

1 (5) a list of procurements made under this chapter from
2 state sources during the previous two fiscal years together with the
3 total number of procurement contracts entered into during that period
4 with state contractors and the total value of these contracts.

5 ARTICLE 7. LEGAL AND CONTRACTUAL REMEDIES.

6 Sec. 36.30.560. FILING OF A PROTEST. An interested party may
7 protest the award of a contract, the proposed award of a contract, or
8 a solicitation for supplies, services, professional services, or
9 construction by an agency. The protest shall be filed with the
10 procurement officer of the contracting agency in writing and include
11 the following information:

12 (1) the name, address, and telephone number of the pro-
13 tester;

14 (2) the signature of the protester or the protester's
15 representative;

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

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

20 (5) the form of relief requested.

21 Sec. 36.30.565. TIME FOR FILING A PROTEST. (a) A protest based
22 upon alleged improprieties in a solicitation involving competitive
23 sealed bidding that are apparent before the bid opening shall be filed
24 before the bid opening. A protest based on alleged improprieties in a
25 solicitation involving competitive sealed proposals that are apparent

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

28 (2) after the due date for receipt of initial proposals
29 shall be filed before the next due date for receipt of adjusted

1 proposals that occurs after the improprieties are apparent.

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

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

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

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

15 (1) reasonable probability exists that the protest will be
16 sustained; or

17 (2) stay of the award is not contrary to the best interests
18 of the state.

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

25 (b) The time for a decision may be extended up to 26 days for
26 good cause by the commissioner of administration, or for protests
27 involving construction or procurements for the state equipment fleet,
28 the commissioner of transportation and public facilities. If an
29 extension is granted, the procurement officer shall notify the

1 protester in writing of the date the decision is due.

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

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

8 (b) In determining an appropriate remedy, the procurement offi-
9 cer shall consider the circumstances surrounding the solicitation or
10 procurement including the seriousness of the procurement deficiencies,
11 the degree of prejudice to other interested parties or to the
12 integrity of the procurement system, the good faith of the parties,
13 the extent the procurement has been accomplished, costs to the agency
14 and other impacts on the agency of a proposed remedy, and the urgency
15 of the procurement to the welfare of the state.

16 Sec. 36.30.590. APPEAL ON A PROTEST. (a) An appeal from a
17 decision of a procurement officer on a protest may be filed by the
18 protester with the commissioner of administration, or for protests
19 involving construction or procurements for the state equipment fleet,
20 the commissioner of transportation and public facilities. An appeal
21 shall be filed within five days after the decision is received by the
22 protester. The protester shall file a copy of the appeal with the
23 procurement officer.

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

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

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

29 Sec. 36.30.595. NOTICE OF A PROTEST APPEAL. (a) The

1 procurement officer shall immediately give notice of an appeal filed
2 under AS 36.30.590 to the contractor if a contract has been awarded
3 or, if no award has been made, to all interested parties.

4 (b) The commissioner of administration or the commissioner of
5 transportation and public facilities, as appropriate, shall, on
6 request, furnish a copy of the appeal to a person notified under (a)
7 of this section, except that confidential material shall be deleted
8 from the copy.

9 Sec. 36.30.600. STAY OF AWARD DURING PROTEST APPEAL. If a
10 protest appeal is filed before a contract is awarded and the award was
11 stayed under AS 36.30.575, the filing of the appeal automatically
12 continues the stay until the commissioner of administration or the
13 commissioner of transportation and public facilities, as appropriate,
14 makes a written determination that the award of the contract without
15 further delay is necessary to protect substantial interests of the
16 state.

17 Sec. 36.30.605. PROTEST REPORT. (a) The procurement officer of
18 the contracting agency shall file a complete report on the protest and
19 decision with the commissioner of administration or the commissioner
20 of transportation and public facilities, as appropriate, within seven
21 days after a protest appeal is filed. The procurement officer shall
22 furnish a copy of the report to the protester and to interested par-
23 ties that have requested a copy of the appeal under AS 36.30.595(b).

24 (b) The procurement officer may request an extension of time to
25 prepare the protest report. The request must be in writing listing
26 the reasons for the request. The commissioner of administration or
27 the commissioner of transportation and public facilities, as
28 appropriate, shall respond to the request in writing. If an extension
29 is granted, the commissioner shall list the reasons for granting the

1 extension and indicate the date the protest report is due. The com-
2 missioner shall notify the protester in writing that the time for
3 submission of the report has been extended and the date the report is
4 due.

5 (c) The protester may file comments on the protest report with
6 the commissioner of administration or the commissioner of
7 transportation and public facilities, as appropriate, within seven
8 days after the report is received. The protester shall provide copies
9 of the comments to the procurement officer and to interested parties
10 that have requested a copy of the appeal under AS 36.30.595(b).

11 (d) The protester may request an extension of time to prepare
12 the comments on the protest report. The request must be in writing
13 listing the reasons for the request. The commissioner of
14 administration or the commissioner of transportation and public
15 facilities, as appropriate, shall respond to the request in writing.
16 If an extension is granted, the commissioner shall list the reasons
17 for granting the extension and indicate the date the comments are due.
18 The commissioner shall notify the procurement officer in writing that
19 the time for submission of the comments has been extended and the date
20 the comments are due.

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

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

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

4 Sec. 36.30.620. CONTRACT CONTROVERSIES. (a) A contractor shall
5 file a claim concerning a contract awarded under this chapter with the
6 procurement officer. The contractor shall certify that the claim is
7 made in good faith, that the supporting data are accurate and complete
8 to the best of the contractor's knowledge and belief, and that the
9 amount requested accurately reflects the contract adjustment for which
10 the contractor believes the state is liable.

11 (b) If a controversy asserted by a contractor concerning a
12 contract awarded under this chapter cannot be resolved by agreement,
13 the procurement officer shall, after receiving a written request by
14 the contractor for a decision, issue a written decision. The decision
15 shall be made no more than 90 days after receipt by the procurement
16 officer of all necessary information from the contractor. Failure of
17 the contractor to furnish necessary information to the procurement
18 officer constitutes a waiver of the claim. Before issuing the
19 decision the procurement officer shall review the facts relating to
20 the controversy and obtain necessary assistance from legal, fiscal,
21 and other advisors.

22 (c) The time for issuing a decision under (b) of this section
23 may be extended for good cause by the commissioner of administration,
24 or for a controversy involving a construction contract or procurement
25 for the state equipment fleet, the commissioner of transportation and
26 public facilities, if the controversy concerns an amount in excess of
27 \$50,000. The procurement officer shall notify the contractor in
28 writing that the time for the issuance of a decision has been extended
29 and of the date by which a decision shall be issued.

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

- 4 (1) description of the controversy;
5 (2) reference to the pertinent contract provisions;
6 (3) statement of the agreed upon and disputed facts;
7 (4) statement of reasons supporting the decision; and
8 (5) statement substantially as follows:

9 "This is the final decision of the procurement officer.

10 This decision may be appealed to the commissioner of

11 _____ (administration/transportation
12 and public facilities). If you appeal, you must file
13 a written notice of appeal with the commissioner within
14 14 days after you receive this decision."

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

18 (f) If a controversy asserted by the state concerning a contract
19 awarded under this chapter cannot be resolved by agreement the matter
20 shall be immediately referred to the commissioner of administration or
21 the commissioner of transportation and public facilities, as
22 appropriate.

23 Sec. 36.30.625. APPEAL ON A CONTRACT CONTROVERSY. (a) An
24 appeal from a decision of the procurement officer on a contract con-
25 troversy may be filed by the contractor with the commissioner of
26 administration, or for a controversy involving a construction contract
27 or procurement for the state equipment fleet, the commissioner of
28 transportation and public facilities. The appeal shall be filed
29 within 14 days after the decision is received by the contractor. The

1 contractor shall file a copy of the appeal with the procurement offi-
2 cer.

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

6 Sec. 36.30.630. HEARING ON A CONTRACT CONTROVERSY. (a) Except
7 as provided in (b) of this section, a hearing shall be conducted
8 according to AS 36.30.670 and regulations adopted by the commissioner
9 of administration on a contract controversy appealed to the commis-
10 sioner of administration or the commissioner of transportation and
11 public facilities or referred to either commissioner under
12 AS 36.30.620(f).

13 (b) Within 15 days after receipt of an appeal on a contract
14 controversy the commissioner of administration or the commissioner of
15 transportation and public facilities, as appropriate, may adopt the
16 decision of the procurement officer as the final decision without a
17 hearing.

18 Sec. 36.30.632. DELEGATION. The commissioner of administration
19 and the commissioner of transportation and public facilities may
20 delegate responsibilities under AS 36.30.590 and 36.30.630 to the head
21 of the contracting agency.

22 Sec. 36.30.635. AUTHORITY TO DEBAR OR SUSPEND. (a) After
23 consultation with the using agency and the attorney general and after
24 a hearing conducted according to AS 36.30.670 and regulations adopted
25 by the commissioner of administration, the commissioner of administra-
26 tion or the commissioner of transportation and public facilities may
27 debar a person for cause from consideration for award of contracts.
28 Notice of a debarment hearing shall be provided in writing at least
29 seven days before the hearing. The debarment may not be for a period

1 of more than three years.

2 (b) The commissioner of administration or the commissioner of
3 transportation and public facilities, after consultation with the
4 using agency and the attorney general, may suspend a person from
5 consideration for award of contracts if there is probable cause for
6 debarment and compelling reasons require suspension to protect state
7 interests. The suspension may not be for a period exceeding three
8 months.

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

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

14 (1) conviction for commission of a criminal offense as an
15 incident to obtaining or attempting to obtain a public or private
16 contract or subcontract, or in the performance of the contract or
17 subcontract;

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

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

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

28 (A) knowing failure without good cause to perform in
29 accordance with the specifications or within the time limit

1 provided in the contract; or

2 (B) failure to perform or unsatisfactory performance
3 in accordance with the terms of one or more contracts, except
4 that failure to perform or unsatisfactory performance caused by
5 acts beyond the control of the contractor may not be considered
6 to be a basis for debarment;

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

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

11 (7) any other cause listed in regulations of the
12 commissioner determined to be so serious and compelling as to affect
13 responsibility as a state contractor, including debarment by another
14 governmental entity for a cause listed in the regulations.

15 Sec. 36.30.645. WRITTEN DETERMINATIONS. (a) The commissioner
16 of administration or the commissioner of transportation and public
17 facilities shall issue a written decision to debar or suspend. The
18 decision must

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

20 (2) inform the debarred person of rights to judicial appeal
21 or inform the suspended person of rights to administrative and judi-
22 cial appeal.

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

26 Sec. 36.30.650. HEARING ON A SUSPENSION. (a) A person suspend-
27 ed under AS 36.30.635 is entitled to a hearing conducted according to
28 AS 36.30.670 and regulations adopted by the commissioner of adminis-
29 tration if the person files a written request for a hearing with the

1 commissioner of administration or the commissioner of transportation
2 and public facilities, as appropriate, within seven days after receipt
3 of the notice of suspension under AS 36.30.645.

4 (b) If a suspended person requests a hearing the commissioner of
5 administration or the commissioner of transportation and public
6 facilities, as appropriate, shall schedule a prompt hearing unless the
7 attorney general determines that a hearing at the proposed time is
8 likely to jeopardize an investigation. A hearing may not be delayed
9 longer than six months after notice of the suspension is provided
10 under AS 36.30.645.

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

14 Sec. 36.30.660. REINSTATEMENT. (a) The commissioner of
15 administration or the commissioner of transportation and public
16 facilities may at any time after a final decision to debar a person
17 from consideration for award of contracts reinstate the person after
18 determining that the cause for which the person was debarred no longer
19 exists or has been substantially mitigated.

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

25 (c) The commissioner of administration or the commissioner of
26 transportation and public facilities may require a hearing on a
27 reinstatement petition. A decision on reinstatement shall be made in
28 writing within seven days after a reinstatement petition is submitted.
29 The decision shall specify the factors on which it is based. A

1 decision under this section is not subject to judicial appeal.

2 Sec. 36.30.665. LIMITED PARTICIPATION. The commissioner of
3 administration or the commissioner of transportation and public
4 facilities may permit a debarred person to participate in a contract
5 on a limited basis during the debarment period if the commissioner
6 determines in writing that the participation is advantageous to the
7 state. The determination shall specify the factors on which it is
8 based and the limits imposed on the debarred person.

9 Sec. 36.30.670. HEARING PROCEDURES. (a) The commissioner of
10 administration or the commissioner of transportation and public
11 facilities shall act as a hearing officer or appoint a hearing officer
12 for a hearing conducted under this chapter. The hearing officer shall
13 arrange for a prompt hearing and notify the parties in writing of the
14 time and place of the hearing. The hearing shall be conducted in an
15 informal manner. The provisions of AS 44.62 (Administrative Procedure
16 Act) do not apply to a hearing conducted under this chapter.

17 (b) The hearing officer may

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

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

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

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

26 (5) regulate the course of the hearing and conduct of the
27 participants;

28 (6) establish time limits for submission of motions or
29 memoranda;

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

3 (A) prohibiting the person from asserting or opposing
4 designated claims or defenses or introducing designated matters
5 into evidence;

6 (B) excluding all testimony of an unresponsive or
7 evasive witness; and

8 (C) excluding a person from further participation in
9 the hearing;

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

13 (9) administer oaths or affirmations.

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

16 Sec. 36.30.675. RECOMMENDATION BY THE HEARING OFFICER. (a) If
17 the commissioner of administration or the commissioner of
18 transportation and public facilities is not acting as hearing officer,
19 the hearing officer shall recommend a decision to the commissioner
20 based on the evidence presented. The recommendation shall include
21 findings of fact and conclusions of law.

22 (b) The commissioner of administration or the commissioner of
23 transportation and public facilities may affirm, modify, or reject the
24 hearing officer's recommendation in whole or in part, may remand the
25 matter to the hearing officer with instructions, or take other
26 appropriate action.

27 Sec. 36.30.680. FINAL DECISION BY THE COMMISSIONER. A decision
28 by the commissioner of administration or the commissioner of
29 transportation and public facilities after a hearing under this

1 chapter is final. A decision shall be sent within 20 days after the
2 hearing to all parties by personal service or certified mail, except
3 that a decision by the commissioner of transportation and public
4 facilities involving procurement of construction shall be sent within
5 90 days after the hearing to all parties by personal service or
6 certified mail.

7 Sec. 36.30.685. JUDICIAL APPEAL. (a) A final decision of the
8 commissioner of administration or the commissioner of transportation
9 and public facilities under AS 36.30.610, 36.30.635(a), 36.30.650, or
10 36.30.680 may be appealed to the superior court in accordance with the
11 Alaska Rules of Appellate Procedure.

12 (b) A final decision of the commissioner of administration or
13 the commissioner of transportation and public facilities under
14 AS 36.30.630(b) may be appealed to the superior court for a trial de
15 novo.

16 Sec. 36.30.687. MISREPRESENTATIONS AND FRAUDULENT CLAIMS. (a)
17 A person who makes or uses in support of a contract claim under this
18 chapter, a misrepresentation, or who practices or attempts to practice
19 a fraud, at any stage of proceedings relating to a procurement or
20 contract controversy under this chapter:

21 (1) forfeits all claims relating to that procurement or
22 contract; and

23 (2) is liable to the state for reimbursement of all sums
24 paid on the claim, for all costs attributable to review of the claim,
25 and for a civil penalty equal to the amount by which the claim is
26 misrepresented.

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

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

4 (d) A person who in a matter relating to a procurement or a
5 contract controversy or claim under this chapter makes a
6 misrepresentation to the state through a trick, scheme, or device is
7 guilty of a class C felony.

8 (e) In this section, "misrepresentation" means a false or
9 misleading statement of material fact, or conduct intended to deceive
10 or mislead concerning material fact, whether it succeeds in deceiving
11 or misleading.

12 Sec. 36.30.690. EXCLUSIVE REMEDY. Notwithstanding AS 44.77 or
13 other law to the contrary, AS 36.30.560 - 36.30.699 and regulations
14 adopted under those sections provide the exclusive procedure for
15 asserting a claim against an agency arising in relation to a
16 procurement under this chapter.

17 Sec. 36.30.695. OTHER RULES OF PROCEDURE. The commissioner may
18 adopt by regulation additional rules of procedure providing for the
19 expeditious administrative review of all contract claims or contro-
20 versies, both before the contracting agency and through an appeal
21 heard de novo.

22 Sec. 36.30.699. DEFINITION. In AS 36.30.560 - 36.30.695,
23 "interested party" means an actual or prospective bidder or offeror
24 whose economic interest may be affected substantially and directly by
25 the issuance of a contract solicitation, the award of a contract, or
26 the failure to award a contract; whether an actual or prospective
27 bidder or offeror has an economic interest depends on the
28 circumstances.

29 ARTICLE 8. INTERGOVERNMENTAL RELATIONS.

1 Sec. 36.30.700. COOPERATIVE PURCHASING AUTHORIZED. A public
2 procurement unit may either participate in, sponsor, conduct, or
3 administer a cooperative purchasing agreement for the procurement of
4 supplies, services, professional services, or construction with one or
5 more public procurement units or external procurement activities in
6 accordance with an agreement entered into between the participants.
7 Cooperative purchasing may include joint or multi-party contracts
8 between public procurement units and open-ended state public procure-
9 ment unit contracts that are made available to local public procure-
10 ment units.

11 Sec. 36.30.710. SALE, ACQUISITION, OR USE OF SUPPLIES BY A
12 PUBLIC PROCUREMENT UNIT. (a) A public procurement unit may sell to,
13 acquire from, or use any supplies belonging to another public procure-
14 ment unit or external procurement activity independent of the require-
15 ments of AS 36.30.070 and 36.30.100 - 36.30.280.

16 (b) A public procurement unit may enter into an agreement,
17 independent of the requirements of AS 36.30.060 and 36.30.100 - 36.-
18 30.280, with another public procurement unit or external procurement
19 activity for the cooperative use of supplies or services under the
20 terms agreed upon between the parties.

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

26 Sec. 36.30.730. SUPPLY OF PERSONNEL, INFORMATION, AND TECHNICAL
27 SERVICES. (a) A public procurement unit may, upon written request
28 from another public procurement unit or external procurement activity,
29 provide personnel to the requesting public procurement unit or

1 external procurement activity. The public procurement unit or
2 external procurement activity making the request shall pay the public
3 procurement unit providing the personnel the direct and indirect cost
4 of furnishing the personnel, in accordance with an agreement between
5 the parties.

6 (b) The informational, technical, and other services of a public
7 procurement unit may be made available to another public procurement
8 unit or external procurement activity except that the requirements of
9 the public procurement unit tendering the services has precedence over
10 the requesting public procurement unit or external procurement activi-
11 ty. The requesting public procurement unit or external procurement
12 activity shall pay for the expenses of the services so provided, in
13 accordance with an agreement between the parties.

14 (c) Upon request, the commissioner may make available to public
15 procurement units or external procurement activities the following
16 services, among others:

- 17 (1) standard forms;
- 18 (2) printed manuals;
- 19 (3) product specifications and standards;
- 20 (4) quality assurance testing services and methods;
- 21 (5) qualified products lists;
- 22 (6) source information;
- 23 (7) common use commodities listings;
- 24 (8) supplier performance ratings;
- 25 (9) lists of persons debarred or suspended from considera-
26 tion for award of state contracts;
- 27 (10) forms for invitations for bids, requests for proposals,
28 instructions to bidders, general contract provisions, and other con-
29 tract forms; and

1 (11) contracts or published summaries of them, including
2 price and time of delivery information.

3 (d) The commissioner may provide the following technical ser-
4 vices, among others:

5 (1) development of product specifications;

6 (2) development of quality assurance test methods, includ-
7 ing receiving, inspection, and acceptance procedures;

8 (3) use of product testing and inspection facilities; and

9 (4) use of personnel training programs.

10 (e) The commissioner may enter into contractual arrangements and
11 publish a schedule of fees for the services provided under (c) and (d)
12 of this section.

13 Sec. 36.30.735. RESTRICTION ON CONTRACTING WITH OR EMPLOYING
14 EXPERTS ON RADIATION HAZARDS. (a) Except for the Department of
15 Health and Social Services, the Department of Labor, the Department of
16 Environmental Conservation, and the Department of Military and Veter-
17 ans' Affairs, a state agency may not

18 (1) contract, other than with the Department of Health and
19 Social Services, to have services performed that require expertise in
20 determining or reducing the hazards of radiation; or

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

23 (b) In this section, "state agency" means a state department or
24 agency, whether in the legislative, judicial, or executive branch,
25 including such entities as the Alaska State Housing Authority, but not
26 including the University of Alaska, a municipality, or an agency of a
27 municipality.

28 (c) In this section, "radiation" does not include radiation
29 emitted from a Federal Communications Commission licensed facility

1 emitting radiation of a wave length longer than one centimeter and an
2 average power output not exceeding two kilowatts.

3 Sec. 36.30.740. REVIEW OF PROCUREMENT REQUIREMENTS. To the
4 extent possible, the commissioner may collect information concerning
5 the type, cost, quality, and quantity of commonly used supplies,
6 equipment for the state fleet, services, or construction being
7 procured or used by state public procurement units. The commissioner
8 may also collect this information from local public procurement units.
9 The commissioner may make this information available to a public
10 procurement unit upon request.

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

15 (b) A local public procurement unit that is not subject to
16 AS 36.30.560 - 36.30.699 may enter into an agreement with another
17 local public procurement unit or external procurement activity to
18 establish procedures or use that unit's or activity's existing proce-
19 dures to resolve controversies with contractors, whether or not the
20 controversy arose under a cooperative purchasing agreement.

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

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

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

29 (3) "local public procurement unit" means a municipality or

1 other subdivision of the state or other entity that expends public
2 funds for the procurement of supplies, services, professional ser-
3 vices, and construction, and any nonprofit corporation operating a
4 charitable hospital;

5 (4) "public procurement unit" means either a local public
6 procurement unit or a state public procurement unit;

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

9 ARTICLE 9. GENERAL PROVISIONS.

10 Sec. 36.30.850. APPLICATION OF THIS CHAPTER. (a) This chapter
11 applies only to contracts solicited or entered into after January 1,
12 1987, unless the parties agree to its application to a contract solic-
13 ited or entered into before that date.

14 (b) This chapter applies to the disposal of state supplies and
15 every expenditure of state funds irrespective of their sources, in-
16 cluding federal assistance except as otherwise specified in AS 36.-
17 30.890, by the state, acting through an agency, under a contract,
18 except that this chapter does not apply to

19 (1) grants;

20 (2) contracts for professional witnesses to provide for
21 professional services or testimony relating to existing or probable
22 lawsuits in which the state is or may become a party;

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

25 (4) contracts for medical doctors and dentists;

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

28 (6) disposals under AS 38.05;

29 (7) contracts for the preparation of ballots under

1 AS 15.15.030;

2 (8) acquisitions or disposals of property and other con-
3 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
4 091;

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

6 (10) disposals of obsolete material or equipment under
7 AS 35.20.060;

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

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

13 (d) Nothing in this chapter or in regulations adopted under this
14 chapter prevents an agency or political subdivision from complying
15 with the terms and conditions of a grant, gift, bequest, or coopera-
16 tive agreement.

17 Sec. 36.30.860. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLIC-
18 ABLE. Unless displaced by the particular provisions of this chapter,
19 the principles of law and equity, including the Uniform Commercial
20 Code (AS 45.01 - AS 45.09), the law merchant, and law relative to
21 capacity to contract, agency, fraud, misrepresentation, duress, coer-
22 cion, mistake, or bankruptcy shall supplement the provisions of this
23 chapter.

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

27 (b) Regulations under this chapter applicable to procurements of
28 construction or procurements for or disposal of property of the state
29 equipment fleet shall be adopted by the commissioner of administration

1 only after consultation with the commissioner of transportation and
2 public facilities.

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

6 Sec. 36.30.890. FEDERAL ASSISTANCE. If a procurement involves
7 the expenditure of federal funds or federal assistance and there is a
8 conflict between a provision of this chapter or a regulation adopted
9 under a provision of this chapter and a federal statute or regulation
10 the federal statute or regulation shall prevail.

11 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
12 does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding
13 preference for Alaska forest products, or AS 36.20.010 regarding
14 preference to producers or dealers in Alaska except as provided in
15 AS 36.30.170(b).

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

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

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

26 (1) a person who contracts for or purchases supplies,
27 equipment for the state fleet, services, professional services, or
28 construction in a manner contrary to the requirements of this chapter
29 or the regulations adopted under this chapter is personally liable for

1 the recovery of all state money paid plus 20 percent of that amount,
2 legal interest from the date of payment, and all costs and damages
3 arising out of the violation;

4 (2) a person who intentionally or knowingly contracts for
5 or purchases supplies, equipment for the state fleet, services,
6 professional services, or construction under a scheme or artifice to
7 avoid the requirements of this chapter is guilty of a class C felony.

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

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

13 (1) "agency" means a department, institution, board, com-
14 mission, division, authority, public corporation, the Alaska Pioneers'
15 Home, or other administrative unit of the executive branch of state
16 government, including the University of Alaska; it does not include
17 the Alaska Railroad Corporation, a regional Native housing authority
18 created under AS 18.55.996, or a regional electrical authority created
19 under AS 18.57.020;

20 (2) "change order" means a written order signed by the
21 procurement officer, directing the contractor to make changes that the
22 changes clause of the contract authorizes the procurement officer to
23 order without the consent of the contractor;

24 (3) "commissioner" means the commissioner of the Department
25 of Administration;

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

28 (5) "competitive sealed proposals" means the procedure
29 under AS 36.30.200 - 36.30.270;

1 (6) "construction" means the process of building, altering,
2 repairing, maintaining, improving, or demolishing a public highway,
3 structure, building, or other public improvement of any kind to real
4 property other than privately owned real property leased for the use
5 of agencies; it includes services and professional services relating
6 to planning and design required for the construction; it does not
7 include the routine operation of a public improvement to real
8 property;

9 (7) "contract" means all types of state agreements, regard-
10 less of what they may be called, for the procurement or disposal of
11 supplies, equipment for the state fleet, services, professional
12 services, or construction;

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

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

18 (10) "grant" means the furnishing by the state of assis-
19 tance, whether financial or otherwise, to a person to support a pro-
20 gram authorized by law; it does not include an award whose primary
21 purpose is to procure an end product for a state agency, whether in
22 the form of supplies, services, professional services, or
23 construction; a contract resulting from such an award is not a grant
24 but a procurement contract;

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

27 (12) "procurement" means buying, purchasing, renting, leas-
28 ing, or otherwise acquiring supplies, equipment for the state fleet,
29 services, or construction; it also includes functions that pertain to

1 the obtaining of a supply, equipment for the state fleet, service, or
2 construction, including description of requirements, selection and
3 solicitation of sources, preparation and award of contract, and all
4 phases of contract administration;

5 (13) "procurement officer" means a person authorized to
6 enter into and administer contracts for an agency and make written
7 determinations with respect to them; it also includes an authorized
8 representative of a procurement officer acting within the limits of
9 authority;

10 (14) "professional services" means professional, technical,
11 or consultant's services that are predominantly intellectual in char-
12 acter, result in the production of a report or the completion of a
13 task, and include analysis, evaluation, prediction, planning, or
14 recommendation;

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

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

25 Sec. 36.30.995. SHORT TITLE. This chapter may be cited as the
26 State Procurement Code.

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

28 Sec. 03.22.030. CENTER SITE, BUILDINGS AND EQUIPMENT. The
29 department shall obtain a site, either by donation, lease, or

1 purchase, and erect suitable buildings on the site, if they are needed
2 for the use of the plant materials center. The department shall also
3 acquire the agricultural land, scientific instruments and equipment
4 necessary to carry on the work of the center. Acquisition of scien-
5 tific instruments and equipment under this section is governed by
6 AS 36.30 (State Procurement Code).

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

8 Sec. 05.20.040. PERSONNEL TO INSPECT DEVICES. The department
9 shall designate a person qualified in experience and training as the
10 inspector of devices. The department may employ additional employees
11 as are necessary to administer this chapter. The inspector and the
12 employees may be hired on a temporary basis or borrowed from other
13 state departments or political subdivisions of the state, or the
14 department may contract with individuals or firms for the inspecting
15 service on an independent basis. The department shall prescribe the
16 salary or other remuneration for this service. Contracting under this
17 section is governed by AS 36.30 (State Procurement Code).

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

19 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person
20 or corporation having a contract, quasi-contract, or tort claim
21 against the state may bring an action against the state in the superi-
22 or court. A person who may present the claim under AS 44.77 may not
23 bring an action under this section except as set out in AS 44.77.-
24 040(c). A person who may bring an action under AS 36.30.560 - 36.30.-
25 695 may not bring an action under this section except as set out in
26 AS 36.30.685. However, no action may be brought under this section if
27 the claim

28 (1) is an action for tort, and is based upon an act or
29 omission of an employee of the state, exercising due care, in the

1 execution of a statute or regulation, whether or not the statute or
2 regulation is valid; or is an action for tort, and based upon the
3 exercise or performance or the failure to exercise or perform a dis-
4 cretionary function or duty on the part of a state agency or an em-
5 ployee of the state, whether or not the discretion involved is abused;

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

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

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

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

13 (1) sue and be sued;

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

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

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

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

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

28 (7) recommend to the department projects for construction,
29 rehabilitation, and improvement of schools and education-related

1 facilities as specified in AS 14.11.010(a), and plan, design, and
2 construct the project when the responsibility for it is assumed under
3 AS 14.11.020;

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

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

10 (10) provide housing for rental to teachers, by leasing
11 existing housing from a local agency or individual, or by entering
12 into contractual arrangements with a local agency or individual to
13 lease housing that will be constructed by the local agency or indi-
14 vidual for that purpose.

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

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

19 (1) assist the United States Fish and Wildlife Service in
20 the enforcement of federal laws and regulations pertaining to fish and
21 game;

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

28 (3) under the provisions of AS 36.30, design and construct
29 hatcheries, pipelines, rearing ponds, fishways, and other projects

1 beneficial for the fish and game resources of the state;

2 (4) accept money from any person under conditions requiring
3 the use of the money for specific purposes in the furtherance of the
4 protection, rehabilitation, propagation, preservation, or investiga-
5 tion of the fish and game resources of the state or in settlement of
6 claims for damages to fish or game resources;

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

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

12 (7) under the provisions of AS 36.30, provide public facil-
13 ities where necessary or proper to facilitate the taking of fish or
14 game, and enter into cooperative agreements with any person to effect
15 them;

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

17 (9) under the provisions of AS 36.30, construct, operate,
18 supervise, and maintain vessels used by the Department of Fish and
19 Game;

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

25 (11) not later than January 31 of each year, provide to the
26 commissioner of revenue the names of those fish and shellfish species
27 which the commissioner of fish and game designates as developing
28 commercial fish species for that calendar year; a fish or shellfish
29 species is a developing commercial fish species if, within a specified

1 geographical region,

2 (A) the optimum yield from the harvest of the species
3 has not been reached;

4 (B) a substantial portion of the allowable harvest of
5 the species has been allocated to fishing vessels of a foreign
6 nation; or

7 (C) a commercial harvest of the fish species has
8 recently developed;

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

11 (13) enter into cooperative agreements with agencies of the
12 federal government, educational institutions, or other agencies or
13 organizations, when in the public interest, to carry out the purposes
14 of this title except AS 16.51 and AS 16.52.

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

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

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

23 Sec. 18.15.120. TUBERCULOSIS CONTROL PROGRAM AUTHORIZED. The
24 department may establish a comprehensive program for the control of
25 tuberculosis in the state, and may

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

28 (2) establish necessary out-patient clinics for the care of
29 tuberculosis;

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

4 (4) under the provisions of AS 36.30 (State Procurement
5 Code), obtain, by purchase or donation from surplus federal property
6 or otherwise, medical supplies and equipment useful in carrying out
7 this program and to allot or resell these supplies and equipment to
8 private institutions engaged by the department to carry out this
9 program;

10 (5) under the provisions of AS 36.30, contract with hos-
11 pitals, associations, or sanatoria qualified and equipped to give
12 adequate care inside or outside the state;

13 (6) employ necessary and trained personnel to carry out the
14 purposes of AS 18.15.120 - 18.15.140;

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

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

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

25 * Sec. 10. AS 18.55.100 is amended by adding a new subsection to read:

26 (d) The authority's power to contract, lease, rent, construct,
27 acquire, procure, and provide for services under this section is
28 governed by AS 36.30.

29 * Sec. 11. AS 19.05.020 is amended to read:

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

6 * Sec. 12. AS 19.05.080 is amended to read:

7 Sec. 19.05.080. 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 highway
10 may purchase in the open market, acquire, take over, or condemn under
11 the right and power of eminent domain land in fee simple or easements
12 which it considers necessary for present public use, either temporary
13 or permanent, or which it considers necessary and reasonable for the
14 public use. By the same means, the department may obtain material,
15 including clay, gravel, sand, or rock, or the land necessary to obtain
16 material, including access to it. The department may acquire the land
17 or materials notwithstanding the fact that title to it is vested in
18 the state or a department, agency, commission or institution of the
19 state. Acquisition of materials by purchase in the open market under
20 this section is governed by AS 36.30 (State Procurement Code).

21 * Sec. 13. AS 19.10.160 is amended to read:

22 Sec. 19.10.160. STANDARD PLANS AND SPECIFICATIONS. The depart-
23 ment shall prepare and adopt uniform standard plans and specifications
24 for the establishment, construction and maintenance of highways in the
25 state. The department may amend the plans and specifications as it
26 considers advisable. The standards shall conform as closely as
27 practicable to those adopted by the American Association of State
28 Highway and Transportation Officials.

29 * Sec. 14. AS 19.10.170(a) is amended to read:

1 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is
2 [SHALL BE] the general policy of the state [DEPARTMENT] to require the
3 construction of all highways under bid contract in accordance with
4 AS 36.30 (State Procurement Code). However, subject to the provisions
5 of (b) of this section, when the estimated cost of a construction
6 project is less than \$100,000 or when it appears to be in the best
7 interests of the state, the department may perform the work notwith-
8 standing any other provisions of law.

9 * Sec. 15. AS 19.10.180 is repealed and reenacted to read:

10 Sec. 19.10.180. REQUEST FOR PUBLIC BIDS. Requests for public
11 bids are governed by AS 36.30 (State Procurement Code). The request
12 for public bids may require the contractor to furnish equipment,
13 labor, materials, and supplies for the project, or it may state that
14 the department will furnish the materials and supplies. If the de-
15 partment elects to provide materials and supplies for a project, it
16 shall do so at the time it adopts the construction program. The
17 department shall acquire these materials and supplies under AS 36.30
18 by requesting bids for them according to the class, type, and nature
19 of the materials and supplies. The contract for materials and sup-
20 plies may be awarded either upon the basis of delivery to the con-
21 struction project directly or to a central storehouse or storehouses
22 maintained by the department. Those materials and supplies so pur-
23 chased by the department may be delivered to the project site without
24 expense to the contractor, or it may sell them to the contractor at
25 cost and make the materials and supplies a part of the construction
26 cost.

27 * Sec. 16. AS 19.10.200 is repealed and reenacted to read:

28 Sec. 19.10.200. PROCEDURES FOR THE AWARD OF CONTRACTS. The
29 award of a contract for highway construction work is governed by

AS 36.30 (State Procurement Code), AS 19.05 - AS 19.25, and regulations adopted under those laws.

* Sec. 17. AS 19.30.070 is amended to read:

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

* Sec. 18. AS 19.30.080 is amended to read:

Sec. 19.30.080. CONSTRUCTION STANDARDS AND MAINTENANCE. An access road constructed under AS 19.30.060 - 19.30.100 shall be of low standard, not necessarily suitable for all weather use. The state is not under obligation to maintain an access road constructed under AS 19.30.060 - 19.30.100. If an access road is constructed outside a municipality that has zoning ordinances, the right-of-way width for the road shall be determined by the division of lands and the Department of Transportation and Public Facilities. If an access road is constructed within the boundaries of a municipality that has zoning ordinances, the right-of-way width shall conform to the subdivision control ordinances of the municipality. Contracts for the work on an access road are governed by AS 36.30 (State Procurement Code) [SHALL BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER QUALIFIED TO CONTRACT WITH THE STATE].

* Sec. 19. AS 19.40.020(a) is amended to read:

(a) Subject to (b) of this section, the department may contract in accordance with AS 36.30 for the construction of a secondary highway from the Yukon River to the Arctic Ocean. [THE DEPARTMENT MAY REQUEST BIDS AND AWARD CONTRACTS FOR THE CONSTRUCTION OF THE HIGHWAY,

OR IT MAY ELECT TO DIRECTLY NEGOTIATE CONTRACTS FOR THE CONSTRUCTION OF THE HIGHWAY IF IT APPEARS TO BE IN THE BEST INTERESTS OF THE STATE.] The provisions of AS 36.10 govern in employment practices on all work authorized by this chapter.

* Sec. 20. AS 19.60.010 is amended to read:

Sec. 19.60.010. ACQUISITION AND MAINTENANCE OF FERRY TERMINAL FACILITIES. The department shall construct, purchase or lease ferry terminal facilities at locations it selects for the loading and unloading of passengers and vehicles under their own power, on and off ferries. The department shall repair and maintain these facilities. Construction and purchasing under this section are governed by AS 36.30 (State Procurement Code).

* Sec. 21. AS 23.15.611(a) is amended to read:

(a) The department may [IS AUTHORIZED TO] participate in programs of manpower training if it finds they are necessary to meet the occupational needs of the state. This authorization includes authority to execute on behalf of the state agreements or contracts which may be necessary or desirable to enable the state to participate in a program, to receive and expend all appropriate funds made available for programs by the state or from other sources, to supervise the expenditure of the funds and conduct of the programs by other public and private agencies of the state, and to make the reports and certificates which are called for, and in cooperative arrangements with the Department of Education. Contracts with private entities under this subsection are governed by AS 36.30 (State Procurement Code).

* Sec. 22. AS 23.20.075(a) is amended to read:

(a) The department may acquire in the name of the state by term purchase agreements based on competitive bids in accordance with AS 36.30 (State Procurement Code) land and buildings upon terms and

1 conditions that [WHICH] are approved by the Bureau of Employment
2 Security of the United States, or its successor, for the purpose of
3 providing office space for the department at a place which the depart-
4 ment finds necessary and suitable.

5 * Sec. 23. AS 23.35.110 is amended to read:

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

11 * Sec. 24. AS 24.55.275 is amended to read:

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

17 * Sec. 25. AS 24.60.040(a) is amended to read:

18 (a) A person to whom this chapter applies may not be a party to
19 or have an interest in a state contract or lease unless the contract
20 or lease is let under the competitive bid procedure in AS 36.30 (State
21 Procurement Code) [AS 37.05.230] or the total annual amount of the
22 state contract or lease is \$1,000 or less, or is a standardized con-
23 tract or lease which was developed under publicly established guide-
24 lines and is generally available to the public at large, members of a
25 profession, occupation or group. A person has an interest in a state
26 contract or lease under this section if the person receives direct or
27 indirect financial benefits.

28 * Sec. 26. AS 26.05.230(a) is amended to read:

29 (a) Buildings and sites for armory purposes may be leased or

constructed, based upon location and size of units to be organized, and shall be financed through state and federal appropriations or both. These facilities may be made available by local communities or by the cooperative arrangement between the state and the federal government and any local community. Leasing and construction under this subsection are governed by AS 36.30 (State Procurement Code).

* Sec. 27. AS 26.05.280 is amended to read:

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

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

Sec. 27.21.030. GENERAL POWERS. To accomplish the purposes of this chapter, the commissioner may

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

(2) issue permits;

(3) conduct hearings and conferences;

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

(5) issue orders modifying previous orders;

(6) after opportunity for a due process hearing, issue a final order revoking the permit of an operator who has failed to

1 comply with an order of the commissioner to take action required by
2 this chapter or regulations adopted under this chapter;

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

11 (8) hire and authorize the hiring of employees and private
12 contractors, subject to the conflict of interest provisions of this
13 chapter and subject to AS 36.30 (State Procurement Code), to assist in
14 carrying out the requirements of this chapter;

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

18 (10) conduct, encourage, request, and participate in
19 studies, surveys, investigations, research, experiments, training, and
20 demonstrations;

21 (11) prepare reports and require permittees to prepare
22 reports;

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

26 (13) take the steps necessary to allow the state to partici-
27 pate to the fullest extent practicable in the abandoned mine land
28 program provided in Title IV of the Surface Mining Control and Recla-
29 mation Act of 1977, including engaged in any work and adopting,

1 amending and enforcing regulations;

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

8 (15) contract with state agencies to obtain the professional
9 and technical services necessary to carry out the provisions of this
10 chapter;

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

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

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

19 * Sec. 29. AS 33.30.050 is amended to read:

20 Sec. 33.30.050. COMMISSIONER TO PROVIDE MEDICAL SERVICES. The
21 commissioner shall detail physicians, nurses, and psychiatrists, or
22 their aides, and laboratory technicians, employed by the department to
23 any prison facility where state prisoners are detained or confined,
24 for the purpose of furnishing necessary medical services, including
25 examinations for communicable and infectious diseases. However, if
26 medical services cannot be furnished by physicians, nurses, psychia-
27 trists, or their aides, and laboratory technicians, regularly employed
28 by the department, the commissioner may contract with private practi-
29 tioners located in the area of a prison facility to furnish these

1 services. The cost of contracted services shall be paid out of appro-
2 priations made to the department. Contracting for services under this
3 section is governed by AS 36.30 (State Procurement Code).

4 * Sec. 30. AS 33.30.062(a) is amended to read:

5 (a) The commissioner may enter into an agreement with a private-
6 ly operated correctional facility, but only if the facility is located
7 in the state and if the purpose of the agreement is to involve prison-
8 ers in a work or rehabilitation furlough program established under
9 this chapter, to provide necessary facilities under AS 33.30.282 -
10 33.30.288, or to confine prisoners convicted of a misdemeanor. An
11 [NOTWITHSTANDING AS 37.05.230(1)(B), AN] agreement awarded under this
12 subsection is governed by AS 36.30 (State Procurement Code) [SHALL BE
13 BASED ON COMPETITIVE BIDS].

14 * Sec. 31. AS 33.32.015(b) is amended to read:

15 (b) The commissioner of corrections may

16 (1) subject to AS 36.30 (State Procurement Code) [THE
17 FISCAL PROCEDURES ACT (AS 37.05)], use, purchase, lease, equip, and
18 maintain buildings, machinery, and other equipment, and may purchase
19 materials and enter into contracts, which may be necessary for the
20 correctional industries program;

21 (2) provide for prisoners to be employed in rendering
22 services and producing articles, materials, and supplies needed by a
23 state agency, a political subdivision of the state, an agency of the
24 federal government, other states or their political subdivisions, or
25 for use by nonprofit organizations;

26 (3) if the Correctional Industries Commission established
27 in AS 33.32.070 approves, employ prisoners to provide services or
28 products as needed by private industry if the services or products
29 have potential for contributing to the economy of the state and will

have minimal negative impact on an existing private industry or labor force in the state.

* Sec. 32. AS 35.05.010 is amended to read:

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

* Sec. 33. AS 35.05.020 is amended to read:

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

* Sec. 34. AS 35 is amended by adding a new section to read:

Sec. 35.10.195. CONFORMANCE WITH AS 36.30. The contractual techniques for the procurement of labor, materials, and contractual services under the policies developed under this chapter must conform to the requirements of AS 36.30 (State Procurement Code).

* Sec. 35. AS 35.15.010(a) is amended to read:

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

1 employees involved in the transactions.

2 * Sec. 36. AS 35.15.020 is repealed and reenacted to read:

3 Sec. 35.15.020. REQUEST FOR PUBLIC BIDS. The solicitation of
4 bids for construction of public works is governed by AS 36.30 (State
5 Procurement Code). The request for bids may require the contractor to
6 furnish equipment, labor, materials, and supplies for the project, or
7 it may state that the department will furnish the materials and sup-
8 plies. If the department elects to provide materials and supplies for
9 a project, it shall make the election at the time it adopts the con-
10 struction program. The department shall acquire these materials and
11 supplies under AS 36.30 by requesting bids for them according to the
12 class, type, and nature of the materials and supplies. The contract
13 may be awarded either upon the basis of delivery to the construction
14 project directly or to a central storehouse or storehouses maintained
15 by the department. Those materials and supplies so purchased by the
16 department may be delivered to the project site without expense to the
17 contractor, or it may sell them to the contractor at cost and make the
18 materials and supplies a part of the construction cost.

19 * Sec. 37. AS 35.15.040 is repealed and reenacted to read:

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

24 * Sec. 38. AS 35.20.010 is amended to read:

25 Sec. 35.20.010. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-
26 RIALS BY PURCHASE OR EMINENT DOMAIN. The department, on behalf of the
27 state and as part of the cost of constructing or maintaining a public
28 work, may purchase in the open market, acquire, take over, or condemn
29 under the right and power of eminent domain land in fee simple or

1 easements which it considers necessary for present public use, either
2 temporary or permanent, or which it considers necessary and reasonable
3 for the public use. By the same means, the department may obtain
4 material including clay, gravel, sand, or rock, or the land necessary
5 to obtain the material, and the necessary land or easements to provide
6 access to it. The department may acquire the land or material
7 notwithstanding the fact that the title to it is in the state or a
8 department, agency, commission or institution of the state.
9 Acquisition of material in the open market under this section is
10 governed by AS 36.30 (State Procurement Code).

11 * Sec. 39. AS 37.05 is amended by adding a new section to read:

12 Sec. 37.05.232. PETTY CASH ACCOUNTS. The department shall
13 determine the amount of the petty cash accounts needed by each state
14 agency and inspect the petty cash accounts at least once each year to
15 determine that the total plus amounts of receipts for unreplenished
16 disbursements is equal to the fixed sum of cash set aside. Shortages
17 in petty cash accounts are a personal liability of the responsible
18 head of the agency to whom the account is set aside. The department
19 shall adopt necessary regulations governing use and replenishment of
20 petty cash funds.

21 * Sec. 40. AS 37.05.316 is amended to read:

22 Sec. 37.05.316. GRANTS TO NAMED RECIPIENTS. When an amount is
23 appropriated or allocated to a department as a grant for a named
24 recipient which is not a municipality, the department to which the
25 appropriation or allocation is made shall promptly notify the named
26 recipient of the availability of the grant and request the named
27 recipient to submit a proposal to provide the goods or services speci-
28 fied in the appropriation act, or both, for which the appropriation or
29 allocation is made. At the same time, the department may issue a

1 request for proposals from other qualified persons to provide the same
2 goods or services, or both, in the same area. The department shall
3 contract with the named recipient unless the Office of the Governor,
4 with due regard for any local expertise or experience among those
5 making proposals, determines that an award of the contract to a dif-
6 ferent party would better serve the public interest. If the contract
7 is awarded to another party than that named by the legislature, the
8 basis of that action shall be stated in writing at the time the grant
9 is issued and a copy of the written statement shall be sent to the
10 Legislative Budget and Audit Committee. A contract shall be executed
11 within 60 days after the effective date of the appropriation or allo-
12 cation. The purchase of the goods or services, or both, shall be in
13 accordance with AS 36.30.100(b)(1) [AS 37.05.230(1)(B)].

14 * Sec. 41. AS 41.21.020(a) is amended to read:

15 (a) The Department of Natural Resources shall

16 (1) develop a continuing plan for the conservation and
17 maximum use in the public interest of the scenic, historic, archaeo-
18 logic, scientific, biological, and recreational resources of the
19 state;

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

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

27 (4) control, develop and maintain state parks and recrea-
28 tional areas;

29 (5) provide for the acquisition, care, control,

1 supervision, improvement, development, extension and maintenance of
2 public recreational land, and make necessary arrangements, contracts
3 or commitments for the improvement and development of land acquired
4 under AS 41.21.010 - 41.21.040; contracting for improvement and
5 development under this paragraph is governed by AS 36.30 (State
6 Procurement Code);

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

11 (7) cooperate with the United States and its agencies and
12 local subdivisions of the state to secure the effective supervision,
13 improvement, development, extension, and maintenance of state parks,
14 state monuments, state historical areas, and state recreational areas,
15 and secure agreements or contracts for the purpose of AS 41.21.010 -
16 41.21.040;

17 (8) encourage the organization of state public park and
18 recreational activities in the local political subdivisions of the
19 state;

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

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

24 (11) perform other duties as are prescribed by executive
25 order or by law;

26 (12) maintain memorials to Alaska veterans located in state
27 parks;

28 (13) adopt, in accordance with the Administrative Procedure
29 Act (AS 44.62), regulations governing the use of the Chena River State

1 Recreation Area and designating incompatible uses within the bound-
2 aries of the Chena River State Recreation Area in accordance with
3 AS 41.21.490.

4 * Sec. 42. AS 42.40.920(b) is amended to read:

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

7 (1) AS 19;

8 (2) AS 30.15;

9 (3) AS 35;

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

11 (State Procurement Code);

12 (5) AS 37.05;

13 (6) [(5)] AS 37.07;

14 (7) [(6)] AS 37.10.010 - 37.10.060;

15 (8) [(7)] AS 37.10.085;

16 (9) [(8)] AS 37.20;

17 (10) [(9)] AS 37.25;

18 (11) [(10)] AS 38;

19 (12) [(11)] AS 44.62.040 - 44.62.320.

20 * Sec. 43. AS 44.21.310(a) is amended to read:

21 (a) The telecommunications divisions, as directed by the deputy
22 commissioner, shall

23 (1) advise the governor on matters of policy and comprehen-
24 sive state planning for telecommunications services;

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

27 (3) coordinate, manage, and supervise state programs in
28 telecommunications, including the management of those telecommunica-
29 tion services for the state obtained from common carriers and from the

1 communications industry;

2 (4) when requested, provide technical and consulting assis-
3 tance to the executive, judicial, and legislative branches of state
4 government, to the University of Alaska, and to private noncommercial
5 entities which request that assistance in facility procurement and
6 leasing and in identifying long-range goals and objectives for the
7 state and its political subdivisions in all aspects of telecommunica-
8 tions, including public, educational, and instructional telecommunica-
9 tions;

10 (5) prepare and maintain a state comprehensive telecommu-
11 nications development plan to further state telecommunications devel-
12 opment and to meet state telecommunications needs and prepare and
13 maintain a comprehensive inventory of all state communications facili-
14 ties;

15 (6) whenever feasible, procure services from private enter-
16 prise or certified and franchised utilities and contract for the
17 construction, management, operation and maintenance of telecommunica-
18 tions systems, and develop a procurement policy consistent with
19 AS 36.30 (State Procurement Code) [UNDER AS 37.05.010 - 37.05.410];
20 the procurement policy must seek to achieve the maximum benefit to the
21 public, and methods of procurement, including lease, purchase, rental,
22 or combinations of lease, purchase, and rental, must be selected on
23 the basis of factors such as the ratio of long-range costs versus
24 benefits, life cycle costing, and the costs to the communications
25 industry to the extent that these costs may affect local and long
26 distance basic telephone rates; procurement, contracting, construc-
27 tion, and maintenance under this paragraph is governed by AS 36.30;

28 (7) provide information and assistance to state agencies to
29 promote governmental coordination and unity in the preparation of

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

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

9 * Sec. 45. AS 44.33.300 is amended to read:

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

14 (1) the requirement of a contractor's bond as prescribed in
15 AS 36.25.010 may be waived if the contract amount does not exceed
16 \$100,000;

17 (2) the public bid requirements as contained in AS 19.10.-
18 170, AS [19.10.190,] 19.30.191(b), AS 35.15.010 - 35.15.020, and
19 AS 36.30 (State Procurement Code) [AND AS 35.15.010 - 35.15.030] may
20 be waived if the contract is to be performed by a contractor whose
21 principal office is in the designated area and the contract amount
22 does not exceed \$50,000;

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

28 * Sec. 46. AS 44.47.250 is amended by adding a new subsection to read:

29 (c) Contracts with persons or nongovernmental entities under

1 this section are governed by AS 36.30.

2 * Sec. 47. AS 44.47.490(a) is amended to read:

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

6 (1) real property appraisers who are familiar with rural
7 construction; and

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

10 * Sec. 48. AS 44.47.730(a) is amended to read:

11 (a) The commissioner shall contract for a study of the
12 feasibility of establishing a borough in the unorganized borough by
13 following the procedures under AS 36.30 (State Procurement Code) [SET
14 OUT IN AS 36.98]. The commissioner shall include terms in the
15 contract that provide for

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

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

19 * Sec. 49. AS 44.62.175(a) is amended to read:

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

23 (1) notices of proposed actions given under AS 44.62.-
24 190(a);

25 (2) notices of state agency meetings required under
26 AS 44.62.310(e), even if the meeting has been held;

27 (3) notices of solicitations to bid issued under
28 AS 36.30.130 [AS 37.05.230];

29 (4) notices of state agency requests for proposals issued

1 under AS 18.55.255, 18.55.320; [AS 19.10.190; AS 19.40.020; AS 35.15.-
2 030; AS 36.98.030; AS 37.05.230,] AS 37.05.315(d); AS 38.05.120; and
3 AS 43.40.010;

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

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

8 (7) the text or a summary of the text of a regulation or
9 order of repeal of a regulation for which notice is given under AS
10 44.62.190(a), including an emergency regulation or repeal whether or
11 not it has taken effect;

12 (8) a summary of the text of recently issued formal
13 opinions and memoranda of advice of the attorney general; and

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

16 * Sec. 50. AS 44.71.010 is amended to read:

17 Sec. 44.71.010. DISPOSITION OF OBSOLETE OR SURPLUS STATE PROP-
18 ERTY. The Department of Administration shall take possession of
19 obsolete or surplus property of the state for which there is no imme-
20 diate or prospective use, except abandoned or obsolete school build-
21 ings and other school property. It shall also take possession of
22 property remaining in the control of a commission or board of the
23 state government after the commission or board stops functioning. The
24 Department of Administration shall sell, lease, license, or dispose of
25 the property on the terms it considers for the best interests of the
26 state in conformance with regulations adopted under AS 36.30 (State
27 Procurement Code).

