoffered at least three additional times, each without benefit of competitive bid.

It is up to the committee and the legislature, of course, to determine whether the dollar limitations now in law for these small contract exceptions should be revised or amended. More significantly, the committee should be exceedingly careful about any exceptions to the general rules it identifies simply because, unless some safeguard against abuse is included, the issuing agencies will, I can assure you, devise ways to apply the exceptions to avoid the use of the law. The easiest safeguard may be to specify that an agency may not extend a

contract beyond the specified ceiling--\$25,000 for professional services contracts--or that the agency may use the exception to contract with a party in excess of the specified ceiling during any fiscal year. However handled, the committee should understand the potential difficulties posed by any such statutory exception which it may enact.

C. Nonprofit firms and government agencies unfairly compete with private sector business.

This is another category in which the public's expectations are at variance with the law.

As it considers this point, the committee should understand that:

(1) agencies are specifically authorized to contract for professional services with other state agencies, a federal agency, or a political subdivision of the state--this term is not defined--free of the requirement that RFP's be solicited (AS 36.98.040(d)(3)); and

(2) agencies are also authorized to purchase, in derogation of competitive bid provisions of the Fiscal Procedures Act, through the General Services Administration (AS 37.05.270).

We have regularly received complaints of "unfair competition" on the part of state agencies, the bulk of the complaints being filed against the University of Alaska. Among examples:

-- F82-1442 (the University of Alaska enjoys competitive advantage in competing against private businesses for available public sector contracts);

-- F83-1392 (Community college system inappropriately and unfairly compete with private contractors for available professional services contractors);

-- A83-0734 (a unit of the University system, the Arctic Environmental Information and Data Center, unfairly competes with the private sector for media production contracts); and

-- A85-0449 (the University's Institute of Social and Economic Research enjoys a preference and, in the particular circumstances described by the complainant, did not submit the proposal with the lowest cost).

Not all complaints in this category have involved challenges to involvement of the University. Concluding investigation of J84-0771, for example, I found "unsupported" complainant's assertion of error against the Department of Community and Regional Affairs for approving a competitive bid waiver for a municipality's provision of day care services. There was sufficient evidence that, under the unusual facts

of the situation, the issuance of a waiver in response to an "emergency" was appropriate. I also found "unsupported" the complainant's assertion in J84-0649 that the Department of Transportation and Public Facilities erroneously substituted work under an interagency agreement for issuance of a professional services agreement, thus favoring use of and reliance on in-house expertise over private sector talent: state law indicates a preference for reimbursable services agreements.

Complaints have been filed, too, relating to decisions not to make use of this preference. So, in F83-0513, the challenge was raised against the decision of the Energy and Power Development Office of the Department of Commerce and Economic Development to use a nonprofit corporation to manage programs which, in the complainant's judgment, should have been passed through to the local government.

Perhaps the oddest in this group of odd-lot complaints was a 1984 grievance, J84-0865, in which the Division of General Services and Supply refused to go to competitive bid for acquisition of outboard motors. It relied instead on a "bid waiver" process which itself depended on a long-extended "contract award" of General Services Administration, the procurer of goods and services for the federal government. In other words, the division had omitted competitive bidding for motors citing a contract award by the federal purchasing agency, though the contacts between the state and federal procurement agencies over acquisition of outboard motors appeared extremely nebulous. The old statute (AS 37.05.270, enacted in 1955) appears to countenance this exception and we, regrettably, found the complaint "unsupported." The division, in turn, indicated that it would probably no longer cite an outdated federal agency contract award, but would go to competitive bid.

The problems arising as to one part of this section appear to have been partially alleviated by the inclusion, in the 1982 addition of the professional services contracting provisions, of a requirement that standard overhead rates be incorporated into proposals from an offering state agency. AS 36.38.035. It is far from clear that the provision is always honored, and the committee may wish to inform itself on the impact of the provision.

#### D. Release of information.

Some examples of the confusion that attends the matter of disclosure of competitive bid and proposal submission documentation:

A81-0884: At the behest of a bidder who had not been able to obtain information about disposition of a competitive bid, the office interceded to obtain from the agency information as to the winner of that bid.

A81-1196: A complainant, who had submitted a proposal in response to an RFP and who was not awarded the contract, encountered difficulty in

obtaining access to the rating sheets and a copy of the successful proposal in order to review the contract award preparatory to an appeal.

F81-0649: The complainant had been unsuccessful in securing a copy of the winning proposal, the agency erroneously citing the proposers' proprietary information.