28 * Sec. 51. AS 44.77.010(a) is amended to read:

29 (a) Except as provided in (d) of this section, every [EVERY]

1 claim for reimbursement for money expended, or for compensation for
2 labor, materials, or supplies furnished, or services given to or for
3 the state, whether based on a contract or on a ratification, shall be
4 promptly presented to the appropriate administrative or executive
5 officer for approval and payment.

6 * Sec. 52. AS 44.77.010 is amended by adding a new subsection to read:

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

9 * Sec. 53. AS 44.85.120 is amended to read:

10 Sec. 44.85.120. CARE AND CUSTODY OF BONDS. The bond bank
11 authority, in accordance with AS 36.30 (State Procurement Code), may
12 enter into agreements or contracts with a bank, trust company, banking
13 or financial institution inside or outside the state as may be neces-
14 sary, desirable or convenient, in the opinion of the bond bank author-
15 ity, for rendering services in connection with the care, custody or
16 safekeeping of municipal bonds or other investments held or owned by
17 the bond bank authority, for rendering services in connection with the
18 payment or collection of amounts payable as to principal or interest,
19 and for rendering services in connection with the delivery to the bond
20 bank authority of municipal bonds or other investments purchased by it
21 or sold by it, and to pay the cost of those services. The bond bank
22 authority may also, in connection with any of the services to be
23 rendered by a bank, trust company or banking or financial institution
24 as to the custody and safekeeping of its municipal bonds or invest-
25 ments, require security in the form of collateral bonds, surety agree-
26 ments or security agreements in such form and amount as, in the opin-
27 ion of the bond bank authority, is necessary or desirable.

28 * Sec. 54. AS 44.99.001 is amended to read:

29 Sec. 44.99.001. ADMINISTRATION OF HIGHWAY SAFETY PROGRAM. The

1 governor may contract and do all other things necessary on behalf of
2 this state under 23 U.S.C. 401-404 (Highway Safety Act of 1966), and
3 may cooperate with interested persons and agencies to effectuate the
4 purposes of that Act. Contracting under this section is governed by
5 AS 36.30 (State Procurement Code). The governor may designate a
6 person to serve as the governor's highway safety representative;
7 however, the governor is the official in this state having the ulti-
8 mate responsibility for dealing with the federal government with
9 respect to programs and activities under the Federal Highway Safety
10 Act of 1966. The governor shall coordinate the activities relating to
11 highway safety of state departments, agencies and subdivisions and of
12 the Governor's Commission on Transportation Safety established in
13 AS 44.19.190.

14 * Sec. 55. AS 46.04.090(a) is amended to read:

15 (a) The department, when feasible, shall enter into contracts
16 with persons or private organizations to provide the personnel, equip-
17 ment, or other services or supplies which may be required to carry out
18 this chapter. Contracts under this section are governed by AS 36.30
19 (State Procurement Code). When private contracting is not feasible,
20 the department may establish and maintain at ports, harbors, or other
21 locations in the state, the cleanup personnel, equipment, and supplies
22 which, in its judgment, are necessary to carry out this chapter.

23 * Sec. 56. AS 46.07.040(a) is amended to read:

24 (a) The commissioner shall provide for the construction of
25 facilities under this chapter, and is authorized to provide for the
26 construction by contract or through grants to public agencies or
27 private nonprofit organizations, or otherwise. A [NO] contribution
28 toward the cost of the construction of a facility may not be required
29 from its users. Construction under this section by contract is

1 governed by AS 36.30 (State Procurement Code).

2 * Sec. 57. AS 46.15.020(a) is amended to read:

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

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

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

15 (3) establish a division of water in the Department of
16 Natural Resources and assign to that division the responsibility for
17 carrying out the provisions of this chapter.

18 * Sec. 58. AS 47.05.015(c) is amended to read:

19 (c) A contract authorized under this section is exempt from the
20 competitive bid requirements of AS 36.30 (State Procurement Code)
21 [AS 37.05.230]. In awarding a contract under this section the depart-
22 ment shall [PUBLISH A] request [FOR] proposals in accordance with
23 regulations of the Department of Administration under AS 36.30 (State
24 Procurement Code) [DEPARTMENT].

25 * Sec. 59. AS 47.30.350(a) is amended to read:

26 (a) The department shall

27 (1) develop and submit to the Surgeon General of the United
28 States Public Health Service a comprehensive program for the con-
29 structing and equipping of hospitals and other facilities for the

1 examination, observation, care, and treatment of the mentally ill;

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

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

9 (4) cooperate, coordinate, and contract, wherever indicated
10 and desirable, with other state boards, departments and agencies, and
11 agencies of the United States in the construction program, and hire
12 necessary personnel and enter into contracts with private individuals
13 and companies, to the end that the hospitals and other facilities are
14 constructed in the most economical and expeditious manner; contracting
15 and construction under this section are governed by AS 36.30 (State
16 Procurement Code).

17 * Sec. 60. AS 47.30.660 is amended to read:

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

20 (1) administer a comprehensive program for the prevention
21 of mental illness and the care and treatment of the mentally ill,
22 including inpatient and outpatient care and treatment and the procure-
23 ment of services of specialists or other persons on a contractual or
24 other basis;

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

29 (3) administer AS 47.30.660 - 47.30.915;

1 (4) designate, operate, and maintain treatment facilities
2 equipped and qualified to provide inpatient and outpatient care and
3 treatment for the mentally ill;

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

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

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

12 (8) enter contracts which incorporate safeguards
13 consistent with AS 47.30.660 - 47.30.915 and the preservation of the
14 civil rights of the patients with another state for the custody and
15 care or treatment of patients previously committed from this state
16 under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd
17 Session, 70 Stat. 709;

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

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

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

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

27 (13) delegate upon mutual agreement to another officer or
28 agency of it, or a political subdivision of the state, or a treatment
29 facility designated, any of the duties and powers imposed upon it by

1 AS 47.30.660 - 47.30.915; and

2 (14) adopt regulations to implement the provisions of
3 AS 47.30.660 - 47.30.915.

4 * Sec. 61. AS 47.35.010(a) is amended to read:

5 (a) The department may

6 (1) license and supervise boarding homes, foster homes,
7 group homes, nurseries, institutions caring for children and foster
8 homes, group homes and institutions caring for dependent adults;

9 (2) investigate and supervise licensees;

10 (3) enforce the standards established by it;

11 (4) contract with private or municipal agencies to investi-
12 gate and make recommendations to the department for the licensing and
13 supervision of boarding homes, foster homes, group homes, nurseries,
14 institutions caring for children and foster homes, group homes and
15 institutions caring for dependent adults under procedures and stan-
16 dards of operation established by the department; contracts with
17 private agencies under this paragraph are governed by AS 36.30 (State
18 Procurement Code).

19 * Sec. 62. AS 47.37.030 is amended to read:

20 Sec. 47.37.030. POWERS OF OFFICE. The office may

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

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

1 Procurement Code);

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

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

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

16 (6) keep records and engage in research and the gathering
17 of relevant statistics;

18 (7) do other acts necessary to implement the authority
19 expressly granted to it;

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

28 * Sec. 63. AS 47.37.130(g) is amended to read:

29 (g) The office may contract for the use of any facility as an

1 approved public treatment facility if the coordinator, subject to the
2 regulations of the department, considers this an effective and econom-
3 ical course to follow. Contracting under this subsection is governed
4 by AS 36.30 (State Procurement Code).

5 * Sec. 64. AS 47.40.041(b) is amended to read:

6 (b) Notices published by the department concerning the opening
7 of the application process for a grant award shall specify the geo-
8 graphical area in which services are needed, the type of services, the
9 number of beds anticipated to be needed, the maximum number of days of
10 care, and any other requirements established by the department.
11 Grants authorized under this section are exempt from the competitive
12 bid requirements of AS 36.30 [AS 37.05.230].

13 * Sec. 65. AS 47.90.010(a) is amended to read:

14 (a) The commissioner, in consultation with state and local
15 government agencies, community groups, and groups concerned with
16 displaced homemakers, may

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

21 (2) coordinate existing state programs for displaced home-
22 makers.

23 * Sec. 66. AS 47.40.041(b) is amended to read:

24 (b) Notices published by the department concerning the opening
25 of th application process for a grant award shall specify the geo-
26 graph. l area in which services are needed, the type of services, the
27 number of beds anticipated to be needed, the maximum number of days of
28 care, and any other requirements established by the department.
29 Grants authorized under this section are exempt from AS 36.30 (State

1 Procurement Code) [THE COMPETITIVE BID REQUIREMENTS OF AS 37.05.230].

2 * Sec. 67. REPORT. By December 1, 1987, the commissioner of adminis-
3 tration and the commissioner of transportation and public facilities shall
4 report to the legislature concerning procurements by state agencies during
5 the first six months of 1987. The report must include

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

7 (2) recommendations for changes in AS 36.30 or other laws based
8 on implementation of AS 36.30 in those six months; and

9 (3) a description of any matters that involved litigation con-
10 cerning AS 36.30 during those six months.

11 * Sec. 68. REGULATIONS DEADLINE. The regulations required under
12 AS 36.30 as added by sec. 2 of this Act, shall be adopted by January 1,
13 1987 and shall be effective on that date. Regulations adopted under laws
14 repealed in sec. 69 of this Act become ineffective January 1, 1987.

15 * Sec. 69. REPEALER. The following laws are repealed: AS 14.40.340;
16 AS 19.10.190, 19.10.210; AS 24.23; AS 35.15.030, 35.15.050; AS 36.98;
17 AS 37.05.220, 37.05.230, 37.05.231, 37.05.240, 37.05.250, 37.05.260, 37.-
18 05.270, 37.05.280, 37.05.290, 37.05.400(2) and (3); AS 44.65; AS 44.77.-
19 010(c); and AS 47.90.010(c).

20 * Sec. 70. Section 68 of this Act takes effect immediately in accor-
21 dance with AS 01.10.070(c).

22 * Sec. 71. Except as provided in sec. 70, this Act takes effect Janu-
23 ary 1, 1987.

Cook
2/27/86 ✓

Original sponsor: Rules Committee
By Request

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 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) make as consistent as possible the procurement practices
15 among the executive branch, the legislative branch, and the judicial branch
16 of state government;

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

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

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

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

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

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

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1 (9) eliminate and prevent discrimination in state contracting
2 because of race, religion, color, national origin, sex, age, marital sta-
3 tus, pregnancy, parenthood, handicap, or political affiliation.

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

5 CHAPTER 30. STATE PROCUREMENT CODE.

6 ARTICLE 1. ORGANIZATION OF STATE PROCUREMENT.

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

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

Regulations adopted by the Board of Regents to under
~~implement~~ ^{section} this ~~chapter~~ shall be substantially
equivalent to the regulations adopted by the
department of administration to implement this
chapter.

supplies for the University of Alaska are transferred to the Board of Regents. To the maximum extent possible, authority granted under this subsection shall be exercised in accordance with this chapter and regulations adopted by the Board of Regents to implement this chapter. For the purposes of this subsection, in this chapter

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

(2) "commissioner," "commissioner of administration," or "commissioner of transportation and public facilities" means the Board of Regents; and

(3) "chief procurement officer" or "attorney general" means the president of the University of Alaska.

Sec. 36.30.010. CHIEF PROCUREMENT OFFICER. (a) The commissioner shall appoint to the partially exempt service the chief procurement officer of the state. The chief procurement officer must have at least five years of prior experience in public procurement, including large scale procurement of supplies, services, or professional services, and must be a person with demonstrated executive and organizational ability. The chief procurement officer may be removed by the commissioner only for cause. The term of office of the chief procurement officer expires when the term of the governor expires.

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

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

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

(3) prescribe the time, manner, authentication, and form of

1 making requisitions for supplies and services;

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

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

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

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

12 Sec. 36.30.015. EXECUTIVE BRANCH AGENCIES. (a) The commis-
13 sioner of transportation and public facilities may delegate to another
14 agency the authority to contract for construction. Before delegating
15 authority to an agency under this subsection, the commissioner of
16 transportation and public facilities shall make a written determina-
17 tion that the agency is capable of implementing the delegated author-
18 ity. Notwithstanding delegation of authority under this subsection,
19 contracts for construction are governed by this chapter and regula-
20 tions adopted by the commissioner of administration under this chap-
21 ter.

22 (b) The commissioner of administration may delegate to an agency
23 the authority to contract for and manage services, professional servi-
24 ces, and supplies. Notwithstanding delegation of authority under this
25 subsection, an agency's exercise of the authority is governed by this
26 chapter and regulations adopted by the commissioner under this chap-
27 ter. Before delegating authority to an agency under this subsection,
28 the commissioner shall make a written determination that the agency is
29 capable of implementing the delegated authority.

1 (c) The commissioner of administration may not delegate the
2 authority to dispose of supplies or the authority to adopt regulations
3 under this chapter.

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

6 (e) The board of directors of the Alaska Railroad Corporation
7 shall adopt procedures to govern the procurement of supplies, ser-
8 vices, professional services, and construction by the corporation.
9 The procedures must be substantially equivalent to the procedures pre-
10 scribed in this chapter and in regulations adopted under this chapter.

11 Sec. 36.30.020. LEGISLATURE. The Legislative Council shall
12 adopt procedures to govern the procurement of supplies, services,
13 professional services, and construction by the legislature, legisla-
14 tors, and legislative agencies and committees. The procedures must be
15 substantially equivalent to the procedures prescribed in this chapter.

16 Sec. 36.30.030. COURT SYSTEM. The supreme court shall adopt
17 procedures to govern the procurement of supplies, services, profes-
18 sional services, and construction by the judicial branch. The proce-
19 dures must be substantially equivalent to the procedures prescribed in
20 this chapter.

21 Sec. 36.30.040. PROCUREMENT REGULATIONS. (a) The commissioner
22 shall adopt regulations governing the procurement, management, and
23 control of supplies, services, professional services and construction
24 by agencies. The commissioner may audit and monitor the implementa-
25 tion of the regulations and the requirements of this chapter with
26 respect to using agencies.

27 (b) The commissioner shall adopt regulations pertaining to the
28 following:

29 (1) suspension, debarment, and reinstatement of prospective

4 bidders and contractors;

2 (2) bid protests;

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

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

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

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

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

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

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

16 (10) definitions and classes of contractual services and
17 procedures for acquiring them;

18 (11) providing for conducting price analysis;

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

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

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

25 (15) a bidder's or offeror's duties under AS 36.30.115 and
26 36.30.210; and

27 (16) the elimination and prevention of discrimination in
28 state contracting because of race, religion, color, national origin,
29 sex, age, marital status, pregnancy, parenthood, handicap, or

1 political affiliation.

2 Sec. 36.30.050. LISTS OF CONTRACTORS. (a) The commissioner
3 shall establish and maintain lists of persons who desire to provide
4 supplies, services, professional services, or construction services to
5 the state.

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

13 (c) The lists may be used by the chief procurement officer or an
14 agency when issuing invitations to bid or requests for proposals under
15 this chapter. The lists may be used by the Legislative Council, the
16 court system, and the Alaska Railroad Corporation.

17 (d) The lists shall be used in providing notice of intent to
18 make a small procurement. A procurement officer who intends to make a
19 procurement under AS 36.30.320 shall request names from the appropri-
20 ate list and the department shall furnish names ^{1 of Alaska Sadders} on a rotating basis
21 from the list in response to each request.

22 Sec. 36.30.060. SPECIFICATIONS. (a) The commissioner shall
23 adopt regulations governing the preparation, revision, and content of
24 specifications for supplies, services, professional services, and
25 construction required by an agency. The commissioner shall monitor
26 the use of these specifications.

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

1 (c) The commissioner may obtain expert advice and assistance
2 from personnel of using agencies in the development of specifications.
3 Specifications must promote overall economy for the purposes intended
4 and encourage competition in satisfying the state's needs, and may not
5 be unduly restrictive. The requirements of this subsection regarding
6 the purposes and nonrestrictiveness of specifications apply to all
7 specifications, including those prepared by architects, engineers,
8 designers, and other professionals.

9 (d) In this section, "specification" means a description of the
10 physical or functional characteristics, or of the nature of a supply,
11 service, professional service, or construction project; it may include
12 requirements for ~~inspecting~~ inspecting, testing, and delivery.

13 Sec. 36.30.070. SUPPLY MANAGEMENT. The commissioner shall adopt
14 regulations governing the

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

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

27 (b) The department may enter into lease-financing agreements,
28 including lease-purchase agreements and agreements related to the
29 issuance of certificates of participation. A lease-financing

1 agreement must provide that lease payments are subject to annual
2 appropriation.

3 (c) If the department intends to enter into a lease or lease-
4 financing agreement with an annual rent to the state anticipated to
5 exceed \$1,000,000, the department shall provide notice to the legisla-
6 ture. The notice must include the anticipated annual lease obligation
7 amount and the anticipated total construction, acquisition, or other
8 costs of the project. The department may not enter into an agreement
9 under this subsection unless the project has been approved by the
10 legislature by law. An appropriation for the project does not consti-
11 tute approval of the project for purposes of this subsection.

12 ARTICLE 2. COMPETITIVE SEALED BIDDING.

13 Sec. 36.30.100. GENERAL POLICY. (a) Except as otherwise pro-
14 vided in this chapter, or unless specifically exempted by law, an
15 agency contract shall be awarded by competitive sealed bidding.

16 (b) Competitive sealed bidding is not required

17 (1) when the commissioner determines in writing that food,
18 clothing, or medical supplies, or materials for use in laboratory or
19 medical studies may be purchased otherwise to the best advantage of
20 the state;

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

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

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

26 (5) for professional services; or

27 (6) for concessions operated on state property.

28 (c) In this section "employment program" means a nonprofit
29 program to increase employment opportunities for individuals with

1 physical or mental disabilities that constitute substantial handicaps
2 to employment.

3 Sec. 36.30.110. INVITATION TO BID. (a) When competitive sealed
4 bidding is used, the procurement officer shall issue an invitation to
5 bid. It must include a time, place and date by which the bid must be
6 received, purchase description, and all contractual terms and condi-
7 tions applicable to the procurement.

8 (b) When responding to the invitation to bid, the bidder shall
9 supply evidence of the bidder's valid Alaska business license. ~~and contractor's license~~ A
10 bidder for a construction contract shall also submit evidence of the
11 bidder's registration under AS 08.18.

12 Sec. 36.30.115. SUBCONTRACTORS. (a) Within 24 hours after the
13 opening of bids, each bidder shall submit a list of the subcontractors
14 the bidder proposes to use in the performance of the contract. The
15 list shall include the name and location of the place of business for
16 each subcontractor and evidence of the subcontractor's valid Alaska
17 business license. ~~and specialty license~~ A bidder for a construction contract shall also
18 submit evidence of each subcontractor's registration under AS 08.18.

19 (b) A bidder may replace a listed subcontractor only if the
20 subcontractor

- 21 (1) fails to comply with AS 08.18;
22 (2) files for bankruptcy or becomes insolvent;
23 (3) fails to execute a contract with the bidder involving
24 performance of the work for which the subcontractor was listed;
25 (4) fails to obtain bonding ~~required by the state~~;
26 (5) fails to obtain insurance acceptable to the state;
27 (6) fails to perform the contract with the bidder involving
28 work for which the subcontractor was listed; or
29 (7) is determined by the ~~commissioner~~ procurement officer not to be a

1 responsible bidder.

2 (c) If a bidder fails to list a subcontractor or lists more than
3 one subcontractor for the same portion of work and the value of that
4 work is in excess of half of one percent of the total bid, the bidder
5 shall be considered to have agreed to perform that portion of work
6 without the use of a subcontractor and to have represented the bidder
7 to be qualified to perform that work.

8 (d) A bidder who attempts to circumvent the requirements of this
9 section by listing as a subcontractor another contractor who, in turn,
10 sublets the majority of the work required under the contract violates
11 this section.

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

14 (1) cancel the contract; or

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

18 Sec. 36.30.120. BID SECURITY. (a) Bid security shall be re-
19 quired for all competitive sealed bidding for construction contracts
20 when the price is estimated by the procurement officer to exceed an
21 amount established by regulation of the commissioner. Bid security on
22 construction contracts under the amount set by the commissioner may be
23 required when the circumstances warrant. Bid security may be required
24 for competitive sealed bidding for contracts for supplies, services,
25 or professional services in accordance with regulations of the commis-
26 sioner when needed for the protection of the state.

27 (b) Bid security must be a bond provided by a surety company
28 authorized to do business in the state or otherwise supplied in a form
29 satisfactory to the commissioner. Bid security must be in an amount

1 equal to at least

2 (1) 10 percent of the amount of the bid if the bid does not
3 exceed \$100,000; or

4 (2) 10 percent of the first \$100,000 and five percent of
5 the amount of the bid over \$100,000 if the bid exceeds \$100,000 up to
6 a maximum of \$200,000 in security.

7 (c) When the invitation to bid requires security, the procure-
8 ment officer shall reject a bid that does not comply with the bid
9 security requirement unless, in accordance with regulations, the
10 officer determines that the bid fails to comply in a nonsubstantial
11 manner with the security requirements.

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

25 (1) publication in a newspaper calculated to reach prospec-
26 tive bidders;

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

29 (3) notices mailed to all active prospective contractors on

1 the appropriate list maintained under AS 36.30.050.

2 (b) Failure to comply with the notice requirements of this
3 section does not invalidate a bid or the award of a contract. The
4 state is not liable for damages caused by failure to comply with this
5 section.

6 Sec. 36.30.140. BID OPENING. (a) The procurement officer shall
7 open bids publicly in the presence of one or more witnesses at the
8 time and place designated in the invitation to bid. The amount of
9 each bid and other relevant information that is specified by regula-
10 tion of the commissioner, together with the name of each bidder, shall
11 be recorded.

12 (b) The information recorded under (a) of this section is open
13 to public inspection as soon as practicable before the notice of
14 intent to award a contract is given under AS 36.30.365. The bids are
15 not open for public inspection until after the notice of intent to
16 award a contract is given. To the extent the bidder designates and
17 the procurement officer concurs, trade secrets and other proprietary
18 data contained in a bid document are confidential.

19 Sec. 36.30.150. BID ACCEPTANCE AND BID EVALUATION. Bids shall
20 be unconditionally accepted without alteration or correction, except
21 as authorized in AS 36.30.160. The procurement officer shall evaluate
22 bids based on the requirements set out in the invitation to bid, which
23 may include criteria to determine acceptability such as inspection,
24 testing, quality, delivery, and suitability for a particular purpose.
25 The criteria that will affect the bid price and be considered in
26 evaluation for award must be objectively measurable, such as dis-
27 counts, transportation costs, and total or life cycle costs. The
28 invitation to bid must set out the evaluation criteria to be used.
29 Criteria may not be used in bid evaluation if they are not set out in

1 the invitation to bid.

2 Sec. 36.30.160. LATE BIDS; CORRECTION OR WITHDRAWAL OF BIDS;
3 CANCELLATION OF AWARDS. (a) Bids received after the bid due date and
4 time indicated on the invitation to bid may not be accepted unless the
5 delay was due to an error of the contracting agency.

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

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

23 (b) The procurement officer shall award a contract based on
24 solicited bids to the lowest responsible and responsive Alaska bidder
25 if the bid is not more than five percent higher than the lowest non-
26 resident bidder's. In this subsection, "Alaska bidder" means a person
27 who

28 (1) holds a current Alaska business license;

29 (2) submits a bid for goods, services, or construction

1 under the name as appearing on the person's current Alaska business
2 license;

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

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

9 (5) derives at least 50 percent of its income from sources
10 in the state exclusive of investment income; and

11 (6) if a joint venture, is composed entirely of ventures
12 that qualify under (1) - (5) of this subsection.

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

19 (d) The provisions of (b) and (c) of this section do not apply
20 to construction contracts for highways and public works if the con-
21 struction contract exceeds ~~\$2,000,000~~.

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

29 ARTICLE 3. COMPETITIVE SEALED PROPOSALS.

1 Sec. 36.30.200. CONDITIONS FOR USE. (a) Except as otherwise
2 provided in this chapter, or unless specifically exempted by law, an
3 agency contract shall be awarded by competitive sealed proposals if it
4 is not awarded by competitive sealed bidding.

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

19 Sec. 36.30.210. REQUEST FOR PROPOSALS. (a) A request for
20 competitive sealed proposals must contain the date, time and place for
21 delivering proposals, a specific description of the supplies,
22 construction, services, or professional services to be provided under
23 the contract, and the terms under which the supplies, construction,
24 services, or professional services are to be provided. The request
25 shall require the offeror to submit evidence of the offeror's valid
26 Alaska business license and contractor's license and, within 24 hours after the date by which
27 proposals must be received, to list subcontractors the offeror pro-
28 poses to use in the performance of the contract. The list shall
29 include the name and location of the place of business for each sub-

1 contractor and evidence of the subcontractor's valid Alaska business
2 and specialty license license. An offeror for a construction contract shall also submit
3 evidence of the offeror's registration under AS 08.18 and evidence of
4 registration for each listed subcontractor.

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

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

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

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

25 (b) In this section, "standard overhead rate" means a charge
26 established for services and professional services from an agency that
27 is designed to compensate the agency for administration and support
28 services incidentally provided with the services contracted for.

29 Sec. 36.30.230. TREATMENT OF PROPOSALS. The procurement officer

1 shall open proposals so as to avoid disclosure of contents to compet-
2 ing offerors during the process of negotiation. A register of pro-
3 posals containing the name and address of each offeror shall be pre-
4 pared in accordance with regulations adopted by the commissioner. The
5 register and the proposals are open for public inspection after the
6 contract is awarded. To the extent that the offeror designates and
7 the procurement officer concurs, trade secrets and other proprietary
8 data contained in the proposal documents are confidential.

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

24 Sec. 36.30.250. AWARD OF CONTRACT. (a) The procurement officer
25 shall award a contract under competitive sealed proposals to the
26 responsible and responsive offeror whose proposal is determined in
27 writing to be the most advantageous to the state taking into consid-
28 eration price and the evaluation factors set out in the request for
29 proposals. Other factors and criteria may not be used in the evalu-
ation. The contract file must contain the basis on which the award is

1 made.

2 (b) In determining^{lim} whether a proposal is advantageous to the
3 state, the procurement officer shall take into account, in accordance
4 with regulations of the commissioner, whether the offeror qualifies as
5 an Alaskan bidder under AS 36.30.170(b) or is offering the services of
6 an employment program as defined in AS 36.30.100(c).

7 Sec. 36.30.260. CONTRACT EXECUTION. A contract awarded under
8 competitive sealed proposals must contain

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

10 (2) the date for the supplies to be delivered or the dates
11 for construction, services, or professional services to begin and be
12 completed;

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

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

19 ➤ ARTICLE 4. OTHER PROCUREMENT METHODS.

20 Sec. 36.30.300. SOLE SOURCE PROCUREMENTS. (a) A contract may
21 be awarded for supplies, services, professional services, or construc-
22 tion without competitive sealed bidding, competitive sealed proposals,
23 or other competition in accordance with regulations adopted by the
24 commissioner of administration. A contract may be awarded under this
25 section only when the chief procurement officer or, for construction
26 contracts or procurements for the state equipment fleet, the commis-
27 sioner of transportation and public facilities determines in writing
28 that there is only one source for the required procurement or con-
29 struction. A sole source procurement may not be awarded if a

1 reasonable alternative source exists. The written determination must
2 include findings of fact that support by clear and convincing evidence
3 the determination that only one source exists. The authority to make
4 the determination required by this subsection may not be delegated.

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

10 (c) The procurement officer shall negotiate with the single
11 supplier, to the extent practicable, to obtain a contract advantageous
12 to the state.

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

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

1 (b) A contract for professional services that does not exceed
2 \$25,000 may be made under regulations adopted by the commissioner for
3 small procurements, except that an agency may not contract for the
4 services of legal counsel without the approval of the attorney
5 general.

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

9 (d) Procurement requirements may not be artificially divided or
10 fragmented so as to constitute a purchase under this section or to
11 circumvent the source selection procedures required by AS 36.30.100 -
12 36.30.260.

13 (e) The procurement officer shall give adequate public notice of
14 intent to make a procurement under this section in accordance with
15 regulations adopted by the commissioner. Notices shall be mailed to
16 those active prospective contractors on the appropriate list main-
17 tained under AS 36.30.050 designated by the commissioner.

18 ARTICLE 5. CONTRACT FORMATION AND MODIFICATION.

19 Sec. 36.30.340. REVIEW AND APPROVAL BY DEPARTMENT OF LAW. If a
20 contract contains a term that is in conflict with a state standard
21 form contract term or if a standard term is deleted or modified by a
22 term that is not standard, the contract must be reviewed by the De-
23 partment of Law and approved as to form.

24 Sec. 36.30.350. BID CANCELLATION, REJECTION. An invitation to
25 bid, a request for proposals, or other solicitation may be cancelled
26 or any or all bids or proposals may be rejected in whole or in part or
27 the date for opening bids or proposals may be delayed when it is in
28 the best interests of the state in accordance with regulations adopted
29 by the commissioner. The reasons for cancellation, rejection, or

1 delay in opening bids or proposals shall be made part of the contract
2 file.

3 Sec. 36.30.360. DETERMINATION OF RESPONSIBILITY. (a) A written
4 determination of responsibility of a bidder or offeror shall be made
5 by the procurement officer in accordance with regulations adopted by
6 the commissioner. The unreasonable failure of a bidder or offeror to
7 promptly supply information in connection with an inquiry with respect
8 to responsibility is grounds for a determination of nonresponsibility
9 with respect to the bidder or offeror.

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

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

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

27 Sec. 36.30.380. APPROVAL OF ACCOUNTING SYSTEM. Except for a
28 contract awarded through competitive sealed bidding or a firm fixed-
29 price contract, a contract type may not be used unless it has been

1 determined in writing by the procurement officer that the proposed
2 contractor's accounting system

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

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

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

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

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

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

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

1 recoverable. The cost of cancellation may be paid from any appropria-
2 tions available for these purposes.

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

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

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

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

29 (1) the contract price is based on adequate price

1 competition;

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

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

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

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

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

28 Sec. 36.30.430. STANDARD MODIFICATION CLAUSES FOR CONTRACTS.

29 (a) The commissioner shall adopt regulations permitting the inclusion

1 of clauses providing for adjustments in prices, time of performance,
2 or other contract provisions as appropriate.

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

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

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

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

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

18 Sec. 36.30.470. FISCAL RESPONSIBILITY. A contract modification,
19 change order, or contract price adjustment under a construction con-
20 tract in excess of an amount established by regulation of the commis-
21 sioner is subject to prior written certification by the fiscal officer
22 of the agency responsible for funding the project or the contract, or
23 other official responsible for monitoring and reporting upon the
24 status of the costs of the total project budget or contract budget, as
25 to the effect of the contract modification, change order, or adjust-
26 ment in contract price on the total project budget or the total con-
27 tract budget. If the certification of the fiscal officer or other
28 responsible official discloses a resulting increase in the total
29 project budget or the total contract budget, the procurement officer

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

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

18 ARTICLE 6. PROCUREMENT RECORDS AND REPORTS.

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

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

1 contain

2 (1) a copy of the contract;

3 (2) the register of proposals prepared under AS 36.30.230
4 and a copy of each proposal submitted; and

5 (3) the written determination to award the contract pre-
6 pared under AS 36.30.250.

7 Sec. 36.30.520. RECORDS OF SOLE SOURCE AND EMERGENCY PROCURE-
8 MENTS. (a) The commissioner shall maintain for a minimum of five
9 years a record listing all sole source procurement contracts made
10 under AS 36.30.300 and emergency procurements made under AS 36.30.310.
11 The record must contain

12 (1) each contractor's name;

13 (2) the amount and type of each contract; and

14 (3) a listing of the supplies, services, professional
15 services, or construction procured under each contract.

16 (b) The Department of Transportation and Public Facilities and
17 any agency to whom the commissioner of administration or the commis-
18 sioner of transportation and public facilities has delegated procure-
19 ment authority under AS 36.30.015 shall, by October 1 of each year,
20 submit to the commissioner of administration records of the type
21 specified in (a) of this section. The commissioner of administration
22 shall maintain these records as required by (a) of this section.

23 Sec. 36.30.530. PUBLIC ACCESS TO PROCUREMENT INFORMATION.
24 Procurement information is public except as otherwise provided by law.

25 Sec. 36.30.540. REPORT TO LEGISLATURE. Beginning with Decem-
26 ber 1, 1989, the commissioner shall biennially report to the legisla-
27 ture concerning procurements by agencies. The report must include

28 (1) the records maintained by the commissioner under
29 AS 36.30.510 and the records maintained under AS 36.30.520(a) for the

except for section 36.30.320,

1 previous two fiscal years;

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

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

7 (4) a list of procurements made under ^{all sections of} this chapter from
8 out-of-state sources during the previous two fiscal years together
9 with the total number of procurement contracts entered into during
10 that period with out-of-state contractors and the total value of these
11 contracts; and

12 (5) a list of procurements made under ^{all sections of} this chapter ^{except section 36.30.320,} from
13 state sources during the previous two fiscal years together with the
14 total number of procurement contracts entered into during that period
15 with state contractors and the total value of these contracts.

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
23 and public facilities). If you appeal, you must file
24 a written notice of appeal with the commissioner within
25 14 days after you receive 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. 36.30.645. WRITTEN DETERMINATIONS. (a) The commissioner
27 of administration or the commissioner of transportation and public
28 facilities shall issue a written decision to debar or suspend. The
29 decision must

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

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

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

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

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

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

25 Sec. 36.30.660. REINSTATEMENT. (a) The commissioner of admin-
26 istration or the commissioner of transportation and public facilities
27 may at any time after a final decision to debar a person from consid-
28 eration for award of contracts reinstate the person after determining
29 that the cause for which the person was debarred no longer exists or

1 has been substantially mitigated.

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

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

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

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

28 (b) The hearing officer may

29 (1) hold prehearing conferences to settle, simplify, or

1 identify the issues in a proceeding, or to consider other matters that
2 may aid in the expeditious disposition of the proceeding;

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

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

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

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

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

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

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

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

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

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

24 (9) administer oaths or affirmations.

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

27 Sec. 36.30.675. RECOMMENDATION BY THE HEARING OFFICER. (a) If
28 the commissioner of administration or the commissioner of transporta-
29 tion and public facilities is not acting as hearing officer, the

1 hearing officer shall recommend a decision to the commissioner based
2 on the evidence presented. The recommendation shall include findings
3 of fact and conclusions of law.

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

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

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

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

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

1 contract controversy under this chapter:

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

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

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

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

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

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

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

27 Sec. 36.30.695. OTHER RULES OF PROCEDURE. The commissioner may
28 adopt by regulation additional rules of procedure providing for the
29 expeditious administrative review of all contract claims or

1 controversies, both before the contracting agency and through an
2 appeal heard *de novo*.

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

9 ARTICLE 8. INTERGOVERNMENTAL RELATIONS.

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

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

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

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

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

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

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

- 26 (1) standard forms;
27 (2) printed manuals;
28 (3) product specifications and standards;
29 (4) quality assurance testing services and methods;

- 1 (5) qualified products lists;
2 (6) source information;
3 (7) common use commodities listings;
4 (8) supplier performance ratings;
5 (9) lists of persons debarred or suspended from considera-
6 tion for award of state contracts;
7 (10) forms for invitations for bids, requests for proposals,
8 instructions to bidders, general contract provisions, and other con-
9 tract forms; and

10 (11) contracts or published summaries of them, including
11 price and time of delivery information.

12 (d) The commissioner may provide the following technical ser-
13 vices, among others:

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

19 (e) The commissioner may enter into contractual arrangements and
20 publish a schedule of fees for the services provided under (c) and (d)
21 of this section.

22 Sec. 36.30.735. RESTRICTION ON CONTRACTING WITH OR EMPLOYING
23 EXPERTS ON RADIATION HAZARDS. (a) Except for the Department of
24 Health and Social Services, the Department of Labor, the Department of
25 Environmental Conservation, and the Department of Military and Veter-
26 ans' Affairs, a state agency may not

27 (1) contract, other than with the Department of Health and
28 Social Services, to have services performed that require expertise in
29 determining or reducing the hazards of radiation; or

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

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

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

21 (d) Nothing in this chapter or in regulations adopted under this
22 chapter prevents an agency or political subdivision from complying
23 with the terms and conditions of a grant, gift, bequest; or coopera-
24 tive agreement.

25 Sec. 36.30.860. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLIC-
26 ABLE. Unless displaced by the particular provisions of this chapter,
27 the principles of law and equity, including the Uniform Commercial
28 Code (AS 45.01 - AS 45.09), the law merchant, and law relative to
29 capacity to contract, agency, fraud, misrepresentation, duress,

1 coercion, mistake, or bankruptcy shall supplement the provisions of
2 this chapter.

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

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

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

14 Sec. 36.30.890. FEDERAL ASSISTANCE. If a procurement involves
15 the expenditure of federal funds or federal assistance and there is a
16 conflict between a provision of this chapter or a regulation adopted
17 under a provision of this chapter and a federal statute or regulation
18 the federal statute or regulation shall prevail. [Insert]

19 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
20 does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding
21 preference for Alaska forest products, or AS 36.20.010 regarding
22 preference to producers or dealers in Alaska except as provided in
23 AS 36.30.170(b) and (c).

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

27 Sec. 36.30.920. REPORTING OF ANTICOMPETITIVE PRACTICES. When
28 for any reason collusion or other anticompetitive practices are sus-
29 pected among bidders or offerors, a notice of the relevant facts shall

1 be transmitted to the attorney general by the person who suspects the
2 collusion or other anticompetitive practices.

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

5 (1) a person who contracts for or purchases supplies,
6 equipment for the state fleet, services, professional services, or
7 construction in a manner ^{which that person knows is} contrary to the requirements of this chapter
8 or the regulations adopted under this chapter ^{is liable for all} ~~is personally liable for~~
9 ~~the recovery of all state money paid plus 20 percent of that amount,~~
10 ~~legal interest from the date of payment, and all costs and damages~~
11 ~~arising out of the violation,~~ &

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

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

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

21 (1) "agency" means a department, institution, board, com-
22 mission, division, authority, public corporation, the Alaska Pioneers'
23 Home, or other administrative unit of the executive branch of state
24 government, except for the University of Alaska and the Alaska
25 Railroad Corporation; it does not include a regional Native housing
26 authority created under AS 18.55.996, or a regional electrical
27 authority created under AS 18.57.020;

28 (2) "change order" means a written order signed by the
29 procurement officer, directing the contractor to make changes that the

1 changes clause of the contract authorizes the procurement officer to
2 order without the consent of the contractor;

3 (3) "commissioner" means the commissioner of the Department
4 of Administration;

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

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

9 (6) "construction" means the process of building, altering,
10 repairing, maintaining, improving, or demolishing a public highway,
11 structure, building, or other public improvement of any kind to real
12 property other than privately owned real property leased for the use
13 of agencies; it includes services and professional services relating
14 to planning and design required for the construction; it does not
15 include the routine operation of a public improvement to real
16 property;

17 (7) "contract" means all types of state agreements, regard-
18 less of what they may be called, for the procurement or disposal of
19 supplies, equipment for the state fleet, services, professional servi-
20 ces, or construction;

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

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

26 (10) "grant" means the furnishing by the state of assis-
27 tance, whether financial or otherwise, to a person to support a pro-
28 gram authorized by law; it does not include an award whose primary
29 purpose is to procure an end product for a state agency, whether in

1 the form of supplies, services, professional services, or construc-
2 tion; a contract resulting from such an award is not a grant but a
3 procurement contract;

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

6 (12) "procurement" means buying, purchasing, renting, leas-
7 ing, or otherwise acquiring supplies, equipment for the state fleet,
8 services, or construction; it also includes functions that pertain to
9 the obtaining of a supply, equipment for the state fleet, service, or
10 construction, including description of requirements, selection and
11 solicitation of sources, preparation and award of contract, and all
12 phases of contract administration;

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

18 (14) "professional services" means professional, technical,
19 or consultant's services that are predominantly intellectual in char-
20 acter, result in the production of a report or the completion of a
21 task, and include analysis, evaluation, prediction, planning, or
22 recommendation;

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

28 (16) "supplies" means all property of an agency, including
29 equipment, materials, and insurance; it includes privately owned real

1 property leased for the use of agencies, such as office space, but
2 does not include the acquisition or disposition of other interests in
3 land.

4 Sec. 36.30.995. SHORT TITLE. This chapter may be cited as the
5 State Procurement Code.

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

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

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

16 Sec. 05.20.040. PERSONNEL TO INSPECT DEVICES. The department
17 shall designate a person qualified in experience and training as the
18 inspector of devices. The department may employ additional employees
19 as are necessary to administer this chapter. The inspector and the
20 employees may be hired on a temporary basis or borrowed from other
21 state departments or political subdivisions of the state, or the
22 department may contract with individuals or firms for the inspecting
23 service on an independent basis. The department shall prescribe the
24 salary or other remuneration for this service. Contracting under this
25 section is governed by AS 36.30 (State Procurement Code).

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

27 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person
28 or corporation having a contract, quasi-contract, or tort claim
29 against the state may bring an action against the state in the

1 superior court. A person who may present the claim under AS 44.77 may
2 not bring an action under this section except as set out in AS 44.77.-
3 040(c). A person who may bring an action under AS 36.30.560 - 36.30.-
4 695 may not bring an action under this section except as set out in
5 AS 36.30.685. However, no action may be brought under this section if
6 the claim

7 (1) is an action for tort, and is based upon an act or
8 omission of an employee of the state, exercising due care, in the
9 execution of a statute or regulation, whether or not the statute or
10 regulation is valid; or is an action for tort, and based upon the
11 exercise or performance or the failure to exercise or perform a dis-
12 cretionary function or duty on the part of a state agency or an em-
13 ployee of the state, whether or not the discretion involved is abused;

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

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

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

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

21 (1) sue and be sued;

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

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

29 (4) appoint, compensate and otherwise control all school

1 employees in accordance with this title; these employees are not
2 subject to the State Personnel Act (AS 39.25);

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

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

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

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

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

18 (10) provide housing for rental to teachers, by leasing
19 existing housing from a local agency or individual, or by entering
20 into contractual arrangements with a local agency or individual to
21 lease housing that will be constructed by the local agency or indi-
22 vidual for that purpose.

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

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

27 (1) assist the United States Fish and Wildlife Service in
28 the enforcement of federal laws and regulations pertaining to fish and
29 game;

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

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

10 (4) accept money from any person under conditions requiring
11 the use of the money for specific purposes in the furtherance of the
12 protection, rehabilitation, propagation, preservation, or investiga-
13 tion of the fish and game resources of the state or in settlement of
14 claims for damages to fish or game resources;

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

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

20 (7) under the provisions of AS 36.30, provide public facil-
21 ities where necessary or proper to facilitate the taking of fish or
22 game, and enter into cooperative agreements with any person to effect
23 them;

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

25 (9) under the provisions of AS 36.30, construct, operate,
26 supervise, and maintain vessels used by the Department of Fish and
27 Game;

28 (10) authorize the holder of an interim-use permit under
29 AS 16.43 to engage on an experimental basis in commercial taking of a

1 fishery resource with vessel, gear, and techniques not presently
2 qualifying for licensing under this chapter in conformity with stand-
3 ards established by the Alaska Commercial Fisheries Entry Commission;

4 (11) not later than January 31 of each year, provide to the
5 commissioner of revenue the names of those fish and shellfish species
6 which the commissioner of fish and game designates as developing
7 commercial fish species for that calendar year; a fish or shellfish
8 species is a developing commercial fish species if, within a specified
9 geographical region,

10 (A) the optimum yield from the harvest of the species
11 has not been reached;

12 (B) a substantial portion of the allowable harvest of
13 the species has been allocated to fishing vessels of a foreign
14 nation; or

15 (C) a commercial harvest of the fish species has
16 recently developed;

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

19 (13) enter into cooperative agreements with agencies of the
20 federal government, educational institutions, or other agencies or
21 organizations, when in the public interest, to carry out the purposes
22 of this title except AS 16.51 and AS 16.52.

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

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

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

2 Sec. 18.15.120. TUBERCULOSIS CONTROL PROGRAM AUTHORIZED. The
3 department may establish a comprehensive program for the control of
4 tuberculosis in the state, and may

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

7 (2) establish necessary out-patient clinics for the care of
8 tuberculosis;

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

12 (4) under the provisions of AS 36.30 (State Procurement
13 Code), obtain, by purchase or donation from surplus federal property
14 or otherwise, medical supplies and equipment useful in carrying out
15 this program and to allot or resell these supplies and equipment to
16 private institutions engaged by the department to carry out this
17 program;

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

21 (6) employ necessary and trained personnel to carry out the
22 purposes of AS 18.15.120 - 18.15.140;

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

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

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

4 * Sec. 10. AS 18.55.100 is amended by adding a new subsection to read:

5 (d) The authority's power to contract, lease, rent, construct,
6 acquire, procure, and provide for services under this section is
7 governed by AS 36.30.

8 * Sec. 11. AS 19.05.020 is amended to read:

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

14 * Sec. 12. AS 19.05.080 is amended to read:

15 Sec. 19.05.080. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-
16 RIALS BY PURCHASE OR EMINENT DOMAIN. The department on behalf of the
17 state and as part of the cost of constructing or maintaining a highway
18 may purchase in the open market, acquire, take over, or condemn under
19 the right and power of eminent domain land in fee simple or easements
20 which it considers necessary for present public use, either temporary
21 or permanent, or which it considers necessary and reasonable for the
22 public use. By the same means, the department may obtain material,
23 including clay, gravel, sand, or rock, or the land necessary to obtain
24 material, including access to it. The department may acquire the land
25 or materials notwithstanding the fact that title to it is vested in
26 the state or a department, agency, commission or institution of the
27 state. Acquisition of materials by purchase in the open market under
28 this section is governed by AS 36.30 (State Procurement Code).

29 * Sec. 13. AS 19.10.160 is amended to read:

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

8 * Sec. 14. AS 19.10.170(a) is amended to read:

9 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is
10 [SHALL BE] the general policy of the state [DEPARTMENT] to require the
11 construction of all highways under bid contract in accordance with
12 AS 36.30 (State Procurement Code). However, subject to the provisions
13 of (b) of this section, when the estimated cost of a construction
14 project is less than \$100,000 or when it appears to be in the best
15 interests of the state, the department may perform the work notwith-
16 standing any other provisions of law.

17 * Sec. 15. AS 19.10.180 is repealed and reenacted to read:

18 Sec. 19.10.180. REQUEST FOR PUBLIC BIDS. Requests for public
19 bids are governed by AS 36.30 (State Procurement Code). The request
20 for public bids may require the contractor to furnish equipment,
21 labor, materials, and supplies for the project, or it may state that
22 the department will furnish the materials and supplies. If the de-
23 partment elects to provide materials and supplies for a project, it
24 shall do so at the time it adopts the construction program. The
25 department shall acquire these materials and supplies under AS 36.30
26 by requesting bids for them according to the class, type, and nature
27 of the materials and supplies. The contract for materials and sup-
28 plies may be awarded either upon the basis of delivery to the con-
29 struction project directly or to a central storehouse or storehouses

1 maintained by the department. Those materials and supplies so pur-
2 chased by the department may be delivered to the project site without
3 expense to the contractor, or it may sell them to the contractor at
4 cost and make the materials and supplies a part of the construction
cost.

6 * Sec. 16. AS 19.10.200 is repealed and reenacted to read:

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

11 * Sec. 17. AS 19.30.070 is amended to read:

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

18 * Sec. 18. AS 19.30.080 is amended to read:

19 Sec. 19.30.080. CONSTRUCTION STANDARDS AND MAINTENANCE. An
20 access road constructed under AS 19.30.060 - 19.30.100 shall be of low
21 standard, not necessarily suitable for all weather use. The state is
22 not under obligation to maintain an access road constructed under AS
23 19.30.060 - 19.30.100. If an access road is constructed outside a
24 municipality that has zoning ordinances, the right-of-way width for
25 the road shall be determined by the division of lands and the Depart-
26 ment of Transportation and Public Facilities. If an access road is
27 constructed within the boundaries of a municipality that has zoning
28 ordinances, the right-of-way width shall conform to the subdivision
29 control ordinances of the municipality. Contracts for the work on an

1 access road are governed by AS 36.30 (State Procurement Code) [SHALL
2 BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER QUALIFIED TO CONTRACT WITH
3 THE STATE].

4 * Sec. 19. AS 19.40.020(a) is amended to read:

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

13 * Sec. 20. AS 19.60.010 is amended to read:

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

21 * Sec. 21. AS 23.15.611(a) is amended to read:

22 (a) The department may [IS AUTHORIZED TO] participate in pro-
23 grams of manpower training if it finds they are necessary to meet the
24 occupational needs of the state. This authorization includes authori-
25 ty to execute on behalf of the state agreements or contracts which may
26 be necessary or desirable to enable the state to participate in a
27 program, to receive and expend all appropriate funds made available
28 for programs by the state or from other sources, to supervise the
29 expenditure of the funds and conduct of the programs by other public

1 and private agencies of the state, and to make the reports and certif-
2 icates which are called for, and in cooperative arrangements with the
3 Department of Education. Contracts with private entities under this
4 subsection are governed by AS 36.30 (State Procurement Code).

5 * Sec. 22. AS 23.20.075(a) is amended to read:

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

13 * Sec. 23. AS 23.35.110 is amended to read:

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

19 * Sec. 24. AS 24.55.275 is amended to read:

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

25 * Sec. 25. AS 24.60.040(a) is amended to read:

26 (a) A person to whom this chapter applies may not be a party to
27 or have an interest in a state contract or lease unless the contract
28 or lease is let through competitive sealed bidding under AS 36.30
29 (State Procurement Code) [AS 37.05.230] or the total annual amount of

1 the state contract or lease is \$1,000 or less, or is a standardized
2 contract or lease which was developed under publicly established
3 guidelines and is generally available to the public at large, members
4 of a profession, occupation or group. A person has an interest in a
5 state contract or lease under this section if the person receives
6 direct or indirect financial benefits.

7 * Sec. 26. AS 26.05.230(a) is amended to read:

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

15 * Sec. 27. AS 26.05.280 is amended to read:

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

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

25 Sec. 27.21.030. GENERAL POWERS. To accomplish the purposes of
26 this chapter, the commissioner may

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

- 1 (2) issue permits;
- 2 (3) conduct hearings and conferences;
- 3 (4) issue orders requiring an operator to take the actions
4 necessary to comply with this chapter and the regulations adopted
5 under this chapter;
- 6 (5) issue orders modifying previous orders;
- 7 (6) after opportunity for a due process hearing, issue a
8 final order revoking the permit of an operator who has failed to
9 comply with an order of the commissioner to take action required by
10 this chapter or regulations adopted under this chapter;
- 11 (7) order the immediate cessation of all or part of a
12 surface coal mining and reclamation operation if the commissioner
13 finds that the operation or part of the operation creates an imminent
14 danger to the health or safety of the public or is causing or can
15 reasonably be expected to cause significant imminent harm to land,
16 air, or water resources, and, to the extent reasonably necessary to
17 eliminate or alleviate those conditions, take other action or make
18 changes in a permit, as provided in this chapter;
- 19 (8) hire and authorize the hiring of employees and private
20 contractors, subject to the conflict of interest provisions of this
21 chapter and subject to AS 36.30 (State Procurement Code), to assist in
22 carrying out the requirements of this chapter;
- 23 (9) enter and inspect a surface coal mining operation that
24 is subject to the provisions of this chapter to assure that the opera-
25 tion is in compliance with this chapter;
- 26 (10) conduct, encourage, request, and participate in
27 studies, surveys, investigations, research, experiments, training, and
28 demonstrations;
- 29 (11) prepare reports and require permittees to prepare

1 reports;

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

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

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

16 (15) contract with state agencies to obtain the professional
17 and technical services necessary to carry out the provisions of this
18 chapter;

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

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

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

27 * Sec. 29. AS 33.30.050 is amended to read:

28 Sec. 33.30.050. COMMISSIONER TO PROVIDE MEDICAL SERVICES. The
29 commissioner shall detail physicians, nurses, and psychiatrists, or

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

12 * Sec. 30. AS 33.30.062(a) is amended to read:

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

22 * Sec. 31. AS 33.32.015(b) is amended to read:

23 (b) The commissioner of corrections may
24 (1) subject to AS 36.30 (State Procurement Code) [THE
25 FISCAL PROCEDURES ACT (AS 37.05)], use, purchase, lease, equip, and
26 maintain buildings, machinery, and other equipment, and may purchase
27 materials and enter into contracts, which may be necessary for the
28 correctional industries program;
29 (2) provide for prisoners to be employed in rendering

1 services and producing articles, materials, and supplies needed by a
2 state agency, a political subdivision of the state, an agency of the
3 federal government, other states or their political subdivisions, or
4 for use by nonprofit organizations;

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

11 * Sec. 32. AS 35.05.010 is amended to read:

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

17 * Sec. 33. AS 35.05.020 is amended to read:

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

23 * Sec. 34. AS 35 is amended by adding a new section to read:

24 Sec. 35.10.195. CONFORMANCE WITH AS 36.30. The contractual
25 techniques for the procurement of labor, materials, and contractual
26 services under the policies developed under this chapter must conform
27 to the requirements of AS 36.30 (State Procurement Code).