A83-0826: Citing the need to consult with its attorney, the agency delayed disclosure of information to the complainant that the complainant believed was need to file an appeal from an adverse professional services contract award.

A83-0881: In this, information indicating the reasons for contract award were withheld from the complainant, a competitor, until after contract award, thereby cutting of complainant's opportunity to appeal the decision.

A84-0526: The complainant was unable to secure information as to the basis for award of a contract to a competing firm in preference to his own.

#### E. Ethics considerations in public contracting.

Conflicts of interest can occur when a present or prospective contractor has interests, current or planned, that directly or indirectly relate to work to be performed under contract. These interests may affect the contractor's ability to perform effectively and impartially under the contract or result in the contractor's enjoying an unfair advantage when competing for the contract or other contracts.

The public--and particularly that segment of the public that competes for the state's contract business--is alert and sensitive to real or perceived conflicts of interest in the evaluation of bids and proposals, in the award of contracts, and in the management of awarded contracts, and in the evaluation of services performed under contract. Among matters which have been directed to our attention:

J79-0213: Investigation of this complaint confirmed the complainant's assertion of a conflict of interest between the Department of Administration and its contractor in a matter relating to data processing: the spouse of the an agency employee was employed by the firm to which the contract was awarded.

A81-1152: This complaint considered, among other elements, and found no support for complainant's assertion that there may have been a financial tie between a state employee who

negotiated the contract in question and the successful contractor.

F81-1314 and others: Investigation of this complaint indicated that, while two members of a department's proposal evaluation committee were former employees of the firm to which the contract was awarded, there was no overt evidence of favoritism in the award. Among other recommendations, the agency was alerted to the appearance of impropriety involved with such an arrangement.

A83-0592: On referral from a complainant, the office evaluated the assertion that the award of a contract was made to a firm employing a former department official at the expense of award to a firm which employed and used the services of another department official.

J83-0043: The complainant reported a situation in which the law firm that employed or included a recently-resigned former state official received a contract for legal services work.

J83-0855: In the award of a professional services contract for inspection services on a sole source basis, the complainant suggested that the agency may have selected an individual who was employed by or retained by the prime contractor on the public works project which he was directed to inspect. Investigation found no evidence of conflict, but noted that the department needed to include a conflict provision in its negotiated contracts.

J8C:pjc

# Anchorage Daily News



Winner, 1976 Pulitzer Prize Gold Medal for Public Service

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## A breakthrough for common sense

Alaska will spend less for goods and services next year, but state government will remain a plenty big spender. That's why the procurement reform bill that passed the Alaska Senate last week is so important.

Currently, no standard set of procedures governs state business. Bidding and purchasing practices vary widely from department to department. This often leaves those doing business with the state frustrated and confused by the government's idiosyncratic demands. It also provokes occasional charges that the state system is unfair and open to favoritism — like the favoritism charges that led to impeachment proceedings against Gov. Sheffield last summer and prompted the Senate to establish a special committee on procurement.

The committee, chaired by Sen. Jan Faiks of Anchorage, developed the procurement reform recommendations that became the basis for the legislation passed last week. With a few exceptions, bidding and buying procedures will become uniform under the direction of a state procurement officer.

Competitive bidding will be required for all contracts unless an agency can demonstrate that it faces an emergency. This means an end to most of the sole source contracting that state agencies and their favored contractors have used too often. (Unfortunately, one of the exceptions is the legislature itself, home of some of the juiciest sole source contracts.)

Procurement reform will not be without expense. New staff to monitor the state's procurement activities, for example, will cost about \$350,000 a year. But it should prove an investment in prudent management.

Wise spending and uniform business practices are hardly radical ideas. Sen. Faiks and her Senate colleagues have invoked some basic common sense, even if they did exempt the legislature. Now it's up to the House to finish the job before this legislative session ends.

HOUSE  
COMMITTEE REPORT

(7)

JUDICIARY

Date referred: 4/4/86

FURTHER REFERR

FINANCE

DATE: 4/30/86

The STATE AFFAIRS 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 House CS for CSSB341(SA)  same title
- new title

and recommends no recommendation

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note

SIGNING DO PASS:

Katie Hurley

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNING OTHER RECOMMENDATIONS:

Mike Savone - no rec

John Jenkins No Rec

[Signature] - oo

NOT PASS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Katie Hurley

Chairman

## SB 40 cont'd

SENATE JOINT RESOLUTION NO. 40 is on the calendar.