28 * Sec. 35. AS 35.15.010(a) is amended to read:

29 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is

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

10 * Sec. 36. AS 35.15.020 is repealed and reenacted to read:

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

27 * Sec. 37. AS 35.15.040 is repealed and reenacted to read:

28 Sec. 35.15.040. PROCEDURES FOR THE AWARD OF CONTRACTS. Award of
29 a contract for the construction of a public work shall comply with

1 this title, AS 36.30 (State Procurement Code), and the regulations
2 adopted under those laws.

3 * Sec. 38. AS 35.20.010 is amended to read:

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

19 * Sec. 39. AS 37.05 is amended by adding a new section to read:

20 Sec. 37.05.232. PETTY CASH ACCOUNTS. The department shall
21 determine the amount of the petty cash accounts needed by each state
22 agency and inspect the petty cash accounts at least once each year to
23 determine that the total plus amounts of receipts for unreplenished
24 disbursements is equal to the fixed sum of cash set aside. Shortages
25 in petty cash accounts are a personal liability of the responsible
26 head of the agency to whom the account is set aside. The department
27 shall adopt necessary regulations governing use and replenishment of
28 petty cash funds.

29 * Sec. 40. AS 37.05.316 is amended to read:

1 Sec. 37.05.316. GRANTS TO NAMED RECIPIENTS. When an amount is
2 appropriated or allocated to a department as a grant for a named
3 recipient which is not a municipality, the department to which the
4 appropriation or allocation is made shall promptly notify the named
5 recipient of the availability of the grant and request the named
6 recipient to submit a proposal to provide the goods or services speci-
7 fied in the appropriation act, or both, for which the appropriation or
8 allocation is made. At the same time, the department may issue a
9 request for proposals from other qualified persons to provide the same
10 goods or services, or both, in the same area. The department shall
11 contract with the named recipient unless the Office of the Governor,
12 with due regard for any local expertise or experience among those
13 making proposals, determines that an award of the contract to a dif-
14 ferent party would better serve the public interest. If the contract
15 is awarded to another party than that named by the legislature, the
16 basis of that action shall be stated in writing at the time the grant
17 is issued and a copy of the written statement shall be sent to the
18 Legislative Budget and Audit Committee. A contract shall be executed
19 within 60 days after the effective date of the appropriation or allo-
20 cation. The purchase of the goods or services, or both, shall be in
21 accordance with AS 36.30.100(b) [AS 37.05.230(1)(B)].

22 * Sec. 41. AS 41.21.020(a) is amended to read:

23 (a) The Department of Natural Resources shall

24 (1) develop a continuing plan for the conservation and
25 maximum use in the public interest of the scenic, historic, archaeo-
26 logic, scientific, biological, and recreational resources of the
27 state;

28 (2) plan for and develop a system of state parks and recre-
29 ational facilities, to be established as the legislature authorizes

1 and directs;

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

6 (4) control, develop and maintain state parks and recrea-
7 tional areas;

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

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

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

24 (8) encourage the organization of state public park and
25 recreational activities in the local political subdivisions of the
26 state;

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

29 (10) provide clearing-house services for other state

1 agencies concerned with park and recreation matters; and

2 (11) perform other duties as are prescribed by executive
3 order or by law;

4 (12) maintain memorials to Alaska veterans located in state
5 parks;

6 (13) adopt, in accordance with the Administrative Procedure
7 Act (AS 44.62), regulations governing the use of the Chena River State
8 Recreation Area and designating incompatible uses within the bound-
9 aries of the Chena River State Recreation Area in accordance with
10 AS 41.21.490.

11 * Sec. 42. AS 42.40.920(b) is amended to read:

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

14 (1) AS 19;

15 (2) AS 30.15;

16 (3) AS 35;

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

18 (State Procurement Code);

19 (5) AS 37.05;

20 (6) [(5)] AS 37.07;

21 (7) [(6)] AS 37.10.010 - 37.10.060;

22 (8) [(7)] AS 37.10.085;

23 (9) [(8)] AS 37.20;

24 (10) [(9)] AS 37.25;

25 (11) [(10)] AS 38;

26 (12) [(11)] AS 44.62.040 - 44.62.320.

27 * Sec. 43. AS 44.21.310(a) is amended to read:

28 (a) The telecommunications divisions, as directed by the deputy
29 commissioner, shall

1 (1) advise the governor on matters of policy and comprehen-
2 sive state planning for telecommunications services;

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

5 (3) coordinate, manage, and supervise state programs in
6 telecommunications, including the management of those telecommunica-
7 tion services for the state obtained from common carriers and from the
8 communications industry;

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

17 (5) prepare and maintain a state comprehensive telecommu-
18 nications development plan to further state telecommunications devel-
19 opment and to meet state telecommunications needs and prepare and
20 maintain a comprehensive inventory of all state communications facil-
21 ities;

22 (6) whenever feasible, procure services from private enter-
23 prise or certified and franchised utilities and contract for the
24 construction, management, operation and maintenance of telecommunica-
25 tions systems, and develop a procurement policy consistent with
26 AS 36.30 (State Procurement Code) [UNDER AS 37.05.010 - 37.05.410];
27 the procurement policy must seek to achieve the maximum benefit to the
28 public, and methods of procurement, including lease, purchase, rental,
29 or combinations of lease, purchase, and rental, must be selected on

1 the basis of factors such as the ratio of long-range costs versus
2 benefits, life cycle costing, and the costs to the communications
3 industry to the extent that these costs may affect local and long
4 distance basic telephone rates; procurement, contracting, construc-
5 tion, and maintenance under this paragraph is governed by AS 36.30;

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

9 (8) apply for and accept federal and private money, proper-
10 ty, or assistance, that may be appropriated, granted, or otherwise
11 made available to the telecommunications divisions and use and dis-
12 burse money and property for purposes consistent with AS 44.21.300 -
13 44.21.330 and AS 44.21.256 - 44.21.290, subject to reasonable limita-
14 tions imposed by the grantor;

15 (9) participate with other governmental units in planning,
16 and assist local governments and governmental conferences and councils
17 in the state in planning and coordinating their activities relating to
18 telecommunications;

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

21 (11) serve as a clearinghouse for information, data, and
22 other materials which may be necessary or helpful to federal, state,
23 or local governmental agencies in the development of telecommunication
24 systems;

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

28 (13) provide that all activities of the telecommunications
29 divisions are responsive to state statutes and regulations, and to the

1 regulations and rulings of the Federal Communications Commission.

2 * Sec. 44. AS 44.19.144(b) is amended to read:

3 (b) The director may

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

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

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

16 * Sec. 45. AS 44.33.300 is amended to read:

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

21 (1) the requirement of a contractor's bond as prescribed in
22 AS 36.25.010 may be waived if the contract amount does not exceed
23 \$100,000;

24 (2) the public bid requirements as contained in AS 19.10.-
25 170, AS [19.10.190,] 19.30.191(b), AS 35.15.010 - 35.15.020, an
26 AS 36.30 (State Procurement Code) [AND AS 35.15.010 - 35.15.030] may
27 be waived if the contract is to be performed by a contractor whose
28 principal office is in the designated area and the contract amount
29 does not exceed \$50,000;

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

6 * Sec. 46. AS 44.47.250 is amended by adding a new subsection to read:

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

9 * Sec. 47. AS 44.47.490(a) is amended to read:

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

13 (1) real property appraisers who are familiar with rural
14 construction; and

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

17 * Sec. 48. AS 44.47.730(a) is amended to read:

18 (a) The commissioner shall contract for a study of the feasibil-
19 ity of establishing a borough in the unorganized borough by following
20 the procedures under AS 36.30 (State Procurement Code) [SET OUT IN
21 AS 36.98]. The commissioner shall include terms in the contract that
22 provide for

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

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

26 * Sec. 49. AS 44.62.175(a) is amended to read:

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

1 (1) notices of proposed actions given under AS 44.62.-
2 190(a);

3 (2) notices of state agency meetings required under AS 44.-
4 62.310(e), even if the meeting has been held;

5 (3) notices of solicitations to bid issued under AS 36.30.-
6 130 [AS 37.05.230];

7 (4) notices of state agency requests for proposals issued
8 under AS 18.55.255, 18.55.320; [AS 19.10.190; AS 19.40.020; AS 35.15.-
9 030; AS 36.98.030; AS 37.05.230,] AS 37.05.315(d); AS 38.05.120; and
10 AS 43.40.010;

11 (5) executive orders and administrative orders issued by
12 the governor;

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

15 (7) the text or a summary of the text of a regulation or
16 order of repeal or a regulation for which notice is given under AS
17 44.62.190(a), including an emergency regulation or repeal whether or
18 not it has taken effect;

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

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

23 * Sec. 50. AS 44.71.010 is amended to read:

24 Sec. 44.71.010. DISPOSITION OF OBSOLETE OR SURPLUS STATE PROP-
25 ERTY. The Department of Administration shall take possession of
26 obsolete or surplus property of the state for which there is no imme-
27 diate or prospective use, except abandoned or obsolete school build-
28 ings and other school property. It shall also take possession of
29 property remaining in the control of a commission or board of the

1 state government after the commission or board stops functioning. The
2 Department of Administration shall sell, lease, license, or dispose of
3 the property on the terms it considers for the best interests of the
4 state in conformance with regulations adopted under AS 36.30 (State
5 Procurement Code).

6 * Sec. 51. AS 44.77.010(a) is amended to read:

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

13 * Sec. 52. AS 44.77.010 is amended by adding a new subsection to read:

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

16 * Sec. 53. AS 44.85.120 is amended to read:

17 Sec. 44.85.120. CARE AND CUSTODY OF BONDS. The bond bank
18 authority, in accordance with AS 36.30 (State Procurement Code), may
19 enter into agreements or contracts with a bank, trust company, banking
20 or financial institution inside or outside the state as may be neces-
21 sary desirable or convenient, in the opinion of the bond bank author-
22 ity, for rendering services in connection with the care, custody or
23 safekeeping of municipal bonds or other investments held or owned by
24 the bond bank authority, for rendering services in connection with the
25 payment or collection of amounts payable as to principal or interest,
26 and for rendering services in connection with the delivery to the bond
27 bank authority of municipal bonds or other investments purchased by it
28 or sold by it, and to pay the cost of those services. The bond bank
29 authority may also, in connection with any of the services to be

1 rendered by a bank, trust company or banking or financial institution
2 as to the custody and safekeeping of its municipal bonds or invest-
3 ments, require security in the form of collateral bonds, surety agree-
4 ments or security agreements in such form and amount as, in the opin-
5 ion of the bond bank authority, is necessary or desirable.

6 * Sec. 54. AS 44.99.001 is amended to read:

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

21 * Sec. 55. AS 46.04.090(a) is amended to read:

22 (a) The department, when feasible, shall enter into contracts
23 with persons or private organizations to provide the personnel, equip-
24 ment, or other services or supplies which may be required to carry out
25 this chapter. Contracts under this section are governed by AS 36.30
26 (State Procurement Code). When private contracting is not feasible,
27 the department may establish and maintain at ports, harbors, or other
28 locations in the state, the cleanup personnel, equipment, and supplies
29 which, in its judgment, are necessary to carry out this chapter.

1 * Sec. 56. AS 46.07.040(a) is amended to read:

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

9 * Sec. 57. AS 46.15.020(a) is amended to read:

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

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

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

22 (3) establish a division of water in the Department of
23 Natural Resources and assign to that division the responsibility for
24 carrying out the provisions of this chapter.

25 * Sec. 58. AS 47.05.015(c) is amended to read:

26 (c) A contract authorized under this section is exempt from the
27 competitive bid requirements of AS 36.30 (State Procurement Code)
28 [AS 37.05.230]. In awarding a contract under this section the depart-
29 ment shall [PUBLISH A] request [FOR] proposals in accordance with

1 regulations of the Department of Administration under AS 36.30 (State
2 Procurement Code) [DEPARTMENT].

3 * Sec. 59. AS 47.30.350(a) is amended to read:

4 (a) The department shall

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

9 (2) develop and submit to the Surgeon General plans and
10 specifications for the constructing and equipping of the hospitals and
11 other facilities;

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

16 (4) cooperate, coordinate, and contract, wherever indicated
17 and desirable, with other state boards, departments and agencies, and
18 agencies of the United States in the construction program, and hire
19 necessary personnel and enter into contracts with private individuals
20 and companies, to the end that the hospitals and other facilities are
21 constructed in the most economical and expeditious manner; contracting
22 and construction under this section are governed by AS 36.30 (State
23 Procurement Code).

24 * Sec. 60. AS 47.30.660 is amended to read:

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

27 (1) administer a comprehensive program for the prevention
28 of mental illness and the care and treatment of the mentally ill,
29 including inpatient and outpatient care and treatment and the

1 procurement of services of specialists or other persons on a contrac-
2 tual or other basis;

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

7 (3) administer AS 47.30.660 - 47.30.915;

8 (4) designate, operate, and maintain treatment facilities
9 equipped and qualified to provide inpatient and outpatient care and
10 treatment for the mentally ill;

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

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

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

19 (8) enter into contracts which incorporate safeguards
20 consistent with AS 47.30.660 - 47.30.915 and the preservation of the
21 civil rights of the patients with another state for the custody and
22 care or treatment of patients previously committed from this state
23 under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd
24 Session, 70 Stat. 709;

25 (9) prescribe the form of applications, records, reports,
26 requests for release, and consents to medical or psychological treat-
27 men required by AS 47.30.660 - 47.30.915;

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

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

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

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

9 (14) adopt regulations to implement the provisions of
10 AS 47.30.660 - 47.30.915.

11 * Sec. 61. AS 47.35.010(a) is amended to read:

12 (a) The department may

13 (1) license and supervise boarding homes, foster homes,
14 group homes, nurseries, institutions caring for children and foster
15 homes, group homes and institutions caring for dependent adults;

16 (2) investigate and supervise licensees;

17 (3) enforce the standards established by it;

18 (4) contract with private or municipal agencies to investi-
19 gate and make recommendations to the department for the licensing and
20 supervision of boarding homes, foster homes, group homes, nurseries,
21 institutions caring for children and foster homes, group homes and
22 institutions caring for dependent adults under procedures and stan-
23 dards of operation established by the department; contracts with
24 private agencies under this paragraph are governed by AS 36.30 (State
25 Procurement Code).

26 * Sec. 62. AS 47.37.030 is amended to read:

27 Sec. 47.37.030. POWERS OF OFFICE. The office may

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

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

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

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

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

23 (6) keep records and engage in research and the gathering
24 of relevant statistics;

25 (7) do other acts necessary to implement the authority
26 expressly granted to it;

27 (8) acquire, hold, or dispose of real property or any
28 interest in it, and construct, lease, or otherwise provide treatment
29 facilities for alcoholics and intoxicated persons; however, the office

1 shall encourage local initiative, involvement and financial participa-
2 tion under grants-in-aid whenever possible in preference to the con-
3 struction or operation of facilities directly by the office; contract-
4 ing and construction under this paragraph are governed by AS 36.30
5 (State Procurement Code).

6 * Sec. 63. AS 47.37.130(g) is amended to read:

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

12 * Sec. 64. AS 47.40.041(b) is amended to read:

13 (b) Notices published by the department concerning the opening
14 of the application process for a grant award shall specify the geo-
15 graphical area in which services are needed, the type of services, the
16 number of beds anticipated to be needed, the maximum number of days of
17 care, and any other requirements established by the department.
18 Grants authorized under this section are exempt from the competitive
19 bid requirements of AS 36.30 [AS 37.05.230].

20 * Sec. 65. AS 47.90.010(a) is amended to read:

21 (a) The commissioner, in consultation with state and local
22 government agencies, community groups, and groups concerned with
23 displaced homemakers, may

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

28 (2) coordinate existing state programs for displaced home-
29 makers.

1 * Sec. 66. AS 47.40.041(b) is amended to read:

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

9 * Sec. 67. REPORT. By December 1, 1987, the commissioner of adminis-
10 tration and the commissioner of transportation and public facilities shall
11 report to the legislature concerning procurements by state agencies during
12 the first six months of 1987. The report must include

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

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

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

18 * Sec. 68. REGULATIONS DEADLINE. The regulations required under
19 AS 36.30 as added by sec. 2 of this Act, shall be adopted by January 1,
20 1987 and shall be effective on that date. Regulations adopted under laws
21 repealed in sec. 69 of this Act become ineffective January 1, 1987.

22 * Sec. 69. REPEALER. The following laws are repealed: AS 14.40.340;
23 AS 19.10.190, 19.10.210; AS 24.23; AS 35.15.030, 35.15.050; AS 36.98;
24 AS 37.05.220, 37.05.230, 37.05.231, 37.05.240, 37.05.250, 37.05.260, 37.-
25 05.270, 37.05.280, 37.05.290, 37.05.400(2) and (3); AS 44.65; AS 44.77.-
26 010(c); and AS 47.90.010(c).

27 * Sec. 70. Section 68 of this Act takes effect immediately in accor-
28 dance with AS 01.10.070(c).

29 * Sec. 71. Except as provided in sec. 70, this Act takes effect

1 January 1, 1987.
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Cook
3/5/86

Original sponsor: Rules Committee
By Request

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 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) make as consistent as possible the procurement practices
15 among the executive branch, the legislative branch, and the judicial branch
16 of state government;

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

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

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

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

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

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

(9) eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, handicap, or political affiliation.

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

CHAPTER 30. STATE PROCUREMENT CODE.

ARTICLE 1. ORGANIZATION OF STATE PROCUREMENT.

Sec. 36.30.005. CENTRALIZATION OF PROCUREMENT AUTHORITY. (a) Except as otherwise provided, all rights, powers, duties, and authority relating to the procurement of supplies, services, and professional services, and the control over supplies, services, and professional services vested in or exercised by an agency on January 1, 1987, are transferred to the commissioner of administration and to the chief procurement officer. Authority granted under this subsection shall be exercised in accordance with this chapter.

(b) Except as otherwise provided, all rights, powers, duties, and authority relating to the procurement of construction and procurements of equipment or services for the state equipment fleet and the control over construction and the state equipment fleet vested in or exercised by an agency on January 1, 1987, are transferred to the commissioner of transportation and public facilities, subject to regulations adopted by the commissioner of administration. Notwithstanding AS 44.71.010, authority relating to disposals from the state equipment fleet is vested in the the commissioner of transportation and public facilities, subject to regulations adopted by the commissioner of administration. Authority granted under this subsection shall be exercised in accordance with this chapter.

(c) Notwithstanding other provisions of law, all rights, powers, duties, and authority relating to the procurement of supplies, services, 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) "commissioner," "commissioner of administration," or
11 "commissioner of transportation and public facilities" means the Board
12 of Regents; and

13 (3) "chief procurement officer" or "attorney general" means
14 the president of the University of Alaska.

15 Sec. 36.30.010. CHIEF PROCUREMENT OFFICER. (a) The commis-
16 sioner shall appoint to the partially exempt service the chief pro-
17 curement officer of the state. The chief procurement officer must
18 have at least five years of prior experience in public procurement,
19 including large scale procurement of supplies, services, or profes-
20 sional services, and must be a person with demonstrated executive and
21 organizational ability. The chief procurement officer may be removed
22 by the commissioner only for cause. The term of office of the chief
23 procurement officer expires when the term of the governor expires.

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

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

28 (2) exercise general supervision and control over all
29 inventories of supplies belonging to an agency and prescribe the

1 manner in which supplies shall be purchased, delivered, stored, and
2 distributed;

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

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

8 (5) establish and maintain programs for the inspection,
9 testing, and acceptance of supplies and services and the testing of
10 samples submitted with bids;

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

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

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

25 (b) The commissioner of administration may delegate to an agency
26 the authority to contract for and manage services, professional servi-
27 ces, and supplies. Notwithstanding delegation of authority under this
28 subsection, an agency's exercise of the authority is governed by this
29 chapter and regulations adopted by the commissioner under this

1 chapter. Before delegating authority to an agency under this
2 subsection, the commissioner shall make a written determination that
3 the agency is capable of implementing the delegated authority.

4 (c) The commissioner of administration may not delegate the
5 authority to dispose of supplies or the authority to adopt regulations
6 under this chapter.

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

9 (e) The board of directors of the Alaska Railroad Corporation
10 shall adopt procedures to govern the procurement of supplies, ser-
11 vices, professional services, and construction by the corporation.
12 The procedures must be substantially equivalent to the procedures pre-
13 scribed in this chapter and in regulations adopted under this chapter.

14 Sec. 36.30.020. LEGISLATURE. The Legislative Council shall
15 adopt procedures to govern the procurement of supplies, services,
16 professional services, and construction by the legislature, legisla-
17 tors, and legislative agencies and committees. The procedures must be
18 substantially equivalent to the procedures prescribed in this chapter.

19 Sec. 36.30.030. COURT SYSTEM. The supreme court shall adopt
20 procedures to govern the procurement of supplies, services, profes-
21 sional services, and construction by the judicial branch. The proce-
22 dures must be substantially equivalent to the procedures prescribed in
23 this chapter.

24 Sec. 36.30.040. PROCUREMENT REGULATIONS. (a) The commissioner
25 shall adopt regulations governing the procurement, management, and
26 control of supplies, services, professional services and construction
27 by agencies. The commissioner may audit and monitor the implemen-
28 tation of the regulations and the requirements of this chapter with
29 respect to using agencies.

1 (b) The commissioner shall adopt regulations pertaining to the
2 following:

3 (1) suspension, debarment, and reinstatement of prospective
4 bidders and contractors;

5 (2) bid protests;

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

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

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

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

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

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

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

19 (10) definitions and classes of contractual services and
20 procedures for acquiring them;

21 (11) providing for conducting price analysis;

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

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

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

28 (15) a bidder's or offeror's duties under AS 36.30.115 and
29 36.30.210; and

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

5 Sec. 36.30.050. LISTS OF CONTRACTORS. (a) The commissioner
6 shall establish and maintain lists of persons who desire to provide
7 supplies, services, professional services, or construction services to
8 the state.

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

16 (c) The lists may be used by the chief procurement officer or an
17 agency when issuing invitations to bid or requests for proposals under
18 this chapter. The lists may be used by the Legislative Council, the
19 court system, and the Alaska Railroad Corporation.

20 (d) The lists shall be used in providing notice of intent to
21 make a small procurement. A procurement officer who intends to make a
22 procurement under AS 36.30.320 shall request names from the appropri-
23 ate list and the department shall furnish names on a rotating basis
24 from the list in response to each request. If possible, the names
25 furnished in response to each request shall include Alaska bidders as
26 defined in AS 36.30.170(b).

27 Sec. 36.30.060. SPECIFICATIONS. (a) The commissioner shall
28 adopt regulations governing the preparation, revision, and content of
29 specifications for supplies, services, professional services, and

1 construction required by an agency. The commissioner shall monitor
2 the use of these specifications.

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

6 (c) The commissioner may obtain expert advice and assistance
7 from personnel of using agencies in the development of specifications.
8 Specifications must promote overall economy for the purposes intended
9 and encourage competition in satisfying the state's needs, and may not
10 be unduly restrictive. The requirements of this subsection regarding
11 the purposes and nonrestrictiveness of specifications apply to all
12 specifications, including those prepared by architects, engineers,
13 designers, and other professionals.

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

18 Sec. 36.30.070. SUPPLY MANAGEMENT. The commissioner shall adopt
19 regulations governing the

20 (1) management of supplies during their entire life cycle;

21 (2) sale, lease, or disposal of surplus supplies by public
22 auction, competitive sealed bidding, or other appropriate method;

23 (3) purchase of surplus supplies by an employee of the
24 using or disposing agency; and

25 (4) transfer of excess supplies.

26 Sec. 36.30.080. LEASES. (a) The department shall lease space
27 for the use of the state or an agency wherever it is necessary and
28 feasible, subject to compliance with the requirements of this chapter.
29 A lease may not provide for a period of occupancy greater than 40

1 years. An agency requiring office, warehouse, or other space shall
2 lease the space through the department.

3 (b) The department may enter into lease-financing agreements,
4 including lease-purchase agreements and agreements related to the
5 issuance of certificates of participation. A lease-financing agree-
6 ment must provide that lease payments are subject to annual appropria-
7 tion.

8 (c) If the department intends to enter into a lease or lease-
9 financing agreement with an annual rent to the state anticipated to
10 exceed \$1,000,000, the department shall provide notice to the legisla-
11 ture. The notice must include the anticipated annual lease obligation
12 amount and the anticipated total construction, acquisition, or other
13 costs of the project. The department may not enter into an agreement
14 under this subsection unless the project has been approved by the
15 legislature by law. An appropriation for the project does not consti-
16 tute approval of the project for purposes of this subsection.

17 ARTICLE 2. COMPETITIVE SEALED BIDDING.

18 Sec. 36.30.100. GENERAL POLICY. (a) Except as otherwise pro-
19 vided in this chapter, or unless specifically exempted by law, an
20 agency contract shall be awarded by competitive sealed bidding.

21 (b) Competitive sealed bidding is not required

22 (1) when the commissioner determines in writing that food,
23 clothing, or medical supplies, or materials for use in laboratory or
24 medical studies may be purchased otherwise to the best advantage of
25 the state;

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

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

29 (4) for the purchase of products or services provided by

1 the correctional industries program established under AS 33.32;

2 (5) for professional services; or

3 (6) for concessions operated on state property.

4 (c) In this section "employment program" means a nonprofit
5 program to increase employment opportunities for individuals with
6 physical or mental disabilities that constitute substantial handicaps
7 to employment.

8 Sec. 36.30.110. INVITATION TO BID. (a) When competitive sealed
9 bidding is used, the procurement officer shall issue an invitation to
10 bid. It must include a time, place and date by which the bid must be
11 received, purchase description, and all contractual terms and condi-
12 tions applicable to the procurement.

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

17 Sec. 36.30.115. SUBCONTRACTORS. (a) Within 24 hours after the
18 opening of bids, each bidder shall submit a list of the subcontractors
19 the bidder proposes to use in the performance of the contract. The
20 list shall include the name and location of the place of business for
21 each subcontractor and evidence of the subcontractor's valid Alaska
22 business license. A bidder for a construction contract shall also
23 submit evidence of each subcontractor's registration under AS 08.18.

24 (b) A bidder may replace a listed subcontractor only if the
25 subcontractor

26 (1) fails to comply with AS 08.18;

27 (2) files for bankruptcy or becomes insolvent;

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

- 1 (4) fails to obtain bonding;
2 (5) fails to obtain insurance acceptable to the state;
3 (6) fails to perform the contract with the bidder involving
4 work for which the subcontractor was listed; or
5 (7) is determined by the commissioner not to be a
6 responsible bidder.

7 (c) If a bidder fails to list a subcontractor or lists more than
8 one subcontractor for the same portion of work and the value of that
9 work is in excess of half of one percent of the total bid, the bidder
10 shall be considered to have agreed to perform that portion of work
11 without the use of a subcontractor and to have represented the bidder
12 to be qualified to perform that work.

13 (d) A bidder who attempts to circumvent the requirements of this
14 section by listing as a subcontractor another contractor who, in turn,
15 sublets the majority of the work required under the contract violates
16 this section.

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

- 19 (1) cancel the contract; or
20 (2) after notice and a hearing, assess a penalty on the
21 bidder in an amount that does not exceed 10 percent of the value of
22 the subcontract at issue.

23 Sec. 36.30.120. BID SECURITY. (a) Bid security shall be re-
24 quired for all competitive sealed bidding for construction contracts
25 when the price is estimated by the procurement officer to exceed an
26 amount established by regulation of the commissioner. Bid security on
27 construction contracts under the amount set by the commissioner may be
28 required when the circumstances warrant. Bid security may be required
29 for competitive sealed bidding for contracts for supplies, services,

1 or professional services in accordance with regulations of the commis-
2 sioner when needed for the protection of the state.

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

7 (1) 10 percent of the amount of the bid if the bid does not
8 exceed \$100,000; or

9 (2) 10 percent of the first \$100,000 and five percent of
10 the amount of the bid over \$100,000 if the bid exceeds \$100,000 up to
11 a maximum of \$200,000 in security.

12 (c) When the invitation to bid requires security, the procure-
13 ment officer shall reject a bid that does not comply with the bid
14 security requirement unless, in accordance with regulations, the
15 officer determines that the bid fails to comply in a nonsubstantial
16 manner with the security requirements.

17 Sec. 36.30.130. PUBLIC NOTICE OF INVITATION TO BID. (a) The
18 procurement officer shall give adequate public notice of the invita-
19 tion to bid at least 21 days before the date for the opening of bids.
20 If a determination is made in writing that a shorter notice period is
21 necessary for a particular bid, the 21-day period may be shortened.
22 The determination shall be made by the chief procurement officer for
23 bids for supplies, services, or professional services. The determina-
24 tion shall be made by the commissioner of transportation and public
25 facilities for bids for construction or acquisition of property for
26 the state equipment fleet. Notice shall be published in the Alaska
27 Administrative Journal. The time and manner of notice must be in
28 accordance with regulations adopted by the commissioner of adminis-
29 tration. When practicable, notice may include

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

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

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

7 (b) Failure to comply with the notice requirements of this
8 section does not invalidate a bid or the award of a contract. The
9 state is not liable for damages caused by failure to comply with this
10 section.

11 Sec. 36.30.140. BID OPENING. (a) The procurement officer shall
12 open bids publicly in the presence of one or more witnesses at the
13 time and place designated in the invitation to bid. The amount of
14 each bid and other relevant information that is specified by regula-
15 tion of the commissioner, together with the name of each bidder, shall
16 be recorded.

17 (b) The information recorded under (a) of this section is open
18 to public inspection as soon as practicable before the notice of
19 intent to award a contract is given under AS 36.30.365. The bids are
20 not open for public inspection until after the notice of intent to
21 award a contract is given. To the extent the bidder designates and
22 the procurement officer concurs, trade secrets and other proprietary
23 data contained in a bid document are confidential.

24 Sec. 36.30.150. BID ACCEPTANCE AND BID EVALUATION. Bids shall
25 be unconditionally accepted without alteration or correction, except
26 as authorized in AS 36.30.160. The procurement officer shall evaluate
27 bids based on the requirements set out in the invitation to bid, which
28 may include criteria to determine acceptability such as inspection,
29 testing, quality, delivery, and suitability for a particular purpose.

1 The criteria that will affect the bid price and be considered in
2 evaluation for award must be objectively measurable, such as dis-
3 counts, transportation costs, and total or life cycle costs. The
4 invitation to bid must set out the evaluation criteria to be used.
5 Criteria may not be used in bid evaluation if they are not set out in
6 the invitation to bid.

7 Sec. 36.30.160. LATE BIDS; CORRECTION OR WITHDRAWAL OF BIDS;
8 CANCELLATION OF AWARDS. (a) Bids received after the bid due date and
9 time indicated on the invitation to bid may not be accepted unless the
10 delay was due to an error of the contracting agency.

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

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

28 (b) The procurement officer shall award a contract based on
29 solicited bids to the lowest responsible and responsive Alaska bidder

1 if the bid is not more than five percent higher than the lowest non-
2 resident bidder's. In this subsection, "Alaska bidder" means a person
3 who

4 (1) holds a current Alaska business license;

5 (2) submits a bid for goods, services, or construction
6 under the name as appearing on the person's current Alaska business
7 license;

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

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

14 (5) derives at least 50 percent of its income from sources
15 in the state exclusive of investment income; and

16 (6) if a joint venture, is composed entirely of ventures
17 that qualify under (1) - (5) of this subsection.

18 (c) If a bidder qualifies under (b) of this section as an Alaska
19 bidder, is offering services through an employment program as defined
20 under AS 36.30.100(c), and is the lowest responsible and responsive
21 bidder with a bid that is not more than 10 percent higher than the
22 lowest bid of a nonresident, the procurement officer shall award the
23 contract to that bidder.

24 Sec. 36.30.190. MULTI-STEP SEALED BIDDING. When it is con-
25 sidered impractical to initially prepare a definitive purchase de-
26 scription to support an award based on price, the procurement officer
27 may issue an invitation to bid requesting the submission of unpriced
28 technical offers to be followed by an invitation to bid limited to the
29 bidders whose offers are determined to be technically qualified under

1 the criteria set out in the first solicitation.

2 ARTICLE 3. COMPETITIVE SEALED PROPOSALS.

3 Sec. 36.30.200. CONDITIONS FOR USE. (a) Except as otherwise
4 provided in this chapter, or unless specifically exempted by law, an
5 agency contract shall be awarded by competitive sealed proposals if it
6 is not awarded by competitive sealed bidding.

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

21 Sec. 36.30.210. REQUEST FOR PROPOSALS. (a) A request for
22 competitive sealed proposals must contain the date, time and place for
23 delivering proposals, a specific description of the supplies,
24 construction, services, or professional services to be provided under
25 the contract, and the terms under which the supplies, construction,
26 services, or professional services are to be provided. The request
27 shall require the offeror to submit evidence of the offeror's valid
28 Alaska business license and, within 24 hours after the date by which
29 proposals must be received, to list subcontractors the offeror

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

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

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

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

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

27 (b) In this section, "standard overhead rate" means a charge
28 established for services and professional services from an agency that
29 is designed to compensate the agency for administration and support

1 services incidentally provided with the services contracted for.

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

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

26 Sec. 36.30.250. AWARD OF CONTRACT. (a) The procurement officer
27 shall award a contract under competitive sealed proposals to the
28 responsible and responsive offeror whose proposal is determined in
29 writing to be the most advantageous to the state taking into

1 consideration price and the evaluation factors set out in the request
2 for proposals. Other factors and criteria may not be used in the
3 evaluation. The contract file must contain the basis on which the
4 award is made.

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

10 Sec. 36.30.260. CONTRACT EXECUTION. A contract awarded under
11 competitive sealed proposals must contain

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

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

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

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

22 ARTICLE 4. OTHER PROCUREMENT METHODS.

23 Sec. 36.30.300. SOLE SOURCE PROCUREMENTS. (a) A contract may
24 be awarded for supplies, services, professional services, or construc-
25 tion without competitive sealed bidding, competitive sealed proposals,
26 or other competition in accordance with regulations adopted by the
27 commissioner of administration. A contract may be awarded under this
28 section only when the chief procurement officer or, for construction
29 contracts or procurements for the state equipment fleet, the

1 commissioner of transportation and public facilities determines in
2 writing that there is only one source for the required procurement or
3 construction. A sole source procurement may not be awarded if a rea-
4 sonable alternative source exists. The written determination must
5 include findings of fact that support by clear and convincing evidence
6 the determination that only one source exists. The authority to make
7 the determination required by this subsection may not be delegated.

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

13 (c) The procurement officer shall negotiate with the single
14 supplier, to the extent practicable, to obtain a contract advantageous
15 to the state.

16 Sec. 36.30.310. EMERGENCY PROCUREMENTS. Procurements may be
17 made under emergency conditions as defined in regulations adopted by
18 the commissioner when there exists a threat to public health, welfare,
19 or safety, when a situation exists that makes a procurement through
20 competitive sealed bidding or competitive sealed proposals impracti-
21 cable or contrary to the public interest, or to protect public or
22 private property. An emergency procurement need not be made through
23 competitive sealed bidding or competitive sealed proposals but shall
24 be made with competition that is practicable under the circumstances.
25 A written determination by the procurement officer of the basis for
26 the emergency and for the selection of the particular contractor shall
27 be included in the contract file. The written determination must
28 include findings of fact that support the determination.

29 Sec. 36.30.320. SMALL PROCUREMENTS. (a) A procurement for

1 supplies, services, or construction that does not exceed an aggregate
2 dollar amount of \$5,000 may be made in accordance with regulations
3 adopted by the commissioner for small procurements.

4 (b) A contract for professional services that does not exceed
5 \$25,000 may be made under regulations adopted by the commissioner for
6 small procurements, except that an agency may not contract for the
7 services of legal counsel without the approval of the attorney
8 general.

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

12 (d) Procurement requirements may not be artificially divided or
13 fragmented so as to constitute a purchase under this section or to
14 circumvent the source selection procedures required by AS 36.30.100 -
15 36.30.260.

16 (e) The procurement officer shall give adequate public notice of
17 intent to make a procurement under this section in accordance with
18 regulations adopted by the commissioner. Notices shall be mailed to
19 those active prospective contractors on the appropriate list main-
20 tained under AS 36.30.050 designated by the commissioner.

21 ARTICLE 5. CONTRACT FORMATION AND MODIFICATION.

22 Sec. 36.30.340. REVIEW AND APPROVAL BY DEPARTMENT OF LAW. If a
23 contract contains a term that is in conflict with a state standard
24 form contract term or if a standard term is deleted or modified by a
25 term that is not standard, the contract must be reviewed by the De-
26 partment of Law and approved as to form.

27 Sec. 36.30.350. BID CANCELLATION, REJECTION. An invitation to
28 bid, a request for proposals, or other solicitation may be cancelled
29 or any or all bids or proposals may be rejected in whole or in part or

1 the date for opening bids or proposals may be delayed when it is in
2 the best interests of the state in accordance with regulations adopted
3 by the commissioner. The reasons for cancellation, rejection, or
4 delay in opening bids or proposals shall be made part of the contract
5 file.

6 Sec. 36.30.360. DETERMINATION OF RESPONSIBILITY. (a) A written
7 determination of responsibility of a bidder or offeror shall be made
8 by the procurement officer in accordance with regulations adopted by
9 the commissioner. The unreasonable failure of a bidder or offeror to
10 promptly supply information in connection with an inquiry with respect
11 to responsibility is grounds for a determination of nonresponsibility
12 with respect to the bidder or offeror.

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

16 Sec. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT. At least
17 10 days before the formal award of a contract under this chapter the
18 procurement officer shall provide to each bidder or offeror notice of
19 intent to award a contract. The notice shall conform to regulations
20 adopted by the commissioner.

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

1 Sec. 36.30.380. APPROVAL OF ACCOUNTING SYSTEM. Except for a
2 contract awarded through competitive sealed bidding or a firm fixed-
3 price contract, a contract type may not be used unless it has been
4 determined in writing by the procurement officer that the proposed
5 contractor's accounting system

6 (1) will permit timely development of all necessary cost
7 data in the form required by the specific contract type contemplated;
8 and

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

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

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

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

24 (2) the contract will serve the best interests of the state
25 by encouraging effective competition or otherwise promoting economies
26 in state procurement.

27 (c) When funds are not appropriated or otherwise made available
28 to support continuation of performance in a subsequent fiscal period,
29 the contract shall be cancelled. The contractor may only be

1 reimbursed for the reasonable value of any nonrecurring costs incurred
2 but not amortized in the price of the supplies, services, or
3 professional services delivered under the contract that are not
4 otherwise recoverable. The cost of cancellation may be paid from any
5 appropriations available for these purposes.

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

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

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

1 agreed upon by the parties.

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

3 (1) the contract price is based on adequate price competi-
4 tion;

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

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

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

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

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

1 the commissioner.

2 Sec. 36.30.430. STANDARD MODIFICATION CLAUSES FOR CONTRACTS.

3 (a) The commissioner shall adopt regulations permitting the inclusion
4 of clauses providing for adjustments in prices, time of performance,
5 or other contract provisions as appropriate.

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

- 9 (1) liquidated damages;
10 (2) specified excuses for delay or nonperformance;
11 (3) termination of the contract for default; and
12 (4) termination of the contract in whole or in part for the
13 convenience of the state.

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

- 18 (1) variations are supported by a written determination
19 that states the circumstances justifying the variation; and
20 (2) approval required by AS 36.30.340 is obtained.

21 Sec. 36.30.470. FISCAL RESPONSIBILITY. A contract modification,
22 change order, or contract price adjustment under a construction con-
23 tract in excess of an amount established by regulation of the commis-
24 sioner is subject to prior written certification by the fiscal officer
25 of the agency responsible for funding the project or the contract, or
26 other official responsible for monitoring and reporting upon the
27 status of the costs of the total project budget or contract budget, as
28 to the effect of the contract modification, change order, or adjust-
29 ment in contract price on the total project budget or the total

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

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

21 ARTICLE 6. PROCUREMENT RECORDS AND REPORTS.

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

27 Sec. 36.30.510. RECORDS OF CONTRACTS AWARDED UNDER COMPETITIVE
28 SEALED PROPOSALS. A contract file open for public inspection shall be
29 kept by the commissioner and the contracting agency for each contract

1 awarded under competitive sealed proposals. The file kept by the
2 commissioner shall contain a summary of the information in the file of
3 the contracting agency. The file kept by the contracting agency must
4 contain

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

10 Sec. 36.30.520. RECORDS OF SOLE SOURCE AND EMERGENCY PROCURE-
11 MENTS. (a) The commissioner shall maintain for a minimum of five
12 years a record listing all sole source procurement contracts made
13 under AS 36.30.300 and emergency procurements made under AS 36.30.310.
14 The record must contain

- 15 (1) each contractor's name;
- 16 (2) the amount and type of each contract; and
- 17 (3) a listing of the supplies, services, professional
18 services, or construction procured under each contract.

19 (b) The Department of Transportation and Public Facilities and
20 any agency to whom the commissioner of administration or the commis-
21 sioner of transportation and public facilities has delegated procure-
22 ment authority under AS 36.30.015 shall, by October 1 of each year,
23 submit to the commissioner of administration records of the type
24 specified in (a) of this section. The commissioner of administration
25 shall maintain these records as required by (a) of this section.

26 Sec. 36.30.530. PUBLIC ACCESS TO PROCUREMENT INFORMATION.
27 Procurement information is public except as otherwise provided by law.

28 Sec. 36.30.540. REPORT TO LEGISLATURE. Beginning with Decem-
29 ber 1, 1989, the commissioner shall biennially report to the

1 legislature concerning procurements by agencies. The report must
2 include

3 (1) the records maintained by the commissioner under
4 AS 36.30.510 and the records maintained under AS 36.30.520(a) for the
5 previous two fiscal years;

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

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

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

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

22 ARTICLE 7. LEGAL AND CONTRACTUAL REMEDIES.

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

29 (1) the name, address, and telephone number of the

1 protester;

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

4 (3) identification of the contracting agency and the solic-
5 itation or contract at issue;

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

8 (5) the form of relief requested.

9 Sec. 36.30.565. TIME FOR FILING A PROTEST. (a) A protest based
10 upon alleged improprieties in a solicitation involving competitive
11 sealed bidding that are apparent before the bid opening shall be filed
12 before the bid opening. A protest based on alleged improprieties in a
13 solicitation involving competitive sealed proposals that are apparent

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

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

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

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

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

29 Sec. 36.30.575. STAY OF AWARD. If a protest is filed the award

1 may be made unless the procurement officer of the contracting agency
2 determines in writing that a

3 (1) reasonable probability exists that the protest will be
4 sustained; or

5 (2) stay of the award is not contrary to the best interests
6 of the state.

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

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

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

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

25 (b) In determining an appropriate remedy, the procurement offi-
26 cer shall consider the circumstances surrounding the solicitation or
27 procurement including the seriousness of the procurement deficiencies,
28 the degree of prejudice to other interested parties or to the integri-
29 ty of the procurement system, the good faith of the parties, the

1 extent the procurement has been accomplished, costs to the agency and
2 other impacts on the agency of a proposed remedy, and the urgency of
3 the procurement to the welfare of the state.

4 Sec. 36.30.590. APPEAL ON A PROTEST. (a) An appeal from a
5 decision of a procurement officer on a protest may be filed by the
6 protester with the commissioner of administration, or for protests
7 involving construction or procurements for the state equipment fleet,
8 the commissioner of transportation and public facilities. An appeal
9 shall be filed within five days after the decision is received by the
10 protester. The protester shall file a copy of the appeal with the
11 procurement officer.

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

- 14 (1) a copy of the decision being appealed; and
15 (2) identification of the factual or legal errors in the
16 decision that form the basis for the appeal.

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

21 (b) The commissioner of administration or the commissioner of
22 transportation and public facilities, as appropriate, shall, on re-
23 quest, furnish a copy of the appeal to a person notified under (a) of
24 this section, except that confidential material shall be deleted from
25 the copy.

26 Sec. 36.30.600. STAY OF AWARD DURING PROTEST APPEAL. If a
27 protest appeal is filed before a contract is awarded and the award was
28 stayed under AS 36.30.575, the filing of the appeal automatically
29 continues the stay until the commissioner of administration or the

1 commissioner of transportation and public facilities, as appropriate,
2 makes a written determination that the award of the contract without
3 further delay is necessary to protect substantial interests of the
4 state.

5 Sec. 36.30.605. PROTEST REPORT. (a) The procurement officer of
6 the contracting agency shall file a complete report on the protest and
7 decision with the commissioner of administration or the commissioner
8 of transportation and public facilities, as appropriate, within seven
9 days after a protest appeal is filed. The procurement officer shall
10 furnish a copy of the report to the protester and to interested par-
11 ties that have requested a copy of the appeal under AS 36.30.595(b).

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

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

28 (d) The protester may request an extension of time to prepare
29 the comments on the protest report. The request must be in writing

1 listing the reasons for the request. The commissioner of administra-
2 tion or the commissioner of transportation and public facilities, as
3 appropriate, shall respond to the request in writing. If an extension
4 is granted, the commissioner shall list the reasons for granting the
5 extension and indicate the date the comments are due. The commission-
6 er shall notify the procurement officer in writing that the time for
7 submission of the comments has been extended and the date the comments
8 are due.

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

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

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

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

28 (b) If a controversy asserted by a contractor concerning a
29 contract awarded under this chapter cannot be resolved by agreement,

1 the procurement officer shall, after receiving a written request by
2 the contractor for a decision, issue a written decision. The decision
3 shall be made no more than 90 days after receipt by the procurement
4 officer of all necessary information from the contractor. Failure of
5 the contractor to furnish necessary information to the procurement
6 officer constitutes a waiver of the claim. Before issuing the deci-
7 sion the procurement officer shall review the facts relating to the
8 controversy and obtain necessary assistance from legal, fiscal, and
9 other advisors.

10 (c) The time for issuing a decision under (b) of this section
11 may be extended for good cause by the commissioner of administration,
12 or for a controversy involving a construction contract or procurement
13 for the state equipment fleet, the commissioner of transportation and
14 public facilities, if the controversy concerns an amount in excess of
15 \$50,000. The procurement officer shall notify the contractor in
16 writing that the time for the issuance of a decision has been extended
17 and of the date by which a decision shall be issued.

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

- 21 (1) description of the controversy;
22 (2) reference to the pertinent contract provisions;
23 (3) statement of the agreed upon and disputed facts;
24 (4) statement of reasons supporting the decision; and
25 (5) statement substantially as follows:

26 "This is the final decision of the procurement officer.

27 This decision may be appealed to the commissioner of

28 _____ (administration/transportation

29 and public facilities). If you appeal, you must file

1 a written notice of appeal with the commissioner within
2 14 days after you receive this decision."

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

6 (f) If a controversy asserted by the state concerning a contract
7 awarded under this chapter cannot be resolved by agreement the matter
8 shall be immediately referred to the commissioner of administration or
9 the commissioner of transportation and public facilities, as appro-
10 priate.

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

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

23 Sec. 36.30.630. HEARING ON A CONTRACT CONTROVERSY. (a) Except
24 as provided in (b) of this section, a hearing shall be conducted
25 according to AS 36.30.670 and regulations adopted by the commissioner
26 of administration on a contract controversy appealed to the commis-
27 sioner of administration or the commissioner of transportation and
28 public facilities or referred to either commissioner under AS 36.30.-
29 620(f).

1 (b) Within 15 days after receipt of an appeal on a contract
2 controversy the commissioner of administration or the commissioner of
3 transportation and public facilities, as appropriate, may adopt the
4 decision of the procurement officer as the final decision without a
5 hearing.

6 Sec. 36.30.632. DELEGATION. The commissioner of administration
7 and the commissioner of transportation and public facilities may
8 delegate responsibilities under AS 36.30.590 and 36.30.630 to the head
9 of the contracting agency.

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

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

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

29 Sec. 36.30.640. CAUSES FOR DEBARMENT OR SUSPENSION. The causes

1 for debarment or suspension include the following:

2 (1) conviction for commission of a criminal offense as an
3 incident to obtaining or attempting to obtain a public or private
4 contract or subcontract, or in the performance of the contract or
5 subcontract;

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

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

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

16 (A) knowing failure without good cause to perform in
17 accordance with the specifications or within the time limit
18 provided in the contract; or

19 (B) failure to perform or unsatisfactory performance
20 in accordance with the terms of one or more contracts, except
21 that failure to perform or unsatisfactory performance caused by
22 acts beyond the control of the contractor may not be considered
23 to be a basis for debarment;

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

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

28 (7) any other cause listed in regulations of the commis-
29 sioner determined to be so serious and compelling as to affect

responsibility as a state contractor, including debarment by another governmental entity for a cause listed in the regulations.

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

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

(2) inform the debarred person of rights to judicial appeal or inform the suspended person of rights to administrative and judicial appeal.

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

Sec. 36.30.650. HEARING ON A SUSPENSION. (a) A person suspended under AS 36.30.635 is entitled to a hearing conducted according to AS 36.30.670 and regulations adopted by the commissioner of administration if the person files a written request for a hearing with the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, within seven days after receipt of the notice of suspension under AS 36.30.645.

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

Sec. 36.30.655. LIST OF PERSONS DEBARRED OR SUSPENDED. The commissioner shall maintain a list of all persons debarred or

1 suspended from consideration for award of contracts.

2 Sec. 36.30.660. REINSTATEMENT. (a) The commissioner of admin-
3 istration or the commissioner of transportation and public facilities
4 may at any time after a final decision to debar a person from consid-
5 eration for award of contracts reinstate the person after determining
6 that the cause for which the person was debarred no longer exists or
7 has been substantially mitigated.

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

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

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

26 Sec. 36.30.670. HEARING PROCEDURES. (a) The commissioner of
27 administration or the commissioner of transportation and public facil-
28 ities shall act as a hearing officer or appoint a hearing officer for
29 a hearing conducted under this chapter. The hearing officer shall

1 arrange for a prompt hearing and notify the parties in writing of the
2 time and place of the hearing. The hearing shall be conducted in an
3 informal manner. The provisions of AS 44.62 (Administrative Procedure
4 Act) do not apply to a hearing conducted under this chapter.

5 (b) The hearing officer may

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

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

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

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

14 (5) regulate the course of the hearing and conduct of the
15 participants;

16 (6) establish time limits for submission of motions or
17 memoranda;

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

20 (A) prohibiting the person from asserting or opposing
21 designated claims or defenses or introducing designated matters
22 into evidence;

23 (B) excluding all testimony of an unresponsive or
24 evasive witness; and

25 (C) excluding a person from further participation in
26 the hearing;

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

1 (9) administer oaths or affirmations.

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

4 Sec. 36.30.675. RECOMMENDATION BY THE HEARING OFFICER. (a) If
5 the commissioner of administration or the commissioner of transporta-
6 tion and public facilities is acting as hearing officer, the
7 hearing officer shall recommend a decision to the commissioner based
8 on the evidence presented. The recommendation shall include findings
9 of fact and conclusions of law.

10 (b) The commissioner of administration or the commissioner of
11 transportation and public facilities may affirm, modify, or reject the
12 hearing officer's recommendation in whole or in part, may remand the
13 matter to the hearing officer with instructions, or take other appro-
14 priate action.

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

24 Sec. 36.30.685. JUDICIAL APPEAL. (a) A final decision of the
25 commissioner of administration or the commissioner of transportation
26 and public facilities under AS 36.30.610, 36.30.635(a), 36.30.650, or
27 36.30.680 may be appealed to the superior court in accordance with the
28 Alaska Rules of Appellate Procedure.

29 (b) A final decision of the commissioner of administration or

1 the commissioner of transportation and public facilities under AS 36.-
2 30.630(b) may be appealed to the superior court for a trial de novo.

3 Sec. 36.30.687. MISREPRESENTATIONS AND FRAUDULENT CLAIMS. (a)
4 A person who makes or uses in support of a contract claim under this
5 chapter, a misrepresentation, or who practices or attempts to practice
6 a fraud, at any stage of proceedings relating to a procurement or
7 contract controversy under this chapter:

8 (1) forfeits all claims relating to that procurement or
9 contract; and

10 (2) is liable to the state for reimbursement of all sums
11 paid on the claim, for all costs attributable to review of the claim,
12 and for a civil penalty equal to the amount by which the claim is
13 misrepresented.