## SB 387

The Rules Committee considered SENATE BILL NO. 387 (taxation of watercraft motor fuel) and a majority of the committee recommended calendar April 3. The report was signed by Senator Kelly, Chairman and concurred in by Senators Faiks, Josephson and Coghill.

SENATE BILL NO. 387 is on the calendar.

## SB 464

The Rules Committee considered SENATE BILL NO. 464 (duties of the Commission on Judicial Conduct) and a majority of the committee recommended calendar April 3. The report was signed by Senator Kelly, Chairman and concurred in by Senators Bennett, Faiks and Coghill.

SENATE BILL NO. 464 is on the calendar.

The presence of Senator Vic Fischer was noted.

## CONSIDERATION OF THE CALENDAR

## SECOND READING OF SENATE BILLS

## SB 341

SENATE BILL NO. 341 (state procurement practices and procedures; old) was read the second time.

Senator Rodey moved and asked unanimous consent for the adoption of the Judiciary Committee Substitute offered on page 2107. Without objection, CS FOR SENATE BILL NO. 341 (JUD) was adopted.

CS FOR SENATE BILL NO. 341 (JUD) was read the second time.

Senator Faiks moved for the adoption of Finance Committee Amendment No. 1 offered on page 2191. Senator Josephson objected.

## SB 341 cont'd

The question being: "Shall Amendment No. 1 be adopted?" The roll was taken with the following result:

## CS SB 341 JUD AM 1

Yeas:	15	Aboud, Bennett, Coghill, Eliason, Ferguson, Fischer Paul, Fischer Vic, Halford, Kelly, Kerttula, Ray, Roddy, Sturgulewski, Zharoff, Ziegler
Nays:	5	DeVries, Edventamp, Faiks, Josephson, Sackett

and so, Amendment No. 1 was adopted.

Senator Faiks moved and asked unanimous consent for the adoption of Finance Committee Amendment No. 2 offered on page 2192. Without objection, Amendment No. 2 was adopted.

Senator Roddy offered Amendment No. 3:

Page 10, line 18: delete "Within 48 hours after the opening of bids" insert "no later than the time of opening of bids"

Page 17, line 13: delete "within 48 hours after" insert "no later than"

Senator Roddy moved Amendment No. 3, then withdrew his motion.

Senator Roddy moved and asked unanimous consent that Amendment No. 3 be withdrawn. Without objection, Amendment No. 3 was withdrawn.

Senator Halford moved and asked unanimous consent that the Senate rescind its action in adopting Amendment No. 2. Without objection, the Senate rescinded its action in adopting Amendment No. 2.

Amendment No. 2 was before the Senate.

Senator Roddy offered an amendment No. 1 to Amendment No. 2:

On first line of Amendment No. 2: delete "Within 48 hours after the opening of bids" insert "no later than the time of opening of bids"

(Technical amendment on page 10, line 19 change "bidder proposes" to "bidders propose")

April 3, 1986

SB 341 cont'd

Senator Rodzy moved the amendment to Amendment No. 2 be adopted.

The question being: "Shall amendment No. 1 to Amendment No. 2 be adopted?" The roll was taken with the following result:

CSB 341 JUD AM AM1 TO AM2

Yeas: 15 Abood, Bennett, DeVries, Eliason, Ehrenkamp, Faiks, Ferguson, Fischer Vic, Halford, Josephson, Kerttula, Kay, Rodzy, Sackett, Tharoff

Nays: 5 Coghill, Fischer Paul, Kelly, Sturgulowski, Ziepler

and so, amendment No. 1 to Amendment No. 2 was adopted.

Senator Rodzy offered an addition to Amendment No. 2:

Add to Amendment No. 2  
Page 17, line 13: Delete "within 48 hours after"  
insert "no later than"

Senator Rodzy moved amendment No. 2 to Amendment No. 2:

The question being: "Shall amendment No. 2 to Amendment No. 2 be adopted?" The roll was taken with the following result:

CSB 341 JUD AM AM2 TO AM2

Yeas: 16 Abood, Bennett, DeVries, Eliason, Ehrenkamp, Faiks, Ferguson, Fischer Vic, Halford, Josephson, Kerttula, Kay, Rodzy, Sackett, Sturgulowski, Tharoff

Nays: 6 Coghill, Fischer Paul, Kelly, Ziepler

and so, amendment No. 2 to Amendment No. 2 was adopted.