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

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

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

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

28 Sec. 36.30.690. EXCLUSIVE REMEDY. Notwithstanding AS 44.77 or
29 other law to the contrary, AS 36.30.560 - 36.30.699 and regulations

1 adopted under those sections provide the exclusive procedure for
2 asserting a claim against an agency arising in relation to a procure-
3 ment under this chapter.

4 Sec. 36.30.695. OTHER RULES OF PROCEDURE. The commissioner may
5 adopt by regulation additional rules of procedure providing for the
6 expeditious administrative review of all contract claims or contro-
7 versies, both before the contracting agency and through an appeal
8 heard de novo.

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

15 ARTICLE 8. INTERGOVERNMENTAL RELATIONS.

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

26 Sec. 36.30.710. SALE, ACQUISITION, OR USE OF SUPPLIES BY A
27 PUBLIC PROCUREMENT UNIT. (a) A public procurement unit may sell to,
28 acquire from, or use any supplies belonging to another public procure-
29 ment unit or external procurement activity independent of the

1 requirements of AS 36.30.060 and 36.30.100 - 36.30.260.

2 (b) A public procurement unit may enter into an agreement,
3 independent of the requirements of AS 36.30.060 and 36.30.100 - 36.-
4 30.260, with another public procurement unit or external procurement
5 activity for the cooperative use of supplies or services under the
6 terms agreed upon between the parties.

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

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

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

29 (c) Upon request, the commissioner may make available to public

1 procurement units or external procurement activities the following
2 services, among others:

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

18 (d) The commissioner may provide the following technical ser-
19 vices, among others:

- 20 (1) development of product specifications;
- 21 (2) development of quality assurance test methods, includ-
22 ing receiving, inspection, and acceptance procedures;
- 23 (3) use of product testing and inspection facilities; and
- 24 (4) use of personnel training programs.

25 (e) The commissioner may enter into contractual arrangements and
26 publish a schedule of fees for the services provided under (c) and (d)
27 of this section.

28 Sec. 36.30.735. RESTRICTION ON CONTRACTING WITH OR EMPLOYING
29 EXPERTS ON RADIATION HAZARDS. (a) Except for the Department of

1 Health and Social Services, the Department of Labor, the Department of
2 Environmental Conservation, and the Department of Military and Veter-
3 ans' Affairs, a state agency may not

4 (1) contract, other than with the Department of Health and
5 Social Services, to have services performed that require expertise in
6 determining or reducing the hazards of radiation; or

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

9 (b) In this section, "state agency" means a state department or
10 agency, whether in the legislative, judicial, or executive branch,
11 including such entities as the Alaska State Housing Authority, but not
12 including the University of Alaska, a municipality, or an agency of a
13 municipality.

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

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

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

1 (b) A local public procurement unit that is not subject to
2 AS 36.30.560 - 36.30.699 may enter into an agreement with another
3 local public procurement unit or external procurement activity to
4 establish procedures or use that unit's or activity's existing proce-
5 dures to resolve controversies with contractors, whether or not the
6 controversy arose under a cooperative purchasing agreement.

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

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

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

15 (3) "local public procurement unit" means a municipality or
16 other subdivision of the state or other entity that expends public
17 funds for the procurement of supplies, services, professional ser-
18 vices, and construction, and any nonprofit corporation operating a
19 charitable hospital;

20 (4) "public procurement unit" means either a local public
21 procurement unit or a state public procurement unit;

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

24 ARTICLE 9. GENERAL PROVISIONS.

25 Sec. 36.30.850. APPLICATION OF THIS CHAPTER. (a) This chapter
26 applies only to contracts solicited or entered into after January 1,
27 1987, unless the parties agree to its application to a contract solici-
28 ted or entered into before that date.

29 (b) This chapter applies to every expenditure of state funds

1 irrespective of their sources, including federal assistance except as
2 otherwise specified in AS 36.30.890, by the state, acting through an
3 agency, under a contract, except that this chapter does not apply to

4 (1) grants;

5 (2) contracts for professional witnesses to provide for
6 professional services or testimony relating to existing or probable
7 lawsuits in which the state is or may become a party;

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

10 (4) contracts for medical doctors and dentists;

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

13 (6) disposals under AS 38.05;

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

16 (8) acquisitions or disposals of property and other con-
17 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
18 091;

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

20 (10) disposals of obsolete material or equipment under
21 AS 35.20.060;

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

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

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

1 cooperative agreement.

2 Sec. 36.30.860. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLIC-
3 ABLE. Unless displaced by the particular provisions of this chapter,
4 the principles of law and equity, including the Uniform Commercial
5 Code (AS 45.01 - AS 45.09), the law merchant, and law relative to
6 capacity to contract, agency, fraud, misrepresentation, duress, coer-
7 cion, mistake, or bankruptcy shall supplement the provisions of this
8 chapter.

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

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

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

20 Sec. 36.30.890. FEDERAL ASSISTANCE. If a procurement involves
21 the expenditure of federal funds or federal assistance and there is a
22 conflict between a provision of this chapter or a regulation adopted
23 under a provision of this chapter and a federal statute or regulation
24 the federal statute or regulation 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. 36.30.990. DEFINITIONS. In this chapter, unless the con-
24 text in which a term is used clearly requires a different meaning or a
25 different definition is prescribed for a particular provision,

26 (1) "agency" means a department, institution, board, com-
27 mission, division, authority, public corporation, the Alaska Pioneers'
28 Home, or other administrative unit of the executive branch of state
29 government, except for the University of Alaska and the Alaska

1 Railroad Corporation; it does not include a regional Native housing
2 authority created under AS 18.55.996, or a regional electrical
3 authority created under AS 18.57.020;

4 (2) "change order" means a written order signed by the
5 procurement officer, directing the contractor to make changes that the
6 changes clause of the contract authorizes the procurement officer to
7 order without the consent of the contractor;

8 (3) "commissioner" means the commissioner of the Department
9 of Administration;

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

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

14 (6) "construction" means the process of building, altering,
15 repairing, maintaining, improving, or demolishing a public highway,
16 structure, building, or other public improvement of any kind to real
17 property other than privately owned real property leased for the use
18 of agencies; it includes services and professional services relating
19 to planning and design required for the construction; it does not
20 include the routine operation of a public improvement to real
21 property;

22 (7) "contract" means all types of state agreements, regard-
23 less of what they may be called, for the procurement or disposal of
24 supplies, equipment for the state fleet, services, professional servi-
25 ces, or construction;

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

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

2 (10) "grant" means the furnishing by the state of assis-
3 tance, whether financial or otherwise, to a person to support a pro-
4 gram authorized by law; it does not include an award whose primary
5 purpose is to procure an end product for a state agency, whether in
6 the form of supplies, services, professional services, or construc-
7 tion; a contract resulting from such an award is not a grant but a
8 procurement contract;

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

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

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

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

28 (15) "services" means the furnishing of labor, time, or
29 effort by a contractor, not involving the delivery of a specific end

1 product other than reports that are merely incidental to the required
2 performance; it does not include employment agreements or collective
3 bargaining agreements;

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

9 Sec. 36.30.995. SHORT TITLE. This chapter may be cited as the
10 State Procurement Code.

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

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

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

21 Sec. 05.20.040. PERSONNEL TO INSPECT DEVICES. The department
22 shall designate a person qualified in experience and training as the
23 inspector of devices. The department may employ additional employees
24 as are necessary to administer this chapter. The inspector and the
25 employees may be hired on a temporary basis or borrowed from other
26 state departments or political subdivisions of the state, or the
27 department may contract with individuals or firms for the inspecting
28 service on an independent basis. The department shall prescribe the
29 salary or other remuneration for this service. Contracting under this

1 section is governed by AS 36.30 (State Procurement Code).

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

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

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

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

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

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

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

26 (1) sue and be sued;

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

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

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

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

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

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

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

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

23 (10) provide housing for rental to teachers; by leasing
24 existing housing from a local agency or individual, or by entering
25 into contractual arrangements with a local agency or individual to
26 lease housing that will be constructed by the local agency or indi-
27 vidual for that purpose.

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

29 Sec. 16.05.050. POWERS AND DUTIES OF COMMISSIONER. The

1 commissioner has, but not by way of limitation, the following powers
2 and duties:

3 (1) assist the United States Fish and Wildlife Service in
4 the enforcement of federal laws and regulations pertaining to fish and
5 game;

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

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

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

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

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

25 (7) under the provisions of AS 36.30, provide public facil-
26 ities where necessary or proper to facilitate the taking of fish or
27 game, and enter into cooperative agreements with any person to effect
28 them;

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

1 (9) under the provisions of AS 36.30, construct, operate,
2 supervise, and maintain vessels used by the Department of Fish and
3 Game;

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

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

15 (A) the optimum yield from the harvest of the species
16 has not been reached;

17 (B) a substantial portion of the allowable harvest of
18 the species has been allocated to fishing vessels of a foreign
19 nation; or

20 (C) a commercial harvest of the fish species has
21 recently developed;

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

24 (13) enter into cooperative agreements with agencies of the
25 federal government, educational institutions, or other agencies or
26 organizations, when in the public interest, to carry out the purposes
27 of this title except AS 16.51 and AS 16.52.

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

29 (c) The department may contract to others the performance of the

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

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

7 Sec. 18.15.120. TUBERCULOSIS CONTROL PROGRAM AUTHORIZED. The
8 department may establish a comprehensive program for the control of
9 tuberculosis in the state, and may

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

12 (2) establish necessary out-patient clinics for the care of
13 tuberculosis;

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

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

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

26 (6) employ necessary and trained personnel to carry out the
27 purposes of AS 18.15.120 - 18.15.140;

28 (7) pay the costs of care and incidental expenses for
29 residents of the state, in whole or in part, depending on the ability

1 of each patient to pay, and the temporary costs of care and transpor-
2 tation for nonresidents on the same basis until they can be trans-
3 ferred to their residence;

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

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

9 * Sec. 10. AS 18.55.100 is amended by adding a new subsection to read:

10 (d) The authority's power to contract, lease, rent, construct,
11 acquire, procure, and provide for services under this section is
12 governed by AS 36.30. However, to the extent that AS 36.30 conflicts
13 with responsibilities of the authority under AS 18.55.110, the provi-
14 sions of AS 18.55.110 prevail.

15 * Sec. 11. AS 19.05.020 is amended to read:

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

21 * Sec. 12. AS 19.05.080 is amended to read:

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

1 including clay, gravel, sand, or rock, or the land necessary to obtain
2 material, including access to it. The department may acquire the land
3 or materials notwithstanding the fact that title to it is vested in
4 the state or a department, agency, commission or institution of the
5 state. Acquisition of materials by purchase in the open market under
6 this section is governed by AS 36.30 (State Procurement Code).

7 * Sec. 13. AS 19.10.160 is amended to read:

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

15 * Sec. 14. AS 19.10.170(a) is amended to read:

16 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is
17 [SHALL BE] the general policy of the state [DEPARTMENT] to require the
18 construction of all highways under bid contract in accordance with
19 AS 36.30 (State Procurement Code). However, subject to the provisions
20 of (b) of this section, when the estimated cost of a construction
21 project is less than \$100,000 or when it appears to be in the best
22 interests of the state, the department may perform the work notwith-
23 standing any other provisions of law.

24 * Sec. 15. AS 19.10.180 is repealed and reenacted to read:

25 Sec. 19.10.180. REQUEST FOR PUBLIC BIDS. Requests for public
26 bids are governed by AS 36.30 (State Procurement Code). The request
27 for public bids may require the contractor to furnish equipment,
28 labor, materials, and supplies for the project, or it may state that
29 the department will furnish the materials and supplies. If the

1 department elects to provide materials and supplies for a project, it
2 shall do so at the time it adopts the construction program. The
3 department shall acquire these materials and supplies under AS 36.30
4 by requesting bids for them according to the class, type, and nature
5 of the materials and supplies. The contract for materials and sup-
6 plies may be awarded either upon the basis of delivery to the con-
7 struction project directly or to a central storehouse or storehouses
8 maintained by the department. Those materials and supplies so pur-
9 chased by the department may be delivered to the project site without
10 expense to the contractor, or it may sell them to the contractor at
11 cost and make the materials and supplies a part of the construction
12 cost.

13 * Sec. 16. AS 19.10.200 is repealed and reenacted to read:

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

18 * Sec. 17. AS 19.30.070 is amended to read:

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

25 * Sec. 18. AS 19.30.080 is amended to read:

26 Sec. 19.30.080. CONSTRUCTION STANDARDS AND MAINTENANCE. An
27 access road constructed under AS 19.30.060 - 19.30.100 shall be of low
28 standard, not necessarily suitable for all weather use. The state is
29 not under obligation to maintain an access road constructed under AS

19.30.060 - 19.30.100. If an access road is constructed outside a municipality that has zoning ordinances, the right-of-way width for the road shall be determined by the division of lands and the Department of Transportation and Public Facilities. If an access road is constructed within the boundaries of a municipality that has zoning ordinances, the right-of-way width shall conform to the subdivision control ordinances of the municipality. Contracts for the work on an access road are governed by AS 36.30 (State Procurement Code) [SHALL BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER QUALIFIED TO CONTRACT WITH THE STATE].

* Sec. 19. AS 19.40.020(a) is amended to read:

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

* Sec. 20. AS 19.60.010 is amended to read:

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

* Sec. 21. AS 23.15.611(a) is amended to read:

(a) The department may [IS AUTHORIZED TO] participate in

1 programs of manpower training if it finds they are necessary to meet
2 the occupational needs of the state. This authorization includes
3 authority to execute on behalf of the state agreements or contracts
4 which may be necessary or desirable to enable the state to participate
5 in a program, to receive and expend all appropriate funds made
6 available for programs by the state or from other sources, to
7 supervise the expenditure of the funds and conduct of the programs by
8 other public and private agencies of the state, and to make the
9 reports and certificates which are called for, and in cooperative
10 arrangements with the Department of Education. Contracts with private
11 entities under this subsection are governed by AS 36.30 (State
12 Procurement Code).

13 * Sec. 22. AS 23.20.075(a) is amended to read:

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

21 * Sec. 23. AS 23.35.110 is amended to read:

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

27 * Sec. 24. AS 24.55.275 is amended to read:

28 Sec. 24.55.275. CONTRACT PROCEDURES. The ombudsman shall adopt
29 by regulation procedures consistent with AS 36.30 [AS 24.23] to be

1 followed by the office of the ombudsman in contracting for services.
2 However, the procedure for requests for proposals does not apply to
3 contracts for investigations under AS 24.55.100.

4 * Sec. 25. AS 24.60.040(a) is amended to read:

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

15 * Sec. 26. AS 26.05.230(a) is amended to read:

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

23 * Sec. 27. AS 26.05.280 is amended to read:

24 Sec. 26.05.280. TRANSPORTATION, SUBSISTENCE, AND SUPPLIES.
25 There shall be provided by the state, transportation and subsistence
26 for all officers and enlisted persons who are ordered into active
27 service by the state for encampment, field duty, or other duty. Nec-
28 es- sary transportation, stores and subsistence for troops when ordered on
29 duty shall be contracted by the proper officers and paid for as other

1 military bills. Contracting under this section is governed by AS 36.-
2 30 (State Procurement Code).

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

4 Sec. 27.21.030. GENERAL POWERS. To accomplish the purposes of
5 this chapter, the commissioner may

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

9 (2) issue permits;

10 (3) conduct hearings and conferences;

11 (4) issue orders requiring an operator to take the actions
12 necessary to comply with this chapter and the regulations adopted
13 under this chapter;

14 (5) issue orders modifying previous orders;

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

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

27 (8) hire and authorize the hiring of employees and private
28 contractors, subject to the conflict of interest provisions of this
29 chapter and subject to AS 36.30 (State Procurement Code), to assist in

1 carrying out the requirements of this chapter;

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

5 (10) conduct, encourage, request, and participate in
6 studies, surveys, investigations, research, experiments, training, and
7 demonstrations;

8 (11) prepare reports and require permittees to prepare
9 reports;

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

13 (13) take the steps necessary to allow the state to partici-
14 pate to the fullest extent practicable in the abandoner' mine land
15 program provided in Title IV of the Surface Mining Control and Recla-
16 mation Act of 1977, including engaged in any work and adopting, amend-
17 ing and enforcing regulations;

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

24 (15) contract with state agencies to obtain the professional
25 and technical services necessary to carry out the provisions of this
26 chapter;

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

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

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

6 * Sec. 29. AS 33.30.050 is amended to read:

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

20 * Sec. 30. AS 33.30.062(a) is amended to read:

21 (a) The commissioner may enter into an agreement with a private-
22 ly operated correctional facility, but only if the facility is located
23 in the state and if the purpose of the agreement is to involve prison-
24 ers in a work or rehabilitation furlough program established under
25 this chapter, to provide necessary facilities under AS 33.30.282 -
26 33.30.288, or to confine prisoners convicted of a misdemeanor. An
27 [NOTWITHSTANDING AS 37.05.230(1)(B), AN] agreement awarded under this
28 subsection is governed by AS 36.30 (State Procurement Code) [SHALL BE
29 BASED ON COMPETITIVE BIDS].

1 * Sec. 31. AS 33.32.015(b) is amended to read:

2 (b) The commissioner of corrections may

3 (1) subject to AS 36.30 (State Procurement Code) [THE
4 FISCAL PROCEDURES ACT (AS 37.05)], use, purchase, lease, equip, and
5 maintain buildings, machinery, and other equipment, and may purchase
6 materials and enter into contracts, which may be necessary for the
7 correctional industries program;

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

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

19 * Sec. 32. AS 35.05.010 is amended to read:

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

25 * Sec. 33. AS 35.05.020 is amended to read:

26 Sec. 35.05.020. RULES AND REGULATIONS. The department shall
27 adopt [RULES AND] regulations that [WHICH] it considers necessary to
28 carry out the purpose of this title. The regulations may not conflict
29 with AS 36.30 (State Procurement Code) or the regulations adopted by

1 the Department of Administration under that chapter.

2 * Sec. 34. AS 35 is amended by adding a new section to read:

3 Sec. 35.10.195. CONFORMANCE WITH AS 36.30. The contractual
4 techniques for the procurement of labor, materials, and contractual
5 services under the policies developed under this chapter must conform
6 to the requirements of AS 36.30 (State Procurement Code).

7 * Sec. 35. AS 35.15.010(a) is amended to read:

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

18 * Sec. 36. AS 35.15.020 is repealed and reenacted to read:

19 Sec. 35.15.020. REQUEST FOR PUBLIC BIDS. The solicitation of
20 bids for construction of public works is governed by AS 36.30 (State
21 Procurement Code). The request for bids may require the contractor to
22 furnish equipment, labor, materials, and supplies for the project, or
23 it may state that the department will furnish the materials and sup-
24 plies. If the department elects to provide materials and supplies for
25 a project, it shall make the election at the time it adopts the con-
26 struction program. The department shall acquire these materials and
27 supplies under AS 36.30 by requesting bids for them according to the
28 class, type, and nature of the materials and supplies. The contract
29 may be awarded either upon the basis of delivery to the construction

1 project directly or to a central storehouse or storehouses maintained
2 by the department. These materials and supplies so purchased by the
3 department may be delivered to the project site without expense to the
4 contractor, or it may sell them to the contractor at cost and make the
5 materials and supplies a part of the construction cost.

6 * Sec. 37. AS 35.15.040 is repealed and reenacted to read:

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

11 * Sec. 38. AS 35.20.010 is amended to read:

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

27 * Sec. 39. AS 37.05 is amended by adding a new section to read:

28 Sec. 37.05.232. PETTY CASH ACCOUNTS. The department shall
29 determine the amount of the petty cash accounts needed by each state

1 agency and inspect the petty cash accounts at least once each year to
2 determine that the total plus amounts of receipts for unreplenished
3 disbursements is equal to the fixed sum of cash set aside. Shortages
4 in petty cash accounts are a personal liability of the responsible
5 head of the agency to whom the account is set aside. The department
6 shall adopt necessary regulations governing use and replenishment of
7 petty cash funds.

8 * Sec. 40. AS 37.05.316 is amended to read:

9 Sec. 37.05.316. GRANTS TO NAMED RECIPIENTS. When an amount is
10 appropriated or allocated to a department as a grant for a named
11 recipient which is not a municipality, the department to which the
12 appropriation or allocation is made shall promptly notify the named
13 recipient of the availability of the grant and request the named
14 recipient to submit a proposal to provide the goods or services speci-
15 fied in the appropriation act, or both, for which the appropriation or
16 allocation is made. At the same time, the department may issue a
17 request for proposals from other qualified persons to provide the same
18 goods or services, or both, in the same area. The department shall
19 contract with the named recipient unless the Office of the Governor,
20 with due regard for any local expertise or experience among those
21 making proposals, determines that an award of the contract to a dif-
22 ferent party would better serve the public interest. If the contract
23 is awarded to another party than that named by the legislature, the
24 basis of that action shall be stated in writing at the time the grant
25 is issued and a copy of the written statement shall be sent to the
26 Legislative Budget and Audit Committee. A contract shall be executed
27 within 60 days after the effective date of the appropriation or allo-
28 cation. The purchase of the goods or services, or both, shall be in
29 accordance with AS 36.30.100(b) [AS 37.05.230(1)(B)].

1 * Sec. 41. AS 41.21.020(a) is amended to read:

2 (a) The Department of Natural Resources shall

3 (1) develop a continuing plan for the conservation and
4 maximum use in the public interest of the scenic, historic, archaeo-
5 logic, scientific, biological, and recreational resources of the
6 state;

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

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

14 (4) control, develop and maintain state parks and recrea-
15 tional areas;

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

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

26 (7) cooperate with the United States and its agencies and
27 local subdivisions of the state to secure the effective supervision,
28 improvement, development, extension, and maintenance of state parks,
29 state monuments, state historical areas, and state recreational areas,

1 and secure agreements or contracts for the purpose of AS 41.21.010 -
2 41.21.040;

3 (8) encourage the organization of state public park and
4 recreational activities in the local political subdivisions of the
5 state;

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

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

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

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

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

19 * Sec. 42. AS 42.40.920(b) is amended to read:

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

22 (1) AS 19;

23 (2) AS 30.15;

24 (3) AS 35;

25 (4) AS 36.30, except as specifically provided in AS 36.30
26 (State Procurement Code);

27 (5) AS 37.05;

28 (6) [(5)] AS 37.07;

29 (7) [(6)] AS 37.10.010 - 37.10.060;

1 (8) [(7)] AS 37.10.085;

2 (9) [(8)] AS 37.20;

3 (10) [(9)] AS 37.25;

4 (11) [(10)] AS 38;

5 (12) [(11)] AS 44.62.040 - 44.62.320.

6 * Sec. 43. AS 44.21.310(a) is amended to read:

7 (a) The telecommunications divisions, as directed by the deputy
8 commissioner, shall

9 (1) advise the governor on matters of policy and comprehen-
10 sive state planning for telecommunications services;

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

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

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

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

1 (6) whenever feasible, procure services from private enter-
2 prise or certified and franchised utilities and contract for the
3 construction, management, operation and maintenance of telecommunica-
4 tions systems, and develop a procurement policy consistent with
5 AS 36.30 (State Procurement Code) [UNDER AS 37.05.010 - 37.05.410];
6 the procurement policy must seek to achieve the maximum benefit to the
7 public, and methods of procurement, including lease, purchase, rental,
8 or combinations of lease, purchase, and rental, must be selected on
9 the basis of factors such as the ratio of long-range costs versus
10 benefits, life cycle costing, and the costs to the communications
11 industry to the extent that these costs may affect local and long
12 distance basic telephone rates; procurement, contracting, construc-
13 tion, and maintenance under this paragraph is governed by AS 36.30;

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

17 (8) apply for and accept federal and private money, proper-
18 ty, or assistance, that may be appropriated, granted, or otherwise
19 made available to the telecommunications divisions and use and dis-
20 burse money and property for purposes consistent with AS 44.21.300 -
21 44.21.330 and AS 44.21.256 - 44.21.290, subject to reasonable limita-
22 tions imposed by the grantor;

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

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

29 (11) serve as a clearinghouse for information, data, and

1 other materials which may be necessary or helpful to federal, state,
2 or local governmental agencies in the development of telecommunication
3 systems;

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

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

10 * Sec. 44. AS 44.19.144(b) is amended to read:

11 (b) The director may

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

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

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

24 * Sec. 45. AS 44.33.300 is amended to read:

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

29 (1) the requirement of a contractor's bond as prescribed in

1 AS 36.25.010 may be waived if the contract amount does not exceed
2 \$100,000;

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

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

14 * Sec. 46. AS 44.47.250 is amended by adding a new subsection to read:

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

17 * Sec. 47. AS 44.47.490(a) is amended to read:

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

21 (1) real property appraisers who are familiar with rural
22 construction; and

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

25 * Sec. 48. AS 44.47.730(a) is amended to read:

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

1 provide for

- 2 (1) public participation in the preparation of the study;
3 (2) completion of the study not later than June 30 of the
4 third year after the year the contract is executed.

5 * Sec. 49. AS 44.62.175(a) is amended to read:

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

9 (1) notices of proposed actions given under AS 44.62.-
10 190(a);

11 (2) notices of state agency meetings required under AS 44.-
12 62.310(e), even if the meeting has been held;

13 (3) notices of solicitations to bid issued under AS 36.30.-
14 130 [AS 37.05.230];

15 (4) notices of state agency requests for proposals issued
16 under AS 18.55.255, 18.55.320; [AS 19.10.190; AS 19.40.020; AS 35.15.-
17 030; AS 36.98.030; AS 37.05.230,] AS 37.05.315(d); AS 38.05.120; and
18 AS 43.40.010;

19 (5) executive orders and administrative orders issued by
20 the governor;

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

23 (7) the text or a summary of the text of a regulation or
24 order of repeal of a regulation for which notice is given under AS
25 44.62.190(a), including an emergency regulation or repeal whether or
26 not it has taken effect;

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

29 (9) a list of vacancies on boards, commissions, and other

1 bodies whose members are appointed by the governor.

2 * Sec. 50. AS 44.71.010 is amended to read:

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

14 * Sec. 51. AS 44.77.010(a) is amended to read:

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

21 * Sec. 52. AS 44.77.010 is amended by adding a new subsection to read:

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

24 * Sec. 53. AS 44.85.120 is amended to read:

25 Sec. 44.85.120. CARE AND CUSTODY OF BONDS. The bond bank
26 authority, in accordance with AS 36.30 (State Procurement Code), may
27 enter into agreements or contracts with a bank, trust company, banking
28 or financial institution inside or outside the state as may be neces-
29 sary, desirable or convenient, in the opinion of the bond bank

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

15 * Sec. 54. AS 44.99.001 is amended to read:

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

1 * Sec. 55. AS 46.04.090(a) is amended to read:

2 (a) The department, when feasible, shall enter into contracts
3 with persons or private organizations to provide the personnel, equip-
4 ment, or other services or supplies which may be required to carry out
5 this chapter. Contracts under this section are governed by AS 36.30
6 (State Procurement Code). When private contracting is not feasible,
7 the department may establish and maintain at ports, harbors, or other
8 locations in the state, the cleanup personnel, equipment, and supplies
9 which, in its judgment, are necessary to carry out this chapter.

10 * Sec. 56. AS 46.07.040(a) is amended to read:

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

18 * Sec. 57. AS 46.15.020(a) is amended to read:

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

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

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

1 the state to receive grants, gifts and loans;

2 (3) establish a division of water in the Department of
3 Natural Resources and assign to that division the responsibility for
4 carrying out the provisions of this chapter.

5 * Sec. 58. AS 47.05.015(c) is amended to read:

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

12 * Sec. 59. AS 47.30.350(a) is amended to read:

13 (a) The department shall

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

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

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

25 (4) cooperate, coordinate, and contract, wherever indicated
26 and desirable, with other state boards, departments and agencies, and
27 agencies of the United States in the construction program, and hire
28 necessary personnel and enter into contracts with private individuals
29 and companies, to the end that the hospitals and other facilities are

constructed in the most economical and expeditious manner; contracting and construction under this section are governed by AS 36.30 (State Procurement Code).

* Sec. 60. AS 47.30.660 is amended to read:

Sec. 47.30.660. POWERS AND DUTIES OF DEPARTMENT. The department is the mental health authority of the state and shall

(1) administer a comprehensive program for the prevention of mental illness and the care and treatment of the mentally ill, including inpatient and outpatient care and treatment and the procurement of services of specialists or other persons on a contractual or other basis;

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

(3) administer AS 47.30.660 - 47.30.915;

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

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

(6) enter into arrangements with governmental agencies for the care or treatment of the mentally ill in facilities of the governmental agencies in the state or in another state;

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

(8) enter into contracts which incorporate safeguards consistent with AS 47.30.660 - 47.30.915 and the preservation of the

1 civil rights of the patients with another state for the custody and
2 care or treatment of patients previously committed from this state
3 under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd
4 Session, 70 Stat. 709;

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

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

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

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

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

18 (14) adopt regulations to implement the provisions of
19 AS 47.30.660 - 47.30.915.

20 * Sec. 61. AS 47.35.010(a) is amended to read:

21 (a) The department may

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

25 (2) investigate and supervise licensees;

26 (3) enforce the standards established by it;

27 (4) contract with private or municipal agencies to investi-
28 gate and make recommendations to the department for the licensing and
29 supervision of boarding homes, foster homes, group homes, nurseries,

1 institutions caring for children and foster homes, group homes and
2 institutions caring for dependent adults under procedures and stan-
3 dards of operation established by the department; contracts with
4 private agencies under this paragraph are governed by AS 36.30 (State
5 Procurement Code).

6 * Sec. 62. AS 47.37.030 is amended to read:

7 Sec. 47.37.030. POWERS OF OFFICE. The office may

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

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

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

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

27 (5) coordinate its activities and cooperate with alcoholism
28 programs in this and other states, and make contracts and other joint
29 or cooperative arrangements with state, local, or private agencies for

1 the treatment of alcoholics and intoxicated persons and for the common
2 advancement of alcoholism programs in this and other states;

3 (6) keep records and engage in research and the gathering
4 of relevant statistics;

5 (7) do other acts necessary to implement the authority
6 expressly granted to it;

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

15 * Sec. 63. AS 47.37.130(g) is amended to read:

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

21 * Sec. 64. AS 47.40.041(b) is amended to read:

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

29 * Sec. 65. AS 47.90.010(a) is amended to read:

1 (a) The commissioner, in consultation with state and local
2 government agencies, community groups, and groups concerned with
3 displaced homemakers, may

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

8 (2) coordinate existing state programs for displaced home-
9 makers.

10 * Sec. 66. AS 47.40.041(b) is amended to read:

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

18 * Sec. 67. REPORT. By December 1, 1987, the commissioner of adminis-
19 tration and the commissioner of transportation and public facilities shall
20 report to the legislature concerning procurements by state agencies during
21 the first six months of 1987. The report must include

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

23 (2) recommendations for changes in AS 36.30 or other laws based
24 on implementation of AS 36.30 in those six months; and

25 (3) a description of any matters that involved litigation con-
26 cerning AS 36.30 during those six months.

27 * Sec. 68. REGULATIONS DEADLINE. The regulations required under
28 'S 36.30 as added by sec. 2 of this Act, shall be adopted by January 1,
29 1987 and shall be effective on that date. Regulations adopted under laws

1 repealed in sec. 69 of this Act become ineffective January 1, 1987.

2 * Sec. 69. REPEALER. The following laws are repealed: AS 14.40.340;
3 AS 19.10.190, 19.10.210; AS 24.23; AS 35.15.030, 35.15.050; AS 36.98;
4 AS 37.05.220, 37.05.230, 37.05.231, 37.05.240, 37.05.250, 37.05.260, 37.-
5 05.270, 37.05.280, 37.05.290, 37.05.400(2) and (3); AS 44.65; AS 44.77.-
6 010(c); and AS 47.90.010(c).

7 * Sec. 70. Section 68 of this Act takes effect immediately in accor-
8 dance with AS 01.10.070(c).

9 * Sec. 71. Except as provided in sec. 70, this Act takes effect Janu-
10 ary 1, 1987.

Cook
3/7/86 ✓

Original sponsor: Rules Committee
By Request

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 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) "commissioner," "commissioner of administration," or
11 "commissioner of transportation and public facilities" means the Board
12 of Regents; and

13 (3) "chief procurement officer" or "attorney general" means
14 the president of the University of Alaska.

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

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

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

28 (2) exercise general supervision and control over all
29 inventories of supplies belonging to an agency and prescribe the

1 manner in which supplies shall be purchased, delivered, stored, and
2 distributed;

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

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

8 (5) establish and maintain programs for the inspection,
9 testing, and acceptance of supplies and services and the testing of
10 samples submitted with bids;

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

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

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

25 (b) The commissioner of administration may delegate to an agency
26 the authority to contract for and manage services, professional servi-
27 ces, and supplies. Notwithstanding delegation of authority under this
28 subsection, an agency's exercise of the authority is governed by this
29 chapter and regulations adopted by the commissioner under this

1 chapter. Before delegating authority to an agency under this
2 subsection, the commissioner shall make a written determination that
3 the agency is capable of implementing the delegated authority.

4 (c) The commissioner of administration may not delegate the
5 authority to dispose of supplies or the authority to adopt regulations
6 under this chapter.

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

9 (e) The board of directors of the Alaska Railroad Corporation
10 shall adopt procedures to govern the procurement of supplies, ser-
11 vices, professional services, and construction by the corporation.
12 The procedures must be substantially equivalent to the procedures pre-
13 scribed in this chapter and in regulations adopted under this chapter.

14 Sec. 36.30.020. LEGISLATURE. The Legislative Council shall
15 adopt procedures to govern the procurement of supplies, services,
16 professional services, and construction by the legislature, legisla-
17 tors, and legislative agencies and committees. The procedures must be
18 substantially equivalent to the procedures prescribed in this chapter.

19 Sec. 36.30.030. COURT SYSTEM. The administrative director of
20 courts shall adopt procedures to govern the procurement of supplies,
21 services, professional services, and construction by the judicial
22 branch. The procedures must be based on the competitive principles
23 established under this chapter and must be adapted to the special
24 needs of the judicial branch as determined by the administrator of
25 courts.

26 Sec. 36.30.040. PROCUREMENT REGULATIONS. (a) The commissioner
27 shall adopt regulations governing the procurement, management, and
28 control of supplies, services, professional services and construction
29 by agencies. The commissioner may audit and monitor the imple-

1 mentation of the regulations and the requirements of this chapter with
2 respect to using agencies.

3 (b) The commissioner shall adopt regulations pertaining to the
4 following:

5 (1) suspension, debarment, and reinstatement of prospective
6 bidders and contractors;

7 (2) bid protests;

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

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

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

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

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

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

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

21 (10) definitions and classes of contractual services and
22 procedures for acquiring them;

23 (11) providing for conducting price analysis;

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

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

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

1 (15) a bidder's or offeror's duties under AS 36.30.115 and
2 36.30.210; and

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

7 Sec. 36.30.050. LISTS OF CONTRACTORS. (a) The commissioner
8 shall establish and maintain lists of persons who desire to provide
9 supplies, services, professional services, or construction services to
10 the state.

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

18 (c) The lists may be used by the chief procurement officer or an
19 agency when issuing invitations to bid or requests for proposals under
20 this chapter. The lists may be used by the Legislative Council, the
21 court system, and the Alaska Railroad Corporation.

22 (d) The lists shall be used in providing notice of intent to
23 make a small procurement to Alaska bidders as defined under
24 AS 36.30.170(c). A procurement officer who intends to make a
25 procurement under AS 36.30.320 shall request names from the appropri-
26 ate list and the department shall furnish names of Alaska bidders on a
27 rotating basis from the list in response to each request.

28 Sec. 36.30.060. SPECIFICATIONS. (a) The commissioner shall
29 adopt regulations governing the preparation, revision, and content of

1 specifications for supplies, services, professional services, and
2 construction required by an agency. The commissioner shall monitor
3 the use of these specifications.

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

7 (c) The commissioner may obtain expert advice and assistance
8 from personnel of using agencies in the development of specifications.
9 Specifications must promote overall economy for the purposes intended
10 and encourage competition in satisfying the state's needs, and may not
11 be unduly restrictive. The requirements of this subsection regarding
12 the purposes and nonrestrictiveness of specifications apply to all
13 specifications, including those prepared by architects, engineers,
14 designers, and other professionals.

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

19 Sec. 36.30.070. SUPPLY MANAGEMENT. The commissioner shall adopt
20 regulations governing the

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

27 Sec. 36.30.080. LEASES. (a) The department shall lease space
28 for the use of the state or an agency wherever it is necessary and
29 feasible, subject to compliance with the requirements of this chapter.

1 A lease may not provide for a period of occupancy greater than 40
2 years. An agency requiring office, warehouse, or other space shall
3 lease the space through the department.

4 (b) The department may enter into lease-financing agreements,
5 including lease-purchase agreements and agreements related to the
6 issuance of certificates of participation. A lease-financing agree-
7 ment must provide that lease payments are subject to annual appropria-
8 tion.

9 (c) If the department intends to enter into a lease or lease-
10 financing agreement with an annual rent to the state anticipated to
11 exceed \$1,000,000, the department shall provide notice to the legisla-
12 ture. The notice must include the anticipated annual lease obligation
13 amount and the anticipated total construction, acquisition, or other
14 costs of the project. The department may not enter into an agreement
15 under this subsection unless the project has been approved by the
16 legislature by law. An appropriation for the project does not consti-
17 tute approval of the project for purposes of this subsection.

18 ARTICLE 2. COMPETITIVE SEALED BIDDING.

19 Sec. 36.30.100. GENERAL POLICY. (a) Except as otherwise pro-
20 vided in this chapter, or unless specifically exempted by law, an
21 agency contract shall be awarded by competitive sealed bidding.

22 (b) Competitive sealed bidding is not required

23 (1) when the commissioner determines in writing that food,
24 clothing, or medical supplies, or materials for use in laboratory or
25 medical studies may be purchased otherwise to the best advantage of
26 the state;

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

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

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

3 (5) for professional services; or

4 (6) for concessions operated on state property.

5 (c) In this section "employment program" means a nonprofit
6 program to increase employment opportunities for individuals with
7 physical or mental disabilities that constitute substantial handicaps
8 to employment.

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

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

18 Sec. 36.30.115. SUBCONTRACTORS. (a) Within ~~24~~ hours after the
19 opening of bids, each bidder shall submit a list of the subcontractors
20 the bidder proposes to use in the performance of the contract. The
21 list shall include the name and location of the place of business for
22 each subcontractor and evidence of the subcontractor's valid Alaska
23 business license. A bidder for a construction contract shall also
24 submit evidence of each subcontractor's registration under AS 08.18.

25 (b) A bidder may replace a listed subcontractor only if the
26 subcontractor

27 (1) fails to comply with AS 08.18;

28 (2) files for bankruptcy or becomes insolvent;

29 (3) fails to execute a contract with the bidder involving

1 performance of the work for which the subcontractor was listed;

2 (4) fails to obtain bonding;

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

4 (6) fails to perform the contract with the bidder involving
5 work for which the subcontractor was listed; or

6 (7) is determined by the procurement officer not to be a
7 responsible bidder.

8 (c) If a bidder fails to list a subcontractor or lists more than
9 one subcontractor for the same portion of work and the value of that
10 work is in excess of half of one percent of the total bid, the bidder
11 shall be considered to have agreed to perform that portion of work
12 without the use of a subcontractor and to have represented the bidder
13 to be qualified to perform that work.

14 (d) A bidder who attempts to circumvent the requirements of this
15 section by listing as a subcontractor another contractor who, in turn,
16 sublets the majority of the work required under the contract violates
17 this section.

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

20 (1) cancel the contract; or

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

24 Sec. 36.30.120. BID SECURITY. (a) Bid security shall be re-
25 quired for all competitive sealed bidding for construction contracts
26 when the price is estimated by the procurement officer to exceed an
27 amount established by regulation of the commissioner. Bid security on
28 construction contracts under the amount set by the commissioner may be
29 required when the circumstances warrant. Bid security may be required

1 for competitive sealed bidding for contracts for supplies, services,
2 or professional services in accordance with regulations of the commis-
3 sioner when needed for the protection of the state.

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

8 (1) 10 percent of the amount of the bid if the bid does not
9 exceed \$100,000; or

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

13 (c) When the invitation to bid requires security, the procure-
14 ment officer shall reject a bid that does not comply with the bid
15 security requirement unless, in accordance with regulations, the
16 officer determines that the bid fails to comply in a nonsubstantial
17 manner with the security requirements.

18 Sec. 36.30.130. PUBLIC NOTICE OF INVITATION TO BID. (a) The
19 procurement officer shall give adequate public notice of the invita-
20 tion to bid at least 21 days before the date for the opening of bids.
21 If a determination is made in writing that a shorter notice period is
22 necessary for a particular bid, the 21-day period may be shortened.
23 The determination shall be made by the chief procurement officer for
24 bids for supplies, services, or professional services. The determina-
25 tion shall be made by the commissioner of transportation and public
26 facilities for bids for construction or acquisition of property for
27 the state equipment fleet. Notice shall be published in the Alaska
28 Administrative Journal. The time and manner of notice must be in
29 accordance with regulations adopted by the commissioner of

1 administration. When practicable, notice may include

2 (1) publication in a newspaper calculated to reach prospec-
3 tive bidders;

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

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

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

12 Sec. 36.30.140. BID OPENING. (a) The procurement officer shall
13 open bids publicly in the presence of one or more witnesses at the
14 time and place designated in the invitation to bid. The amount of
15 each bid and other relevant information that is specified by regula-
16 tion of the commissioner, together with the name of each bidder, shall
17 be recorded.

18 (b) The information recorded under (a) of this section is open
19 to public inspection as soon as practicable before the notice of
20 intent to award a contract is given under AS 36.30.365. The bids are
21 not open for public inspection until after the notice of intent to
22 award a contract is given. To the extent the bidder designates and
23 the procurement officer concurs, trade secrets and other proprietary
24 data contained in a bid document are confidential.

25 Sec. 36.30.150. BID ACCEPTANCE AND BID EVALUATION. Bids shall
26 be unconditionally accepted without alteration or correction, except
27 as authorized in AS 36.30.160. The procurement officer shall evaluate
28 bids based on the requirements set out in the invitation to bid, which
29 may include criteria to determine acceptability such as inspection,

1 testing, quality, delivery, and suitability for a particular purpose.
2 The criteria that will affect the bid price and be considered in
3 evaluation for award must be objectively measurable, such as dis-
4 counts, transportation costs, and total or life cycle costs. The
5 invitation to bid must set out the evaluation criteria to be used.
6 Criteria may not be used in bid evaluation if they are not set out in
7 the invitation to bid.

8 Sec. 36.30.160. LATE BIDS; CORRECTION OR WITHDRAWAL OF BIDS;
9 CANCELLATION OF AWARDS. (a) Bids received after the bid due date and
10 time indicated on the invitation to bid may not be accepted unless the
11 delay was due to an error of the contracting agency.

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

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

29 (b) The procurement officer shall award a contract based on

1 solicited bids to the lowest responsible and responsive Alaska bidder
2 if the bid is not more than five percent higher than the lowest non-
3 resident bidder's. In this subsection, "Alaska bidder" means a person
4 who

5 (1) holds a current Alaska business license;

6 (2) submits a bid for goods, services, or construction
7 under the name as appearing on the person's current Alaska business
8 license;

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

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

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

17 (c) If a bidder qualifies under (b) of this section as an Alaska
18 bidder, is offering services through an employment program as defined
19 under AS 36.30.100(c), and is the lowest responsible and responsive
20 bidder with a bid that is not more than 10 percent higher than the
21 lowest bid of a nonresident, the procurement officer shall award the
22 contract to that bidder.

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

ARTICLE 3. COMPETITIVE SEALED PROPOSALS.

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

(b) The commissioner may provide by regulation that it is either not practicable or not advantageous to the state to procure specified types of supplies, services, or construction by competitive sealed bidding that would otherwise be procured by that method. When the chief procurement officer, or for construction contracts or procurements for the state equipment fleet, the commissioner of transportation and public facilities, determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals in accordance with the regulations. When it is determined that it is practicable but not advantageous to use competitive sealed bidding, the chief procurement officer or commissioner of transportation and public facilities shall specify with particularity the basis for the determination.

(c) When the chief procurement officer determines that it is advantageous to the state, a procurement officer may issue a request for proposals requesting the submission of offers to provide construction in accordance with a design provided by the offeror. The request for proposals shall require that each proposal submitted contain a single price that includes the design and construction.

Sec. 36.30.210. REQUEST FOR PROPOSALS. (a) A request for competitive sealed proposals must contain the date, time and place for

1 delivering proposals, a specific description of the supplies,
2 construction, services, or professional services to be provided under
3 the contract, and the terms under which the supplies, construction,
4 services, or professional services are to be provided. The request
5 shall require the offeror to submit evidence of the offeror's valid
6 Alaska business license and, within 24 hours after the date by which
7 proposals must be received, to list subcontractors the offeror pro-
8 poses to use in the performance of the contract. The list shall
9 include the name and location of the place of business for each sub-
10 contractor and evidence of the subcontractor's valid Alaska business
11 license. An offeror for a construction contract shall also submit
12 evidence of the offeror's registration under AS 08.18 and evidence of
13 registration for each listed subcontractor.

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

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

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

28 Sec. 36.30.220. STANDARD OVERHEAD RATE. (a) An agency that
29 provides services to another agency under a contract covered by this

1 chapter shall establish a standard overhead rate. If an agency sub-
2 mits a proposal in response to a request for competitive sealed pro-
3 posals, the agency must include its standard overhead rate within its
4 proposal.

5 (b) In this section, "standard overhead rate" means a charge
6 established for services and professional services from an agency that
7 is designed to compensate the agency for administration and support
8 services incidentally provided with the services contracted for.

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

19 Sec. 36.30.240. DISCUSSION WITH RESPONSIBLE OFFERORS AND REVI-
20 SIONS TO PROPOSALS. As provided in the request for proposals, and
21 under regulations adopted by the commissioner, discussions may be
22 conducted with responsible offerors who submit proposals determined to
23 be reasonably susceptible of being selected for award for the purpose
24 of clarification to assure full understanding of, and responsiveness
25 to, the solicitation requirements. Offerors reasonably susceptible of
26 being selected for award shall be accorded fair and equal treatment
27 with respect to any opportunity for discussion and revision of pro-
28 posals, and revisions may be permitted after submissions and before
29 the award of the contract for the purpose of obtaining best and final

1 offers. In conducting discussions, the procurement officer may not
2 disclose information derived from proposals submitted by competing
3 offerors. AS 44.62.310 does not apply to meetings with offerors under
4 this section.

5 Sec. 36.30.250. AWARD OF CONTRACT. (a) The procurement officer
6 shall award a contract under competitive sealed proposals to the
7 responsible and responsive offeror whose proposal is determined in
8 writing to be the most advantageous to the state taking into consid-
9 eration price and the evaluation factors set out in the request for
10 proposals. Other factors and criteria may not be used in the evalu-
11 ation. The contract file must contain the basis on which the award is
12 made.

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

18 Sec. 36.30.260. CONTRACT EXECUTION. A contract awarded under
19 competitive sealed proposals must contain

- 20 (1) the amount of the contract stated on its first page;
21 (2) the date for the supplies to be delivered or the dates
22 for construction, services, or professional services to begin and be
23 completed;
24 (3) a description of the supplies, construction, services,
25 or professional services to be provided; and
26 (4) certification by the project director for the contract-
27 ing agency, the head of the contracting agency, or a designee that
28 sufficient funds are available in an appropriation to be encumbered
29 for the amount of the contract.

1 Sec. 36.30.270. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING
2 CONTRACTS. (a) Notwithstanding conflicting provisions of
3 AS 36.30.100 - 36.30.260, a procurement officer shall negotiate a
4 contract for an agency with the most qualified and suitable person of
5 demonstrated competence for architectural, engineering, or land
6 surveying services. The procurement officer shall award a contract
7 for those services at fair and reasonable compensation as determined
8 by the procurement officer, after consideration of the estimated value
9 of the services to be rendered, and the scope, complexity, and
10 professional nature of the services.

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

16 (c) Notwithstanding the other provisions of this section, a
17 procurement officer may include price as a factor in selecting
18 architectural, engineering, and land surveying services when, in the
19 judgment of the procurement officer, the services required are
20 repetitious in nature, and the scope, nature, and amount of services
21 required are sufficiently defined by measurable and objective
22 standards to reasonably enable persons making proposals to compete
23 with a clear understanding and interpretation of the services
24 required. In order to include price as a factor in selection, the
25 procurement officer shall involve in the evaluation of the proposals
26 at least one person who is registered in the state to perform the
27 architectural, engineering, or land surveying services that are the
28 primary services to be provided by the contract.

29 (d) The provisions of (a) - (c) of this section do not apply to

1 a contract that incorporates both design and construction services.
2 The provisions of (a) - (c) of this section do not apply to contracts
3 awarded in a situation of public necessity if the procurement officer
4 responsible for execution of the contract on behalf of the agency
5 certifies in writing that a situation of public necessity exists.

6 (e) An agency may not award a contract for architectural,
7 engineering, or land surveying services to a

8 (1) person who is not registered under AS 08.48 to perform
9 the architectural, engineering, or land surveying services required by
10 the contract;

11 (2) partnership that is not qualified under AS 08.48.251 to
12 provide the architectural, engineering, or land surveying services
13 required by the contract; or

14 (3) corporation that is not authorized under AS 08.48.241
15 to offer the architectural, engineering, or land surveying services
16 required by the contract.

17 ARTICLE 4. OTHER PROCUREMENT METHODS.

18 Sec. 36.30.300. SOLE SOURCE PROCUREMENTS. (a) A contract may
19 be awarded for supplies, services, professional services, or construc-
20 tion without competitive sealed bidding, competitive sealed proposals,
21 or other competition in accordance with regulations adopted by the
22 commissioner of administration. A contract may be awarded under this
23 section only when the chief procurement officer or, for construction
24 contracts or procurements for the state equipment fleet, the commis-
25 sioner of transportation and public facilities determines in writing
26 that there is only one source for the required procurement or con-
27 struction. A sole source procurement may not be awarded if a rea-
28 sonable alternative source exists. The written determination must
29 include findings of fact that support by clear and convincing evidence

1 the determination that only one source exists. The authority to make
2 the determination required by this subsection may not be delegated.

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

8 (c) The procurement officer shall negotiate with the single
9 supplier, to the extent practicable, to obtain a contract advantageous
10 to the state.

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

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

28 (b) A contract for professional services that does not exceed
29 \$25,000 may be made under regulations adopted by the commissioner for

1 small procurements, except that an agency may not contract for the
2 services of legal counsel without the approval of the attorney
3 general.

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

7 (d) Procurement requirements may not be artificially divided or
8 fragmented so as to constitute a purchase under this section or to
9 circumvent the source selection procedures required by AS 36.30.100 -
10 36.30.260.

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

16 ARTICLE 5. CONTRACT FORMATION AND MODIFICATION.

17 Sec. 36.30.340. REVIEW AND APPROVAL BY DEPARTMENT OF LAW. If a
18 contract contains a term that is in conflict with a state standard
19 form contract term or if a standard term is deleted or modified by a
20 term that is not standard, the contract must be reviewed by the De-
21 partment of Law and approved as to form.

22 Sec. 36.30.350. BID CANCELLATION, REJECTION. An invitation to
23 bid, a request for proposals, or other solicitation may be cancelled
24 or any or all bids or proposals may be rejected in whole or in part or
25 the date for opening bids or proposals may be delayed when it is in
26 the best interests of the state in accordance with regulations adopted
27 by the commissioner. The reasons for cancellation, rejection, or
28 delay in opening bids or proposals shall be made part of the contract
29 file.

1 Sec. 36.30.360. DETERMINATION OF RESPONSIBILITY. (a) A written
2 determination of responsibility of a bidder or offeror shall be made
3 by the procurement officer in accordance with regulations adopted by
4 the commissioner. The unreasonable failure of a bidder or offeror to
5 promptly supply information in connection with an inquiry with respect
6 to responsibility is grounds for a determination of nonresponsibility
7 with respect to the bidder or offeror.

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

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

19 Sec. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT. At least
20 10 days before the formal award of a contract under this chapter the
21 procurement officer shall provide to each bidder or offeror notice of
22 intent to award a contract. The notice shall conform to regulations
23 adopted by the commissioner.

24 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of
25 this section, any type of contract that will promote the best inter-
26 ests of the state may be used, except that the use of a cost-plus-
27 a-percentage-of-cost contract is prohibited. A cost-reimbursement
28 contract may be used only when a determination is made in writing by
29 the procurement officer that a cost-reimbursement contract is likely

1 to be less costly to the state than any other type or that it is
2 impracticable to obtain the supplies, services, professional services,
3 or construction required except under a cost-reimbursement contract.

4 Sec. 36.30.380. APPROVAL OF ACCOUNTING SYSTEM. Except for a
5 contract awarded through competitive sealed bidding or a firm fixed-
6 price contract, a contract type may not be used unless it has been
7 determined in writing by the procurement officer that the proposed
8 contractor's accounting system

9 (1) will permit timely development of all necessary cost
10 data in the form required by the specific contract type contemplated;
11 and

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

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

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

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

27 (2) the contract will serve the best interests of the state
28 by encouraging effective competition or otherwise promoting economies
29 in state procurement.