The question now being: "Shall Amendment No. 2, as amended be adopted?" The roll was taken with the following result:

April 3, 1986

SB 341 cont'd

CSB 341 JUD AM AM2

Yeas: 16 Abood, Bennett, DeVries, Eliason, Ehrenkamp, Faiks, Ferguson, Fischer Vic, Halford, Josephson, Kerttula, Kay, Rodzy, Sackett, Sturgulowski, Tharoff

Nays: 4 Coghill, Fischer Paul, Kelly, Ziepler

and so, Amendment No. 2, as amended was adopted.

Senator Ferguson offered Amendment No. 3:

Page 55, Delete lines 14-20, insert:

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

Senator Ferguson moved Amendment No. 3 and asked unanimous consent. Without objection, Amendment No. 3 was adopted.

Senator Halford moved and asked unanimous consent that CS FOR SENATE BILL NO. 341 (JUD) as amended be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 341 (JUD) as amended read the third time.

The question being: "Shall CS FOR SENATE BILL NO. 341 (JUD) on (state procurement practices and procedures; etc) pass the Senate?" The roll was taken with the following result:

CSB 341 JUD AM 300

Yeas: 20 Abood, Bennett, Coghill, DeVries, Eliason, Ehrenkamp, Faiks, Ferguson, Fischer Paul, Fischer Vic, Halford, Josephson, Kelly, Kerttula, Kay, Rodzy, Sackett, Sturgulowski, Tharoff, Ziepler

Nays: 0

and so, CS FOR SENATE BILL NO. 341 (JUD) as passed the Senate.

## SB 361 cont'd

Senator Hallford moved and asked unanimous consent that the vote on the passage of the bill be considered the vote on the effective date clauses. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 351 (JUD) was referred to the Secretary for engrossment.

## SB 387

SENATE BILL NO. 387 (taxation of watercraft motor fuel) was read the second time.

Senator Fails moved and asked unanimous consent for the adoption of the Finance Committee Substitute offered on page 2117. Without objection, CS FOR SENATE BILL NO. 387 (FIR) was adopted.

CS FOR SENATE BILL NO. 387 (FIR) was read the second time.

Senator Hallford moved and asked unanimous consent that CS FOR SENATE BILL NO. 387 (FIR) be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 387 (FIR) was read the third time.

The question being: "Shall CS FOR SENATE BILL NO. 387 (FIR) (taxation of watercraft motor fuel) pass the Senate?" The roll was taken with the following result:

## CS SB 387 FIR 3RD

Yeas:	11	Abood, Bennett, Coghill, DeVries, Fahrenkamp, Fails, Fischer Paul, Josephson, Kay, Lodey, Storgulewski, Zharoff, Ziegler
Nays:	0	Flinson, Ferguson, Fischer Vic, Hallford, Kelly, Ferrula
Absent:	1	Sackett

and so, CS FOR SENATE BILL NO. 387 (FIR) passed the Senate.

Senator Flinson gave notice of reconsideration.

## SB 464

SENATE BILL NO. 464 (duties of the Commission on Judicial Conduct) was read the second time.

Senator Hallford moved and asked unanimous consent that SENATE BILL NO. 464 be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE BILL NO. 464 was read the third time.

The question being: "Shall SENATE BILL NO. 464 (duties of the Commission on Judicial Conduct) pass the Senate?" The roll was taken with the following result:

## SB 464 3RD

Yeas:	19	Abood, Bennett, Coghill, DeVries, Elrason, Fahrenkamp, Fails, Ferguson, Fischer Paul, Fischer Vic, Hallford, Josephson, Kelly, Ferrula, Kay, Lodey, Storgulewski, Zharoff, Ziegler
Nays:	0	
Absent:	1	Sackett

and so, SENATE BILL NO. 464 passed the Senate and was referred to the Secretary for engrossment.

## SECOND READING OF SENATE JOINT RESOLUTIONS

## SJR 50

SENATE JOINT RESOLUTION NO. 50 (Proposing amendments to the Constitution of the State of Alaska relating to amendment of regulations by the Legislature) was read the second time.

A new zero fiscal note was received from the State Treasurer.

Senator Hallford moved and asked unanimous consent that SENATE JOINT RESOLUTION NO. 50 be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE JOINT RESOLUTION NO. 50 was read the third time.