1 (c) When funds are not appropriated or otherwise made available
2 to support continuation of performance in a subsequent fiscal period,
3 the contract shall be cancelled. The contractor may only be reim-
4 bursed for the reasonable value of any nonrecurring costs incurred but
5 not amortized in the price of the supplies, services, or professional
6 services delivered under the contract that are not otherwise recover-
7 able. The cost of cancellation may be paid from any appropriations
8 available for these purposes.

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

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

26 (c) A contract, change order, or contract modification under
27 which a certificate is required under (a) or (b) of this section must
28 contain a provision that the price to the state, including the con-
29 tractor's profit or fee, will be adjusted to exclude any significant

1 sums by which the state finds that the price is increased because the
2 cost or pricing data furnished by the contractor or prospective con-
3 tractor is inaccurate, incomplete, or not current as of the date
4 agreed upon by the parties.

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

6 (1) the contract price is based on adequate price competi-
7 tion;

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

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

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

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

26 (b) The state may audit the books and records of a contractor or
27 a subcontractor to the extent that the books and records relate to the
28 performance of the contract or subcontract. Books and records shall
29 be maintained by the contractor for a period of three years after the

1 date of final payment under the prime contract and by the
2 subcontractor for a period of three years after the date of final
3 payment under the subcontract, unless a shorter period is authorized
4 in writing by the commissioner.

5 Sec. 36.30.430. STANDARD MODIFICATION CLAUSES FOR CONTRACTS.

6 (a) The commissioner shall adopt regulations permitting the inclusion
7 of clauses providing for adjustments in prices, time of performance,
8 or other contract provisions as appropriate.

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

- 12 (1) liquidated damages;
13 (2) specified excuses for delay or nonperformance;
14 (3) termination of the contract for default; and
15 (4) termination of the contract in whole or in part for the
16 convenience of the state.

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

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

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

24 Sec. 36.30.470. FISCAL RESPONSIBILITY. A contract modification,
25 change order, or contract price adjustment under a construction con-
26 tract in excess of an amount established by regulation of the commis-
27 sioner is subject to prior written certification by the fiscal officer
28 of the agency responsible for funding the project or the contract, or
29 other official responsible for monitoring and reporting upon the

1 status of the costs of the total project budget or contract budget, as
2 to the effect of the contract modification, change order, or adjust-
3 ment in contract price on the total project budget or the total con-
4 tract budget. If the certification of the fiscal officer or other
5 responsible official discloses a resulting increase in the total
6 project budget or the total contract budget, the procurement officer
7 may not approve the contract modification, change order, or adjustment
8 in contract price unless sufficient funds are available, or the scope
9 of the project or contract is adjusted to permit the degree of com-
10 pletion that is feasible within the total project budget or total
11 contract budget as it existed before the contract modification, change
12 order, or adjustment in contract price under consideration. A con-
13 tract modification change order, or adjustment in contract that is
14 signed by both parties and has been reasonably relied on by a contrac-
15 tor, is presumed to be valid even if the provisions of this section
16 have not been met.

17 Sec. 36.30.480. COST PRINCIPLE REGULATIONS. The commissioner
18 shall adopt regulations setting out cost principles that shall be used
19 to determine the allowability of incurred costs for the purpose of
20 reimbursing costs under contract provisions that provide for the
21 reimbursement of costs. If a written determination is approved at a
22 level above the procurement officer, the cost principles may be modi-
23 fied by contract.

24 ARTICLE 6. PROCUREMENT RECORDS AND REPORTS.

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

1 Sec. 36.30.510. RECORDS OF CONTRACTS AWARDED UNDER COMPETITIVE
2 SEALED PROPOSALS. A contract file open for public inspection shall be
3 kept by the commissioner and the contracting agency for each contract
4 awarded under competitive sealed proposals. The file kept by the
5 commissioner shall contain a summary of the information in the file of
6 the contracting agency. The file kept by the contracting agency must
7 contain

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

13 Sec. 36.30.520. RECORDS OF SOLE SOURCE AND EMERGENCY PROCURE-
14 MENTS. (a) The commissioner shall maintain for a minimum of five
15 years a record listing all sole source procurement contracts made
16 under AS 36.30.300 and emergency procurements made under AS 36.30.310.
17 The record must contain

- 18 (1) each contractor's name;
19 (2) the amount and type of each contract; and
20 (3) a listing of the supplies, services, professional
21 services, or construction procured under each contract.

22 (b) The Department of Transportation and Public Facilities and
23 any agency to whom the commissioner of administration or the commis-
24 sioner of transportation and public facilities has delegated procure-
25 ment authority under AS 36.30.015 shall, by October 1 of each year,
26 submit to the commissioner of administration records of the type
27 specified in (a) of this section. The commissioner of administration
28 shall maintain these records as required by (a) of this section.

29 Sec. 36.30.530. PUBLIC ACCESS TO PROCUREMENT INFORMATION.

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

2 Sec. 36.30.540. REPORT TO LEGISLATURE. Beginning with Decem-
3 ber 1, 1989, the commissioner shall biennially report to the legisla-
4 ture concerning procurements by agencies. The report must include

5 (1) the records maintained by the commissioner under
6 AS 36.30.510 and the records maintained under AS 36.30.520(a) for the
7 previous two fiscal years;

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

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

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

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

24 ARTICLE 7. LEGAL AND CONTRACTUAL REMEDIES.

25 Sec. 36.30.560. FILING OF A PROTEST. An interested party may
26 protest the award of a contract, the proposed award of a contract, or
27 a solicitation for supplies, services, professional services, or
28 construction by an agency. The protest shall be filed with the pro-
29 curement officer of the contracting agency in writing and include the

1 following information:

2 (1) the name, address, and telephone number of the pro-
3 tester;

4 (2) the signature of the protester or the protester's
5 representative;

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

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

10 (5) the form of relief requested.

11 Sec. 36.30.565. TIME FOR FILING A PROTEST. (a) A protest based
12 upon alleged improprieties in a solicitation involving competitive
13 sealed bidding that are apparent before the bid opening shall be filed
14 before the bid opening. A protest based on alleged improprieties in a
15 solicitation involving competitive sealed proposals that are apparent

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

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

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

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

27 Sec. 36.30.570. NOTICE OF A PROTEST. The procurement officer
28 shall immediately give notice of a protest filed under AS 36.30.565 to
29 the contractor if a contract has been awarded or, if no award has been

1 made, to all interested parties.

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

5 (1) reasonable probability exists that the protest will be
6 sustained; or

7 (2) stay of the award is not contrary to the best interests
8 of the state.

9 Sec. 36.30.580. DECISION BY THE PROCUREMENT OFFICER. (a) The
10 procurement officer of the contracting agency shall issue a written
11 decision containing the basis of the decision within 14 days after a
12 protest has been filed. A copy of the decision shall be furnished to
13 the protester by certified mail or other method that provides evidence
14 of receipt.

15 (b) The time for a decision may be extended up to 26 days for
16 good cause by the commissioner of administration, or for protests
17 involving construction or procurements for the state equipment fleet,
18 the commissioner of transportation and public facilities. If an
19 extension is granted, the procurement officer shall notify the pro-
20 tester in writing of the date the decision is due.

21 (c) If a decision is not made by the date it is due, the pro-
22 tester may proceed as if the procurement officer had issued a decision
23 adverse to the protester.

24 Sec. 36.30.585. PROTEST REMEDIES. (a) If the procurement
25 officer sustains a protest in whole or in part, the procurement offi-
26 cer shall implement an appropriate remedy.

27 (b) In determining an appropriate remedy, the procurement offi-
28 cer shall consider the circumstances surrounding the solicitation or
29 procurement including the seriousness of the procurement deficiencies,

1 the degree of prejudice to other interested parties or to the
2 integrity of the procurement system, the good faith of the parties,
3 the extent the procurement has been accomplished, costs to the agency
4 and other impacts on the agency of a proposed remedy, and the urgency
5 of the procurement to the welfare of the state.

6 Sec. 36.30.590. APPEAL ON A PROTEST. (a) An appeal from a
7 decision of a procurement officer on a protest may be filed by the
8 protester with 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. An appeal
11 shall be filed within five days after the decision is received by the
12 protester. The protester shall file a copy of the appeal with the
13 procurement officer.

14 (b) An appeal must contain the information required under
15 AS 36.30.560. In addition, the appeal must include

- 16 (1) a copy of the decision being appealed; and
17 (2) identification of the factual or legal errors in the
18 decision that form the basis for the appeal.

19 Sec. 36.30.595. NOTICE OF A PROTEST APPEAL. (a) The procure-
20 ment officer shall immediately give notice of an appeal filed under
21 AS 36.30.590 to the contractor if a contract has been awarded or, if
22 no award has been made, to all interested parties.

23 (b) The commissioner of administration or the commissioner of
24 transportation and public facilities, as appropriate, shall, on re-
25 quest, furnish a copy of the appeal to a person notified under (a) of
26 this section, except that confidential material shall be deleted from
27 the copy.

28 Sec. 36.30.600. STAY OF AWARD DURING PROTEST APPEAL. If a
29 protest appeal is filed before a contract is awarded and the award was

1 stayed under AS 36.30.575, the filing of the appeal automatically
2 continues the stay until the commissioner of administration or the
3 commissioner of transportation and public facilities, as appropriate,
4 makes a written determination that the award of the contract without
5 further delay is necessary to protect substantial interests of the
6 state.

7 Sec. 36.30.605. PROTEST REPORT. (a) The procurement officer of
8 the contracting agency shall file a complete report on the protest and
9 decision with the commissioner of administration or the commissioner
10 of transportation and public facilities, as appropriate, within seven
11 days after a protest appeal is filed. The procurement officer shall
12 furnish a copy of the report to the protester and to interested par-
13 ties that have requested a copy of the appeal under AS 36.30.595(b).

14 (b) The procurement officer may request an extension of time to
15 prepare the protest report. The request must be in writing listing
16 the reasons for the request. The commissioner of administration or
17 the commissioner of transportation and public facilities, as appropri-
18 ate, shall respond to the request in writing. If an extension is
19 granted, the commissioner shall list the reasons for granting the
20 extension and indicate the date the protest report is due. The com-
21 missioner shall notify the protester in writing that the time for
22 submission of the report has been extended and the date the report is
23 due.

24 (c) The protester may file comments on the protest report with
25 the commissioner of administration or the commissioner of transporta-
26 tion and public facilities, as appropriate, within seven days after
27 the report is received. The protester shall provide copies of the
28 comments to the procurement officer and to interested parties that
29 have requested a copy of the appeal under AS 36.30.595(b).

1 (d) The protester may request an extension of time to prepare
2 the comments on the protest report. The request must be in writing
3 listing the reasons for the request. The commissioner of administra-
4 tion or the commissioner of transportation and public facilities, as
5 appropriate, shall respond to the request in writing. If an extension
6 is granted, the commissioner shall list the reasons for granting the
7 extension and indicate the date the comments are due. The commission-
8 er shall notify the procurement officer in writing that the time for
9 submission of the comments has been extended and the date the comments
10 are due.

11 Sec. 36.30.610. DECISION WITHOUT HEARING. (a) The commissioner
12 of administration or the commissioner of transportation and public
13 facilities, as appropriate, shall dismiss a protest appeal before a
14 hearing is held if it is determined in writing that the appeal is
15 untimely under AS 36.30.590(a).

16 (b) The commissioner of administration or the commissioner of
17 transportation and public facilities, as appropriate, may issue a
18 decision on an appeal without a hearing if the appeal involves ques-
19 tions of law without genuine issues of fact.

20 Sec. 36.30.615. HEARING ON PROTEST APPEAL. A hearing on a
21 protest appeal shall be conducted in accordance with AS 36.30.670 and
22 regulations adopted by the commissioner.

23 Sec. 36.30.620. CONTRACT CONTROVERSIES. (a) A contractor shall
24 file a claim concerning a contract awarded under this chapter with the
25 procurement officer. The contractor shall certify that the claim is
26 made in good faith, that the supporting data are accurate and complete
27 to the best of the contractor's knowledge and belief, and that the
28 amount requested accurately reflects the contract adjustment for which
29 the contractor believes the state is liable.

1 (b) If a controversy asserted by a contractor concerning a
2 contract awarded under this chapter cannot be resolved by agreement,
3 the procurement officer shall, after receiving a written request by
4 the contractor for a decision, issue a written decision. The decision
5 shall be made no more than 90 days after receipt by the procurement
6 officer of all necessary information from the contractor. Failure of
7 the contractor to furnish necessary information to the procurement
8 officer constitutes a waiver of the claim. Before issuing the deci-
9 sion the procurement officer shall review the facts relating to the
10 controversy and obtain necessary assistance from legal, fiscal, and
11 other advisors.

12 (c) The time for issuing a decision under (b) of this section
13 may be extended for good cause by the commissioner of administration,
14 or for a controversy involving a construction contract or procurement
15 for the state equipment fleet, the commissioner of transportation and
16 public facilities, if the controversy concerns an amount in excess of
17 \$50,000. The procurement officer shall notify the contractor in
18 writing that the time for the issuance of a decision has been extended
19 and of the date by which a decision shall be issued.

20 (d) The procurement officer shall furnish a copy of the decision
21 to the contractor by certified mail or other method that provides
22 evidence of receipt. The decision shall include a

- 23 (1) description of the controversy;
24 (2) reference to the pertinent contract provisions;
25 (3) statement of the agreed upon and disputed facts;
26 (4) statement of reasons supporting the decision; and
27 (5) statement substantially as follows:

28 "This is the final decision of the procurement officer.

29 This decision may be appealed to the commissioner of

1 (administration/transportation and public facilities).

2 If you appeal, you must file a written notice of appeal
3 with the commissioner within 14 days after you receive
4 this decision."

5 (e) If a decision is not made by the date it is due, the con-
6 tractor may proceed as if the procurement officer had issued a deci-
7 sion adverse to the contractor.

8 (f) If a controversy asserted by the state concerning a contract
9 awarded under this chapter cannot be resolved by agreement the matter
10 shall be immediately referred to the commissioner of administration or
11 the commissioner of transportation and public facilities, as appro-
12 priate.

13 Sec. 36.30.625. APPEAL ON A CONTRACT CONTROVERSY. (a) An
14 appeal from a decision of the procurement officer on a contract con-
15 troversy may be filed by the contractor with the commissioner of
16 administration, or for a controversy involving a construction contract
17 or procurement for the state equipment fleet, the commissioner of
18 transportation and public facilities. The appeal shall be filed
19 within 14 days after the decision is received by the contractor. The
20 contractor shall file a copy of the appeal with the procurement offi-
21 cer.

22 (b) An appeal shall contain a copy of the decision being ap-
23 pealed and identification of the factual or legal errors in the deci-
24 sion that form the basis for the appeal.

25 Sec. 36.30.630. HEARING ON A CONTRACT CONTROVERSY. (a) Except
26 as provided in (b) of this section, a hearing shall be conducted
27 according to AS 36.30.670 and regulations adopted by the commissioner
28 of administration on a contract controversy appealed to the commis-
29 sioner of administration or the commissioner of transportation and

1 public facilities or referred to either commissioner under
2 AS 36.30.620(f).

3 (b) Within 15 days after receipt of an appeal on a contract
4 controversy the commissioner of administration or the commissioner of
5 transportation and public facilities, as appropriate, may adopt the
6 decision of the procurement officer as the final decision without a
7 hearing.

8 Sec. 36.30.632. DELEGATION. The commissioner of administration
9 and the commissioner of transportation and public facilities may
10 delegate responsibilities under AS 36.30.590 and 36.30.630 to the head
11 of the contracting agency.

12 Sec. 36.30.635. AUTHORITY TO DEBAR OR SUSPEND. (a) After
13 consultation with the using agency and the attorney general and after
14 a hearing conducted according to AS 36.30.670 and regulations adopted
15 by the commissioner of administration, the commissioner of administra-
16 tion or the commissioner of transportation and public facilities may
17 debar a person for cause from consideration for award of contracts.
18 Notice of a debarment hearing shall be provided in writing at least
19 seven days before the hearing. The debarment may not be for a period
20 of more than three years.

21 (b) The commissioner of administration or the commissioner of
22 transportation and public facilities, after consultation with the
23 using agency and the attorney general, may suspend a person from
24 consideration for award of contracts if there is probable cause for
25 debarment and compelling reasons require suspension to protect state
26 interests. The suspension may not be for a period exceeding three
27 months.

28 (c) The authority to debar or suspend shall be exercised in
29 accordance with regulations adopted by the commissioner of adminis-

1 tration.

2 Sec. 36.30.640. CAUSES FOR DEBARMENT OR SUSPENSION. The causes
3 for debarment or suspension include the following:

4 (1) conviction for commission of a criminal offense as an
5 incident to obtaining or attempting to obtain a public or private
6 contract or subcontract, or in the performance of the contract or
7 subcontract;

8 (2) conviction under state or federal statutes of embezzle-
9 ment, theft, forgery, bribery, falsification or destruction of re-
10 cords, receiving stolen property, or other offense indicating a lack
11 of business integrity or business honesty that currently and seriously
12 affects responsibility as a state contractor;

13 (3) conviction or civil judgment finding a violation under
14 state or federal antitrust statutes;

15 (4) violation of contract provisions of a character that is
16 regarded by the commissioner to be so serious as to justify debarment
17 action, such as

18 (A) knowing failure without good cause to perform in
19 accordance with the specifications or within the time limit
20 provided in the contract; or

21 (B) failure to perform or unsatisfactory performance
22 in accordance with the terms of one or more contracts, except
23 that failure to perform or unsatisfactory performance caused by
24 acts beyond the control of the contractor may not be considered
25 to be a basis for debarment;

26 (5) for violation of the ethical standards set out in law
27 or regulation;

28 (6) for a violation of this chapter punishable under
29 AS 36.30.930(2); and

1 (7) any other cause listed in regulations of the
2 commissioner determined to be so serious and compelling as to affect
3 responsibility as a state contractor, including debarment by another
4 governmental entity for a cause listed in the regulations.

5 Sec. 36.30.645. WRITTEN DETERMINATIONS. (a) The commissioner
6 of administration or the commissioner of transportation and public
7 facilities shall issue a written decision to debar or suspend. The
8 decision must

9 (1) state the reasons for the action taken; and

10 (2) inform the debarred person of rights to judicial appeal
11 or inform the suspended person of rights to administrative and judi-
12 cial appeal.

13 (b) A copy of the decision under (a) of this section shall be
14 mailed or otherwise furnished immediately to the debarred or suspended
15 person and any other intervening party.

16 Sec. 36.30.650. HEARING ON A SUSPENSION. (a) A person suspend-
17 ed under AS 36.30.635 is entitled to a hearing conducted according to
18 AS 36.30.670 and regulations adopted by the commissioner of adminis-
19 tration if the person files a written request for a hearing with the
20 commissioner of administration or the commissioner of transportation
21 and public facilities, as appropriate, within seven days after receipt
22 of the notice of suspension under AS 36.30.645.

23 (b) If a suspended person requests a hearing the commissioner of
24 administration or the commissioner of transportation and public facil-
25 ities, as appropriate, shall schedule a prompt hearing unless the
26 attorney general determines that a hearing at the proposed time is
27 likely to jeopardize an investigation. A hearing may not be delayed
28 longer than six months after notice of the suspension is provided
29 under AS 36.30.645.

1 Sec. 36.30.655. LIST OF PERSONS DEBARRED OR SUSPENDED. The
2 commissioner shall maintain a list of all persons debarred or suspend-
3 ed from consideration for award of contracts.

4 Sec. 36.30.660. REINSTATEMENT. (a) The commissioner of admin-
5 istration or the commissioner of transportation and public facilities
6 may at any time after a final decision to debar a person from consid-
7 eration for award of contracts reinstate the person after determining
8 that the cause for which the person was debarred no longer exists or
9 has been substantially mitigated.

10 (b) A debarred person may request reinstatement by submitting a
11 petition to the commissioner of administration or the commissioner of
12 transportation and public facilities supported by evidence showing
13 that the cause for debarment no longer exists or has been substantial-
14 ly mitigated.

15 (c) The commissioner of administration or the commissioner of
16 transportation and public facilities may require a hearing on a rein-
17 statement petition. A decision on reinstatement shall be made in
18 writing within seven days after a reinstatement petition is submitted.
19 The decision shall specify the factors on which it is based. A deci-
20 sion under this section is not subject to judicial appeal.

21 Sec. 36.30.665. LIMITED PARTICIPATION. The commissioner of
22 administration or the commissioner of transportation and public facil-
23 ities may permit a debarred person to participate in a contract on a
24 limited basis during the debarment period if the commissioner deter-
25 mines in writing that the participation is advantageous to the state.
26 The determination shall specify the factors on which it is based and
27 the limits imposed on the debarred person.

28 Sec. 36.30.670. HEARING PROCEDURES. (a) The commissioner of
29 administration or the commissioner of transportation and public facil-

ities shall act as a hearing officer or appoint a hearing officer for a hearing conducted under this chapter. The hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing. The hearing shall be conducted in an informal manner. The provisions of AS 44.62 (Administrative Procedure Act) do not apply to a hearing conducted under this chapter.

(b) The hearing officer may

(1) hold prehearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(2) require parties to state their positions concerning the various issues in the proceeding;

(3) require parties to produce for examination those relevant witnesses and documents under their control;

(4) rule on motions and other procedural matters;

(5) regulate the course of the hearing and conduct of the participants;

(6) establish time limits for submission of motions or memoranda;

(7) impose appropriate sanctions against a person who fails to obey an order of the hearing officer, including

(A) prohibiting the person from asserting or opposing designated claims or defenses or introducing designated matters into evidence;

(B) excluding all testimony of an unresponsive or evasive witness; and

(C) excluding a person from further participation in the hearing;

(8) take official notice of a material fact not appearing

1 in evidence, if the fact is among the traditional matters subject to
2 judicial notice;

3 (9) administer oaths or affirmations.

4 (c) A transcribed record of the hearing shall be made available
5 at cost to a party that requests it.

6 Sec. 36.30.675. RECOMMENDATION BY THE HEARING OFFICER. (a) If
7 the commissioner of administration or the commissioner of transporta-
8 tion and public facilities is not acting as hearing officer, the
9 hearing officer shall recommend a decision to the commissioner based
10 on the evidence presented. The recommendation shall include findings
11 of fact and conclusions of law.

12 (b) The commissioner of administration or the commissioner of
13 transportation and public facilities may affirm, modify, or reject the
14 hearing officer's recommendation in whole or in part, may remand the
15 matter to the hearing officer with instructions, or take other appro-
16 priate action.

17 Sec. 36.30.680. FINAL DECISION BY THE COMMISSIONER. A decision
18 by the commissioner of administration or the commissioner of transporta-
19 tion and public facilities after a hearing under this chapter is
20 final. A decision shall be sent within 20 days after the hearing to
21 all parties by personal service or certified mail, except that a
22 decision by the commissioner of transportation and public facilities
23 involving procurement of construction shall be sent within 90 days
24 after the hearing to all parties by personal service or certified
25 mail.

26 Sec. 36.30.685. JUDICIAL APPEAL. (a) A final decision of the
27 commissioner of administration or the commissioner of transportation
28 and public facilities under AS 36.30.610, 36.30.635(a), 36.30.650, or
29 36.30.680 may be appealed to the superior court in accordance with the

1 Alaska Rules of Appellate Procedure.

2 (b) A final decision of the commissioner of administration or
3 the commissioner of transportation and public facilities under AS 36.-
4 30.630(b) may be appealed to the superior court for a trial de novo.

5 Sec. 36.30.687. MISREPRESENTATIONS AND FRAUDULENT CLAIMS. (a)
6 A person who makes or uses in support of a contract claim under this
7 chapter, a misrepresentation, or who practices or attempts to practice
8 a fraud, at any stage of proceedings relating to a procurement or
9 contract controversy under this chapter:

10 (1) forfeits all claims relating to that procurement or
11 contract; and

12 (2) is liable to the state for reimbursement of all sums
13 paid on the claim, for all costs attributable to review of the claim,
14 and for a civil penalty equal to the amount by which the claim is
15 misrepresented.

16 (b) The procurement officer, commissioner or court shall make
17 specific findings of misrepresentation, attempted fraud or fraud
18 before declaring a forfeiture under (a)(1) of this section.

19 (c) Suits to recover costs and penalties under (a)(2) of this
20 section must be commenced within six years after the discovery of the
21 misrepresentation, fraud, or attempted fraud.

22 (d) A person who in a matter relating to a procurement or a
23 contract controversy or claim under this chapter makes a misrepresen-
24 tation to the state through a trick, scheme, or device is guilty of a
25 class C felony.

26 (e) In this section, "misrepresentation" means a false or mis-
27 leading statement of material fact, or conduct intended to deceive or
28 mislead concerning material fact, whether it succeeds in deceiving or
29 misleading.

1 Sec. 36.30.690. EXCLUSIVE REMEDY. Notwithstanding AS 44.77 or
2 other law to the contrary, AS 36.30.560 - 36.30.699 and regulations
3 adopted under those sections provide the exclusive procedure for
4 asserting a claim against an agency arising in relation to a procure-
5 ment under this chapter.

6 Sec. 36.30.695. OTHER RULES OF PROCEDURE. The commissioner may
7 adopt by regulation additional rules of procedure providing for the
8 expeditious administrative review of all contract claims or contro-
9 versies, both before the contracting agency and through an appeal
10 heard de novo.

11 Sec. 36.30.699. DEFINITION. In AS 36.30.560 - 36.30.695, "in-
12 terested party" means an actual or prospective bidder or offeror whose
13 economic interest may be affected substantially and directly by the
14 issuance of a contract solicitation, the award of a contract, or the
15 failure to award a contract; whether an actual or prospective bidder
16 or offeror has an economic interest depends on the circumstances.

17 ARTICLE 8. INTERGOVERNMENTAL RELATIONS.

18 Sec. 36.30.700. COOPERATIVE PURCHASING AUTHORIZED. A public
19 procurement unit may either participate in, sponsor, conduct, or
20 administer a cooperative purchasing agreement for the procurement of
21 supplies, services, professional services, or construction with one or
22 more public procurement units or external procurement activities in
23 accordance with an agreement entered into between the participants.
24 Cooperative purchasing may include joint or multi-party contracts
25 between public procurement units and open-ended state public procure-
26 ment unit contracts that are made available to local public procure-
27 ment units.

28 Sec. 36.30.710. SALE, ACQUISITION, OR USE OF SUPPLIES BY A
29 PUBLIC PROCUREMENT UNIT. (a) A public procurement unit may sell to,

1 acquire from, or use any supplies belonging to another public
2 procurement unit or external procurement activity independent of the
3 requirements of AS 36.30.060 and 36.30.100 - 36.30.260.

4 (b) A public procurement unit may enter into an agreement,
5 independent of the requirements of AS 36.30.060 and 36.30.100 - 36.-
6 30.260, with another public procurement unit or external procurement
7 activity for the cooperative use of supplies or services under the
8 terms agreed upon between the parties.

9 Sec. 36.30.720. JOINT USE OF FACILITIES. A public procurement
10 unit may enter into agreements for the common use or lease of ware-
11 housing facilities, capital equipment, and other facilities with
12 another public procurement unit or an external procurement activity
13 under the terms agreed upon between the parties.

14 Sec. 36.30.730. SUPPLY OF PERSONNEL, INFORMATION, AND TECHNICAL
15 SERVICES. (a) A public procurement unit may, upon written request
16 from another public procurement unit or external procurement activity,
17 provide personnel to the requesting public procurement unit or exter-
18 nal procurement activity. The public procurement unit or external
19 procurement activity making the request shall pay the public procure-
20 ment unit providing the personnel the direct and indirect cost of
21 furnishing the personnel, in accordance with an agreement between the
22 parties.

23 (b) The informational, technical, and other services of a public
24 procurement unit may be made available to another public procurement
25 unit or external procurement activity except that the requirements of
26 the public procurement unit tendering the services has precedence over
27 the requesting public procurement unit or external procurement activi-
28 ty. The requesting public procurement unit or external procurement
29 activity shall pay for the expenses of the services so provided, in

1 accordance with an agreement between the parties.

2 (c) Upon request, the commissioner may make available to public
3 procurement units or external procurement activities the following
4 services, among others:

- 5 (1) standard forms;
- 6 (2) printed manuals;
- 7 (3) product specifications and standards;
- 8 (4) quality assurance testing services and methods;
- 9 (5) qualified products lists;
- 10 (6) source information;
- 11 (7) common use commodities listings;
- 12 (8) supplier performance ratings;
- 13 (9) lists of persons debarred or suspended from considera-
14 tion for award of state contracts;
- 15 (10) forms for invitations for bids, requests for proposals,
16 instructions to bidders, general contract provisions, and other con-
17 tract forms; and
- 18 (11) contracts or published summaries of them, including
19 price and time of delivery information.

20 (d) The commissioner may provide the following technical ser-
21 vices, among others:

- 22 (1) development of product specifications;
- 23 (2) development of quality assurance test methods, includ-
24 ing receiving, inspection, and acceptance procedures;
- 25 (3) use of product testing and inspection facilities; and
- 26 (4) use of personnel training programs.

27 (e) The commissioner may enter into contractual arrangements and
28 publish a schedule of fees for the services provided under (c) and (d)
29 of this section.

1 Sec. 36.30.735. RESTRICTION ON CONTRACTING WITH OR EMPLOYING
2 EXPERTS ON RADIATION HAZARDS. (a) Except for the Department of
3 Health and Social Services, the Department of Labor, the Department of
4 Environmental Conservation, and the Department of Military and Veter-
5 ans' Affairs, a state agency may not

6 (1) contract, other than with the Department of Health and
7 Social Services, to have services performed that require expertise in
8 determining or reducing the hazards of radiation; or

9 (2) employ a person whose duties require expertise in
10 determining or reducing the hazards of radiation.

11 (b) In this section, "state agency" means a state department or
12 agency, whether in the legislative, judicial, or executive branch,
13 including such entities as the Alaska State Housing Authority, but not
14 including the University of Alaska, a municipality, or an agency of a
15 municipality.

16 (c) In this section, "radiation" does not include radiation
17 emitted from a Federal Communications Commission licensed facility
18 emitting radiation of a wave length longer than one centimeter and an
19 average power output not exceeding two kilowatts.

20 Sec. 36.30.740. REVIEW OF PROCUREMENT REQUIREMENTS. To the
21 extent possible, the commissioner may collect information concerning
22 the type, cost, quality, and quantity of commonly used supplies,
23 equipment for the state fleet, services, or construction being pro-
24 cured or used by state public procurement units. The commissioner may
25 also collect this information from local public procurement units.
26 The commissioner may make this information available to a public
27 procurement unit upon request.

28 Sec. 36.30.750. CONTRACT CONTROVERSIES. (a) Under a coopera-
29 tive purchasing agreement, controversies arising between an adminis-

1 tering public procurement unit and its bidders, offerors, or
2 contractors shall be resolved in accordance with AS 36.30.560 -
3 36.30.699.

4 (b) A local public procurement unit that is not subject to
5 AS 36.30.560 - 36.30.699 may enter into an agreement with another
6 local public procurement unit or external procurement activity to
7 establish procedures or use that unit's or activity's existing proce-
8 dures to resolve controversies with contractors, whether or not the
9 controversy arose under a cooperative purchasing agreement.

10 Sec. 36.30.790. DEFINITIONS. In AS 36.30.700 - 36.30.790

11 (1) "cooperative purchasing" means procurement conducted
12 by, or on behalf of, more than one public procurement unit, or by a
13 public procurement unit with an external procurement activity;

14 (2) "external procurement activity" means a buying orga-
15 nization not located in this state that, if located in this state,
16 would qualify as a public procurement unit; an agency of the United
17 States is an external procurement activity;

18 (3) "local public procurement unit" means a municipality or
19 other subdivision of the state or other entity that expends public
20 funds for the procurement of supplies, services, professional ser-
21 vices, and construction, and any nonprofit corporation operating a
22 charitable hospital;

23 (4) "public procurement unit" means either a local public
24 procurement unit or a state public procurement unit;

25 (5) "state public procurement unit" means the Department of
26 Administration and any other contracting agency of the state.

27 ARTICLE 9. GENERAL PROVISIONS.

28 Sec. 36.30.850. APPLICATION OF THIS CHAPTER. (a) This chapter
29 applies only to contracts solicited or entered into after January 1,

1 1987, unless the parties agree to its application to a contract
2 solicited or entered into before that date.

3 (b) This chapter applies to every expenditure of state funds
4 irrespective of their sources, including federal assistance except as
5 otherwise specified in AS 36.30.890, by the state, acting through an
6 agency, under a contract, except that this chapter does not apply to

7 (1) grants;

8 (2) contracts for professional witnesses to provide for
9 professional services or testimony relating to existing or probable
10 lawsuits in which the state is or may become a party;

11 (3) contracts of the University of Alaska where the work is
12 to be performed substantially by students enrolled in the university;

13 (4) contracts for medical doctors and dentists;

14 (5) acquisitions or disposals of real property or interest
15 in real property, except as provided in AS 36.30.080;

16 (6) disposals under AS 38.05;

17 (7) contracts for the preparation of ballots under AS 15.-
18 15.030;

19 (8) acquisitions or disposals of property and other con-
20 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
21 091;

22 (9) disposals of obsolete property under AS 19.05.060;

23 (10) disposals of obsolete material or equipment under
24 AS 35.20.060;

25 (11) agreements with providers of services under AS 47.07;
26 AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195, and 47.25.310;

27 (12) contracts of the Department of Fish and Game for
28 flights that involve specialized flying and piloting skills and are
29 not point-to-point.

1 (c) Except for AS 36.30.700 - 36.30.790, this chapter does not
2 apply to contracts between two or more agencies, the state and its
3 political subdivisions, or the state and other governments.
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1 (d) Nothing in this chapter or in regulations adopted under this
2 chapter prevents an agency or political subdivision from complying
3 with the terms and conditions of a grant, gift, bequest, or coopera-
4 tive agreement.

5 Sec. 36.30.860. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLIC-
6 ABLE. Unless displaced by the particular provisions of this chapter,
7 the principles of law and equity, including the Uniform Commercial
8 Code (AS 45.01 - AS 45.09), the law merchant, and law relative to
9 capacity to contract, agency, fraud, misrepresentation, duress, coer-
10 cion, mistake, or bankruptcy shall supplement the provisions of this
11 chapter.

12 Sec. 36.30.870. ADOPTION OF REGULATIONS. (a) Regulations under
13 this chapter shall be adopted in accordance with the Administrative
14 Procedure Act (AS 44.52).

15 (b) Regulations under this chapter applicable to procurements of
16 construction or procurements for or disposal of property of the state
17 equipment fleet shall be adopted by the commissioner of administration
18 only after consultation with the commissioner of transportation and
19 public facilities.

20 Sec. 36.30.880. REQUIREMENT OF GOOD FAITH. All parties involved
21 in the negotiation, performance, or administration of state contracts
22 shall act in good faith.

23 Sec. 36.30.890. FEDERAL ASSISTANCE. If a procurement involves
24 the expenditure of federal funds or federal assistance and there is a
25 conflict between a provision of this chapter or a regulation adopted
26 under a provision of this chapter and a federal statute or regulation
27 the federal statute or regulation shall prevail.

28 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
29 does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding

1 preference for Alaska forest products, or AS 36.20.010 regarding
2 preference to producers or dealers in Alaska except as provided in
3 AS 36.30.170(b) and (c).

4 Sec. 36.30.910. PURCHASES THROUGH GENERAL SERVICES ADMINISTRA-
5 TION. This chapter does not prevent purchasing through the general
6 services administration as provided by law.

7 Sec. 36.30.920. REPORTING OF ANTICOMPETITIVE PRACTICES. When
8 for any reason collusion or other anticompetitive practices are sus-
9 pected among bidders or offerors, a notice of the relevant facts shall
10 be transmitted to the attorney general by the person who suspects the
11 collusion or other anticompetitive practices.

12 Sec. 36.30.930. CIVIL AND CRIMINAL PENALTIES. The following
13 penalties apply to violations of this chapter:

14 (1) a person who contracts for or purchases supplies,
15 equipment for the state fleet, services, professional services, or
16 construction in a manner the person knows to be contrary to the re-
17 quirements of this chapter or the regulations adopted under this
18 chapter is liable for all costs and damages to the state arising out
19 of the violation;

20 (2) a person who intentionally or knowingly contracts for
21 or purchases supplies, equipment for the state fleet, services, pro-
22 fessional services, or construction under a scheme or artifice to
23 avoid the requirements of this chapter is guilty of a class C felony.

24 Sec. 36.30.940. ENFORCEMENT. The attorney general on behalf of
25 the state shall enforce the provisions of this chapter.

26 Sec. 36.30.990. DEFINITIONS. In this chapter, unless the con-
27 text in which a term is used clearly requires a different meaning or a
28 different definition is prescribed for a particular provision,

29 (1) "agency" means a department, institution, board, com-

1 mission, division, authority, public corporation, the Alaska Pioneers'
2 Home, or other administrative unit of the executive branch of state
3 government, except for the University of Alaska and the Alaska
4 Railroad Corporation; it does not include a regional Native housing
5 authority created under AS 18.55.996, or a regional electrical
6 authority created under AS 18.57.020;

7 (2) "change order" means a written order signed by the
8 procurement officer, directing the contractor to make changes that the
9 changes clause of the contract authorizes the procurement officer to
10 order without the consent of the contractor;

11 (3) "commissioner" means the commissioner of the Department
12 of Administration;

13 (4) "competitive sealed bidding" means the procedure under
14 AS 36.30.100 - 36.30.190;

15 (5) "competitive sealed proposals" means the procedure
16 under AS 36.30.200 - 36.30.260;

17 (6) "construction" means the process of building, altering,
18 repairing, maintaining, improving, or demolishing a public highway,
19 structure, building, or other public improvement of any kind to real
20 property other than privately owned real property leased for the use
21 of agencies; it includes services and professional services relating
22 to planning and design required for the construction; it does not
23 include the routine operation of a public improvement to real
24 property;

25 (7) "contract" means all types of state agreements, regard-
26 less of what they may be called, for the procurement or disposal of
27 supplies, equipment for the state fleet, services, professional servi-
28 ces, or construction;

29 (8) "contract modification" means a written alteration in

1 specifications, delivery point, rate of delivery, period of
2 performance, price, quantity, or other provisions of a contract accom-
3 plished by mutual action of the parties to the contract;

4 (9) "department" means the Department of Administration;

5 (10) "grant" means the furnishing by the state of assis-
6 tance, whether financial or otherwise, to a person to support a pro-
7 gram authorized by law; it does not include an award whose primary
8 purpose is to procure an end product for a state agency, whether in
9 the form of supplies, services, professional services, or construc-
10 tion; a contract resulting from such an award is not a grant but a
11 procurement contract;

12 (11) "person" means a business, individual, union, commit-
13 tee, club, other organization, or group of individuals;

14 (12) "procurement" means buying, purchasing, renting, leas-
15 ing, or otherwise acquiring supplies, equipment for the state fleet,
16 services, or construction; it also includes functions that pertain to
17 the obtaining of a supply, equipment for the state fleet, service, or
18 construction, including description of requirements, selection and
19 solicitation of sources, preparation and award of contract, and all
20 phases of contract administration;

21 (13) "procurement officer" means a person authorized to
22 enter into and administer contracts for an agency and make written
23 determinations with respect to them; it also includes an authorized
24 representative of a procurement officer acting within the limits of
25 authority;

26 (14) "professional services" means professional, technical,
27 or consultant's services that are predominantly intellectual in char-
28 acter, result in the production of a report or the completion of a
29 task, and include analysis, evaluation, prediction, planning, or

1 recommendation;

2 (15) "services" means the furnishing of labor, time, or
3 effort by a contractor, not involving the delivery of a specific end
4 product other than reports that are merely incidental to the required
5 performance; it does not include employment agreements or collective
6 bargaining agreements;

7 (16) "supplies" means all property of an agency, including
8 equipment, materials, and insurance; it includes privately owned real
9 property leased for the use of agencies, such as office space, but
10 does not include the acquisition or disposition of other interests in
11 land.

12 Sec. 36.30.995. SHORT TITLE. This chapter may be cited as the
13 State Procurement Code.

14 * Sec. 3. AS 03.22.030 is amended to read:

15 Sec. 03.22.030. CENTER SITE, BUILDINGS AND EQUIPMENT. The
16 department shall obtain a site, either by donation, lease, or pur-
17 chase, and erect suitable buildings on the site, if they are needed
18 for the use of the plant materials center. The department shall also
19 acquire the agricultural land, scientific instruments and equipment
20 necessary to carry on the work of the center. Acquisition of scien-
21 tific instruments and equipment under this section is governed by
22 AS 36.30 (State Procurement Code).

23 * Sec. 4. AS 05.20.040 is amended to read:

24 Sec. 05.20.040. PERSONNEL TO INSPECT DEVICES. The department
25 shall designate a person qualified in experience and training as the
26 inspector of devices. The department may employ additional employees
27 as are necessary to administer this chapter. The inspector and the
28 employees may be hired on a temporary basis or borrowed from other
29 state departments or political subdivisions of the state, or the

1 department may contract with individuals or firms for the inspecting
2 service on an independent basis. The department shall prescribe the
3 salary or other remuneration for this service. Contracting under this
4 section is governed by AS 36.30 (State Procurement Code).

5 * Sec. 5. AS 09.50.250 is amended to read:

6 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person
7 or corporation having a contract, quasi-contract, or tort claim
8 against the state may bring an action against the state in the superi-
9 or court. A person who may present the claim under AS 44.77 may not
10 bring an action under this section except as set out in AS 44.77.-
11 040(c). A person who may bring an action under AS 36.30.560 - 36.30.-
12 695 may not bring an action under this section except as set out in
13 AS 36.30.685. However, no action may be brought under this section if
14 the claim

15 (1) is an action for tort, and is based upon an act or
16 omission of an employee of the state, exercising due care, in the
17 execution of a statute or regulation, whether or not the statute or
18 regulation is valid; or is an action for tort, and based upon the
19 exercise or performance or the failure to exercise or perform a dis-
20 cretionary function or duty on the part of a state agency or an em-
21 ployee of the state, whether or not the discretion involved is abused;

22 (2) is for damages caused by the imposition or establish-
23 ment of a quarantine by the state;

24 (3) arises out of assault, battery, false imprisonment,
25 false arrest, malicious prosecution, abuse of process, libel, slander,
26 misrepresentation, deceit, or interference with contract rights.

27 * Sec. 6. AS 14.08.101 is amended to read:

28 Sec. 14.08.101. POWERS. A regional school board may

29 (1) sue and be sued;

1 (2) contract with the department, the Bureau of Indian
2 Affairs, or any other school district, agency, or regional board for
3 the provision of services, facilities, supplies or utilities;

4 (3) determine its own fiscal procedures including but not
5 limited to policies and procedures for the purchase of supplies and
6 equipment; the regional school boards are exempt from the Fiscal
7 Procedures Act (AS 37.05) and the State Procurement Code (AS 36.30);

8 (4) appoint, compensate and otherwise control all school
9 employees in accordance with this title; these employees are not
10 subject to the State Personnel Act (AS 39.25);

11 (5) adopt regulations governing organization, policies and
12 procedures for the operation of the schools;

13 (6) establish, maintain, operate, discontinue and combine
14 schools subject to the approval of the commissioner;

15 (7) recommend to the department projects for construction,
16 rehabilitation, and improvement of schools and education-related
17 facilities as specified in AS 14.11.010(a), and plan, design, and
18 construct the project when the responsibility for it is assumed under
19 AS 14.11.020;

20 (8) exercise those other functions that may be necessary
21 for the proper performance of its responsibilities;

22 (9) by resolution adopted by a majority of all the members
23 of the board and provided to the commissioner of the department,
24 assume ownership of all land and buildings used in relation to the
25 schools in the regional educational attendance area;

26 (10) provide housing for rental to teachers, by leasing
27 existing housing from a local agency or individual, or by entering
28 into contractual arrangements with a local agency or individual to
29 lease housing that will be constructed by the local agency or indi-

vidual for that purpose.

* Sec. 7. AS 16.05.050 is amended to read:

Sec. 16.05.050. POWERS AND DUTIES OF COMMISSIONER. The commissioner has, but not by way of limitation, the following powers and duties:

(1) assist the United States Fish and Wildlife Service in the enforcement of federal laws and regulations pertaining to fish and game;

(2) through the appropriate state agency and under the provisions of AS 36.30 (State Procurement Code), acquire by gift, purchase, or lease, or other lawful means, land, buildings, water, rights-of-way, or other necessary or proper real or personal property when the acquisition is in the interest of furthering an objective or purpose of the department and the state;

(3) under the provisions of AS 36.30, design and construct hatcheries, pipelines, rearing ponds, fishways, and other projects beneficial for the fish and game resources of the state;

(4) accept money from any person under conditions requiring the use of the money for specific purposes in the furtherance of the protection, rehabilitation, propagation, preservation, or investigation of the fish and game resources of the state or in settlement of claims for damages to fish or game resources;

(5) collect, classify, and disseminate statistics, data and information that, in the commissioner's discretion, will tend to promote the purposes of this title except AS 16.51 and AS 16.52;

(6) capture, propagate, transport, buy, sell, or exchange fish or game or eggs for propagating, scientific or stocking purposes;

(7) under the provisions of AS 36.30, provide public facilities where necessary or proper to facilitate the taking of fish or

1 game, and enter into cooperative agreements with any person to effect
2 them;

3 (8) exercise administrative, budgeting, and fiscal powers;

4 (9) under the provisions of AS 36.30, construct, operate,
5 supervise, and maintain vessels used by the Department of Fish and
6 Game;

7 (10) authorize the holder of an interim-use permit under
8 AS 16.43 to engage on an experimental basis in commercial taking of a
9 fishery resource with vessel, gear, and techniques not presently
10 qualifying for licensing under this chapter in conformity with stand-
11 ards established by the Alaska Commercial Fisheries Entry Commission;

12 (11) not later than January 31 of each year, provide to the
13 commissioner of revenue the names of those fish and shellfish species
14 which the commissioner of fish and game designates as developing
15 commercial fish species for that calendar year; a fish or shellfish
16 species is a developing commercial fish species if, within a specified
17 geographical region,

18 (A) the optimum yield from the harvest of the species
19 has not been reached;

20 (B) a substantial portion of the allowable harvest of
21 the species has been allocated to fishing vessels of a foreign
22 nation; or

23 (C) a commercial harvest of the fish species has
24 recently developed;

25 (12) initiate or conduct research necessary or advisable to
26 carry out the purposes of this title except AS 16.51 and AS 16.52;

27 (13) enter into cooperative agreements with agencies of the
28 federal government, educational institutions, or other agencies or
29 organizations, when in the public interest, to carry out the purposes

1 of this title except AS 16.51 and AS 16.52.

2 * Sec. 8. AS 16.05.826(c) is amended to read:

3 (c) The department may contract to others the performance of the
4 department's responsibilities under this section. Contracting under
5 this subsection is governed by AS 36.30 (State Procurement Code),
6 except that a [A] contract may include provisions for advance payment
7 or reimbursement for services performed under the contract. All costs
8 incurred under this section may be paid from the fish and game fund.

9 * Sec. 9. AS 18.15.120 is amended to read:

10 Sec. 18.15.120. TUBERCULOSIS CONTROL PROGRAM AUTHORIZED. The
11 department may establish a comprehensive program for the control of
12 tuberculosis in the state, and may

13 (1) arrange means by which persons in the state may be
14 X-rayed to determine the presence of tuberculosis;

15 (2) establish necessary out-patient clinics for the care of
16 tuberculosis;

17 (3) encourage and promote the establishment of adequate
18 sanatorium facilities within the state to care for persons suffering
19 from tuberculosis and allied conditions;

20 (4) under the provisions of AS 36.30 (State Procurement
21 Code), obtain, by purchase or donation from surplus federal property
22 or otherwise, medical supplies and equipment useful in carrying out
23 this program and to allot or resell these supplies and equipment to
24 private institutions engaged by the department to carry out this
25 program;

26 (5) under the provisions of AS 36.30, contract with hos-
27 pitals, associations, or sanatorium qualified and equipped to give
28 adequate care inside or outside the state;

29 (6) employ necessary and trained personnel to carry out the

purposes of AS 18.15.120 - 18.15.140;

(7) pay the costs of care and incidental expenses for residents of the state, in whole or in part, depending on the ability of each patient to pay, and the temporary costs of care and transportation for nonresidents on the same basis until they can be transferred to their residence;

(8) enlist the cooperation of state and federal agencies operating in the state for the furtherance of this program;

(9) establish standards in accordance with department procedure for the care of tuberculars receiving treatment under AS 18.15.120 - 18.15.140.

* Sec. 10. AS 18.55.100 is amended by adding a new subsection to read:

(d) The authority's power to contract, lease, rent, construct, acquire, procure, and provide for services under this section is governed by AS 36.30. However, to the extent that AS 36.30 conflicts with responsibilities of the authority under AS 18.55.110, the provisions of AS 18.55.110 prevail.

* Sec. 11. AS 19.05.020 is amended to read:

Sec. 19.05.020. REGULATIONS. The department shall adopt regulations necessary to carry out the purpose of AS 19.05 - AS 19.25. The regulations may not conflict with AS 36.30 (State Procurement Code) or regulations adopted by the Department of Administration to implement that chapter.

* Sec. 12. AS 19.05.080 is amended to read:

Sec. 19.05.080. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATERIALS BY PURCHASE OR EMINENT DOMAIN. The department on behalf of the state and as part of the cost of constructing or maintaining a highway may purchase in the open market, acquire, take over, or condemn under the right and power of eminent domain land in fee simple or easements

1 which it considers necessary for present public use, either temporary
2 or permanent, or which it considers necessary and reasonable for the
3 public use. By the same means, the department may obtain material,
4 including clay, gravel, sand, or rock, or the land necessary to obtain
5 material, including access to it. The department may acquire the land
6 or materials notwithstanding the fact that title to it is vested in
7 the state or a department, agency, commission or institution of the
8 state. Acquisition of materials by purchase in the open market under
9 this section is governed by AS 36.30 (State Procurement Code).

10 * Sec. 13. AS 19.10.160 is amended to read:

11 Sec. 19.10.160. STANDARD PLANS AND SPECIFICATIONS. The depart-
12 ment shall prepare and adopt uniform standard plans and specifications
13 for the establishment, construction and maintenance of highways in the
14 state. The department may amend the plans and specifications as it
15 considers advisable. The standards shall conform as closely as prac-
16 ticable to those adopted by the American Association of State Highway
17 and Transportation Officials.

18 * Sec. 14. AS 19.10.170(a) is amended to read:

19 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is
20 [SHALL BE] the general policy of the state [DEPARTMENT] to require the
21 construction of all highways under bid contract in accordance with
22 AS 36.30 (State Procurement Code). However, subject to the provisions
23 of (b) of this section, when the estimated cost of a construction
24 project is less than \$100,000 or when it appears to be in the best
25 interests of the state, the department may perform the work notwith-
26 standing any other provisions of law.

27 * Sec. 15. AS 19.10.180 is repealed and reenacted to read:

28 Sec. 19.10.180. REQUEST FOR PUBLIC BIDS. Requests for public
29 bids are governed by AS 36.30 (State Procurement Code). The request

1 for public bids may require the contractor to furnish equipment,
2 labor, materials, and supplies for the project, or it may state that
3 the department will furnish the materials and supplies. If the de-
4 partment elects to provide materials and supplies for a project, it
5 shall do so at the time it adopts the construction program. The
6 department shall acquire these materials and supplies under AS 36.30
7 by requesting bids for them according to the class, type, and nature
8 of the materials and supplies. The contract for materials and sup-
9 plies may be awarded either upon the basis of delivery to the con-
10 struction project directly or to a central storehouse or storehouses
11 maintained by the department. Those materials and supplies so pur-
12 chased by the department may be delivered to the project site without
13 expense to the contractor, or it may sell them to the contractor at
14 cost and make the materials and supplies a part of the construction
15 cost.

16 * Sec. 16. AS 19.10.200 is repealed and reenacted to read:

17 Sec. 19.10.200. PROCEDURES FOR THE AWARD OF CONTRACTS. The
18 award of a contract for highway construction work is governed by
19 AS 36.30 (State Procurement Code), AS 19.05 - AS 19.25, and regula-
20 tions adopted under those laws.

21 * Sec. 17. AS 19.30.070 is amended to read:

22 Sec. 19.30.070. CONTRACTS FOR CONSTRUCTION OF ROADS. The
23 director of the division of lands may contract with private persons
24 for the construction of roads to and on state lands programmed for
25 surface disposal which are not more than six miles from existing roads
26 or highways. Contracts under this section are governed by AS 36.30
27 (State Procurement Code).