*Alaska Society of Professional Engineers*

FAIRBANKS CHAPTER  
P. O. BOX 61170  
FAIRBANKS, ALASKA 99706

MAY 5 1986

April 28, 1986

Senator Bettye Fahrenkamp  
Pouch V  
Juneau, AK 99811

Ref: SB 341

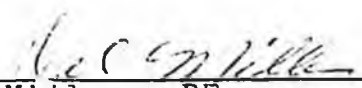
Dear Senator Fahrenkamp:

The Alaska Society of Professional Engineers does not take a strong position on SB 341: we are not really convinced that contracting procedures now in place require a major overhaul. However, if you feel that you must pass this bill, we do have some suggestions on portions of the bill which specifically concern the engineering profession that appear to have been "borrowed" from SB 204, the "Mini-Brooks Bill." Specific changes to SB 341 that we would request are as follows:

- 1) On page 12, line 9: delete the words "professional services."
- 2) On page 21, line 2: in the phrase "as a factor," strike "a" and replace with "an added...."
- 3) On Page 21, line 6: replace the word "sufficiently" with "thoroughly."
- 4) On Page 21, line 10: replace the words "at least one person who is" with the words "persons who are."
- 5) On Page 21, line 13: insert the words "in no event shall price be used for more than 20% of the evaluation criteria."

We believe that the above changes will help to define the few circumstances under which price would be used as a criteria for evaluating proposals.

Sincerely yours,

  
\_\_\_\_\_  
Del Miller, PE  
Chair, Political Action Committee  
Alaska Society of Professional Engineers  
Fairbanks Chapter

DM/skk

KENNETH D. JENSEN  
R. EVERETT HARRIS  
JEFFREY H. ROTH  
SCOTT H. FINLEY  
TIMOTHY C. VERRETT  
KENNETH W. LEGACKI

LAW OFFICES  
JENSEN, HARRIS & ROTH  
A PROFESSIONAL CORPORATION  
310 K STREET, SUITE 406  
ANCHORAGE, ALASKA 99501

TELEPHONE  
(907) 277-3533  
(907) 276-6850  
TELECOPIER  
(907) 279-0335

April 29, 1986

Honorable M. Mike Miller  
Chairman  
House Judiciary Committee  
P.O. Box 1494  
Juneau, Alaska 99802

Re: Committee Substitute for Senate Bill No. 341  
(Procurement Code)

Dear Representative Miller:

I regret that I have been "at sleep at the switch" respecting the progress of the above-referenced legislation. I had intended to express my views early in the session when the Bill was first introduced in the Senate but frankly let it slip my mind. I understand that the Senate passed version of the Bill is to be referred to the House Judiciary Committee for additional hearings before the end of the session. Hence I write you with copies to the other members of your Committee.

Again because of my own neglect I have prepared the attached analysis in great haste. It is not intended to be a comprehensive evaluation of all of the sections of the legislation but does, I think, cover some particularly troublesome areas.

At the outset I express my support for the adoption of a procurement code patterned after the "Model Procurement Code for State and Local Governments" published by the Section of Public Contract Law of the American Bar Association. It is from this code that I suspect the organization if not the substance of the Alaska Bill was derived.

Recognizing the need for adoption of uniform procurement practices in Alaska -- and the perception held by some that there exists an emergency to pass such legislation before the end of this session -- I feel that the legislation in its present form would cause more problems than it attempts to cure. Unfortunately the problems are so many in number and so

Honorable M. Mike Miller  
April 29, 1986  
Page Two

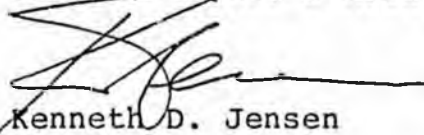
substantial as to make it highly unlikely that a "fix" could be affected by amendments. For that reason I would urge that the Bill not be reported from the House Judiciary Committee this session of the Legislature and that the interim between this session and the next be used to develop needed refinements.

Because of the shortness of time available to me I will not thoroughly address the administrative adjudication provisions of the legislation. I am in agreement with the views previously expressed to the legislature by the Alaska Chapter of the Associated General Contractors of America. AGC correctly noted that the present version of the legislation would invest in the Commissioner of Administration or the Commissioner of the Department of Transportation/Public Facilities the multiple roles of prosecutor, judge and jury. This is a radical departure from the philosophy of the model procurement code which contemplates that the administrative proceedings (intended to remove construction disputes from the expensive judicial arena) be administered by autonomous and independent hearing officers and tribunals. I concur with the views expressed by AGC in this regard and would add that it seems highly improbable to me that an Alaska court would find the result of such proceedings consistent with requirements of procedural due process.

I would very much appreciate your lodging this letter together with the attached abbreviated analysis in the record of hearings before your Committee. I have provided each member a copy for personal reference.

Sincerely yours,

~~JENSEN, HARRIS & ROTH~~



Kenneth D. Jensen

KDJ/spd  
Enc:

PROPOSED AMENDMENTS TO CSSB 341 - PROCUREMENT

P. 20, line 24 -

add "an added" between "as" & "factor". Delete "a"

P. 20, line 28 -

delete the word "sufficiently", add the word "thoroughly"

Page 21, line 4 -

delete "at least one person who is" and add "a majority of persons who are", delete the last word on line 4, "the"

Page 21, line 5 & 6

delete the rest of the sentence after the word "services" and put a period after "services".

Page 21, line 7

insert a new section (d), and reletter existing (d) to (e) and reletter existing (e) and (f) accordingly to (f) and (g).

(d) The consideration of price under ~~(c)~~ of this section as a factor in the selection of architectural, engineering, and land surveying services may not exceed 20 percent of the scoring formula used in evaluating proposals. The state agency shall base the evaluation of price on a previously established schedule that objectively correlates price with points scored.

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

HOUSE OF STATE CAPITO  
JUNEAU ALASKA 99811  
907 465 3800

MEMORANDUM

April 21, 1986

TO: THE HONORABLE KATIE HURLEY  
CHAIRMAN, HOUSE STATE AFFAIRS COMMITTEE

FROM: Warren W. Endicott, Executive Director *WWE*

SUBJECT: Amend CSSB 341(Jud)am

This is to request amendment of CSSB 341(Jud)am, "The State procurement code" as it pertains to the Legislature.

Because of time constraints in the legislative branch and cost savings by not always using the State contract award, it is requested that the language in AS 36.30.020 be amended as follows:

"Sec. 36.30.020. LEGISLATURE. The Legislative Council shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the legislature, legislators, and legislative agencies and committees. The procedures must be based on the competitive principles established under this chapter and must be adapted to the special needs of the legislative branch as determined by the Legislative Council [substantially equivalent to the procedures prescribed in this chapter]."

WWE:mmm

A M E N D M E N T S

CSSB 341 (Jud) am

#1

Page 10, line 20 through Page 12, line 1:

Delete all material

#2

Page 15, line 26-28:

Delete:

"(4) is incorporated under the laws of the state, is a sole proprietorship, and the proprietor is a resident of the state or is a partnership, and all partners are residents of the state; and"

#3

Page 16, line 8:

Add a new subsection (d)

"(d) The provisions of (b) of this section do not apply to construction contracts for highways and public works if the construction contract exceeds \$5,000."

#4

Page 51, line 20:

Delete:

"(1) grants;"

Renumber following sections accordingly.

#6

Page 54, Line 20:

After the word "for" Delete:

"the University of Alaska,"

#7

Page 54, Line 21.

After the word "Authority" Delete:

"and the Alaska Railroad Corporation;"

Amendment CSSB 341

P. 52, after line 6, add a new item (13) to read:

(13) acquisitions or contracts by utilities who operate and maintain state facilities under contract with the Alaska Power Authority.



# Alaska State Legislature

Representative Mike Davis

Pouch V  
Juneau, Alaska 99811  
(907) 465-4930/4941

Interim Office:  
P.O. Box 81435  
Fairbanks, Alaska 99708

TO: Senator Pat Rodey, Chairman, Judiciary Committee  
FROM: Rep. Mike Davis  
DATE: March 6, 1986  
RE: SB 341-An Act relating to state procurement practices and procedures; and providing for an effective date.

Attached please find a letter originally addressed to Senator Jan Faiks who at the time was working on the draft for what would become SB 341, the procurement bill. The letter is from a constituent of mine who also forwarded a copy to my office.

The issue that Mr. Miller brought up, that the lowest bidder may not be the best qualified to perform a very specialized and potentially dangerous service, is a valid one. I think it unfortunate that this was not addressed when the bill was initially drafted.

I hope that you will consider Mr. Miller's comments when the Senate Judiciary Committee takes up this bill. I would encourage you to consult with some of the knowledgeable professionals in the Alaska Department of Fish and Game. I am certain they will concur that there is a need for flexibility in the procurement of this type of service.