28 * Sec. 18. AS 19.30.080 is amended to read:

29 Sec. 19.30.080. CONSTRUCTION STANDARDS AND MAINTENANCE. An

1 access road constructed under AS 19.30.060 - 19.30.100 shall be of low
2 standard, not necessarily suitable for all weather use. The state is
3 not under obligation to maintain an access road constructed under AS
4 19.30.060 - 19.30.100. If an access road is constructed outside a
5 municipality that has zoning ordinances, the right-of-way width for
6 the road shall be determined by the division of lands and the Depart-
7 ment of Transportation and Public Facilities. If an access road is
8 constructed within the boundaries of a municipality that has zoning
9 ordinances, the right-of-way width shall conform to the subdivision
10 control ordinances of the municipality. Contracts for the work on an
11 access road are governed by AS 36.30 (State Procurement Code) [SHALL
12 BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER QUALIFIED TO CONTRACT WITH
13 THE STATE].

14 * Sec. 19. AS 19.40.020(a) is amended to read:

15 (a) Subject to (b) of this section, the department may contract
16 in accordance with AS 36.30 for the construction of a secondary high-
17 way from the Yukon River to the Arctic Ocean. [THE DEPARTMENT MAY
18 REQUEST BIDS AND AWARD CONTRACTS FOR THE CONSTRUCTION OF THE HIGHWAY,
19 OR IT MAY ELECT TO DIRECTLY NEGOTIATE CONTRACTS FOR THE CONSTRUCTION
20 OF THE HIGHWAY IF IT APPEARS TO BE IN THE BEST INTERESTS OF THE
21 STATE.] The provisions of AS 36.10 govern in employment practices on
22 all work authorized by this chapter.

23 * Sec. 20. AS 19.60.010 is amended to read:

24 Sec. 19.60.010. ACQUISITION AND MAINTENANCE OF FERRY TERMINAL
25 FACILITIES. The department shall construct, purchase or lease ferry
26 terminal facilities at locations it selects for the loading and un-
27 loading of passengers and vehicles under their own power, on and off
28 ferries. The department shall repair and maintain these facilities.
29 Construction and purchasing under this section are governed by AS 36.-

1 30 (State Procurement Code).

2 * Sec. 21. AS 23.15.611(a) is amended to read:

3 (a) The department may [IS AUTHORIZED TO] participate in pro-
4 grams of manpower training if it finds they are necessary to meet the
5 occupational needs of the state. This authorization includes authori-
6 ty to execute on behalf of the state agreements or contracts which may
7 be necessary or desirable to enable the state to participate in a
8 program, to receive and expend all appropriate funds made available
9 for programs by the state or from other sources, to supervise the
10 expenditure of the funds and conduct of the programs by other public
11 and private agencies of the state, and to make the reports and certif-
12 icates which are called for, and in cooperative arrangements with the
13 Department of Education. Contracts with private entities under this
14 subsection are governed by AS 36.30 (State Procurement Code).

15 * Sec. 22. AS 23.20.075(a) is amended to read:

16 (a) The department may acquire in the name of the state by term
17 purchase agreements based on competitive bids in accordance with
18 AS 36.30 (State Procurement Code) land and buildings upon terms and
19 conditions that [WHICH] are approved by the Bureau of Employment
20 Security of the United States, or its successor, for the purpose of
21 providing office space for the department at a place which the depart-
22 ment finds necessary and suitable.

23 * Sec. 23. AS 23.35.110 is amended to read:

24 Sec. 23.35.110. CONTRACTS FOR CARE. In carrying out this
25 chapter, the department may enter into contracts or other arrangements
26 with hospitals and doctors in the state for furnishing care on an
27 annual basis to persons entitled to benefits. Contracting under this
28 section is governed by AS 36.30 (State Procurement Code).

29 * Sec. 24. AS 24.55.275 is amended to read:

1 Sec. 24.55.275. CONTRACT PROCEDURES. The ombudsman shall adopt
2 by regulation procedures consistent with AS 36.30 [AS 24.23] to be
3 followed by the office of the ombudsman in contracting for services.
4 However, the procedure for requests for proposals does not apply to
5 contracts for investigations under AS 24.55.100.

6 * Sec. 25. AS 24.60.040(a) is amended to read:

7 (a) A person to whom this chapter applies may not be a party to
8 or have an interest in a state contract or lease unless the contract
9 or lease is let through competitive sealed bidding under AS 36.30
10 (State Procurement Code) [AS 37.05.230] or the total annual amount of
11 the state contract or lease is \$1,000 or less, or is a standardized
12 contract or lease which was developed under publicly established
13 guidelines and is generally available to the public at large, members
14 of a profession, occupation or group. A person has an interest in a
15 state contract or lease under this section if the person receives
16 direct or indirect financial benefits.

17 * Sec. 26. AS 26.05.230(a) is amended to read:

18 (a) Buildings and sites for armory purposes may be leased or
19 constructed, based upon location and size of units to be organized,
20 and shall be financed through state and federal appropriations or
21 both. These facilities may be made available by local communities or
22 by the cooperative arrangement between the state and the federal
23 government and any local community. Leasing and construction under
24 this subsection are governed by AS 36.30 (State Procurement Code).

25 * Sec. 27. AS 26.05.280 is amended to read:

26 Sec. 26.05.280. TRANSPORTATION, SUBSISTENCE, AND SUPPLIES.
27 There shall be provided by the state, transportation and subsistence
28 for all officers and enlisted persons who are ordered into active
29 service by the state for encampment, field duty, or other duty. Neces-

1 sary transportation, stores and subsistence for troops when ordered on
2 duty shall be contracted by the proper officers and paid for as other
3 military bills. Contracting under this section is governed by AS 36.-
4 30 (State Procurement Code).

5 * Sec. 28. AS 27.21.030 is amended to read:

6 Sec. 27.21.030. GENERAL POWERS. To accomplish the purposes of
7 this chapter, the commissioner may

8 (1) in accordance with the Administrative Procedure Act
9 (AS 44.62) adopt, amend, and enforce regulations pertaining to surface
10 coal mining and reclamation operations;

11 (2) issue permits;

12 (3) conduct hearings and conferences;

13 (4) issue orders requiring an operator to take the actions
14 necessary to comply with this chapter and the regulations adopted
15 under this chapter;

16 (5) issue orders modifying previous orders;

17 (6) after opportunity for a due process hearing, issue a
18 final order revoking the permit of an operator who has failed to
19 comply with an order of the commissioner to take action required by
20 this chapter or regulations adopted under this chapter;

21 (7) order the immediate cessation of all or part of a
22 surface coal mining and reclamation operation if the commissioner
23 finds that the operation or part of the operation creates an imminent
24 danger to the health or safety of the public or is causing or can
25 reasonably be expected to cause significant imminent harm to land,
26 air, or water resources, and, to the extent reasonably necessary to
27 eliminate or alleviate those conditions, take other action or make
28 changes in a permit, as provided in this chapter;

29 (8) hire and authorize the hiring of employees and private

1 contractors, subject to the conflict of interest provisions of this
2 chapter and subject to AS 36.30 (State Procurement Code), to assist in
3 carrying out the requirements of this chapter;

4 (9) enter and inspect a surface coal mining operation that
5 is subject to the provisions of this chapter to assure that the opera-
6 tion is in compliance with this chapter;

7 (10) conduct, encourage, request, and participate in
8 studies, surveys, investigations, research, experiments, training, and
9 demonstrations;

10 (11) prepare reports and require permittees to prepare
11 reports;

12 (12) accept, receive, and administer grants, gifts, or other
13 money made available for the purposes of this chapter regardless of
14 the source of the grants, gifts, or money;

15 (13) take the steps necessary to allow the state to partici-
16 pate to the fullest extent practicable in the abandoned mine land
17 program provided in Title IV of the Surface Mining Control and Recla-
18 mation Act of 1977, including engaged in any work and adopting, amend-
19 ing and enforcing regulations;

20 (14) take the actions necessary to establish and maintain
21 exclusive jurisdiction over surface coal mining and reclamation opera-
22 tions in the state under the provisions of the Surface Mining Control
23 and Reclamation Act of 1977, including making recommendations for
24 legislation to clarify or amend this chapter to conform with the terms
25 of the Surface Mining Control and Reclamation Act of 1977;

26 (15) contract with state agencies to obtain the professional
27 and technical services necessary to carry out the provisions of this
28 chapter;

29 (16) coordinate the review of applications and issuance of

1 permits for surface coal mining and reclamation operations with other
2 federal or state permit processes applicable to those operations;

3 (17) enter into cooperative agreements with the Secretary of
4 the United States Department of the Interior for the regulation of
5 surface coal mining operations on federal land in accordance with the
6 Surface Mining Control and Reclamation Act of 1977; and

7 (18) perform other duties required by this chapter.

8 * Sec. 29. AS 33.30.050 is amended to read:

9 Sec. 33.30.050. COMMISSIONER TO PROVIDE MEDICAL SERVICES. The
10 commissioner shall detail physicians, nurses, and psychiatrists, or
11 their aides, and laboratory technicians, employed by the department to
12 any prison facility where state prisoners are detained or confined,
13 for the purpose of furnishing necessary medical services, including
14 examinations for communicable and infectious diseases. However, if
15 medical services cannot be furnished by physicians, nurses, psychia-
16 trists, or their aides, and laboratory technicians, regularly employed
17 by the department, the commissioner may contract with private practi-
18 tioners located in the area of a prison facility to furnish these
19 services. The cost of contracted services shall be paid out of appro-
20 priations made to the department. Contracting for services under this
21 section is governed by AS 36.30 (State Procurement Code).

22 * Sec. 30. AS 33.30.062(a) is amended to read:

23 (a) The commissioner may enter into an agreement with a private-
24 ly operated correctional facility, but only if the facility is located
25 in the state and if the purpose of the agreement is to involve prison-
26 ers in a work or rehabilitation furlough program established under
27 this chapter, to provide necessary facilities under AS 33.30.282 -
28 33.30.288, or to confine prisoners convicted of a misdemeanor. An
29 [NOTWITHSTANDING AS 37.05.230(1)(B), AN] agreement awarded under this

1 Section is governed by AS 36.30 (State Procurement Code) [SHALL BE
2 BASED ON COMPETITIVE BIDS].

3 * Sec. 31. AS 33.32.015(b) is amended to read:

4 (b) The commissioner of corrections may

5 (1) subject to AS 36.30 (State Procurement Code) [THE
6 FISCAL PROCEDURES ACT (AS 37.05)], use, purchase, lease, equip, and
7 maintain buildings, machinery, and other equipment, and may purchase
8 materials and enter into contracts, which may be necessary for the
9 correctional industries program;

10 (2) provide for prisoners to be employed in rendering
11 services and producing articles, materials, and supplies needed by a
12 state agency, a political subdivision of the state, an agency of the
13 federal government, other states or their political subdivisions, or
14 for use by nonprofit organizations;

15 (3) if the Correctional Industries Commission established
16 in AS 33.32.070 approves, employ prisoners to provide services or
17 products as needed by private industry if the services or products
18 have potential for contributing to the economy of the state and will
19 have minimal negative impact on an existing private industry or labor
20 force in the state.

21 * Sec. 32. AS 35.05.010 is amended to read:

22 Sec. 35.05.010. PLANNING AND CONSTRUCTION. The department is
23 responsible for the planning and construction of public works except
24 as provided for court facilities in AS 22.05.025. Contracts for
25 planning and construction of public works are governed by AS 36.30
26 (State Procurement Code).

27 * Sec. 33. AS 35.05.020 is amended to read:

28 Sec. 35.05.020. RULES AND REGULATIONS. The department shall
29 adopt [RULES AND] regulations that [WHICH] it considers necessary to

1 carry out the purpose of this title. The regulations may not conflict
2 with AS 36.30 (State Procurement Code) or the regulations adopted by
3 the Department of Administration under that chapter.

4 * Sec. 34. AS 35 is amended by adding a new section to read:

5 Sec. 35.10.195. CONFORMANCE WITH AS 36.30. The contractual
6 techniques for the procurement of labor, materials, and contractual
7 services under the policies developed under this chapter must conform
8 to the requirements of AS 36.30 (State Procurement Code).

9 * Sec. 35. AS 35.15.010(a) is amended to read:

10 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is
11 [SHALL BE] the general policy of the state [DEPARTMENT] to require the
12 construction of all public works under bid contract in accordance with
13 AS 36 (State Procurement Code). However, when the estimated cost
14 of a construction project is less than \$100,000, or when it appears to
15 be in the best interests of the state, the department may perform the
16 work, notwithstanding any other provisions of law. A complete record
17 shall be kept by the commissioner or the commissioner's designee of
18 all transactions entered into under this section including names of
19 employees involved in the transactions.

20 * Sec. 36. AS 35.15.020 is repealed and reenacted to read:

21 Sec. 35.15.020. REQUEST FOR PUBLIC BIDS. The solicitation of
22 bids for construction of public works is governed by AS 36.30 (State
23 Procurement Code). The request for bids may require the contractor to
24 furnish equipment, labor, materials, and supplies for the project, or
25 it may state that the department will furnish the materials and sup-
26 plies. If the department elects to provide materials and supplies for
27 a project, it shall make the election at the time it adopts the con-
28 struction program. The department shall acquire these materials and
29 supplies under AS 36.30 by requesting bids for them according to the

1 class, type, and nature of the materials and supplies. The contract
2 may be awarded either upon the basis of delivery to the construction
3 project directly or to a central storehouse or storehouses maintained
4 by the department. Those materials and supplies so purchased by the
5 department may be delivered to the project site without expense to the
6 contractor, or it may sell them to the contractor at cost and make the
7 materials and supplies a part of the construction cost.

8 * Sec. 37. AS 35.15.040 is repealed and reenacted to read:

9 Sec. 35.15.040. PROCEDURES FOR THE AWARD OF CONTRACTS. Award of
10 a contract for the construction of a public work shall comply with
11 this title, AS 36.30 (State Procurement Code), and the regulations
12 adopted under those laws.

13 * Sec. 38. AS 35.20.010 is amended to read:

14 Sec. 35.20.010. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-
15 RIALS BY PURCHASE OR EMINENT DOMAIN. The department, on behalf of the
16 state and as part of the cost of constructing or maintaining a public
17 work, may purchase in the open market, acquire, take over, or condemn
18 under the right and power of eminent domain land in fee simple or
19 easements which it considers necessary for present public use, either
20 temporary or permanent, or which it considers necessary and reasonable
21 for the public use. By the same means, the department may obtain
22 material including clay, gravel, sand, or rock, or the land necessary
23 to obtain the material, and the necessary land or easements to provide
24 access to it. The department may acquire the land or material not-
25 withstanding the fact that the title to it is in the state or a
26 department, agency, commission or institution of the state. Acquisi-
27 tion of material in the open market under this section is governed by
28 AS 36.30 (State Procurement Code).

29 * Sec. 39. AS 37.05 is amended by adding a new section to read:

1 Sec. 37.05.232. PETTY CASH ACCOUNTS. The department shall
2 determine the amount of the petty cash accounts needed by each state
3 agency and inspect the petty cash accounts at least once each year to
4 determine that the total plus amounts of receipts for unreplenished
5 disbursements is equal to the fixed sum of cash set aside. Shortages
6 in petty cash accounts are a personal liability of the responsible
7 head of the agency to whom the account is set aside. The department
8 shall adopt necessary regulations governing use and replenishment of
9 petty cash funds.

10 * Sec. 40. AS 37.05.316 is amended to read:

11 Sec. 37.05.316. GRANTS TO NAMED RECIPIENTS. When an amount is
12 appropriated or allocated to a department as a grant for a named
13 recipient that [WHICH] is not a municipality, the department to which
14 the appropriation or allocation is made shall promptly notify the
15 named recipient of the availability of the grant and request the named
16 recipient to submit a proposal to provide the goods or services speci-
17 fied in the appropriation act [, OR BOTH,] for which the appropriation
18 or allocation is made. At the same time, the department may issue a
19 request for proposals from other qualified persons to provide the same
20 goods or services [, OR BOTH,] in the same area. The department shall
21 award the grant to [CONTRACT WITH] the named recipient unless the
22 Office of the Governor, with due regard for the [ANY] local expertise
23 or experience of [AMONG] those making proposals, determines that an
24 award [OF THE CONTRACT] to a different party would better serve the
25 public interest. If the grant [CONTRACT] is awarded to a [ANOTHER]
26 party other than that named by the legislature, the basis of that
27 action shall be stated in writing at the time the grant is issued and
28 a copy of the written statement shall be sent to the Legislative
29 Budget and Audit Committee. A grant agreement must [CONTRACT SHALL]

1 be executed within 60 days after the effective date of the
2 appropriation or allocation. [THE PURCHASE OF THE GOODS OR SERVICES,
3 OR BOTH, SHALL BE IN ACCORDANCE WITH AS 37.05.230(1)(B).]

4 * Sec. 41. AS 41.21.020(a) is amended to read:

5 (a) The Department of Natural Resources shall

6 (1) develop a continuing plan for the conservation and
7 maximum use in the public interest of the scenic, historic, archaeo-
8 logic, scientific, biological, and recreational resources of the
9 state;

10 (2) plan for and develop a system of state parks and recre-
11 ational facilities, to be established as the legislature authorizes
12 and directs;

13 (3) acquire by gift, purchase, or transfer from state or
14 federal agencies, or from individuals, corporations, partnerships or
15 associations, land necessary, suitable and proper for roadside, pic-
16 nic, recreational or park purposes;

17 (4) control, develop and maintain state parks and recrea-
18 tional areas;

19 (5) provide for the acquisition, care, control, supervi-
20 sion, improvement, development, extension and maintenance of public
21 recreational land, and make necessary arrangements, contracts or
22 commitments for the improvement and development of land acquired under
23 AS 41.21.010 - 41.21.040; contracting for improvement and development
24 under this paragraph is governed by AS 36.30 (State Procurement Code);

25 (6) adopt, in accordance with this section and the Adminis-
26 trative Procedure Act (AS 44.62), regulations governing the use and
27 designating incompatible uses within the boundaries of state park and
28 recreational areas to protect the property and to preserve the peace;

29 (7) cooperate with the United States and its agencies and

1 local subdivisions of the state to secure the effective supervision,
2 improvement, development, extension, and maintenance of state parks,
3 state monuments, state historical areas, and state recreational areas,
4 and secure agreements or contracts for the purpose of AS 41.21.010 -
5 41.21.040;

6 (8) encourage the organization of state public park and
7 recreational activities in the local political subdivisions of the
8 state;

9 (9) provide for consulting service designed to develop
10 local park and recreation facilities and programs;

11 (10) provide clearing-house services for other state agen-
12 cies concerned with park and recreation matters; and

13 (11) perform other duties as are prescribed by executive
14 order or by law;

15 (12) maintain memorials to Alaska veterans located in state
16 parks;

17 (13) adopt, in accordance with the Administrative Procedure
18 Act (AS 44.62), regulations governing the use of the Chena River State
19 Recreation Area and designating incompatible uses within the bound-
20 aries of the Chena River State Recreation Area in accordance with
21 AS 41.21.490.

22 * Sec. 42. AS 42.40.920(b) is amended to read:

23 (b) Unless specifically provided otherwise in this chapter, the
24 following laws do not apply to the operations of the corporation:

25 (1) AS 19;

26 (2) AS 30.15;

27 (3) AS 35;

28 (4) AS 36.30, except as specifically provided in AS 36.30

29 (State Procurement Code);

1 (5) AS 37.05;

2 (6) [(5)] AS 37.07;

3 (7) [(6)] AS 37.10.010 - 37.10.060;

4 (8) [(7)] AS 37.10.085;

5 (9) [(8)] AS 37.20;

6 (10) [(9)] AS 37.25;

7 (11) [(10)] AS 38;

8 (12) [(11)] AS 44.62.040 - 44.62.320.

9 * Sec. 43. AS 44.21.310(a) is amended to read:

10 (a) The telecommunications divisions, as directed by the deputy
11 commissioner, shall

12 (1) advise the governor on matters of policy and comprehen-
13 sive state planning for telecommunications services;

14 (2) make an annual report to the governor and to the legis-
15 lature on the activities of the telecommunications divisions;

16 (3) coordinate, manage, and supervise state programs in
17 telecommunications, including the management of those telecommunica-
18 tion services for the state obtained from common carriers and from the
19 communications industry;

20 (4) when requested, provide technical and consulting assis-
21 tance to the executive, judicial, and legislative branches of state
22 government, to the University of Alaska, and to private noncommercial
23 entities which request that assistance in facility procurement and
24 leasing and in identifying long-range goals and objectives for the
25 state and its political subdivisions in all aspects of telecommunica-
26 tions, including public, educational, and instructional telecommunica-
27 tions;

28 (5) prepare and maintain a state comprehensive telecommu-
29 nications development plan to further state telecommunications devel-

1 opment and to meet state telecommunications needs and prepare and
2 maintain a comprehensive inventory of all state communications facil-
3 ities;

4 (6) whenever feasible, procure services from private enter-
5 prise or certified and franchised utilities and contract for the
6 construction, management, operation and maintenance of telecommunica-
7 tions systems, and develop a procurement policy consistent with
8 AS 36.30 (State Procurement Code) [UNDER AS 37.05.010 - 37.05.410];
9 the procurement policy must seek to achieve the maximum benefit to the
10 public, and methods of procurement, including lease, purchase, rental,
11 or combinations of lease, purchase, and rental, must be selected on
12 the basis of factors such as the ratio of long-range costs versus
13 benefits, life cycle costing, and the costs to the communications
14 industry to the extent that these costs may affect local and long
15 distance basic telephone rates; procurement, contracting, construc-
16 tion, and maintenance under this paragraph is governed by AS 36.30;

17 (7) provide information and assistance to state agencies to
18 promote governmental coordination and unity in the preparation of
19 agency plans and programs involving the use of telecommunications;

20 (8) apply for and accept federal and private money, proper-
21 ty, or assistance, that may be appropriated, granted, or otherwise
22 made available to the telecommunications divisions and use and dis-
23 burse money and property for purposes consistent with AS 44.21.300 -
24 44.21.330 and AS 44.21.256 - 44.21.290, subject to reasonable limita-
25 tions imposed by the grantor;

26 (9) participate with other governmental units in planning,
27 and assist local governments and governmental conferences and councils
28 in the state in planning and coordinating their activities relating to
29 telecommunications;

1 (10) provide for the orderly transition to new
2 telecommunications services and systems by state agencies;

3 (11) serve as a clearinghouse for information, data, and
4 other materials which may be necessary or helpful to federal, state,
5 or local governmental agencies in the development of telecommunication
6 systems;

7 (12) coordinate their services and activities with those of
8 other state departments and agencies to the fullest extent possible to
9 avoid unnecessary duplication; and

10 (13) provide that all activities of the telecommunications
11 divisions are responsive to state statutes and regulations, and to the
12 regulations and rulings of the Federal Communications Commission.

13 * Sec. 44. AS 44.19.144(b) is amended to read:

14 (b) The director may

15 (1) with the written concurrence of the governor, enter
16 into contracts and subcontracts on behalf of the state to carry out
17 the provisions of AS 44.19.141 - 44.19.152; contracting under this
18 paragraph is governed by AS 36.30 (State Procurement Code);

19 (2) act for the state in the initiation, investigation,
20 evaluation of or participation in any program relative to the stated
21 purpose of AS 44.19.141 - 44.19.152 which may involve more than one
22 government or governmental unit;

23 (3) on behalf of the state, accept and expend any gifts or
24 grants made to the state with the approval of the governor where such
25 gifts or grants were made for the purposes of furthering the objec-
26 tives of the office.

27 * Sec. 45. AS 44.33.300 is amended to read:

28 Sec. 44.33.300. WAIVER OF CERTAIN PROVISIONS. When the gover-
29 nor has by proclamation declared an area impacted by an economic

1 disaster, the following provisions regarding public contracts may be
2 waived to the extent specified in the proclamation:

3 (1) the requirement of a contractor's bond as prescribed in
4 AS 36.25.010 may be waived if the contract amount does not exceed
5 \$100,000;

6 (2) the public bid requirements as contained in AS 19.10.-
7 170, AS [19.10.190,] 19.30.191(b), AS 35.15.010 - 35.15.020, and
8 AS 36.30 (State Procurement Code) [AND AS 35.15.010 - 35.15.030] may
9 be waived if the contract is to be performed by a contractor whose
10 principal office is in the designated area and the contract amount
11 does not exceed \$50,000;

12 (3) the general policy to require all construction to be
13 under bid contract as contained in AS 19.10.170, AS 35.15.010, and
14 AS 36.30 (State Procurement Code) may be waived if the contract is to
15 be performed by the state, another governmental entity, or a nonprofit
16 entity.

17 * Sec. 46. AS 44.47.250 is amended by adding a new subsection to read:

18 (c) Contracts with persons or nongovernmental entities under
19 this section are governed by AS 36.30.

20 * Sec. 47. AS 44.47.490(a) is amended to read:

21 (a) The director may establish field offices under this chapter,
22 may hire one or more lending officers, and, under AS 36.30 (State
23 Procurement Code), may contract for the services of

24 (1) real property appraisers who are familiar with rural
25 construction; and

26 (2) engineers who are familiar with engineering problems in
27 arctic and subarctic regions.

28 * Sec. 48. AS 44.47.730(a) is amended to read:

29 (a) The commissioner shall contract for a study of the feasibil-

1 ity of establishing a borough in the unorganized borough by following
2 the procedures under AS 36.30 (State Procurement Code) [SET OUT IN
3 AS 36.98]. The commissioner shall include terms in the contract that
4 provide for

- 5 (1) public participation the preparation of the study;
6 (2) completion of the study not later than June 30 of the
7 third year after the year the contract is executed.

8 * Sec. 49. AS 44.62.175(a) is amended to read:

9 (a) The lieutenant governor shall publish or contract for the
10 publication of the Alaska Administrative Journal. The journal shall
11 be published weekly. The journal must include

12 (1) notices of proposed actions given under AS 44.62.-
13 190(a);

14 (2) notices of state agency meetings required under AS 44.-
15 62.310(e), even if the meeting has been held;

16 (3) notices of solicitations to bid issued under AS 36.30.-
17 130 [AS 37.05.230];

18 (4) notices of state agency requests for proposals issued
19 under AS 18.55.255, 18.55.320; [AS 19.10.190; AS 19.40.020; AS 35.15.-
20 030; AS 36.98.030; AS 37.05.230,] AS 37.05.315(d); AS 38.05.120; and
21 AS 43.40.010;

22 (5) executive orders and administrative orders issued by
23 the governor;

24 (6) written delegations of authority made by the governor
25 or the head of a principal department under AS 44.17.010;

26 (7) the text or a summary of the text of a regulation or
27 order of repeal of a regulation for which notice is given under AS
28 44.62.190(a), including an emergency regulation or repeal whether or
29 not it has taken effect;

1 (8) a summary of the text of recently issued formal
2 opinions and memoranda of advice of the attorney general; and

3 (9) a list of vacancies on boards, commissions, and other
4 bodies whose members are appointed by the governor.

5 * Sec. 50. AS 44.71.010 is amended to read:

6 Sec. 44.71.010. DISPOSITION OF OBSOLETE OR SURPLUS STATE PROP-
7 ERTY. The Department of Administration shall take possession of
8 obsolete or surplus property of the state for which there is no imme-
9 diate or prospective use, except abandoned or obsolete school build-
10 ings and other school property. It shall also take possession of
11 property remaining in the control of a commission or board of the
12 state government after the commission or board stops functioning. The
13 Department of Administration shall sell, lease, license, or dispose of
14 the property on the terms it considers for the best interests of the
15 state in conformance with regulations adopted under AS 36.30 (State
16 Procurement Code).

17 * Sec. 51. AS 44.77.010(a) is amended to read:

18 (a) Except as provided in (d) of this section, every [EVERY]
19 claim for reimbursement for money expended, or for compensation for
20 labor, materials, or supplies furnished, or services given to or for
21 the state, whether based on a contract or on a ratification, shall be
22 promptly presented to the appropriate administrative or executive
23 officer for approval and payment.

24 * Sec. 52. AS 44.77.010 is amended by adding a new subsection to read:

25 (d) A claim that is governed by AS 36.30.560 - 36.30.699 is not
26 governed by this chapter.

27 * Sec. 53. AS 44.85.120 is amended to read:

28 Sec. 44.85.120. CARE AND CUSTODY OF BONDS. The bond bank
29 authority, in accordance with AS 36.30 (State Procurement Code), may

1 enter into agreements or contracts with a bank, trust company, banking
2 or financial institution inside or outside the state as may be neces-
3 sary, desirable or convenient, in the opinion of the bond bank author-
4 ity, for rendering services in connection with the care, custody or
5 safekeeping of municipal bonds or other investments held or owned by
6 the bond bank authority, for rendering services in connection with the
7 payment or collection of amounts payable as to principal or interest,
8 and for rendering services in connection with the delivery to the bond
9 bank authority of municipal bonds or other investments purchased by it
10 or sold by it, and to pay the cost of those services. The bond bank
11 authority may also, in connection with any of the services to be
12 rendered by a bank, trust company or banking or financial institution
13 as to the custody and safekeeping of its municipal bonds or invest-
14 ments, require security in the form of colla al bonds, surety agree-
15 ments or security agreements in such form a amount as, in the opin-
16 ion of the bond bank authority, is necessary . desirable.

17 * Sec. 54. AS 44.99.001 is amended to read:

18 Sec. 44.99.001. ADMINISTRATION OF HIGHWAY SAFETY PROGRAM. The
19 governor may contract and do all other things necessary on behalf of
20 this state under 23 U.S.C. 401-404 (Highway Safety Act of 1966), and
21 may cooperate with interested persons and agencies to effectuate the
22 purposes of that Act. Contracting under this section is governed by
23 AS 36.30 (State Procurement Code). The governor may designate a
24 person to serve as the governor's highway safety representative;
25 however, the governor is the official in this state 'aving the ulti-
26 mate responsibility for dealing with the federal government with
27 respect to programs and activities under the Federal Highway Safety
28 Act of 1966. The governor shall coordinate the activities relating to
29 highway safety of state departments, agencies and subdivisions and of

1 the Governor's Commission on Transportation Safety established in
2 AS 44.19.190.

3 * Sec. 55. AS 46.04.090(a) is amended to read:

4 (a) The department, when feasible, shall enter into contracts
5 with persons or private organizations to provide the personnel, equip-
6 ment, or other services or supplies which may be required to carry out
7 this chapter. Contracts under this section are governed by AS 36.30
8 (State Procurement Code). When private contracting is not feasible,
9 the department may establish and maintain at ports, harbors, or other
10 locations in the state, the cleanup personnel, equipment, and supplies
11 which, in its judgment, are necessary to carry out this chapter.

12 * Sec. 56. AS 46.07.040(a) is amended to read:

13 (a) The commissioner shall provide for the construction of
14 facilities under this chapter, and is authorized to provide for the
15 construction by contract or through grants to public agencies or
16 private nonprofit organizations, or otherwise. A [NO] contribution
17 toward the cost of the construction of a facility may not be required
18 from its users. Construction under this section by contract is gov-
19 erned by AS 36.30 (State Procurement Code).

20 * Sec. 57. AS 46.15.020(a) is amended to read:

21 (a) The commissioner shall exercise all those powers and do all
22 those acts necessary to carry out the provisions and objectives of
23 this chapter. The commissioner may

24 (1) subject to AS 36.30 (State Procurement Code), enter
25 into contractual agreements necessary to carry out the provisions of
26 this chapter including agreements with federal, state and local agen-
27 cies;

28 (2) apply for, accept, administer and expend grants, gifts,
29 and loans from the federal government and any other public or private

1 sources for the purposes of this chapter, and adopt procedures and do
2 acts not otherwise restricted by law which are necessary to qualify
3 the state to receive grants, gifts and loans;

4 (3) establish a division of water in the Department of
5 Natural Resources and assign to that division the responsibility for
6 carrying out the provisions of this chapter.

7 * Sec. 58. AS 47.05.015(c) is amended to read:

8 (c) A contract authorized under this section is exempt from the
9 competitive bid requirements of AS 36.30 (State Procurement Code)
10 [AS 37.05.230]. In awarding a contract under this section the depart-
11 ment shall [PUBLISH A] request [FOR] proposals in accordance with
12 regulations of the Department of Administration under AS 36.30 (State
13 Procurement Code) [DEPARTMENT].

14 * Sec. 59. AS 47.30.350(a) is amended to read:

15 (a) The department shall

16 (1) develop and submit to the Surgeon General of the United
17 States Public Health Service a comprehensive program for the con-
18 structing and equipping of hospitals and other facilities for the
19 examination, observation, care, and treatment of the mentally ill;

20 (2) develop and submit to the Surgeon General plans and
21 specifications for the constructing and equipping of the hospitals and
22 other facilities;

23 (3) construct and equip the hospitals and other facilities
24 in accordance with the program, plans, and specifications approved by
25 the Surgeon General; construction and equipping under this paragraph
26 is governed by AS 36.30 (State Procurement Code);

27 (4) cooperate, coordinate, and contract, wherever indicated
28 and desirable, with other state boards, departments and agencies, and
29 agencies of the United States in the construction program, and hire

1 necessary personnel and enter into contracts with private individuals
2 and companies, to the end that the hospitals and other facilities are
3 constructed in the most economical and expeditious manner; contracting
4 and construction under this section are governed by AS 36.30 (State
5 Procurement Code).

6 * Sec. 60. AS 47.30.660 is amended to read:

7 Sec. 47.30.660. POWERS AND DUTIES OF DEPARTMENT. The depart-
8 ment is the mental health authority of the state and shall

9 (1) administer a comprehensive program for the prevention
10 of mental illness and the care and treatment of the mentally ill,
11 including inpatient and outpatient care and treatment and the procure-
12 ment of services of specialists or other persons on a contractual or
13 other basis;

14 (2) take the actions and undertake the obligations which
15 are necessary to participate in federal grants-in-aid programs and
16 accept federal or other financial aid from whatever sources for the
17 study, examination, care, and treatment of the mentally ill;

18 (3) administer AS 47.30.660 - 47.30.915;

19 (4) designate, operate, and maintain treatment facilities
20 equipped and qualified to provide inpatient and outpatient care and
21 treatment for the mentally ill;

22 (5) provide for the placement of mentally ill patients in
23 designated treatment facilities;

24 (6) enter into arrangements with governmental agencies for
25 the care or treatment of the mentally ill in facilities of the govern-
26 mental agencies in the state or in another state;

27 (7) enter into contracts with treatment facilities for the
28 custody and care or treatment of the mentally ill; contracts under
29 this paragraph are governed by AS 36.30 (State Procurement Code);

1 (8) enter into contracts which incorporate safeguards
2 consistent with AS 47.30.660 - 47.30.915 and the preservation of the
3 civil rights of the patients with another state for the custody and
4 care or treatment of patients previously committed from this state
5 under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd
6 Session, 70 Stat. 709;

7 (9) prescribe the form of applications, records, reports,
8 requests for release, and consents to medical or psychological treat-
9 ment required by AS 47.30.660 - 47.30.915;

10 (10) require reports from the head of a treatment facility
11 concerning the care of patients;

12 (11) visit each treatment facility at least annually to
13 review methods of care or treatment for patients;

14 (12) investigate complaints made by a patient or an inter-
15 ested party on behalf of a patient;

16 (13) delegate upon mutual agreement to another officer or
17 agency of it, or a political subdivision of the state, or a treatment
18 facility designated, any of the duties and powers imposed upon it by
19 AS 47.30.660 - 47.30.915; and

20 (14) adopt regulations to implement the provisions of
21 AS 47.30.660 - 47.30.915.

22 * Sec. 61. AS 47.35.010(a) is amended to read:

23 (a) The department may

24 (1) license and supervise boarding homes, foster homes,
25 group homes, nurseries, institutions caring for children and foster
26 homes, group homes and institutions caring for dependent adults;

27 (2) investigate and supervise licensees;

28 (3) enforce the standards established by it;

29 (4) contract with private or municipal agencies to investi-

1 gate and make recommendations to the department for the licensing and
2 supervision of boarding homes, foster homes, group homes, nurseries,
3 institutions caring for children and foster homes, group homes and
4 institutions caring for dependent adults under procedures and stan-
5 dards of operation established by the department; contracts with
6 private agencies under this paragraph are governed by AS 36.30 (State
7 Procurement Code).

8 * Sec. 62. AS 47.37.030 is amended to read:

9 Sec. 47.37.030. POWERS OF OFFICE. The office may

10 (1) plan, establish, and maintain treatment programs as
11 appropriate;

12 (2) make contracts and award grants necessary or incidental
13 to the performance of its duties and the execution of its powers,
14 including contracts with and grants to public and private agencies,
15 organizations, and individuals, to pay them for services rendered or
16 furnished to alcoholics or intoxicated persons; to the maximum extent
17 possible, contracts and grants shall be for a period of two years;
18 contracts under this paragraph are governed by AS 36.30 (State Pro-
19 curement Code);

20 (3) solicit and accept for use a gift of money or property
21 or a grant of money, services, or property from the federal govern-
22 ment, the state, or a political subdivision of it or a private source,
23 and do all things necessary to cooperate with the federal government
24 or any of its agencies in making an application for a grant;

25 (4) administer or supervise the administration of the
26 provisions relating to alcoholics and intoxicated persons of any state
27 plan submitted for federal funding under federal health, welfare, or
28 treatment legislation;

29 (5) coordinate its activities and cooperate with alcoholism

1 programs in this and other states, and make contracts and other joint
2 or cooperative arrangements with state, local, or private agencies for
3 the treatment of alcoholics and intoxicated persons and for the common
4 advancement of alcoholism programs in this and other states;

5 (6) keep records and engage in research and the gathering
6 of relevant statistics;

7 (7) do other acts necessary to implement the authority
8 expressly granted to it;

9 (8) acquire, hold, or dispose of real property or any
10 interest in it, and construct, lease, or otherwise provide treatment
11 facilities for alcoholics and intoxicated persons; however, the office
12 shall encourage local initiative, involvement and financial participa-
13 tion under grants-in-aid whenever possible in preference to the con-
14 struction or operation of facilities directly by the office; contract-
15 ing and construction under this paragraph are governed by AS 36.30
16 (State Procurement Code).

17 * Sec. 63. AS 47.37.130(g) is amended to read:

18 (g) The office may contract for the use of any facility as an
19 approved public treatment facility if the coordinator, subject to the
20 regulations of the department, considers this an effective and econom-
21 ical course to follow. Contracting under this subsection is governed
22 by AS 36.30 (State Procurement Code).

23 * Sec. 64. AS 47.40.041(b) is amended to read:

24 (b) Notices published by the department concerning the opening
25 of the application process for a grant award shall specify the geo-
26 graphical area in which services are needed, the type of services, the
27 number of beds anticipated to be needed, the maximum number of days of
28 care, and any other requirements established by the department.
29 Grants authorized under this section are exempt from the competitive

1 bid requirements of AS 36.30 [AS 37.05.230].

2 * Sec. 65. AS 47.90.010(a) is amended to read:

3 (a) The commissioner, in consultation with state and local
4 government agencies, community groups, and groups concerned with
5 displaced homemakers, may

6 (1) contract with eligible private profit and nonprofit
7 corporations for multipurpose service centers for displaced home-
8 makers; contracting under this paragraph is governed by AS 36.30
9 (State Procurement Code); and

10 (2) coordinate existing state programs for displaced home-
11 makers.

12 * Sec. 66. AS 47.40.041(b) is amended to read:

13 (b) Notices published by the department concerning the opening
14 of the application process for a grant award shall specify the geo-
15 graphical area in which services are needed, the type of services, the
16 number of beds anticipated to be needed, the maximum number of days of
17 care, and any other requirements established by the department.
18 Grants authorized under this section are exempt from AS 36.30 (State
19 Procurement Code) [THE COMPETITIVE BID REQUIREMENTS OF AS 37.05.230].

20 * Sec. 67. REPORT. By December 1, 1987, the commissioner of adminis-
21 tration and the commissioner of transportation and public facilities shall
22 report to the legislature concerning procurements by state agencies during
23 the first six months of 1987. The report must include

24 (1) the records prepared under AS 36.30.510(4);

25 (2) recommendations for changes in AS 36.30 or other laws based
26 on implementation of AS 36.30 in those six months; and

27 (3) a description of any matters that involved litigation con-
28 cerning AS 36.30 during those six months.

29 * Sec. 68. REGULATIONS DEADLINE. The regulations required under
CSSB 341(Jud)

1 AS 36.30 as added by sec. 2 of this Act, shall be adopted by January 1,
2 1987 and shall be effective on that date. Regulations adopted under laws
3 repealed in sec. 69 of this Act become ineffective January 1, 1987.

4 * Sec. 69. REPEALER. The following laws are repealed: AS 14.40.340;
5 AS 19.10.190, 19.10.210; AS 24.23; AS 35.15.030, 35.15.050; AS 36.98;
6 AS 37.05.220, 37.05.230, 37.05.231, 37.05.240, 37.05.250, 37.05.260, 37.-
7 05.270, 37.05.280, 37.05.290, 37.05.400(2) and (3); AS 44.65; AS 44.77.-
8 010(c); and AS 47.90.010(c).

9 * Sec. 70. Section 68 of this Act takes effect immediately in accor-
10 dance with AS 01.10.070(c).

11 * Sec. 71. Except as provided in sec. 70, this Act takes effect Janu-
12 ary 1, 1987.

Cook
3/11/86

Original sponsor: Rules Committee
By Request

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 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) "commissioner," "commissioner of administration," or
11 "commissioner of transportation and public facilities" means the Board
12 of Regents; and

13 (3) "chief procurement officer" or "attorney general" means
14 the president of the University of Alaska.

15 Sec. 36.30.010. CHIEF PROCUREMENT OFFICER. (a) The commis-
16 sioner shall appoint to the partially exempt service the chief pro-
17 curement officer of the state. The chief procurement officer must
18 have at least five years of prior experience in public procurement,
19 including large scale procurement of supplies, services, or profes-
20 sional services, and must be a person with demonstrated executive and
21 organizational ability. The chief procurement officer may be removed
22 by the commissioner only for cause. The term of office of the chief
23 procurement officer is four years.

24 (b) Except as otherwise specifically provided in this chapter,
25 the chief procurement officer shall

26 (1) procure or supervise the procurement of all supplies,
27 services, and professional services needed by an agency;

28 (2) exercise general supervision and control over all
29 inventories of supplies belonging to an agency and prescribe the

1 manner in which supplies shall be purchased, delivered, stored, and
2 distributed;

3 (3) prescribe the time, manner, authentication, and form of
4 making requisitions for supplies and services;

5 (4) sell, trade, transfer between agencies, or otherwise
6 dispose of surplus, obsolete, or unused supplies and make proper
7 adjustments in the accounts of agencies concerned;

8 (5) establish and maintain programs for the inspection,
9 testing, and acceptance of supplies and services and the testing of
10 samples submitted with bids;

11 (6) prescribe standard forms for bids and contracts; and

12 (7) provide for other matters that may be necessary to
13 carry out the provisions of this chapter and the regulations adopted
14 under this chapter.

15 Sec. 36.30.015. EXECUTIVE BRANCH AGENCIES. (a) The commis-
16 sioner of transportation and public facilities may delegate to another
17 agency the authority to contract for construction. Before delegating
18 authority to an agency under this subsection, the commissioner of
19 transportation and public facilities shall make a written determina-
20 tion that the agency is capable of implementing the delegated author-
21 ity. Notwithstanding delegation of authority under this subsection,
22 contracts for construction are governed by this chapter and regula-
23 tions adopted by the commissioner of administration under this chap-
24 ter.

25 (b) The commissioner of administration may delegate to an agency
26 the authority to contract for and manage services, professional servi-
27 ces, and supplies. Notwithstanding delegation of authority under this
28 subsection, an agency's exercise of the authority is governed by this
29 chapter and regulations adopted by the commissioner under this

1 chapter. Before delegating authority to an agency under this
2 subsection, the commissioner shall make a written determination that
3 the agency is capable of implementing the delegated authority.

4 (c) The commissioner of administration may not delegate the
5 authority to dispose of supplies or the authority to adopt regulations
6 under this chapter.

7 (d) An agency may not contract for the services of legal counsel
8 without the approval of the attorney general.

9 (e) The board of directors of the Alaska Railroad Corporation
10 shall adopt procedures to govern the procurement of supplies, ser-
11 vices, professional services, and construction by the corporation.
12 The procedures must be substantially equivalent to the procedures pre-
13 scribed in this chapter and in regulations adopted under this chapter.

14 Sec. 36.30.020. LEGISLATURE. The Legislative Council shall
15 adopt procedures to govern the procurement of supplies, services,
16 professional services, and construction by the legislature, legisla-
17 tors, and legislative agencies and committees. The procedures must be
18 substantially equivalent to the procedures prescribed in this chapter.

19 Sec. 36.30.030. COURT SYSTEM. The administrative director of
20 courts shall adopt procedures to govern the procurement of supplies,
21 services, professional services, and construction by the judicial
22 branch. The procedures must be based on the competitive principles
23 established under this chapter and must be adapted to the special
24 needs of the judicial branch as determined by the administrator of
25 courts.

26 Sec. 36.30.040. PROCUREMENT REGULATIONS. (a) The commissioner
27 shall adopt regulations governing the procurement, management, and
28 control of supplies, services, professional services and construction
29 by agencies. The commissioner may audit and monitor the imple-

1 mentation of the regulations and the requirements of this chapter with
2 respect to using agencies.

3 (b) The commissioner shall adopt regulations pertaining to the
4 following:

5 (1) suspension, debarment, and reinstatement of prospective
6 bidders and contractors;

7 (2) bid protests;

8 (3) conditions and procedures for the procurement of per-
9 ishables and items for resale;

10 (4) conditions and procedures for the use of source selec-
11 tion methods authorized by this chapter, including sole source pro-
12 curements, emergency procurements, and small procurements;

13 (5) the opening or rejection of bids and offers, and waiver
14 of informalities in bids and offers;

15 (6) confidentiality of technical data and trade secrets
16 submitted by actual or prospective bidders or offerors;

17 (7) partial, progressive, and multiple awards;

18 (8) storerooms and inventories, including determination of
19 appropriate stock levels and the management of agency supplies;

20 (9) transfer, sale or other disposal of supplies;

21 (10) definitions and classes of contractual services and
22 procedures for acquiring them;

23 (11) providing for conducting price analysis;

24 (12) use of payment and performance bonds in connection with
25 contracts for supplies, services, and construction;

26 (13) guidelines for use of cost principles in negotiations,
27 adjustments, and settlements;

28 (14) conditions under which an agency may use the services
29 of an employment program as defined under AS 36.30.100(c);

1 (15) a bidder's or offeror's duties under AS 36.30.115 and
2 36.30.210; and

3 (16) the elimination and prevention of discrimination in
4 state contracting because of race, religion, color, national origin,
5 sex, age, marital status, pregnancy, parenthood, handicap, or politi-
6 cal affiliation.

7 Sec. 36.30.050. LISTS OF CONTRACTORS. (a) The commissioner
8 shall establish and maintain lists of persons who desire to provide
9 supplies, services, professional services, or construction services to
10 the state.

11 (b) A person who desires to be on a list shall submit to the
12 commissioner evidence of a valid Alaska business license together with
13 a biennial fee established by regulation in an amount reasonably
14 calculated to pay the costs of administering this section. A con-
15 struction contractor shall also submit a valid certificate of regis-
16 tration issued under AS 08.18. The commissioner, by regulation, may
17 require submission of additional information.

18 (c) The lists may be used by the chief procurement officer or an
19 agency when issuing invitations to bid or requests for proposals under
20 this chapter. The lists may be used by the Legislative Council, the
21 court system, and the Alaska Railroad Corporation.

22 (d) The lists shall be used in providing notice of intent to
23 make a small procurement to Alaska bidders as defined under
24 AS 36.30.170(c). A procurement officer who intends to make a
25 procurement under AS 36.30.320 shall request names from the appropri-
26 ate list and the department shall furnish names of Alaska bidders on a
27 rotating basis from the list in response to each request.

28 Sec. 36.30.060. SPECIFICATIONS. (a) The commissioner shall
29 adopt regulations governing the preparation, revision, and content of

1 specifications for supplies, services, professional services, and
2 construction required by an agency. The commissioner shall monitor
3 the use of these specifications.

4 (b) Specifications for construction of highways must conform as
5 closely as practicable to those adopted by the American Association of
6 State Highway and Transportation Officials.

7 (c) The commissioner may obtain expert advice and assistance
8 from personnel of using agencies in the development of specifications.
9 Specifications must promote overall economy for the purposes intended
10 and encourage competition in satisfying the state's needs, and may not
11 be unduly restrictive. The requirements of this subsection regarding
12 the purposes and nonrestrictiveness of specifications apply to all
13 specifications, including those prepared by architects, engineers,
14 designers, and other professionals.

15 (d) In this section, "specification" means a description of the
16 physical or functional characteristics, or of the nature of a supply,
17 service, professional service, or construction project; it may include
18 requirements for licensing, inspecting, testing, and delivery.

19 Sec. 36.30.070. SUPPLY MANAGEMENT. The commissioner shall adopt
20 regulations governing the

- 21 (1) management of supplies during their entire life cycle;
22 (2) sale, lease, or disposal of surplus supplies by public
23 auction, competitive sealed bidding, or other appropriate method;
24 (3) purchase of surplus supplies by an employee of the
25 using or disposing agency; and
26 (4) transfer of excess supplies.

27 Sec. 36.30.080. LEASES. (a) The department shall lease space
28 for the use of the state or an agency wherever it is necessary and
29 feasible, subject to compliance with the requirements of this chapter.

1 A lease may not provide for a period of occupancy greater than 40
2 years. An agency requiring office, warehouse, or other space shall
3 lease the space through the department.

4 (b) The department may enter into lease-financing agreements,
5 including lease-purchase agreements and agreements related to the
6 issuance of certificates of participation. A lease-financing agree-
7 ment must provide that lease payments are subject to annual appropria-
8 tion.

9 (c) If the department intends to enter into a lease or lease-
10 financing agreement with an annual rent to the state anticipated to
11 exceed \$1,000,000, the department shall provide notice to the legisla-
12 ture. The notice must include the anticipated annual lease obligation
13 amount and the anticipated total construction, acquisition, or other
14 costs of the project. The department may not enter into an agreement
15 under this subsection unless the project has been approved by the
16 legislature by law. An appropriation for the project does not consti-
17 tute approval of the project for purposes of this subsection.

18 ARTICLE 2. COMPETITIVE SEALED BIDDING.

19 Sec. 36.30.100. GENERAL POLICY. (a) Except as otherwise pro-
20 vided in this chapter, or unless specifically exempted by law, an
21 agency contract shall be awarded by competitive sealed bidding.

22 (b) Competitive sealed bidding is not required

23 (1) when the commissioner determines in writing that food,
24 clothing, or medical supplies, or materials for use in laboratory or
25 medical studies may be purchased otherwise to the best advantage of
26 the state;

27 (2) when rates are fixed by law or ordinance;

28 (3) for the purchase of products or services manufactured
29 or provided by an employment program;

1 (4) for the purchase of products or services provided by
2 the correctional industries program established under AS 33.32;

3 (5) for professional services; or

4 (6) for concessions operated on state property.

5 (c) In this section "employment program" means a nonprofit
6 program to increase employment opportunities for individuals with
7 physical or mental disabilities that constitute substantial handicaps
8 to employment.

9 Sec. 36.30.110. INVITATION TO BID. (a) When competitive sealed
10 bidding is used, the procurement officer shall issue an invitation to
11 bid. It must include a time, place and date by which the bid must be
12 received, purchase description, and a description of all contractual
13 terms and conditions applicable to the procurement.

14 (b) When responding to the invitation to bid, the bidder shall
15 supply evidence of the bidder's valid Alaska business license. A
16 bidder for a construction contract shall also submit evidence of the
17 bidder's registration under AS 08.18.

18 Sec. 36.30.115. SUBCONTRACTORS. (a) Within 48 hours after the
19 opening of bids, each bidder shall submit a list of the subcontractors
20 the bidder proposes to use in the performance of the contract. The
21 list shall include the name and location of the place of business for
22 each subcontractor and evidence of the subcontractor's valid Alaska
23 business license. A bidder for a construction contract shall also
24 submit evidence of each subcontractor's registration under AS 08.18.

25 (b) A bidder may replace a listed subcontractor only if the
26 subcontractor

27 (1) fails to comply with AS 08.18;

28 (2) files for bankruptcy or becomes insolvent;

29 (3) fails to execute a contract with the bidder involving

1 performance of the work for which the subcontractor was listed;

2 (4) fails to obtain bonding;

3 (5) fails to obtain insurance acceptable to the state;

4 (6) fails to perform the contract with the bidder involving
5 work for which the subcontractor was listed; or

6 (7) is determined by the procurement officer not to be a
7 responsible bidder.

8 (c) If a bidder fails to list a subcontractor or lists more than
9 one subcontractor for the same portion of work and the value of that
10 work is in excess of half of one percent of the total bid, the bidder
11 shall be considered to have agreed to perform that portion of work
12 without the use of a subcontractor and to have represented the bidder
13 to be qualified to perform that work.

14 (d) A bidder who attempts to circumvent the requirements of this
15 section by listing as a subcontractor another contractor who, in turn,
16 sublets the majority of the work required under the contract violates
17 this section.

18 (e) If a contract is awarded to a bidder who violates this
19 section, the purchasing officer may

20 (1) cancel the contract; or

21 (2) after notice and a hearing, assess a penalty on the
22 bidder in an amount that does not exceed 10 percent of the value of
23 the subcontract at issue.

24 Sec. 36.30.120. BID SECURITY. (a) Bid security shall be re-
25 quired for all competitive sealed bidding for construction contracts
26 when the price is estimated by the procurement officer to exceed an
27 amount established by regulation of the commissioner. Bid security on
28 construction contracts under the amount set by the commissioner may be
29 required when the circumstances warrant. Bid security may be required

1 for competitive sealed bidding for contracts for supplies, services,
2 or professional services in accordance with regulations of the commis-
3 sioner when needed for the protection of the state.

4 (b) Bid security must be a bond provided by a surety company
5 authorized to do business in the state or otherwise supplied in a form
6 satisfactory to the commissioner. Bid security must be in an amount
7 equal to at least

8 (1) 10 percent of the amount of the bid if the bid does not
9 exceed \$100,000; or

10 (2) 10 percent of the first \$100,000 and five percent of
11 the amount of the bid over \$100,000 if the bid exceeds \$100,000 up to
12 a maximum of \$200,000 in security.

13 (c) When the invitation to bid requires security, the procure-
14 ment officer shall reject a bid that does not comply with the bid
15 security requirement unless, in accordance with regulations, the
16 officer determines that the bid fails to comply in a nonsubstantial
17 manner with the security requirements.

18 Sec. 36.30.130. PUBLIC NOTICE OF INVITATION TO BID. (a) The
19 procurement officer shall give adequate public notice of the invita-
20 tion to bid at least 21 days before the date for the opening of bids.
21 If a determination is made in writing that a shorter notice period is
22 necessary for a particular bid, the 21-day period may be shortened.
23 The determination shall be made by the chief procurement officer for
24 bids for supplies, services, or professional services. The determina-
25 tion shall be made by the commissioner of transportation and public
26 facilities for bids for construction or acquisition of property for
27 the state equipment fleet. Notice shall be published in the Alaska
28 Administrative Journal. The time and manner of notice must be in
29 accordance with regulations adopted by the commissioner of

1 administration. When practicable, notice may include

2 (1) publication in a newspaper calculated to reach prospec-
3 tive bidders;

4 (2) notices posted in public places within the area where
5 the work is to be performed or the material furnished; and

6 (3) notices mailed to all active prospective contractors on
7 the appropriate list maintained under AS 36.30.050.

8 (b) Failure to comply with the notice requirements of this
9 section does not invalidate a bid or the award of a contract. If the
10 state fails to substantially comply with the requirements of (a) of
11 this section, the state is liable for damages caused by that failure.

12 Sec. 36.30.140. BID OPENING. (a) The procurement officer shall
13 open bids publicly in the presence of one or more witnesses at the
14 time and place designated in the invitation to bid. The amount of
15 each bid and other relevant information that is specified by regula-
16 tion of the commissioner, together with the name of each bidder, shall
17 be recorded.

18 (b) The information recorded under (a) of this section is open
19 to public inspection as soon as practicable before the notice of
20 intent to award a contract is given under AS 36.30.365. The bids are
21 not open for public inspection until after the notice of intent to
22 award a contract is given. To the extent the bidder designates and
23 the procurement officer concurs, trade secrets and other proprietary
24 data contained in a bid document are confidential.

25 Sec. 36.30.150. BID ACCEPTANCE AND BID EVALUATION. (a) Bids
26 shall be unconditionally accepted without alteration or correction,
27 except as authorized in AS 36.30.160. The procurement officer shall
28 evaluate bids based on the requirements set out in the invitation to
29 bid, which may include criteria to determine acceptability such as

1 inspection, testing, quality, delivery, and suitability for a parti-
2 cular purpose. The criteria that will affect the bid price and be
3 considered in evaluation for award must be objectively measurable,
4 such as discounts, transportation costs, and total or life cycle
5 costs. The invitation to bid must set out the evaluation criteria to
6 be used. Criteria may not be used in bid evaluation if they are not
7 set out in the invitation to bid.

8 (b) A contract based on total or life cycle costs may be awarded
9 only when the chief procurement officer or, for construction contracts
10 or procurements for the state equipment fleet, the commissioner of
11 transportation and public facilities, determines in writing at the
12 time of contract solicitation that the contract promotes overall
13 economy for the purposes intended, encourages competition, is not
14 unduly restrictive, and is in the best interests of the state.

15 Sec. 36.30.160. LATE BIDS; CORRECTION OR WITHDRAWAL OF BIDS;
16 CANCELLATION OF AWARDS. (a) Bids received after the bid due date and
17 time indicated on the invitation to bid may not be accepted unless the
18 delay was due to an error of the contracting agency.

19 (b) Correction or withdrawal of inadvertently erroneous bids
20 before or after bid opening, or cancellation of awards or contracts
21 based on bid mistakes may be permitted in accordance with regulations
22 adopted by the commissioner. After bid opening, changes in bid prices
23 or other provisions of bids prejudicial to the interest of the state
24 or fair competition may not be permitted. Except as otherwise provid-
25 ed by regulation, a decision to permit the correction or withdrawal of
26 a bid, or to cancel an award or contract based on a bid mistake, shall
27 be supported by a written determination made by the procurement offi-
28 cer. If a bidder is permitted to withdraw a bid before award, an
29 action may not be maintained against the bidder or the bid security.

1 Sec. 36.30.170. CONTRACT AWARD AFTER BIDS. (a) Except as
2 provided in (b) of this section, the procurement officer shall award a
3 contract based on the solicited bids with reasonable promptness by
4 written notice to the lowest responsible and responsive bidder whose
5 bid conforms in all material respects to the requirements and criteria
6 set out in the invitation to bid.

7 (b) The procurement officer shall award a contract based on
8 solicited bids to the lowest responsible and responsive Alaska bidder
9 if the bid is not more than five percent higher than the lowest non-
10 resident bidder's. In this subsection, "Alaska bidder" means a person
11 who

12 (1) holds a current Alaska business license;

13 (2) submits a bid for goods, services, or construction
14 under the name as appearing on the person's current Alaska business
15 license;

16 (3) has maintained a place of business within the state
17 staffed by the bidder or an employee of the bidder for a period of six
18 months immediately preceding the date of the bid;

19 (4) is incorporated under the laws of the state, is a sole
20 proprietorship, and the proprietor is a resident of the state or is a
21 partnership, and all partners are residents of the state; and

22 (5) if a joint venture, is composed entirely of ventures
23 that qualify under (1) - (4) of this subsection.

24 (c) If a bidder qualifies under (b) of this section as an Alaska
25 bidder, is offering services through an employment program as defined
26 under AS 36.30.100(c), and is the lowest responsible and responsive
27 bidder with a bid that is not more than 10 percent higher than the
28 lowest bid of a nonresident, the procurement officer shall award the
29 contract to that bidder.

1 Sec. 36.30.190. MULTI-STEP SEALED BIDDING. When it is con-
2 sidered impractical to initially prepare a definitive purchase de-
3 scription to support an award based on price, the procurement officer
4 may issue an invitation to bid requesting the submission of unpriced
5 technical offers to be followed by an invitation to bid limited to the
6 bidders whose offers are determined to be technically qualified under
7 the criteria set out in the first solicitation.

8 ARTICLE 3. COMPETITIVE SEALED PROPOSALS.

9 Sec. 36.30.200. CONDITIONS FOR USE. (a) Except as otherwise
10 provided in this chapter, or unless specifically exempted by law, an
11 agency contract shall be awarded by competitive sealed proposals if it
12 is not awarded by competitive sealed bidding. Construction may only
13 be procured by competitive sealed proposals if the conditions under
14 (c) of this section are met.

15 (b) The commissioner may provide by regulation that it is either
16 not practicable or not advantageous to the state to procure specified
17 types of supplies, services, or construction by competitive sealed
18 bidding that would otherwise be procured by that method. When the
19 chief procurement officer, or for construction contracts or procure-
20 ments for the state equipment fleet, the commissioner of transporta-
21 tion and public facilities, determines in writing that the use of
22 competitive sealed bidding is either not practicable or not advanta-
23 geous to the state, a contract may be entered into by competitive
24 sealed proposals in accordance with the regulations. When it is
25 determined that it is practicable but not advantageous to use competi-
26 tive sealed bidding, the chief procurement officer or commissioner of
27 transportation and public facilities shall specify with particularity
28 the basis for the determination.

29 (c) When the chief procurement officer determines that it is

1 advantageous to the state, a procurement officer may issue a request
2 for proposals requesting the submission of offers to provide
3 construction in accordance with a design provided by the offeror. The
4 request for proposals shall require that each proposal submitted
5 contain a single price that includes the design and construction.

6 Sec. 36.30.210. REQUEST FOR PROPOSALS. (a) A request for
7 competitive sealed proposals must contain the date, time and place for
8 delivering proposals, a specific description of the supplies,
9 construction, services, or professional services to be provided under
10 the contract, and the terms under which the supplies, construction,
11 services, or professional services are to be provided. The request
12 shall require the offeror to submit evidence of the offeror's valid
13 Alaska business license and, within 48 hours after the date by which
14 proposals must be received, to list subcontractors the offeror pro-
15 poses to use in the performance of the contract. The list shall
16 include the name and location of the place of business for each sub-
17 contractor and evidence of the subcontractor's valid Alaska business
18 license. An offeror for a construction contract shall also submit
19 evidence of the offeror's registration under AS 08.18 and evidence of
20 registration for each listed subcontractor.

21 (b) A request for proposals must contain that information neces-
22 sary for an offeror to submit a proposal or contain references to any
23 information that cannot reasonably be included with the request. The
24 request must provide a description of the factors that will be con-
25 sidered by the procurement officer when evaluating the proposals
26 received, including the relative importance of price and other evalu-
27 ation factors.

28 (c) Notice of a request for proposals shall be given in accor-
29 dance with procedures under AS 36.30.130. The procurement officer may

1 use additional means considered appropriate to notify prospective
2 offerors of the intent to enter into a contract through competitive
3 sealed proposals.

4 (d) The provisions of AS 36.30.115(b) - (e) apply to competitive
5 sealed proposals.

6 Sec. 36.30.220. STANDARD OVERHEAD RATE. (a) An agency that
7 provides services to another agency under a contract covered by this
8 chapter shall establish a standard overhead rate. If an agency sub-
9 mits a proposal in response to a request for competitive sealed pro-
10 posals, the agency must include its standard overhead rate within its
11 proposal.

12 (b) In this section, "standard overhead rate" means a charge
13 established for services and professional services from an agency that
14 is designed to compensate the agency for administration and support
15 services incidentally provided with the services contracted for.

16 Sec. 36.30.230. TREATMENT OF PROPOSALS. The procurement officer
17 shall open proposals so as to avoid disclosure of contents to compet-
18 ing offerors during the process of negotiation. A register of pro-
19 posals containing the name and address of each offeror shall be pre-
20 pared in accordance with regulations adopted by the commissioner. The
21 register and the proposals are open for public inspection after the
22 notice of intent to award a contract is issued under AS 36.30.365. To
23 the extent that the offeror designates and the procurement officer
24 concurs, trade secrets and other proprietary data contained in the
25 proposal documents are confidential.

26 Sec. 36.30.240. DISCUSSION WITH RESPONSIBLE OFFERORS AND REVI-
27 SIONS TO PROPOSALS. As provided in the request for proposals, and
28 under regulations adopted by the commissioner, discussions may be
29 conducted with responsible offerors who submit proposals determined to

1 be reasonably susceptible of being selected for award for the purpose
2 of clarification to assure full understanding of, and responsiveness
3 to, the solicitation requirements. Offerors reasonably susceptible of
4 being selected for award shall be accorded fair and equal treatment
5 with respect to any opportunity for discussion and revision of pro-
6 posals, and revisions may be permitted after submissions and before
7 the award of the contract for the purpose of obtaining best and final
8 offers. In conducting discussions, the procurement officer may not
9 disclose information derived from proposals submitted by competing
10 offerors. AS 44.62.310 does not apply to meetings with offerors under
11 this section.

12 Sec. 36.30.250. AWARD OF CONTRACT. (a) The procurement officer
13 shall award a contract under competitive sealed proposals to the
14 responsible and responsive offeror whose proposal is determined in
15 writing to be the most advantageous to the state taking into consid-
16 eration price and the evaluation factors set out in the request for
17 proposals. Other factors and criteria may not be used in the evalu-
18 ation. The contract file must contain the basis on which the award is
19 made.

20 (b) In determining whether a proposal is advantageous to the
21 state, the procurement officer shall take into account, in accordance
22 with regulations of the commissioner, whether the offeror qualifies as
23 an Alaskan bidder under AS 36.30.170(b) or is offering the services of
24 an employment program as defined in AS 36.30.100(c).

25 Sec. 36.30.260. CONTRACT EXECUTION. A contract awarded under
26 competitive sealed proposals must contain

- 27 (1) the amount of the contract stated on its first page;
28 (2) the date for the supplies to be delivered or the dates
29 for construction, services, or professional services to begin and be

1 completed;

2 (3) a description of the supplies, construction, services,
3 or professional services to be provided; and

4 (4) certification by the project director for the contract-
5 ing agency, the head of the contracting agency, or a designee that
6 sufficient funds are available in an appropriation to be encumbered
7 for the amount of the contract.

8 Sec. 36.30.270. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING
9 CONTRACTS. (a) Notwithstanding conflicting provisions of
10 AS 36.30.100 - 36.30.260, a procurement officer shall negotiate a
11 contract for an agency with the most qualified and suitable person of
12 demonstrated competence for architectural, engineering, or land
13 surveying services. The procurement officer shall award a contract
14 for those services at fair and reasonable compensation as determined
15 by the procurement officer, after consideration of the estimated value
16 of the services to be rendered, and the scope, complexity, and
17 professional nature of the services.

18 (b) If negotiations with the most qualified and suitable person
19 under (a) of this section are not successful, the procurement officer
20 shall negotiate a contract with other qualified persons of
21 demonstrated competence, in order of public ranking. The procurement
22 officer may reject all or part of a proposal.

23 (c) Notwithstanding the other provisions of this section, a
24 procurement officer may include price as a factor in selecting
25 architectural, engineering, and land surveying services when, in the
26 judgment of the procurement officer, the services required are
27 repetitious in nature, and the scope, nature, and amount of services
28 required are sufficiently defined by measurable and objective
29 standards to reasonably enable persons making proposals to compete

1 with a clear understanding and interpretation of the services
2 required. In order to include price as a factor in selection, the
3 procurement officer shall involve in the evaluation of the proposals
4 at least one person who is registered in the state to perform the
5 architectural, engineering, or land surveying services that are the
6 primary services to be provided by the contract.

7 (d) The provisions of (a) - (c) of this section do not apply to
8 a contract that incorporates both design and construction services.
9 The provisions of (a) - (c) of this section do not apply to contracts
10 awarded in a situation of public necessity if the procurement officer
11 responsible for execution of the contract on behalf of the agency
12 certifies in writing that a situation of public necessity exists.

13 (e) An agency may not award a contract for architectural,
14 engineering, or land surveying services to a

15 (1) person who is not registered under AS 08.48 to perform
16 the architectural, engineering, or land surveying services required by
17 the contract;

18 (2) partnership that is not qualified under AS 08.48.251 to
19 provide the architectural, engineering, or land surveying services
20 required by the contract; or

21 (3) corporation that is not authorized under AS 08.48.241
22 to offer the architectural, engineering, or land surveying services
23 required by the contract.

24 ARTICLE 4. OTHER PROCUREMENT METHODS.

25 Sec. 36.30.300. SOLE SOURCE PROCUREMENTS. (a) A contract may
26 be awarded for supplies, services, professional services, or construc-
27 tion without competitive sealed bidding, competitive sealed proposals,
28 or other competition in accordance with regulations adopted by the
29 commissioner of administration. A contract may be awarded under this

1 section only when the chief procurement officer or, for construction
2 contracts or procurements for the state equipment fleet, the commis-
3 sioner of transportation and public facilities determines in writing
4 that there is only one source for the required procurement or con-
5 struction. A sole source procurement may not be awarded if a rea-
6 sonable alternative source exists. The written determination must
7 include findings of fact that support by clear and convincing evidence
8 the determination that only one source exists. The authority to make
9 the determination required by this subsection may not be delegated.

10 (b) The using agency shall submit written evidence to support a
11 sole source determination. The commissioner of administration or the
12 commissioner of transportation and public facilities, as appropriate,
13 may also require the submission of cost or pricing data in connection
14 with an award under this section.

15 (c) The procurement officer shall negotiate with the single
16 supplier, to the extent practicable, to obtain a contract advantageous
17 to the state.

18 Sec. 36.30.310. EMERGENCY PROCUREMENTS. Procurements may be
19 made under emergency conditions as defined in regulations adopted by
20 the commissioner when there exists a threat to public health, welfare,
21 or safety, when a situation exists that makes a procurement through
22 competitive sealed bidding or competitive sealed proposals impracti-
23 cable or contrary to the public interest, or to protect public or
24 private property. An emergency procurement need not be made through
25 competitive sealed bidding or competitive sealed proposals but shall
26 be made with competition that is practicable under the circumstances.
27 A written determination by the procurement officer of the basis for
28 the emergency and for the selection of the particular contractor shall
29 be included in the contract file. The written determination must

1 include findings of fact that support the determination.

2 Sec. 36.30.320. SMALL PROCUREMENTS. (a) A procurement for
3 supplies, services, or construction that does not exceed an aggregate
4 dollar amount of \$5,000 may be made in accordance with regulations
5 adopted by the commissioner for small procurements.

6 (b) A contract for professional services that does not exceed
7 \$25,000 may be made under regulations adopted by the commissioner for
8 small procurements, except that an agency may not contract for the
9 services of legal counsel without the approval of the attorney
10 general.

11 (c) Small procurements need not be made through competitive
12 sealed bidding or competitive sealed proposals but shall be made with
13 competition that is practicable under the circumstances.

14 (d) Procurement requirements may not be artificially divided or
15 fragmented so as to constitute a purchase under this section or to
16 circumvent the source selection procedures required by AS 36.30.100 -
17 36.30.260.

18 (e) The procurement officer shall give adequate public notice of
19 intent to make a procurement under this section in accordance with
20 regulations adopted by the commissioner. Notices shall also be pro-
21 vided to those Alaska bidders designated by the commissioner under
22 AS 36.30.050(d).

23 ARTICLE 5. CONTRACT FORMATION AND MODIFICATION.

24 Sec. 36.30.340. REVIEW AND APPROVAL BY DEPARTMENT OF LAW. If a
25 contract contains a term that is in conflict with a state standard
26 form contract term or if a standard term is deleted or modified by a
27 term that is not standard, the contract must be reviewed by the De-
28 partment of Law and approved as to form.

29 Sec. 36.30.350. BID CANCELLATION, REJECTION. An invitation to

1 bid, a request for proposals, or other solicitation may be cancelled
2 or any or all bids or proposals may be rejected in whole or in part or
3 the date for opening bids or proposals may be delayed when it is in
4 the best interests of the state in accordance with regulations adopted
5 by the commissioner. The reasons for cancellation, rejection, or
6 delay in opening bids or proposals shall be made part of the contract
7 file.

8 Sec. 36.30.360. DETERMINATION OF RESPONSIBILITY. (a) A written
9 determination of responsibility of a bidder or offeror shall be made
10 by the procurement officer in accordance with regulations adopted by
11 the commissioner. The unreasonable failure of a bidder or offeror to
12 promptly supply information in connection with an inquiry with respect
13 to responsibility is grounds for a determination of nonresponsibility
14 with respect to the bidder or offeror.

15 (b) Information furnished by a bidder or offeror under (a) of
16 this section is confidential and may not be disclosed without prior
17 written consent by the bidder or offeror.

18 Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESI-
19 DENT. If the procurement officer awards a contract to a person who
20 does not reside or maintain a place of business in the state and if
21 the supplies, services, professional services, or construction that is
22 the subject of the contract could have been obtained from sources in
23 the state, the procurement officer shall issue a written statement
24 explaining the basis of the award. The statement required under this
25 section shall be kept in the contract file.

26 Sec. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT. At least
27 10 days before the formal award of a contract under this chapter the
28 procurement officer shall provide to each bidder or offeror notice of
29 intent to award a contract. The notice shall conform to regulations

1 adopted by the commissioner.

2 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of
3 this section, any type of contract that will promote the best inter-
4 ests of the state may be used, except that the use of a cost-plus-
5 a-percentage-of-cost contract is prohibited. A cost-reimbursement
6 contract may be used only when a determination is made in writing by
7 the procurement officer that a cost-reimbursement contract is likely
8 to be less costly to the state than any other type or that it is
9 impracticable to obtain the supplies, services, professional services,
10 or construction required except under a cost-reimbursement contract.

11 Sec. 36.30.380. APPROVAL OF ACCOUNTING SYSTEM. Except for a
12 contract awarded through competitive sealed bidding or a firm fixed-
13 price contract, a contract type may not be used unless it has been
14 determined in writing by the procurement officer that the proposed
15 contractor's accounting system

16 (1) will permit timely development of all necessary cost
17 data in the form required by the specific contract type contemplated;
18 and

19 (2) is adequate to allocate costs in accordance with gen-
20 erally accepted accounting principles.

21 Sec. 36.30.390. MULTI-TERM CONTRACTS. (a) Unless otherwise
22 provided by law, a contract for supplies, services, or professional
23 services may be entered into for any period of time considered to be
24 in the best interests of the state provided the term of the contract
25 and conditions of renewal or extension, if any, are included in the
26 solicitation and funds are available for the first fiscal period at
27 the time of contracting. Payment and performance obligations for
28 succeeding fiscal periods shall be subject to the availability and
29 appropriation of funds for them.

1 (b) Before using a multi-term contract, the procurement officer
2 shall determine in writing that

3 (1) estimated requirements cover the period of the contract
4 and are reasonably firm and continuing; and

5 (2) the contract will serve the best interests of the state
6 by encouraging effective competition or otherwise promoting economies
7 in state procurement.

8 (c) When funds are not appropriated or otherwise made available
9 to support continuation of performance in a subsequent fiscal period,
10 the contract shall be cancelled. The contractor may only be reim-
11 bursed for the reasonable value of any nonrecurring costs incurred but
12 not amortized in the price of the supplies, services, or professional
13 services delivered under the contract that are not otherwise recover-
14 able. The cost of cancellation may be paid from any appropriations
15 available for these purposes.

16 Sec. 36.30.400. COST OR PRICING DATA. (a) Before an award of a
17 contract or a change order or contract modification, the contractor or
18 prospective contractor shall submit cost and pricing data. The con-
19 tractor or prospective contractor shall certify that, to the best of
20 the contractor's or prospective contractor's knowledge and belief, the
21 data submitted is accurate, complete, and current as of a mutually
22 determined specified date and will continue to be accurate and com-
23 plete during the performance of the contract.

24 (b) When a contractor becomes aware of a situation that may form
25 the basis of a claim for compensation that exceeds the amount desig-
26 nated as the base amount of the contract and before performing addi-
27 tional work or supplying additional materials, the contractor shall
28 submit cost and pricing data on the additional work or materials. The
29 contractor shall certify that, to the best of the contractor's

1 knowledge and belief, the data submitted is accurate, complete, and
2 current and is the actual cost to the contractor of performing the
3 additional work or supplying the additional materials.

4 (c) A contract, change order, or contract modification under
5 which a certificate is required under (a) or (b) of this section must
6 contain a provision that the price to the state, including the con-
7 tractor's profit or fee, will be adjusted to exclude any significant
8 sums by which the state finds that the price is increased because the
9 cost or pricing data furnished by the contractor or prospective con-
10 tractor is inaccurate, incomplete, or not current as of the date
11 agreed upon by the parties.

12 (d) The requirements of (a) of this section do not apply when

13 (1) the contract price is based on adequate price competi-
14 tion;

15 (2) the contract price is set by law or regulation; or

16 (3) it is determined by the procurement officer in writing
17 and in accordance with regulations adopted by the commissioner that
18 the requirements of (a) of this section may be waived, and the reasons
19 for waiver are stated.

20 Sec. 36.30.410. RIGHT TO INSPECT PLANT. The state may, at
21 reasonable times, inspect the part of the plant or place of business
22 of a contractor or subcontractor that is related to the performance of
23 a contract awarded or to be awarded by an agency.

24 Sec. 36.30.420. RIGHT TO AUDIT RECORDS. (a) The state may, at
25 reasonable times and places, audit the books and records of a person
26 who has submitted cost or pricing data under AS 36.30.400 to the
27 extent that the books and records relate to the cost or pricing data.
28 A person who receives a contract, change order, or contract modifica-
29 tion for which cost or pricing data is required, shall maintain books

1 and records that relate to the cost or pricing data for three years
2 after the date of final payment under the contract, unless a shorter
3 period is authorized in writing by the commissioner.

4 (b) The state may audit the books and records of a contractor or
5 a subcontractor to the extent that the books and records relate to the
6 performance of the contract or subcontract. Books and records shall
7 be maintained by the contractor for a period of three years after the
8 date of final payment under the prime contract and by the subcontractor
9 for a period of three years after the date of final payment under
10 the subcontract, unless a shorter period is authorized in writing by
11 the commissioner.

12 Sec. 36.30.430. STANDARD MODIFICATION CLAUSES FOR CONTRACTS.

13 (a) The commissioner shall adopt regulations permitting the inclusion
14 of clauses providing for adjustments in prices, time of performance,
15 or other contract provisions as appropriate.

16 (b) The commissioner shall adopt regulations permitting or
17 requiring the inclusion in state contracts of clauses providing for
18 appropriate remedies and covering the following subjects:

- 19 (1) liquidated damages;
20 (2) specified excuses for delay or nonperformance;
21 (3) termination of the contract for default; and
22 (4) termination of the contract in whole or in part for the
23 convenience of the state.

24 Sec. 36.30.460. MODIFICATION OF STANDARD CLAUSES. The procure-
25 ment officer or the head of a contracting agency may vary the clauses
26 adopted under AS 36.30.430 for inclusion in a particular state con-
27 tract if the

- 28 (1) variations are supported by a written determination
29 that states the circumstances justifying the variation; and

1 (2) approval required by AS 36.30.340 is obtained.

2 Sec. 36.30.470. FISCAL RESPONSIBILITY. A contract modification,
3 change order, or contract price adjustment under a construction con-
4 tract in excess of an amount established by regulation of the commis-
5 sioner is subject to prior written certification by the fiscal officer
6 of the agency responsible for funding the project or the contract, or
7 other official responsible for monitoring and reporting upon the
8 status of the costs of the total project budget or contract budget, as
9 to the effect of the contract modification, change order, or adjust-
10 ment in contract price on the total project budget or the total con-
11 tract budget. If the certification of the fiscal officer or other
12 responsible official discloses a resulting increase in the total
13 project budget or the total contract budget, the procurement officer
14 may not approve the contract modification, change order, or adjustment
15 in contract price unless sufficient funds are available, or the scope
16 of the project or contract is adjusted to permit the degree of com-
17 pletion that is feasible within the total project budget or total
18 contract budget as it existed before the contract modification, change
19 order, or adjustment in contract price under consideration. A con-
20 tract modification change order, or adjustment in contract that is
21 signed by both parties and has been reasonably relied on by a contrac-
22 tor, is presumed to be valid even if the provisions of this section
23 have not been met.

24 Sec. 36.30.480. COST PRINCIPLE REGULATIONS. The commissioner
25 shall adopt regulations setting out cost principles that shall be used
26 to determine the allowability of incurred costs for the purpose of
27 reimbursing costs under contract provisions that provide for the
28 reimbursement of costs. If a written determination is approved at a
29 level above the procurement officer, the cost principles may be

1 modified by contract.

2 ARTICLE 6. PROCUREMENT RECORDS AND REPORTS.

3 Sec. 36.30.500. RETENTION OF PROCUREMENT RECORDS. Procurement
4 records shall be retained and disposed of in accordance with records
5 retention guidelines and schedules approved by the state archivist.
6 Retained documents shall be made available to the attorney general or
7 a designee upon request and proper receipt.

8 Sec. 36.30.510. RECORDS OF CONTRACTS AWARDED UNDER COMPETITIVE
9 SEALED PROPOSALS. A contract file open for public inspection shall be
10 kept by the commissioner and the contracting agency for each contract
11 awarded under competitive sealed proposals. The file kept by the
12 commissioner shall contain a summary of the information in the file of
13 the contracting agency. The file kept by the contracting agency must
14 contain

15 (1) a copy of the contract;

16 (2) the register of proposals prepared under AS 36.30.230
17 and a copy of each proposal submitted; and

18 (3) the written determination to award the contract pre-
19 pared under AS 36.30.250.

20 Sec. 36.30.520. RECORDS OF SOLE SOURCE AND EMERGENCY PROCURE-
21 MENTS. (a) The commissioner shall maintain for a minimum of five
22 years a record listing all sole source procurement contracts made
23 under AS 36.30.300 and emergency procurements made under AS 36.30.310.
24 The record must contain

25 (1) each contractor's name;

26 (2) the amount and type of each contract; and

27 (3) a listing of the supplies, services, professional
28 services, or construction procured under each contract.

29 (b) The Department of Transportation and Public Facilities and

1 any agency to whom the commissioner of administration or the commis-
2 sioner of transportation and public facilities has delegated procure-
3 ment authority under AS 36.30.015 shall, by October 1 of each year,
4 submit to the commissioner of administration records of the type
5 specified in (a) of this section. The commissioner of administration
6 shall maintain these records as required by (a) of this section.

7 Sec. 36.30.530. PUBLIC ACCESS TO PROCUREMENT INFORMATION.
8 Procurement information is public except as otherwise provided by law.

9 Sec. 36.30.540. REPORT TO LEGISLATURE. Beginning with Decem-
10 ber 1, 1989, the commissioner shall biennially report to the legisla-
11 ture concerning procurements by agencies. The report must include

12 (1) the records maintained by the commissioner under
13 AS 36.30.510 and the records maintained under AS 36.30.520(a) for the
14 previous two fiscal years;

15 (2) recommendations for changes in this chapter or other
16 laws based on implementation of this chapter in the previous two
17 fiscal years;

18 (3) a description of any matters that involved litigation
19 concerning this chapter in the previous two fiscal years;

20 (4) a list of procurements made under this chapter from
21 out-of-state sources during the previous two fiscal years together
22 with the total number of procurement contracts entered into during
23 that period with out-of-state contractors and the total value of these
24 contracts; this paragraph does not apply to procurements made under
25 AS 36.30.320; and

26 (5) a list of procurements made under this chapter from
27 state sources during the previous two fiscal years together with the
28 total number of procurement contracts entered into during that period
29 with state contractors and the total value of these contracts; this

1 paragraph does not apply to procurements made under AS 36.30.320.

2 ARTICLE 7. LEGAL AND CONTRACTUAL REMEDIES.

3 Sec. 36.30.560. FILING OF A PROTEST. An interested party may
4 protest the award of a contract, the proposed award of a contract, or
5 a solicitation for supplies, services, professional services, or
6 construction by an agency. The protest shall be filed with the pro-
7 curement officer of the contracting agency in writing and include the
8 following information:

9 (1) the name, address, and telephone number of the pro-
10 tester;

11 (2) the signature of the protester or the protester's
12 representative;

13 (3) identification of the contracting agency and the solici-
14 tation or contract at issue;

15 (4) a detailed statement of the legal and factual grounds
16 of the protest, including copies of relevant documents; and

17 (5) the form of relief requested.

18 Sec. 36.30.565. TIME FOR FILING A PROTEST. (a) A protest based
19 upon alleged improprieties in a solicitation involving competitive
20 sealed bidding that are apparent before the bid opening shall be filed
21 before the bid opening. A protest based on alleged improprieties in a
22 solicitation involving competitive sealed proposals that are apparent

23 (1) before the due date for receipt of initial proposals
24 shall be filed before that due date;

25 (2) after the due date for receipt of initial proposals
26 shall be filed before the next due date for receipt of adjusted pro-
27 posals that occurs after the improprieties are apparent.

28 (b) In situations not covered under (a) of this section, pro-
29 tests shall be filed within 10 days after a notice of intent to award

1 the contract is issued by the procurement officer.

2 (c) If the protester shows good cause, the procurement officer
3 of the contracting agency may consider a filed protest that is not
4 timely.

5 Sec. 36.30.570. NOTICE OF A PROTEST. The procurement officer
6 shall immediately give notice of a protest filed under AS 36.30.565 to
7 the contractor if a contract has been awarded or, if no award has been
8 made, to all interested parties.

9 Sec. 36.30.575. STAY OF AWARD. If a protest is filed the award
10 may be made unless the procurement officer of the contracting agency
11 determines in writing that a

12 (1) reasonable probability exists that the protest will be
13 sustained; or

14 (2) stay of the award is not contrary to the best interests
15 of the state.

16 Sec. 36.30.580. DECISION BY THE PROCUREMENT OFFICER. (a) The
17 procurement officer of the contracting agency shall issue a written
18 decision containing the basis of the decision within 14 days after a
19 protest has been filed. A copy of the decision shall be furnished to
20 the protester by certified mail or other method that provides evidence
21 of receipt.

22 (b) The time for a decision may be extended up to 26 days for
23 good cause by the commissioner of administration, or for protests
24 involving construction or procurements for the state equipment fleet,
25 the commissioner of transportation and public facilities. If an
26 extension is granted, the procurement officer shall notify the pro-
27 tester in writing of the date the decision is due.

28 (c) If a decision is not made by the date it is due, the pro-
29 tester may proceed as if the procurement officer had issued a decision

1 adverse to the protester.

2 Sec. 36.30.585. PROTEST REMEDIES. (a) If the procurement
3 officer sustains a protest in whole or in part, the procurement offi-
4 cer shall implement an appropriate remedy.

5 (b) In determining an appropriate remedy, the procurement offi-
6 cer shall consider the circumstances surrounding the solicitation or
7 procurement including the seriousness of the procurement deficiencies,
8 the degree of prejudice to other interested parties or to the integri-
9 ty of the procurement system, the good faith of the parties, the
10 extent the procurement has been accomplished, costs to the agency and
11 other impacts on the agency of a proposed remedy, and the urgency of
12 the procurement to the welfare of the state.

13 Sec. 36.30.590. APPEAL ON A PROTEST. (a) An appeal from a
14 decision of a procurement officer on a protest may be filed by the
15 protester with the commissioner of administration, or for protests
16 involving construction or procurements for the state equipment fleet,
17 the commissioner of transportation and public facilities. An appeal
18 shall be filed within five days after the decision is received by the
19 protester. The protester shall file a copy of the appeal with the
20 procurement officer.

21 (b) An appeal must contain the information required under
22 AS 36.30.560. In addition, the appeal must include

23 (1) a copy of the decision being appealed; and

24 (2) identification of the factual or legal errors in the
25 decision that form the basis for the appeal.

26 Sec. 36.30.595. NOTICE OF A PROTEST APPEAL. (a) The procure-
27 ment officer shall immediately give notice of an appeal filed under
28 AS 36.30.590 to the contractor if a contract has been awarded or, if
29 no award has been made, to all interested parties.

1 (b) The commissioner of administration or the commissioner of
2 transportation and public facilities, as appropriate, shall, on re-
3 quest, furnish a copy of the appeal to a person notified under (a) of
4 this section, except that confidential material shall be deleted from
5 the copy.

6 Sec. 36.30.600. STAY OF AWARD DURING PROTEST APPEAL. If a
7 protest appeal is filed before a contract is awarded and the award was
8 stayed under AS 36.30.575, the filing of the appeal automatically
9 continues the stay until the commissioner of administration or the
10 commissioner of transportation and public facilities, as appropriate,
11 makes a written determination that the award of the contract without
12 further delay is necessary to protect substantial interests of the
13 state.

14 Sec. 36.30.605. PROTEST REPORT. (a) The procurement officer of
15 the contracting agency shall file a complete report on the protest and
16 decision with the commissioner of administration or the commissioner
17 of transportation and public facilities, as appropriate, within seven
18 days after a protest appeal is filed. The procurement officer shall
19 furnish a copy of the report to the protester and to interested par-
20 ties that have requested a copy of the appeal under AS 36.30.595(b).

21 (b) The procurement officer may request an extension of time to
22 prepare the protest report. The request must be in writing listing
23 the reasons for the request. The commissioner of administration or
24 the commissioner of transportation and public facilities, as appropri-
25 ate, shall respond to the request in writing. If an extension is
26 granted, the commissioner shall list the reasons for granting the
27 extension and indicate the date the protest report is due. The com-
28 missioner shall notify the protester in writing that the time for
29 submission of the report has been extended and the date the report is

1 due.

2 (c) The protester may file comments on the protest report with
3 the commissioner of administration or the commissioner of transporta-
4 tion and public facilities, as appropriate, within seven days after
5 the report is received. The protester shall provide copies of the
6 comments to the procurement officer and to interested parties that
7 have requested a copy of the appeal under AS 36.30.595(b).

8 (d) The protester may request an extension of time to prepare
9 the comments on the protest report. The request must be in writing
10 listing the reasons for the request. The commissioner of administra-
11 tion or the commissioner of transportation and public facilities, as
12 appropriate, shall respond to the request in writing. If an extension
13 is granted, the commissioner shall list the reasons for granting the
14 extension and indicate the date the comments are due. The commission-
15 er shall notify the procurement officer in writing that the time for
16 submission of the comments has been extended and the date the comments
17 are due.

18 Sec. 36.30.610. DECISION WITHOUT HEARING. (a) The commissioner
19 of administration or the commissioner of transportation and public
20 facilities, as appropriate, shall dismiss a protest appeal before a
21 hearing is held if it is determined in writing that the appeal is
22 untimely under AS 36.30.590(a).

23 (b) The commissioner of administration or the commissioner of
24 transportation and public facilities, as appropriate, may issue a
25 decision on an appeal without a hearing if the appeal involves ques-
26 tions of law without genuine issues of fact.

27 Sec. 36.30.615. HEARING ON PROTEST APPEAL. A hearing on a
28 protest appeal shall be conducted in accordance with AS 36.30.670 and
29 regulations adopted by the commissioner.

1 Sec. 36.30.620. CONTRACT CONTROVERSIES. (a) A contractor shall
2 file a claim concerning a contract awarded under this chapter with the
3 procurement officer. The contractor shall certify that the claim is
4 made in good faith, that the supporting data are accurate and complete
5 to the best of the contractor's knowledge and belief, and that the
6 amount requested accurately reflects the contract adjustment for which
7 the contractor believes the state is liable.

8 (b) If a controversy asserted by a contractor concerning a
9 contract awarded under this chapter cannot be resolved by agreement,
10 the procurement officer shall, after receiving a written request by
11 the contractor for a decision, issue a written decision. The decision
12 shall be made no more than 90 days after receipt by the procurement
13 officer of all necessary information from the contractor. Failure of
14 the contractor to furnish necessary information to the procurement
15 officer constitutes a waiver of the claim. Before issuing the deci-
16 sion the procurement officer shall review the facts relating to the
17 controversy and obtain necessary assistance from legal, fiscal, and
18 other advisors.

19 (c) The time for issuing a decision under (b) of this section
20 may be extended for good cause by the commissioner of administration,
21 or for a controversy involving a construction contract or procurement
22 for the state equipment fleet, the commissioner of transportation and
23 public facilities, if the controversy concerns an amount in excess of
24 \$50,000. The procurement officer shall notify the contractor in
25 writing that the time for the issuance of a decision has been extended
26 and of the date by which a decision shall be issued.

27 (d) The procurement officer shall furnish a copy of the decision
28 to the contractor by certified mail or other method that provides
29 evidence of receipt. The decision shall include a

- (1) description of the controversy;
- (2) reference to the pertinent contract provisions;
- (3) statement of the agreed upon and disputed facts;
- (4) statement of reasons supporting the decision; and
- (5) statement substantially as follows:

"This is the final decision of the procurement officer.

This decision may be appealed to the commissioner of
(administration/transportation and public facilities).

If you appeal, you must file a written notice of appeal
with the commissioner within 14 days after you receive
this decision."

(e) If a decision is not made by the date it is due, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor.

(f) If a controversy asserted by the state concerning a contract awarded under this chapter cannot be resolved by agreement the matter shall be immediately referred to the commissioner of administration or the commissioner of transportation and public facilities, as appropriate.

Sec. 36.30.625. APPEAL ON A CONTRACT CONTROVERSY. (a) 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 for a controversy involving a construction contract or procurement for the state equipment fleet, the commissioner of transportation and public facilities. The appeal shall be filed within 14 days after the decision is received by the contractor. The contractor shall file a copy of the appeal with the procurement officer.

(b) An appeal shall contain a copy of the decision being

1 appealed and identification of the factual or legal errors in the
2 decision that form the basis for the appeal.

3 Sec. 36.30.630. HEARING ON A CONTRACT CONTROVERSY. (a) Except
4 as provided in (b) of this section, a hearing shall be conducted
5 according to AS 36.30.670 and regulations adopted by the commissioner
6 of administration on a contract controversy appealed to the commis-
7 sioner of administration or the commissioner of transportation and
8 public facilities or referred to either commissioner under AS 36.30.-
9 620(f).

10 (b) Within 15 days after receipt of an appeal on a contract
11 controversy the commissioner of administration or the commissioner of
12 transportation and public facilities, as appropriate, may adopt the
13 decision of the procurement officer as the final decision without a
14 hearing.

15 Sec. 36.30.632. DELEGATION. The commissioner of administration
16 and the commissioner of transportation and public facilities may
17 delegate responsibilities under AS 36.30.590 and 36.30.630 to the head
18 of the contracting agency.

19 Sec. 36.30.635. AUTHORITY TO DEBAR OR SUSPEND. (a) After
20 consultation with the using agency and the attorney general and after
21 a hearing conducted according to AS 36.30.670 and regulations adopted
22 by the commissioner of administration, the commissioner of administra-
23 tion or the commissioner of transportation and public facilities may
24 debar a person for cause from consideration for award of contracts.
25 Notice of a debarment hearing shall be provided in writing at least
26 seven days before the hearing. The debarment may not be for a period
27 of more than three years.

28 (b) The commissioner of administration or the commissioner of
29 transportation and public facilities, after consultation with the

1 using agency and the attorney general, may suspend a person from
2 consideration for award of contracts if there is probable cause for
3 debarment and compelling reasons require suspension to protect state
4 interests. The suspension may not be for a period exceeding three
5 months.

6 (c) The authority to debar or suspend shall be exercised in
7 accordance with regulations adopted by the commissioner of adminis-
8 tration.

9 Sec. 36.30.640. CAUSES FOR DEBARMENT OR SUSPENSION. The causes
10 for debarment or suspension include the following:

11 (1) conviction for commission of a criminal offense as an
12 incident to obtaining or attempting to obtain a public or private
13 contract or subcontract, or in the performance of the contract or
14 subcontract;

15 (2) conviction under state or federal statutes of embezzle-
16 ment, theft, forgery, bribery, falsification or destruction of re-
17 cords, receiving stolen property, or other offense indicating a lack
18 of business integrity or business honesty that currently and seriously
19 affects responsibility as a state contractor;

20 (3) conviction or civil judgment finding a violation under
21 state or federal antitrust statutes;

22 (4) violation of contract provisions of a character that is
23 regarded by the commissioner to be so serious as to justify debarment
24 action, such as

25 (A) knowing failure without good cause to perform in
26 accordance with the specifications or within the time limit
27 provided in the contract; or

28 (B) failure to perform or unsatisfactory performance
29 in accordance with the terms of one or more contracts, except

1 that failure to perform or unsatisfactory performance caused by
2 acts beyond the control of the contractor may not be considered
3 to be a basis for debarment;

4 (5) for violation of the ethical standards set out in law
5 or regulation;

6 (6) for a violation of this chapter punishable under
7 AS 36.30.930(2); and

8 (7) any other cause listed in regulations of the commis-
9 sioner determined to be so serious and compelling as to affect respon-
10 sibility as a state contractor, including debarment by another govern-
11 mental entity for a cause listed in the regulations.

12 Sec. 36.30.645. WRITTEN DETERMINATIONS. (a) The commissioner
13 of administration or the commissioner of transportation and public
14 facilities shall issue a written decision to debar or suspend. The
15 decision must

16 (1) state the reasons for the action taken; and

17 (2) inform the debarred person of rights to judicial appeal
18 or inform the suspended person of rights to administrative and judi-
19 cial appeal.

20 (b) A copy of the decision under (a) of this section shall be
21 mailed or otherwise furnished immediately to the debarred or suspended
22 person and any other intervening party.

23 Sec. 36.30.650. HEARING ON A SUSPENSION. (a) A person suspend-
24 ed under AS 36.30.635 is entitled to a hearing conducted according to
25 AS 36.30.670 and regulations adopted by the commissioner of adminis-
26 tration if the person files a written request for a hearing with the
27 commissioner of administration or the commissioner of transportation
28 and public facilities, as appropriate, within seven days after receipt
29 of the notice of suspension under AS 36.30.645.

1 (b) If a suspended person requests a hearing the commissioner of
2 administration or the commissioner of transportation and public facil-
3 ities, as appropriate, shall schedule a prompt hearing unless the
4 attorney general determines that a hearing at the proposed time is
5 likely to jeopardize an investigation. A hearing may not be delayed
6 longer than six months after notice of the suspension is provided
7 under AS 36.30.645.

8 Sec. 36.30.655. LIST OF PERSONS DEBARRED OR SUSPENDED. The
9 commissioner shall maintain a list of all persons debarred or suspend-
10 ed from consideration for award of contracts.

11 Sec. 36.30.660. REINSTATEMENT. (a) The commissioner of admin-
12 istration or the commissioner of transportation and public facilities
13 may at any time after a final decision to debar a person from consid-
14 eration for award of contracts reinstate the person after determining
15 that the cause for which the person was debarred no longer exists or
16 has been substantially mitigated.

17 (b) A debarred person may request reinstatement by submitting a
18 petition to the commissioner of administration or the commissioner of
19 transportation and public facilities supported by evidence showing
20 that the cause for debarment no longer exists or has been substantial-
21 ly mitigated.

22 (c) The commissioner of administration or the commissioner of
23 transportation and public facilities may require a hearing on a rein-
24 statement petition. A decision on reinstatement shall be made in
25 writing within seven days after a reinstatement petition is submitted.
26 The decision shall specify the factors on which it is based. A deci-
27 sion under this section is not subject to judicial appeal.

28 Sec. 36.30.665. LIMITED PARTICIPATION. The commissioner of
29 administration or the commissioner of transportation and public

1 facilities may permit a debarred person to participate in a contract
2 on a limited basis during the debarment period if the commissioner
3 determines in writing that the participation is advantageous to the
4 state. The determination shall specify the factors on which it is
5 based and the limits imposed on the debarred person.

6 Sec. 36.30.670. HEARING PROCEDURES. (a) The commissioner of
7 administration or the commissioner of transportation and public facil-
8 ities shall act as a hearing officer or appoint a hearing officer for
9 a hearing conducted under this chapter. The hearing officer shall
10 arrange for a prompt hearing and notify the parties in writing of the
11 time and place of the hearing. The hearing shall be conducted in an
12 informal manner. The provisions of AS 44.62 (Administrative Procedure
13 Act) do not apply to a hearing conducted under this chapter.

14 (b) The hearing officer may

15 (1) hold prehearing conferences to settle, simplify, or
16 identify the issues in a proceeding, or to consider other matters that
17 may aid in the expeditious disposition of the proceeding;

18 (2) require parties to state their positions concerning the
19 various issues in the proceeding;

20 (3) require parties to produce for examination those rele-
21 vant witnesses and documents under their control;

22 (4) rule on motions and other procedural matters;

23 (5) regulate the course of the hearing and conduct of the
24 participants;

25 (6) establish time limits for submission of motions or
26 memoranda;

27 (7) impose appropriate sanctions against a person who fails
28 to obey an order of the hearing officer, including

29 (A) prohibiting the person from asserting or opposing

1 designated claims or defenses or introducing designated matters
2 into evidence;

3 (B) excluding all testimony of an unresponsive or
4 evasive witness; and

5 (C) excluding a person from further participation in
6 the hearing;

7 (8) take official notice of a material fact not appearing
8 in evidence, if the fact is among the traditional matters subject to
9 judicial notice;

10 (9) administer oaths or affirmations.

11 (c) A transcribed record of the hearing shall be made available
12 at cost to a party that requests it.

13 Sec. 36.30.675. RECOMMENDATION BY THE HEARING OFFICER. (a) If
14 the commissioner of administration or the commissioner of transporta-
15 tion and public facilities is not acting as hearing officer, the
16 hearing officer shall recommend a decision to the commissioner based
17 on the evidence presented. The recommendation shall include findings
18 of fact and conclusions of law.

19 (b) The commissioner of administration or the commissioner of
20 transportation and public facilities may affirm, modify, or reject the
21 hearing officer's recommendation in whole or in part, may remand the
22 matter to the hearing officer with instructions, or take other appro-
23 priate action.

24 Sec. 36.30.680. FINAL DECISION BY THE COMMISSIONER. A decision
25 by the commissioner of administration or the commissioner of transpor-
26 tation and public facilities after a hearing under this chapter is
27 final. A decision shall be sent within 20 days after the hearing to
28 all parties by personal service or certified mail, except that a
29 decision by the commissioner of transportation and public facilities

1 involving procurement of construction shall be sent within 90 days
2 after the hearing to all parties by personal service or certified
3 mail.

4 Sec. 36.30.685. JUDICIAL APPEAL. (a) A final decision of the
5 commissioner of administration or the commissioner of transportation
6 and public facilities under AS 36.30.610, 36.30.635(a), 36.30.650, or
7 36.30.680 may be appealed to the superior court in accordance with the
8 Alaska Rules of Appellate Procedure.

9 (b) A final decision of the commissioner of administration or
10 the commissioner of transportation and public facilities under AS 36.-
11 30.630(b) may be appealed to the superior court for a trial de novo.

12 Sec. 36.30.687. MISREPRESENTATIONS AND FRAUDULENT CLAIMS. (a)
13 A person who makes or uses in support of a contract claim under this
14 chapter, a misrepresentation, or who practices or attempts to practice
15 a fraud, at any stage of proceedings relating to a procurement or
16 contract controversy under this chapter:

17 (1) forfeits all claims relating to that procurement or
18 contract; and

19 (2) is liable to the state for reimbursement of all sums
20 paid on the claim, for all costs attributable to review of the claim,
21 and for a civil penalty equal to the amount by which the claim is
22 misrepresented.

23 (b) The procurement officer, commissioner or court shall make
24 specific findings of misrepresentation, attempted fraud or fraud
25 before declaring a forfeiture under (a)(1) of this section.

26 (c) Suits to recover costs and penalties under (a)(2) of this
27 section must be commenced within six years after the discovery of the
28 misrepresentation, fraud, or attempted fraud.

29 (d) A person who in a matter relating to a procurement or a

1 contract controversy or claim under this chapter makes a misrepresen-
2 tation to the state through a trick, scheme, or device is guilty of a
3 class C felony.

4 (e) In this section, "misrepresentation" means a false or mis-
5 leading statement of material fact, or conduct intended to deceive or
6 mislead concerning material fact, whether it succeeds in deceiving or
7 misleading.

8 Sec. 36.30.690. EXCLUSIVE REMEDY. Notwithstanding AS 44.77 or
9 other law to the contrary, AS 36.30.560 - 36.30.699 and regulations
10 adopted under those sections provide the exclusive procedure for
11 asserting a claim against an agency arising in relation to a procure-
12 ment under this chapter.

13 Sec. 36.30.695. OTHER RULES OF PROCEDURE. The commissioner may
14 adopt by regulation additional rules of procedure providing for the
15 expeditious administrative review of all contract claims or contro-
16 versies, both before the contracting agency and through an appeal
17 heard de novo.

18 Sec. 36.30.699. DEFINITION. In AS 36.30.560 - 36.30.695, "in-
19 terested party" means an actual or prospective bidder or offeror whose
20 economic interest may be affected substantially and directly by the
21 issuance of a contract solicitation, the award of a contract, or the
22 failure to award a contract; whether an actual or prospective bidder
23 or offeror has an economic interest depends on the circumstances.

24 ARTICLE 8. INTERGOVERNMENTAL RELATIONS.

25 Sec. 36.30.700. COOPERATIVE PURCHASING AUTHORIZED. A public
26 procurement unit may either participate in, sponsor, conduct, or
27 administer a cooperative purchasing agreement for the procurement of
28 supplies, services, professional services, or construction with one or
29 more public procurement units or external procurement activities in

1 accordance with an agreement entered into between the participants.
2 Cooperative purchasing may include joint or multi-party contracts
3 between public procurement units and open-ended state public procure-
4 ment unit contracts that are made available to local public procure-
5 ment units.

6 Sec. 36.30.710. SALE, ACQUISITION, OR USE OF SUPPLIES BY A
7 PUBLIC PROCUREMENT UNIT. (a) A public procurement unit may sell to,
8 acquire from, or use any supplies belonging to another public procure-
9 ment unit or external procurement activity independent of the require-
10 ments of AS 36.30.060 and 36.30.100 - 36.30.260.

11 (b) A public procurement unit may enter into an agreement,
12 independent of the requirements of AS 36.30.060 and 36.30.100 - 36.-
13 30.260, with another public procurement unit or external procurement
14 activity for the cooperative use of supplies or services under the
15 terms agreed upon between the parties.