# CARIBOU AIR SERVICE

DENNIS C. MILLER

P.O. Box 2648

Fairbanks, AK 99707 (907) 479-2189



Senator Jan Faiks  
1024 W. 6th Ave Suite 305  
Anchorage, AK 99501

December 16, 1985

Dear Senator Faiks,

On October 30, 1985, I spoke to Jens Zehbe about a serious reservation I have about the draft state procurement practices bill. I wanted to share these concerns with you, and to document them via memos written within the Alaska Department of Fish and Game.

I spoke to Jens about the critical need to provide an exception within the procurement bill for Alaska Department of Fish and Game technicians and biologists when they are procuring specialized aircraft charter services for fish and wildlife survey work. Being forced to fly with the lowest bidder is an untenable and potentially life endangering situation.

It is my understanding that ADF&G biologists have the highest fatality rate of any group of state employees. This is a result of aircraft accidents while performing sometimes hazardous survey work. The enclosed memos speak effectively to that point, and I urge that you personally take the time to read each of them carefully. We are not talking here about state offices buying office machines, or about a paving contract - human lives are literally at stake. In the draft procurement bill I can find no exception or allowance for this reality.

I am a professional pilot. Caribou Air Service was formed three years ago, with myself as the only pilot. More than 90% of my business is flying highly specialized fish and wildlife survey work for state and federal agencies. I have been fortunate enough to be one of the very few pilots (less than five) in the Interior with whom ADF&G biologists feel comfortable flying. As a pilot, I can certainly confirm that much of the wildlife survey flying I do is indeed potentially life endangering. I know if I were the passenger on many survey flights I would refuse to participate unless I could fly with one of those few pilots in the Interior I knew specialized in such work.

As some of the enclosed memos point out, in most instances forcing biologists to fly with the lowest bidder would in reality cost the state more money, to say nothing of the safety factors involved. An example: Last week I flew a moose survey where we located 30 radio collared moose. Because of my years of radio tracking experience I was able to fly directly to each animal.



The flight took 6.5 hours or \$806.00 at my current rate of \$124.00/hr. Lets assume the biologist was forced to fly with a low bidder at \$120.00/hr. I can guarantee you, and any biologist will confirm, that an inexperienced survey pilot would take at least 2 minutes longer per moose, resulting in a flight of 7.5 hours at \$120.00/hr, or \$900.00 total. The current draft procurement bill would have cost the state an additional \$94.00 and potentially put the biologist's life in jeopardy. On a spawning salmon survey, missing one bend in a stream would seriously compromise the data being collected, and would mean an additional 1-2 minutes to re-fly the bend, and there are hundreds of bends on one typical flight.

As for myself and Caribou Air Service, I am making a living (albeit a meager one) providing highly specialized wildlife survey work. I plan to continue to be available for this work for the foreseeable future. I cannot afford, however, to be forced into a "rate war" to make sure I am the lowest bidder to comply with a state procurement code that doesn't provide for the facts and emotions stated herein and in the enclosed memos.

Those very few of us who specialize in wildlife survey flying are in business for ourselves. When a biologist calls for a flight he knows who he will get for a pilot. There is no pilot turnover when you are in business for yourself, by yourself. As you may be aware, there is an extremely high rate of pilot turnover in the air taxi business in general, certainly a contributing factor to the high accident rate in Alaska. Forcing ADF&G biologists to expose themselves to inexperienced pilots because of a low bid restriction is ill advised at best, life threatening at worst.

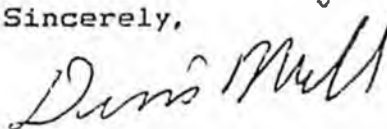
It is imperative that there be an exception for aerial survey work in the state procurement bill. As stated above and in the enclosed memos, it is easy to document and confirm that money is actually saved by flying with experienced survey pilots, even if their hourly rates may be a few dollars higher. We must be allowed to stay in business to provide critical, highly specialized wildlife survey flying. Furthermore, ADF&G biologists must be allowed to choose their own pilots, unrestricted by a procurement code that in reality can endanger their lives and at the same time cost the state more money.

This past year you spent a considerable amount of time on the impeachment proceedings. A man's career was at stake. Now you are dealing with an issue where human lives are potentially at stake. An exception must be made in the procurement bill allowing ADF&G biologists to choose their own pilots for critical survey work.

I am sure you are inundated with memos in the course of your work. I urge you to take whatever time is necessary to read the enclosed, however. You may contribute to saving a state employee's life.

If I can provide any more information, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Dennis Miller". The signature is written in dark ink and is positioned above the printed name.

Dennis Miller

cc: Representative Mike Davis  
Don Collingsworth, Commissioner, ADF&G  
Dick Bishop, Regional Supervisor, ADF&G

Honorable John Sund  
Alaska House of Representatives  
Re: HCS CSSB 341(SA), procurement

May 8, 1986  
Page #2

The intent is to make these provisions consistent with SB 204. If that bill is scheduled for passage, sec. 270 should be deleted.

(4) Grants. Secs. 36.30.850(b)(1), 36.30.990(10).

The procurement code does not apply to grants. However, the definition of "grant" has been controversial. By floor amendment, the Senate adopted a new definition of "grant" which reads as follows:

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

House State Affairs adopted the following definition:

(10) "grant" means the furnishing of financial or other assistance by an agency to a person for a public purpose authorized by law; it does not include an award whose primary purpose is to procure goods or services for the direct administration or operation of state government;

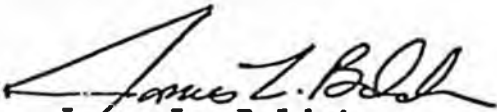
This office prefers the state affairs amendment.

(B) (5) Investment transactions. A new matter has arisen which involves a substantial amount of money and purchasing decisions which are required by the economy rather than the day-to-day needs of state government.

The permanent fund corporation requests the following amendment to sec. 36.30.850(b): "purchases of income producing assets for the state treasury or a public corporation of the state." This would exempt certain investments from the procurement code. Competition usually is not appropriate for these purchases because the value of financial instruments is dictated by the financial markets.

Sincerely yours,

HAROLD M. BROWN  
ATTORNEY GENERAL

By   
James L. Baldwin  
Assistant Attorney General

*Dave Rose  
stocks/bonds  
not brokerage contracts  
JLB/pjg*

SB341- Procurement  
Changes in proposed Judiciary CS  
Prepared by Rep. Sund's office

---

Page 2, beginning line 27: adds language that allows the decisions required by the bill to be made by the officers of the University, rather than the Board of Regents, which meets only four times per year.

---

Page 10, line 1 after "when rates are fixed by law or ordinance" add "and no competitive alternative exists;"

---

Requested by GCI, it allows for a situation which occurs with utilities, where rates might be fixed, but competition still exists, because of tiered rate structures.

---

Page 10, line 22 change from "the apparent low bidder" to "the two apparent low bidders"

---

Insures that if problems preclude the use of the lowest bidder, the second lowest bidder will not have an opportunity to bid shop.

---

Page 17, line 14 change "design and construction" to "design/build"

---

Requested by DOT/PF, who feel that "construction" has a broader definition than "build" to a contractor.

---

Page 23, beginning line 3 insert a new subsection (d) to read: Procurement requirements may not be artificially divided, fragmented, aggregated or structured so as to constitute a purchase under this section or to circumvent the source selection procedures required by AS 36.30.270.

---

Takes the language beginning on page 23, line 28 under Small Procurements and uses it here, plus the word "aggregated".

---

Page 24, on lines 9 and 12, replace "Department of Law" with "Attorney General"

---

Clarification requested by the University of Alaska.

---

Page 52, beginning line 21 insert a new subsection (13) to read: purchases of income producing assets for the state treasury or a public corporation of the state.

---

Requested by the Permanent Fund Corporation, it will exclude purchases of such things as stocks and bonds by the Permanent Fund Corporation, AHFC and the state treasury.

---

Page 56, beginning line 6, delete subsection (10) and replace with a new subsection (10) to read: "grant" means property furnished by the state, whether real or personal, designated by law, including an appropriation Act, as a grant;

---

Page 91, changes the dates of the various provisions to 6 months later than the State Affairs version and delays a report on implementation so that the report is more relevant for legislative purposes.

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, successive, and multiple awards;

26 (8) storeroom 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 after 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) - (c) 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 36.30.190 -  
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  
12 extent that the books and records relate to the cost or pricing data.  
13 A person who receives a contract, change order, or contract modifica-  
14 tion for which cost or pricing data is required, shall maintain books  
15 and 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 a 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 subcontrac-  
23 tor 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 it 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. 36.30.045. 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. 36.5.735. 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 35.30 (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 ) [SHALL  
5 BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER QUALIFIED TO ST 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 mee. the  
27 occupational needs of the state. This authorization 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 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 44.62), 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 ,roperty 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. 52. 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 commissioner 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.