16 Sec. 36.30.720. JOINT USE OF FACILITIES. A public procurement
17 unit may enter into agreements for the common use or lease of ware-
18 housing facilities, capital equipment, and other facilities with
19 another public procurement unit or an external procurement activity
20 under the terms agreed upon between the parties.

21 Sec. 36.30.730. SUPPLY OF PERSONNEL, INFORMATION, AND TECHNICAL
22 SERVICES. (a) A public procurement unit may, upon written request
23 from another public procurement unit or external procurement activity,
24 provide personnel to the requesting public procurement unit or exter-
25 nal procurement activity. The public procurement unit or external
26 procurement activity making the request shall pay the public procure-
27 ment unit providing the personnel the direct and indirect cost of
28 furnishing the personnel, in accordance with an agreement between the
29 parties.

1 (b) The informational, technical, and other services of a public
2 procurement unit may be made available to another public procurement
3 unit or external procurement activity except that the requirements of
4 the public procurement unit tendering the services has precedence over
5 the requesting public procurement unit or external procurement activi-
6 ty. The requesting public procurement unit or external procurement
7 activity shall pay for the expenses of the services so provided, in
8 accordance with an agreement between the parties.

9 (c) Upon request, the commissioner may make available to public
10 procurement units or external procurement activities the following
11 services, among others:

- 12 (1) standard forms;
- 13 (2) printed manuals;
- 14 (3) product specifications and standards;
- 15 (4) quality assurance testing services and methods;
- 16 (5) qualified products lists;
- 17 (6) source information;
- 18 (7) common use commodities listings;
- 19 (8) supplier performance ratings;
- 20 (9) lists of persons debarred or suspended from considera-
21 tion for award of state contracts;
- 22 (10) forms for invitations for bids, requests for proposals,
23 instructions to bidders, general contract provisions, and other con-
24 tract forms; and
- 25 (11) contracts or published summaries of them, including
26 price and time of delivery information.

27 (d) The commissioner may provide the following technical ser-
28 vices, among others:

- 29 (1) development of product specifications;

1 (2) development of quality assurance test methods, includ-
2 ing receiving, inspection, and acceptance procedures;

3 (3) use of product testing and inspection facilities; and

4 (4) use of personnel training programs.

5 (e) The commissioner may enter into contractual arrangements and
6 publish a schedule of fees for the services provided under (c) and (d)
7 of this section.

8 Sec. 36.30.735. RESTRICTION ON CONTRACTING WITH OR EMPLOYING
9 EXPERTS ON RADIATION HAZARDS. (a) Except for the Department of
10 Health and Social Services, the Department of Labor, the Department of
11 Environmental Conservation, and the Department of Military and Veter-
12 ans' Affairs, a state agency may not

13 (1) contract, other than with the Department of Health and
14 Social Services, to have services performed that require expertise in
15 determining or reducing the hazards of radiation; or

16 (2) employ a person whose duties require expertise in
17 determining or reducing the hazards of radiation.

18 (b) In this section, "state agency" means a state department or
19 agency, whether in the legislative, judicial, or executive branch,
20 including such entities as the Alaska State Housing Authority, but not
21 including the University of Alaska, a municipality, or an agency of a
22 municipality.

23 (c) In this section, "radiation" does not include radiation
24 emitted from a Federal Communications Commission licensed facility
25 emitting radiation of a wave length longer than one centimeter and an
26 average power output not exceeding two kilowatts.

27 Sec. 36.30.740. REVIEW OF PROCUREMENT REQUIREMENTS. To the
28 extent possible, the commissioner may collect information concerning
29 the type, cost, quality, and quantity of commonly used supplies,

1 equipment for the state fleet, services, or construction being pro-
2 cured or used by state public procurement units. The commissioner may
3 also collect this information from local public procurement units.
4 The commissioner may make this information available to a public
5 procurement unit upon request.

6 Sec. 36.30.750. CONTRACT CONTROVERSIES. (a) Under a coopera-
7 tive purchasing agreement, controversies arising between an adminis-
8 tering public procurement unit and its bidders, offerors, or contrac-
9 tors shall be resolved in accordance with AS 36.30.560 - 36.30.699.

10 (b) A local public procurement unit that is not subject to
11 AS 36.30.560 - 36.30.699 may enter into an agreement with another
12 local public procurement unit or external procurement activity to
13 establish procedures or use that unit's or activity's existing proce-
14 dures to resolve controversies with contractors, whether or not the
15 controversy arose under a cooperative purchasing agreement.

16 Sec. 36.30.790. DEFINITIONS. In AS 36.30.700 - 36.30.790

17 (1) "cooperative purchasing" means procurement conducted
18 by, or on behalf of, more than one public procurement unit, or by a
19 public procurement unit with an external procurement activity;

20 (2) "external procurement activity" means a buying orga-
21 nization not located in this state that, if located in this state,
22 would qualify as a public procurement unit; an agency of the United
23 States is an external procurement activity;

24 (3) "local public procurement unit" means a municipality or
25 other subdivision of the state or other entity that expends public
26 funds for the procurement of supplies, services, professional ser-
27 vices, and construction, and any nonprofit corporation operating a
28 charitable hospital;

29 (4) "public procurement unit" means either a local public

1 procurement unit or a state public procurement unit;

2 (5) "state public procurement unit" means the Department of
3 Administration and any other contracting agency of the state.

4 ARTICLE 9. GENERAL PROVISIONS.

5 Sec. 36.30.850. APPLICATION OF THIS CHAPTER. (a) This chapter
6 applies only to contracts solicited or entered into after January 1,
7 1987, unless the parties agree to its application to a contract solic-
8 ited or entered into before that date.

9 (b) This chapter applies to every expenditure of state funds
10 irrespective of their sources, including federal assistance except as
11 otherwise specified in AS 36.30.890, by the state, acting through an
12 agency, under a contract, except that this chapter does not apply to

13 (1) grants;

14 (2) contracts for professional witnesses to provide for
15 professional services or testimony relating to existing or probable
16 lawsuits in which the state is or may become a party;

17 (3) contracts of the University of Alaska where the work is
18 to be performed substantially by students enrolled in the university;

19 (4) contracts for medical doctors and dentists;

20 (5) acquisitions or disposals of real property or interest
21 in real property, except as provided in AS 36.30.080;

22 (6) disposals under AS 38.05;

23 (7) contracts for the preparation of ballots under AS 15.-
24 15.030;

25 (8) acquisitions or disposals of property and other con-
26 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
27 091;

28 (9) disposals of obsolete property under AS 19.05.060;

29 (10) disposals of obsolete material or equipment under

1 AS 35.20.060;

2 (11) agreements with providers of services under AS 47.07;
3 AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195, and 47.25.310;

4 (12) contracts of the Department of Fish and Game for
5 flights that involve specialized flying and piloting skills and are
6 not point-to-point.

7 (c) Except for AS 36.30.700 - 36.30.790, this chapter does not
8 apply to contracts between two or more agencies, the state and its
9 political subdivisions, or the state and other governments.

10 (d) Nothing in this chapter or in regulations adopted under this
11 chapter prevents an agency or political subdivision from complying
12 with the terms and conditions of a grant, gift, bequest, or coopera-
13 tive agreement.

14 Sec. 36.30.860. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLIC-
15 ABLE. Unless displaced by the particular provisions of this chapter,
16 the principles of law and equity, including the Uniform Commercial
17 Code (AS 45.01 - AS 45.09), the law merchant, and law relative to
18 capacity to contract, agency, fraud, misrepresentation, duress, coer-
19 cion, mistake, or bankruptcy shall supplement the provisions of this
20 chapter.

21 Sec. 36.30.870. ADOPTION OF REGULATIONS. (a) Regulations under
22 this chapter shall be adopted in accordance with the Administrative
23 Procedure Act (AS 44.62).

24 (b) Regulations under this chapter applicable to procurements of
25 construction or procurements for or disposal of property of the state
26 equipment fleet shall be adopted by the commissioner of administration
27 only after consultation with the commissioner of transportation and
28 public facilities.

29 Sec. 36.30.880. REQUIREMENT OF GOOD FAITH. All parties involved

1 in the negotiation, performance, or administration of state contracts
2 shall act in good faith.

3 Sec. 36.30.890. FEDERAL ASSISTANCE. If a procurement involves
4 the expenditure of federal funds or federal assistance and there is a
5 conflict between a provision of this chapter or a regulation adopted
6 under a provision of this chapter and a federal statute or regulation
7 the federal statute or regulation shall prevail.

8 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
9 does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding
10 preference for Alaska forest products, or AS 36.20.010 regarding
11 preference to producers or dealers in Alaska except as provided in
12 AS 36.30.170(b) and (c).

13 Sec. 36.30.910. PURCHASES THROUGH GENERAL SERVICES ADMINISTRA-
14 TION. This chapter does not prevent purchasing through the general
15 services administration as provided by law.

16 Sec. 36.30.920. REPORTING OF ANTICOMPETITIVE PRACTICES. When
17 for any reason collusion or other anticompetitive practices are sus-
18 pected among bidders or offerors, a notice of the relevant facts shall
19 be transmitted to the attorney general by the person who suspects the
20 collusion or other anticompetitive practices.

21 Sec. 36.30.930. CIVIL AND CRIMINAL PENALTIES. The following
22 penalties apply to violations of this chapter:

23 (1) a person who contracts for or purchases supplies,
24 equipment for the state fleet, services, professional services, or
25 construction in a manner the person knows to be contrary to the re-
26 quirements of this chapter or the regulations adopted under this
27 chapter is liable for all costs and damages to the state arising out
28 of the violation;

29 (2) a person who intentionally or knowingly contracts for

1 or purchases supplies, equipment for the state fleet, services, pro-
2 fessional services, or construction under a scheme or artifice to
3 avoid the requirements of this chapter is guilty of a class C felony.

4 Sec. 36.30.940. ENFORCEMENT. The attorney general on behalf of
5 the state shall enforce the provisions of this chapter.

6 Sec. 36.30.990. DEFINITIONS. In this chapter, unless the con-
7 text in which a term is used clearly requires a different meaning or a
8 different definition is prescribed for a particular provision,

9 (1) "agency" means a department, institution, board, com-
10 mission, division, authority, public corporation, the Alaska Pioneers'
11 Home, or other administrative unit of the executive branch of state
12 government, except for the University of Alaska and the Alaska
13 Railroad Corporation; it does not include a regional Native housing
14 authority created under AS 18.55.996, or a regional electrical
15 authority created under AS 18.57.020;

16 (2) "change order" means a written order signed by the
17 procurement officer, directing the contractor to make changes that the
18 changes clause of the contract authorizes the procurement officer to
19 order without the consent of the contractor;

20 (3) "commissioner" means the commissioner of the Department
21 of Administration;

22 (4) "competitive sealed bidding" means the procedure under
23 AS 36.30.100 - 36.30.190;

24 (5) "competitive sealed proposals" means the procedure
25 under AS 36.30.200 - 36.30.260;

26 (6) "construction" means the process of building, altering,
27 repairing, maintaining, improving, or demolishing a public highway,
28 structure, building, or other public improvement of any kind to real
29 property other than privately owned real property leased for the use

1 of agencies; it includes services and professional services relating
2 to planning and design required for the construction; it does not
3 include the routine operation of a public improvement to real
4 property;

5 (7) "contract" means all types of state agreements, regard-
6 less of what they may be called, for the procurement or disposal of
7 supplies, equipment for the state fleet, services, professional servi-
8 ces, or construction;

9 (8) "contract modification" means a written alteration in
10 specifications, delivery point, rate of delivery, period of perfor-
11 mance, price, quantity, or other provisions of a contract accomplished
12 by mutual action of the parties to the contract;

13 (9) "department" means the Department of Administration;

14 (10) "grant" means the furnishing by the state of assis-
15 tance, whether financial or otherwise, to a person to support a pro-
16 gram authorized by law; it does not include an award whose primary
17 purpose is to procure an end product for a state agency, whether in
18 the form of supplies, services, professional services, or construc-
19 tion; a contract resulting from such an award is not a grant but a
20 procurement contract;

21 (11) "person" means a business, individual, union, commit-
22 tee, club, other organization, or group of individuals;

23 (12) "procurement" means buying, purchasing, renting, leas-
24 ing, or otherwise acquiring supplies, equipment for the state fleet,
25 services, or construction; it also includes functions that pertain to
26 the obtaining of a supply, equipment for the state fleet, service, or
27 construction, including description of requirements, selection and
28 solicitation of sources, preparation and award of contract, and all
29 phases of contract administration;

1 (13) "procurement officer" means a person authorized to
2 enter into and administer contracts for an agency and make written
3 determinations with respect to them; it also includes an authorized
4 representative of a procurement officer acting within the limits of
5 authority;

6 (14) "professional services" means professional, technical,
7 or consultant's services that are predominantly intellectual in char-
8 acter, result in the production of a report or the completion of a
9 task, and include analysis, evaluation, prediction, planning, or
10 recommendation;

11 (15) "services" means the furnishing of labor, time, or
12 effort by a contractor, not involving the delivery of a specific end
13 product other than reports that are merely incidental to the required
14 performance; it does not include employment agreements or collective
15 bargaining agreements;

16 (16) "supplies" means all property of an agency, including
17 equipment, materials, and insurance; it includes privately owned real
18 property leased for the use of agencies, such as office space, but
19 does not include the acquisition or disposition of other interests in
20 land.

21 Sec. 36.30.995. SHORT TITLE. This chapter may be cited as the
22 State Procurement Code.

23 * Sec. 3. AS 03.22.030 is amended to read:

24 Sec. 03.22.030. CENTER SITE, BUILDINGS AND EQUIPMENT. The
25 department shall obtain a site, either by donation, lease, or pur-
26 chase, and erect suitable buildings on the site, if they are needed
27 for the use of the plant materials center. The department shall also
28 acquire the agricultural land, scientific instruments and equipment
29 necessary to carry on the work of the center. Acquisition of

1 scientific instruments and equipment under this section is governed by
2 AS 36.30 (State Procurement Code).

3 * Sec. 4. AS 05.20.040 is amended to read:

4 Sec. 05.20.040. PERSONNEL TO INSPECT DEVICES. The department
5 shall designate a person qualified in experience and training as the
6 inspector of devices. The department may employ additional employees
7 as are necessary to administer this chapter. The inspector and the
8 employees may be hired on a temporary basis or borrowed from other
9 state departments or political subdivisions of the state, or the
10 department may contract with individuals or firms for the inspecting
11 service on an independent basis. The department shall prescribe the
12 salary or other remuneration for this service. Contracting under this
13 section is governed by AS 36.30 (State Procurement Code).

14 * Sec. 5. AS 09.50.250 is amended to read:

15 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person
16 or corporation having a contract, quasi-contract, or tort claim
17 against the state may bring an action against the state in the superi-
18 or court. A person who may present the claim under AS 44.77 may not
19 bring an action under this section except as set out in AS 44.77.-
20 040(c). A person who may bring an action under AS 36.30.560 - 36.30.-
21 695 may not bring an action under this section except as set out in
22 AS 36.30.685. However, no action may be brought under this section if
23 the claim

24 (1) is an action for tort, and is based upon an act or
25 omission of an employee of the state, exercising due care, in the
26 execution of a statute or regulation, whether or not the statute or
27 regulation is valid; or is an action for tort, and based upon the
28 exercise or performance or the failure to exercise or perform a dis-
29 cretionary function or duty on the part of a state agency or an

1 employee of the state, whether or not the discretion involved is
2 abused;

3 (2) is for damages caused by the imposition or establish-
4 ment of a quarantine by the state;

5 (3) arises out of assault, battery, false imprisonment,
6 false arrest, malicious prosecution, abuse of process, libel, slander,
7 misrepresentation, deceit, or interference with contract rights.

8 * Sec. 6. AS 14.08.101 is amended to read:

9 Sec. 14.08.101. POWERS. A regional school board may

10 (1) sue and be sued;

11 (2) contract with the department, the Bureau of Indian
12 Affairs, or any other school district, agency, or regional board for
13 the provision of services, facilities, supplies or utilities;

14 (3) determine its own fiscal procedures including but not
15 limited to policies and procedures for the purchase of supplies and
16 equipment; the regional school boards are exempt from the Fiscal
17 Procedures Act (AS 37.05) and the State Procurement Code (AS 36.30);

18 (4) appoint, compensate and otherwise control all school
19 employees in accordance with this title; these employees are not
20 subject to the State Personnel Act (AS 39.25);

21 (5) adopt regulations governing organization, policies and
22 procedures for the operation of the schools;

23 (6) establish, maintain, operate, discontinue and combine
24 schools subject to the approval of the commissioner;

25 (7) recommend to the department projects for construction,
26 rehabilitation, and improvement of schools and education-related
27 facilities as specified in AS 14.11.010(a), and plan, design, and
28 construct the project when the responsibility for it is assumed under
29 AS 14.11.020;

1 (8) exercise those other functions that may be necessary
2 for the proper performance of its responsibilities;

3 (9) by resolution adopted by a majority of all the members
4 of the board and provided to the commissioner of the department,
5 assume ownership of all land and buildings used in relation to the
6 schools in the regional educational attendance area;

7 (10) provide housing for rental to teachers, by leasing
8 existing housing from a local agency or individual, or by entering
9 into contractual arrangements with a local agency or individual to
10 lease housing that will be constructed by the local agency or indi-
11 vidual for that purpose.

12 * Sec. 7. AS 16.05.050 is amended to read:

13 Sec. 16.05.050. POWERS AND DUTIES OF COMMISSIONER. The commis-
14 sioner has, but not by way of limitation, the following powers and
15 duties:

16 (1) assist the United States Fish and Wildlife Service in
17 the enforcement of federal laws and regulations pertaining to fish and
18 game;

19 (2) through the appropriate state agency and under the
20 provisions of AS 36.30 (State Procurement Code), acquire by gift,
21 purchase, or lease, or other lawful means, land, buildings, water,
22 rights-of-way, or other necessary or proper real or personal property
23 when the acquisition is in the interest of furthering an objective or
24 purpose of the department and the state;

25 (3) under the provisions of AS 36.30, design and construct
26 hatcheries, pipelines, rearing ponds, fishways, and other projects
27 beneficial for the fish and game resources of the state;

28 (4) accept money from any person under conditions requiring
29 the use of the money for specific purposes in the furtherance of the

1 protection, rehabilitation, propagation, preservation, or investiga-
2 tion of the fish and game resources of the state or in settlement of
3 claims for damages to fish or game resources;

4 (5) collect, classify, and disseminate statistics, data and
5 information that, in the commissioner's discretion, will tend to
6 promote the purposes of this title except AS 16.51 and AS 16.52;

7 (6) capture, propagate, transport, buy, sell, or exchange
8 fish or game or eggs for propagating, scientific or stocking purposes;

9 (7) under the provisions of AS 36.30, provide public facil-
10 ities where necessary or proper to facilitate the taking of fish or
11 game, and enter into cooperative agreements with any person to effect
12 them;

13 (8) exercise administrative, budgeting, and fiscal powers;

14 (9) under the provisions of AS 36.30, construct, operate,
15 supervise, and maintain vessels used by the Department of Fish and
16 Game;

17 (10) authorize the holder of an interim-use permit under
18 AS 16.43 to engage on an experimental basis in commercial taking of a
19 fishery resource with vessel, gear, and techniques not presently
20 qualifying for licensing under this chapter in conformity with stand-
21 ards established by the Alaska Commercial Fisheries Entry Commission;

22 (11) not later than January 31 of each year, provide to the
23 commissioner of revenue the names of those fish and shellfish species
24 which the commissioner of fish and game designates as developing
25 commercial fish species for that calendar year; a fish or shellfish
26 species is a developing commercial fish species if, within a specified
27 geographical region,

28 (A) the optimum yield from the harvest of the species
29 has not been reached;

1 (B) a substantial portion of the allowable harvest of
2 the species has been allocated to fishing vessels of a foreign
3 nation; or

4 (C) a commercial harvest of the fish species has
5 recently developed;

6 (12) initiate or conduct research necessary or advisable to
7 carry out the purposes of this title except AS 16.51 and AS 16.52;

8 (13) enter into cooperative agreements with agencies of the
9 federal government, educational institutions, or other agencies or
10 organizations, when in the public interest, to carry out the purposes
11 of this title except AS 16.51 and AS 16.52.

12 * Sec. 8. AS 16.05.826(c) is amended to read:

13 (c) The department may contract to others the performance of the
14 department's responsibilities under this section. Contracting under
15 this subsection is governed by AS 36.30 (State Procurement Code),
16 except that a [A] contract may include provisions for advance payment
17 or reimbursement for services performed under the contract. All costs
18 incurred under this section may be paid from the fish and game fund.

19 * Sec. 9. AS 18.15.120 is amended to read:

20 Sec. 18.15.120. TUBERCULOSIS CONTROL PROGRAM AUTHORIZED. The
21 department may establish a comprehensive program for the control of
22 tuberculosis in the state, and may

23 (1) arrange means by which persons in the state may be
24 X-rayed to determine the presence of tuberculosis;

25 (2) establish necessary out-patient clinics for the care of
26 tuberculosis;

27 (3) encourage and promote the establishment of adequate
28 sanatorium facilities within the state to care for persons suffering
29 from tuberculosis and allied conditions;

1 (4) under the provisions of AS 36.30 (State Procurement
2 Code), obtain, by purchase or donation from surplus federal property
3 or otherwise, medical supplies and equipment useful in carrying out
4 this program and to allot or resell these supplies and equipment to
5 private institutions engaged by the department to carry out this
6 program;

7 (5) under the provisions of AS 36.30, contract with hos-
8 pitals, associations, or sanatorium qualified and equipped to give
9 adequate care inside or outside the state;

10 (6) employ necessary and trained personnel to carry out the
11 purposes of AS 18.15.120 - 18.15.140;

12 (7) pay the costs of care and incidental expenses for
13 residents of the state, in whole or in part, depending on the ability
14 of each patient to pay, and the temporary costs of care and transpor-
15 tation for nonresidents on the same basis until they can be trans-
16 ferred to their residence;

17 (8) enlist the cooperation of state and federal agencies
18 operating in the state for the furtherance of this program;

19 (9) establish standards in accordance with department
20 procedure for the care of tuberculars receiving treatment under
21 AS 18.15.120 - 18.15.140.

22 * Sec. 10. AS 18.55.100 is amended by adding a new subsection to read:

23 (d) The authority's power to contract, lease, rent, construct,
24 acquire, procure, and provide for services under this section is
25 governed by AS 36.30. However, to the extent that AS 36.30 conflicts
26 with responsibilities of the authority under AS 18.55.110, the provi-
27 sions of AS 18.55.110 prevail.

28 * Sec. 11. AS 19.05.020 is amended to read:

29 Sec. 19.05.020. REGULATIONS. The department shall adopt

1 regulations necessary to carry out the purpose of AS 19.05 - AS 19.25.
2 The regulations may not conflict with AS 36.30 (State Procurement
3 Code) or regulations adopted by the Department of Administration to
4 implement that chapter.

5 * Sec. 12. AS 19.05.080 is amended to read:

6 Sec. 19.05.080. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-
7 RIALS BY PURCHASE OR EMINENT DOMAIN. The department on behalf of the
8 state and as part of the cost of constructing or maintaining a highway
9 may purchase in the open market, acquire, take over, or condemn under
10 the right and power of eminent domain land in fee simple or easements
11 which it considers necessary for present public use, either temporary
12 or permanent, or which it considers necessary and reasonable for the
13 public use. By the same means, the department may obtain material,
14 including clay, gravel, sand, or rock, or the land necessary to obtain
15 material, including access to it. The department may acquire the land
16 or materials notwithstanding the fact that title to it is vested in
17 the state or a department, agency, commission or institution of the
18 state. Acquisition of materials by purchase in the open market under
19 this section is governed by AS 36.30 (State Procurement Code).

20 * Sec. 13. AS 19.10.160 is amended to read:

21 Sec. 19.10.160. STANDARD PLANS AND SPECIFICATIONS. The depart-
22 ment shall prepare and adopt uniform standard plans and specifications
23 for the establishment, construction and maintenance of highways in the
24 state. The department may amend the plans and specifications as it
25 considers advisable. The standards shall conform as closely as prac-
26 ticable to those adopted by the American Association of State Highway
27 and Transportation Officials.

28 * Sec. 14. AS 19.10.170(a) is amended to read:

29 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is

1 [SHALL BE] the general policy of the state [DEPARTMENT] to require the
2 construction of all highways under bid contract in accordance with
3 AS 36.30 (State Procurement Code). However, subject to the provisions
4 of (b) of this section, when the estimated cost of a construction
5 project is less than \$100,000 or when it appears to be in the best
6 interests of the state, the department may perform the work notwith-
7 standing any other provisions of law.

8 * Sec. 15. AS 19.10.180 is repealed and reenacted to read:

9 Sec. 19.10.180. REQUEST FOR PUBLIC BIDS. Requests for public
10 bids are governed by AS 36.30 (State Procurement Code). The request
11 for public bids may require the contractor to furnish equipment,
12 labor, materials, and supplies for the project, or it may state that
13 the department will furnish the materials and supplies. If the de-
14 partment elects to provide materials and supplies for a project, it
15 shall do so at the time it adopts the construction program. The
16 departmer shall acquire these materials and supplies under AS 36.30
17 by requesting bids for them according to the cl. type, and nature
18 of the materials and supplies. The contract for materials and sup-
19 plies may be awarded either upon the basis of delivery to the con-
20 struction project directly or to a central storehouse or storehouses
21 maintained by the department. Those materials and supplies so pur-
22 chased by the department may be delivered to the project site without
23 expense to the contractor, or it may sell them to the contractor at
24 cost and make the materials and supplies a part of the construction
25 cost.

26 * Sec. 16. AS 19.10.200 is repealed and reenacted to read:

27 Sec. 19.10.200. PROCEDURES FOR THE AWARD OF CONTRACTS. The
28 award of a contract for highway construction work is governed by
29 AS 36.30 (State Procurement Code), AS 19.05 - AS 19.25, and

1 regulations adopted under those laws.

2 * Sec. 17. AS 19.30.070 is amended to read:

3 Sec. 19.30.070. CONTRACTS FOR CONSTRUCTION OF ROADS. The
4 director of the division of lands may contract with private persons
5 for the construction of roads to and on state lands programmed for
6 surface disposal which are not more than six miles from existing roads
7 or highways. Contracts under this section are governed by AS 36.30
8 (State Procurement Code).

9 * Sec. 18. AS 19.30.080 is amended to read:

10 Sec. 19.30.080. CONSTRUCTION STANDARDS AND MAINTENANCE. An
11 access road constructed under AS 19.30.060 - 19.30.100 shall be of low
12 standard, not necessarily suitable for all weather use. The state is
13 not under obligation to maintain an access road constructed under AS
14 19.30.060 - 19.30.100. If an access road is constructed outside a
15 municipality that has zoning ordinances, the right-of-way width for
16 the road shall be determined by the division of lands and the Depart-
17 ment of Transportation and Public Facilities. If an access road is
18 constructed within the boundaries of a municipality that has zoning
19 ordinances, the right-of-way width shall conform to the subdivision
20 control ordinances of the municipality. Contracts for the work on an
21 access road are governed by AS 36.30 (State Procurement Code) [SHALL
22 BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER QUALIFIED TO CONTRACT WITH
23 THE STATE].

24 * Sec. 19. AS 19.40.020(a) is amended to read:

25 (a) Subject to (b) of this section, the department may contract
26 in accordance with AS 36.30 for the construction of a secondary high-
27 way from the Yukon River to the Arctic Ocean. [THE DEPARTMENT MAY
28 REQUEST BIDS AND AWARD CONTRACTS FOR THE CONSTRUCTION OF THE HIGHWAY,
29 OR IT MAY ELECT TO DIRECTLY NEGOTIATE CONTRACTS FOR THE CONSTRUCTION

1 OF THE HIGHWAY IF IT APPEARS TO BE IN THE BEST INTERESTS OF THE
2 STATE.] The provisions of AS 36.10 govern in employment practices on
3 all work authorized by this chapter.

4 * Sec. 20. AS 19.60.010 is amended to read:

5 Sec. 19.60.010. ACQUISITION AND MAINTENANCE OF FERRY TERMINAL
6 FACILITIES. The department shall construct, purchase or lease ferry
7 terminal facilities at locations it selects for the loading and un-
8 loading of passengers and vehicles under their own power, on and off
9 ferries. The department shall repair and maintain these facilities.
10 Construction and purchasing under this section are governed by AS 36.-
11 30 (State Procurement Code).

12 * Sec. 21. AS 23.15.611(a) is amended to read:

13 (a) The department may [IS AUTHORIZED TO] participate in pro-
14 grams of manpower training if it finds they are necessary to meet the
15 occupational needs of the state. This authorization includes authori-
16 ty to execute on behalf of the state agreements or contracts which may
17 be necessary or desirable to enable the state to participate in a
18 program, to receive and expend all appropriate funds made available
19 for programs by the state or from other sources, to supervise the
20 expenditure of the funds and conduct of the programs by other public
21 and private agencies of the state, and to make the reports and certif-
22 icates which are called for, and in cooperative arrangements with the
23 Department of Education. Contracts with private entities under this
24 subsection are governed by AS 36.30 (State Procurement Code).

25 * Sec. 22. AS 23.20.075(a) is amended to read:

26 (a) The department may acquire in the name of the state by term
27 purchase agreements based on competitive bids in accordance with
28 AS 36.30 (State Procurement Code) land and buildings upon terms and
29 conditions that [WHICH] are approved by the Bureau of Employment

1 Security of the United States, or its successor, for the purpose of
2 providing office space for the department at a place which the depart-
3 ment finds necessary and suitable.

4 * Sec. 23. AS 23.35.110 is amended to read:

5 Sec. 23.35.110. CONTRACTS FOR CARE. In carrying out this
6 chapter, the department may enter into contracts or other arrangements
7 with hospitals and doctors in the state for furnishing care on an
8 annual basis to persons entitled to benefits. Contracting under this
9 section is governed by AS 36.30 (State Procurement Code).

10 * Sec. 24. AS 24.55.275 is amended to read:

11 Sec. 24.55.275. CONTRACT PROCEDURES. The ombudsman shall adopt
12 by regulation procedures consistent with AS 36.30 [AS 24.23] to be
13 followed by the office of the ombudsman in contracting for services.
14 However, the procedure for requests for proposals does not apply to
15 contracts for investigations under AS 24.55.100.

16 * Sec. 25. AS 24.60.040(a) is amended to read:

17 (a) A person to whom this chapter applies may not be a party to
18 or have an interest in a state contract or lease unless the contract
19 or lease is let through competitive sealed bidding under AS 36.30
20 (State Procurement Code) [AS 37.05.230] or the total annual amount of
21 the state contract or lease is \$1,000 or less, or is a standardized
22 contract or lease which was developed under publicly established
23 guidelines and is generally available to the public at large, members
24 of a profession, occupation or group. A person has an interest in a
25 state contract or lease under this section if the person receives
26 direct or indirect financial benefits.

27 * Sec. 26. AS 26.05.230(a) is amended to read:

28 (a) Buildings and sites for armory purposes may be leased or
29 constructed, based upon location and size of units to be organized,

1 and shall be financed through state and federal appropriations or
2 both. These facilities may be made available by local communities or
3 by the cooperative arrangement between the state and the federal
4 government and any local community. Leasing and construction under
5 this subsection are governed by AS 36.30 (State Procurement Code).

6 * Sec. 27. AS 26.05.280 is amended to read:

7 Sec. 26.05.280. TRANSPORTATION, SUBSISTENCE, AND SUPPLIES.
8 There shall be provided by the state, transportation and subsistence
9 for all officers and enlisted persons who are ordered into active
10 service by the state for encampment, field duty, or other duty. Nec-
11 sary transportation, stores and subsistence for troops when ordered on
12 duty shall be contracted by the proper officers and paid for as other
13 military bills. Contracting under this section is governed by AS 36.-
14 30 (State Procurement Code).

15 * Sec. 28. AS 27.21.030 is amended to read:

16 Sec. 27.21.030. GENERAL POWERS. To accomplish the purposes of
17 this chapter, the commissioner may

18 (1) in accordance with the Administrative Procedure Act
19 (AS 44.62) adopt, amend, and enforce regulations pertaining to surface
20 coal mining and reclamation operations;

21 (2) issue permits;

22 (3) conduct hearings and conferences;

23 (4) issue orders requiring an operator to take the actions
24 necessary to comply with this chapter and the regulations adopted
25 under this chapter;

26 (5) issue orders modifying previous orders;

27 (6) after opportunity for a due process hearing, issue a
28 final order revoking the permit of an operator who has failed to
29 comply with an order of the commissioner to take action required by

1 this chapter or regulations adopted under this chapter;

2 (7) order the immediate cessation of all or part of a
3 surface coal mining and reclamation operation if the commissioner
4 finds that the operation or part of the operation creates an imminent
5 danger to the health or safety of the public or is causing or can
6 reasonably be expected to cause significant imminent harm to land,
7 air, or water resources, and, to the extent reasonably necessary to
8 eliminate or alleviate those conditions, take other action or make
9 changes in a permit, as provided in this chapter;

10 (8) hire and authorize the hiring of employees and private
11 contractors, subject to the conflict of interest provisions of this
12 chapter and subject to AS 36.30 (State Procurement Code), to assist in
13 carrying out the requirements of this chapter;

14 (9) enter and inspect a surface coal mining operation that
15 is subject to the provisions of this chapter to assure that the opera-
16 tion is in compliance with this chapter;

17 (10) conduct, encourage, request, and participate in
18 studies, surveys, investigations, research, experiments, training, and
19 demonstrations;

20 (11) prepare reports and require permittees to prepare
21 reports;

22 (12) accept, receive, and administer grants, gifts, or other
23 money made available for the purposes of this chapter regardless of
24 the source of the grants, gifts, or money;

25 (13) take the steps necessary to allow the state to partici-
26 pate to the fullest extent practicable in the abandoned mine land
27 program provided in Title IV of the Surface Mining Control and Recla-
28 mation Act of 1977, including engaged in any work and adopting, amend-
29 ing and enforcing regulations;

1 (14) take the actions necessary to establish and maintain
2 exclusive jurisdiction over surface coal mining and reclamation opera-
3 tions in the state under the provisions of the Surface Mining Control
4 and Reclamation Act of 1977, including making recommendations for
5 legislation to clarify or amend this chapter to conform with the terms
6 of the Surface Mining Control and Reclamation Act of 1977;

7 (15) contract with state agencies to obtain the professional
8 and technical services necessary to carry out the provisions of this
9 chapter;

10 (16) coordinate the review of applications and issuance of
11 permits for surface coal mining and reclamation operations with other
12 federal or state permit processes applicable to those operations;

13 (17) enter into cooperative agreements with the Secretary of
14 the United States Department of the Interior for the regulation of
15 surface coal mining operations on federal land in accordance with the
16 Surface Mining Control and Reclamation Act of 1977; and

17 (18) perform other duties required by this chapter.

18 * Sec. 29. AS 33.30.050 is amended to read:

19 Sec. 33.30.050. COMMISSIONER TO PROVIDE MEDICAL SERVICES. The
20 commissioner shall detail physicians, nurses, and psychiatrists, or
21 their aides, and laboratory technicians, employed by the department to
22 any prison facility where state prisoners are detained or confined,
23 for the purpose of furnishing necessary medical services, including
24 examinations for communicable and infectious diseases. However, if
25 medical services cannot be furnished by physicians, nurses, psychia-
26 trists, or their aides, and laboratory technicians, regularly employed
27 by the department, the commissioner may contract with private practi-
28 tioners located in the area of a prison facility to furnish these
29 services. The cost of contracted services shall be paid out of

1 appropriations made to the department. Contracting for services under
2 this section is governed by AS 36.30 (State Procurement Code).

3 * Sec. 30. AS 33.30.062(a) is amended to read:

4 (a) The commissioner may enter into an agreement with a private-
5 ly operated correctional facility, but only if the facility is located
6 in the state and if the purpose of the agreement is to involve prison-
7 ers in a work or rehabilitation furlough program established under
8 this chapter, to provide necessary facilities under AS 33.30.282 -
9 33.30.288, or to confine prisoners convicted of a misdemeanor. An
10 [NOTWITHSTANDING AS 37.05.230(1)(B), AN] agreement awarded under this
11 subsection is governed by AS 36.30 (State Procurement Code) [SHALL BE
12 BASED ON COMPETITIVE BIDS].

13 * Sec. 31. AS 33.32.015(b) is amended to read:

14 (b) The commissioner of corrections may

15 (1) subject to AS 36.30 (State Procurement Code) [THE
16 FISCAL PROCEDURES ACT (AS 37.05)], use, purchase, lease, equip, and
17 maintain buildings, machinery, and other equipment, and may purchase
18 materials and enter into contracts, which may be necessary for the
19 correctional industries program;

20 (2) provide for prisoners to be employed in rendering
21 services and producing articles, materials, and supplies needed by a
22 state agency, a political subdivision of the state, an agency of the
23 federal government, other states or their political subdivisions, or
24 for use by nonprofit organizations;

25 (3) if the Correctional Industries Commission established
26 in AS 33.32.070 approves, employ prisoners to provide services or
27 products as needed by private industry if the services or products
28 have potential for contributing to the economy of the state and will
29 have minimal negative impact on an existing private industry or labor

1 force in the state.

2 * Sec. 32. AS 35.05.010 is amended to read:

3 Sec. 35.05.010. PLANNING AND CONSTRUCTION. The department is
4 responsible for the planning and construction of public works except
5 as provided for court facilities in AS 22.05.025. Contracts for
6 planning and construction of public works are governed by AS 36.30
7 (State Procurement Code).

8 * Sec. 33. AS 35.05.020 is amended to read:

9 Sec. 35.05.020. RULES AND REGULATIONS. The department shall
10 adopt [RULES AND] regulations that [WHICH] it considers necessary to
11 carry out the purpose of this title. The regulations may not conflict
12 with AS 36.30 (State Procurement Code) or the regulations adopted by
13 the Department of Administration under that chapter.

14 * Sec. 34. AS 35 is amended by adding a new section to read:

15 Sec. 35.10.195. CONFORMANCE WITH AS 36.30. The contractual
16 techniques for the procurement of labor, materials, and contractual
17 services under the policies developed under this chapter must conform
18 to the requirements of AS 36.30 (State Procurement Code).

19 * Sec. 35. AS 35.15.010(a) is amended to read:

20 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is
21 [SHALL BE] the general policy of the state [DEPARTMENT] to require the
22 construction of all public works under bid contract in accordance with
23 AS 36.30 (State Procurement Code). However, when the estimated cost
24 of a construction project is less than \$100,000, or when it appears to
25 be in the best interests of the state, the department may perform the
26 work, notwithstanding any other provisions of law. A complete record
27 shall be kept by the commissioner or the commissioner's designee of
28 all transactions entered into under this section including names of
29 employees involved in the transactions.

1 * Sec. 36. AS 35.15.020 is repealed and reenacted to read:

2 Sec. 35.15.020. REQUEST FOR PUBLIC BIDS. The solicitation of
3 bids for construction of public works is governed by AS 36.30 (State
4 Procurement Code). The request for bids may require the contractor to
5 furnish equipment, labor, materials, and supplies for the project, or
6 it may state that the department will furnish the materials and sup-
7 plies. If the department elects to provide materials and supplies for
8 a project, it shall make the election at the time it adopts the con-
9 struction program. The department shall acquire these materials and
10 supplies under AS 36.30 by requesting bids for them according to the
11 class, type, and nature of the materials and supplies. The contract
12 may be awarded either upon the basis of delivery to the construction
13 project directly or to a central storehouse or storehouses maintained
14 by the department. Those materials and supplies so purchased by the
15 department may be delivered to the project site without expense to the
16 contractor, or it may sell them to the contractor at cost and make the
17 materials and supplies a part of the construction cost.

18 * Sec. 37. AS 35.15.040 is repealed and reenacted to read:

19 Sec. 35.15.040. PROCEDURES FOR THE AWARD OF CONTRACTS. Award of
20 a contract for the construction of a public work shall comply with
21 this title, AS 36.30 (State Procurement Code), and the regulations
22 adopted under those laws.

23 * Sec. 38. AS 35.20.010 is amended to read:

24 Sec. 35.20.010. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-
25 RIALS BY PURCHASE OR EMINENT DOMAIN. The department, on behalf of the
26 state and as part of the cost of constructing or maintaining a public
27 work, may purchase in the open market, acquire, take over, or condemn
28 under the right and power of eminent domain land in fee simple or
29 easements which it considers necessary for present public use, either

1 temporary or permanent, or which it considers necessary and reasonable
2 for the public use. By the same means, the department may obtain
3 material including clay, gravel, sand, or rock or the land necessary
4 to obtain the material, and the necessary land easements to provide
5 access to it. The department may acquire the land or material not-
6 withstanding the fact that the title to it is in the state or a
7 department, agency, commission or institution of the state. Acquisi-
8 tion of material in the open market under this section is governed by
9 AS 36.30 (State Procurement Code).

10 * Sec. 39. AS 37.05 is amended by adding a new section to read:

11 Sec. 37.05.232. PETTY CASH ACCOUNTS. The department shall
12 determine the amount of the petty cash accounts needed by each state
13 agency and inspect the petty cash accounts at least once each year to
14 determine that the total plus amounts of receipts for unreplenished
15 disbursements is equal to the fixed sum of cash set aside. Shortages
16 in petty cash accounts are a personal liability of the responsible
17 head of the agency to whom the account is set aside. The department
18 shall adopt necessary regulations governing use and replenishment of
19 petty cash funds.

20 * Sec. 40. AS 37.05.316 is amended to read:

21 Sec. 37.05.316. GRANTS TO NAMED RECIPIENTS. When an amount is
22 appropriated or allocated to a department as a grant for a named
23 recipient that [WHICH] is not a municipality, the department to which
24 the appropriation or allocation is made shall promptly notify the
25 named recipient of the availability of the grant and request the named
26 recipient to submit a proposal to provide the goods or services speci-
27 fied in the appropriation act [, OR BOTH,] for which the appropriation
28 or allocation is made. At the same time, the department may issue a
29 request for proposals from other qualified persons to provide the same

1 goods or services [, OR BOTH,] in the same area. The department shall
2 award the grant to [CONTRACT WITH] the named recipient unless the
3 Office of the Governor, with due regard for the [ANY] local expertise
4 or experience of [AMONG] those making proposals, determines that an
5 award [OF THE CONTRACT] to a different party would better serve the
6 public interest. If the grant [CONTRACT] is awarded to a [ANOTHER]
7 party other than that named by the legislature, the basis of that
8 action shall be stated in writing at the time the grant is issued and
9 a copy of the written statement shall be sent to the Legislative
10 Budget and Audit Committee. A grant agreement must [CONTRACT SHALL]
11 be executed within 60 days after the effective date of the
12 appropriation or allocation. [THE PURCHASE OF THE GOODS OR SERVICES,
13 OR BOTH, SHALL BE IN ACCORDANCE WITH AS 37.05.230(1)(B).]

14 * Sec. 41. AS 41.21.020(a) is amended to read:

15 (a) The Department of Natural Resources shall

16 (1) develop a continuing plan for the conservation and
17 maximum use in the public interest of the scenic, historic, archaeo-
18 logic, scientific, biological, and recreational resources of the
19 state;

20 (2) plan for and develop a system of state parks and recre-
21 ational facilities, to be established as the legislature authorizes
22 and directs;

23 (3) acquire by gift, purchase, or transfer from state or
24 federal agencies, or from individuals, corporations, partnerships or
25 associations, land necessary, suitable and proper for roadside, pic-
26 nic, recreational or park purposes;

27 (4) control, develop and maintain state parks and recrea-
28 tional areas;

29 (5) provide for the acquisition, care, control,

1 supervision, improvement, development, extension and maintenance of
2 public recreational land, and make necessary arrangements, contracts
3 or commitments for the improvement and development of land acquired
4 under AS 41.21.010 - 41.21.040; contracting for improvement and
5 development under this paragraph is governed by AS 36.30 (State
6 Procurement Code);

7 (6) adopt, in accordance with this section and the Adminis-
8 trative Procedure Act (AS 44.62), regulations governing the use and
9 designating incompatible uses within the boundaries of state park and
10 recreational areas to protect the property and to preserve the peace;

11 (7) cooperate with the United States and its agencies and
12 local subdivisions of the state to secure the effective supervision,
13 improvement, development, extension, and maintenance of state parks,
14 state monuments, state historical areas, and state recreational areas,
15 and secure agreements or contracts for the purpose of AS 41.21.010 -
16 41.21.040;

17 (8) encourage the organization of state public park and
18 recreational activities in the local political subdivisions of the
19 state;

20 (9) provide for consulting service designed to develop
21 local park and recreation facilities and programs;

22 (10) provide clearing-house services for other state agen-
23 cies concerned with park and recreation matters; and

24 (11) perform other duties as are prescribed by executive
25 order or by law;

26 (12) maintain memorials to Alaska veterans located in state
27 parks;

28 (13) adopt, in accordance with the Administrative Procedure
29 Act (AS 44.62), regulations governing the use of the Chena River State

1 Recreation Area and designating incompatible uses within the bound-
2 aries of the Chena River State Recreation Area in accordance with
3 AS 41.21.490.

4 * Sec. 42. AS 42.40.920(b) is amended to read:

5 (b) Unless specifically provided otherwise in this chapter, the
6 following laws do not apply to the operations of the corporation:

7 (1) AS 19;

8 (2) AS 30.15;

9 (3) AS 35;

10 (4) AS 36.30, except as specifically provided in AS 36.30

11 (State Procurement Code);

12 (5) AS 37.05;

13 (6) [(5)] AS 37.07;

14 (7) [(6)] AS 37.10.010 - 37.10.060;

15 (8) [(7)] AS 37.10.085;

16 (9) [(8)] AS 37.20;

17 (10) [(9)] AS 37.25;

18 (11) [(10)] AS 38;

19 (12) [(11)] AS 44.62.040 - 44.62.320.

20 * Sec. 43. AS 44.21.310(a) is amended to read:

21 (a) The telecommunications divisions, as directed by the deputy
22 commissioner, shall

23 (1) advise the governor on matters of policy and comprehen-
24 sive state planning for telecommunications services;

25 (2) make an annual report to the governor and to the legis-
26 lature on the activities of the telecommunications divisions;

27 (3) coordinate, manage, and supervise state programs in
28 telecommunications, including the management of those telecommunica-
29 tion services for the state obtained from common carriers and from the

1 communications industry;

2 (4) when requested, provide technical and consulting assis-
3 tance to the executive, judicial, and legislative branches of state
4 government, to the University of Alaska, and to private noncommercial
5 entities which request that assistance in facility procurement and
6 leasing and in identifying long-range goals and objectives for the
7 state and its political subdivisions in all aspects of telecommunica-
8 tions, including public, educational, and instructional telecommunica-
9 tions;

10 (5) prepare and maintain a state comprehensive telecommu-
11 nications development plan to further state telecommunications devel-
12 opment and to meet state telecommunications needs and prepare and
13 maintain a comprehensive inventory of all state communications facil-
14 ities;

15 (6) whenever feasible, procure services from private enter-
16 prise or certified and franchised utilities and contract for the
17 construction, management, operation and maintenance of telecommunica-
18 tions systems, and develop a procurement policy consistent with
19 AS 36.30 (State Procurement Code) [UNDER AS 37.05.010 - 37.05.410];
20 the procurement policy must seek to achieve the maximum benefit to the
21 public, and methods of procurement, including lease, purchase, rental,
22 or combinations of lease, purchase, and rental, must be selected on
23 the basis of factors such as the ratio of long-range costs versus
24 benefits, life cycle costing, and the costs to the communications
25 industry to the extent that these costs may affect local and long
26 distance basic telephone rates; procurement, contracting, construc-
27 tion, and maintenance under this paragraph is governed by AS 36.30;

28 (7) provide information and assistance to state agencies to
29 promote governmental coordination and unity in the preparation of

1 agency plans and programs involving the use of telecommunications;

2 (8) apply for and accept federal and private money, proper-
3 ty, or assistance, that may be appropriated, granted, or otherwise
4 made available to the telecommunications divisions and use and dis-
5 burse money and property for purposes consistent with AS 44.21.300 -
6 44.21.330 and AS 44.21.256 - 44.21.290, subject to reasonable limita-
7 tions imposed by the grantor;

8 (9) participate with other governmental units in planning,
9 and assist local governments and governmental conferences and councils
10 in the state in planning and coordinating their activities relating to
11 telecommunications;

12 (10) provide for the orderly transition to new telecommu-
13 nications services and systems by state agencies;

14 (11) serve as a clearinghouse for information, data, and
15 other materials which may be necessary or helpful to federal, state,
16 or local governmental agencies in the development of telecommunication
17 systems;

18 (12) coordinate their services and activities with those of
19 other state departments and agencies to the fullest extent possible to
20 avoid unnecessary duplication; and

21 (13) provide that all activities of the telecommunications
22 divisions are responsive to state statutes and regulations, and to the
23 regulations and rulings of the Federal Communications Commission.

24 * Sec. 44. AS 44.19.144(b) is amended to read:

25 (b) The director may

26 (1) with the written concurrence of the governor, enter
27 into contracts and subcontracts on behalf of the state to carry out
28 the provisions of AS 44.19.141 - 44.19.152; contracting under this
29 paragraph is governed by AS 36.30 (State Procurement Code);

1 (2) act for the state in the initiation, investigation,
2 evaluation of or participation in any program relative to the stated
3 purpose of AS 44.19.141 - 44.19.152 which may involve more than one
4 government or governmental unit;

5 (3) on behalf of the state, accept and expend any gifts or
6 grants made to the state with the approval of the governor where such
7 gifts or grants were made for the purposes of furthering the objec-
8 tives of the office.

9 * Sec. 45. AS 44.33.300 is amended to read:

10 Sec. 44.33.300. WAIVER OF CERTAIN PROVISIONS. When the gover-
11 nor has by proclamation declared an area impacted by an economic
12 disaster, the following provisions regarding public contracts may be
13 waived to the extent specified in the proclamation:

14 (1) the requirement of a contractor's bond as prescribed in
15 AS 36.25.010 may be waived if the contract amount does not exceed
16 \$100,000;

17 (2) the public bid requirements as contained in AS 19.10.-
18 170, AS [19.10.190,] 19.30.191(b), AS 35.15.010 - 35.15.020, and
19 AS 36.30 (State Procurement Code) [AND AS 35.15.010 - 35.15.030] may
20 be waived if the contract is to be performed by a contractor whose
21 principal office is in the designated area and the contract amount
22 does not exceed \$50,000;

23 (3) the general policy to require all construction to be
24 under bid contract as contained in AS 19.10.170, AS 35.15.010, and
25 AS 36.30 (State Procurement Code) may be waived if the contract is to
26 be performed by the state, another governmental entity, or a nonprofit
27 entity.

28 * Sec. 46. AS 44.47.250 is amended by adding a new subsection to read:

29 (c) Contracts with persons or nongovernmental entities under

1 this section are governed by AS 36.30.

2 * Sec. 47. AS 44.47.490(a) is amended to read:

3 (a) The director may establish field offices under this chapter,
4 may hire one or more lending officers, and, under AS 36.30 (State
5 Procurement Code), may contract for the services of

6 (1) real property appraisers who are familiar with rural
7 construction; and

8 (2) engineers who are familiar with engineering problems in
9 arctic and subarctic regions.

10 * Sec. 48. AS 44.47.730(a) is amended to read:

11 (a) The commissioner shall contract for a study of the feasibil-
12 ity of establishing a borough in the unorganized borough by following
13 the procedures under AS 36.30 (State Procurement Code) [SET OUT IN
14 AS 36.98]. The commissioner shall include terms in the contract that
15 provide for

16 (1) public participation in the preparation of the study;

17 (2) completion of the study not later than June 30 of the
18 third year after the year the contract is executed.

19 * Sec. 49. AS 44.62.175(a) is amended to read:

20 (a) The lieutenant governor shall publish or contract for the
21 publication of the Alaska Administrative Journal. The journal shall
22 be published weekly. The journal must include

23 (1) notices of proposed actions given under AS 44.62.-
24 190(a);

25 (2) notices of state agency meetings required under AS 44.-
26 62.310(e), even if the meeting has been held;

27 (3) notices of solicitations to bid issued under AS 36.30.-
28 130 [AS 37.05.230];

29 (4) notices of state agency requests for proposals issued

1 under AS 18.55.255, 18.55.320; [AS 19.10.190; AS 19.40.020; AS 35.15.-
2 030; AS 36.98.030; AS 37.05.230,] AS 37.05.315(d); AS 38.05.120; and
3 AS 43.40.010;

4 (5) executive orders and administrative orders issued by
5 the governor;

6 (6) written delegations of authority made by the governor
7 or the head of a principal department under AS 44.17.010;

8 (7) the text or a summary of the text of a regulation or
9 order of repeal of a regulation for which notice is given under AS
10 44.62.190(a), including an emergency regulation or repeal whether or
11 not it has taken effect;

12 (8) a summary of the text of recently issued formal opin-
13 ions and memoranda of advice of the attorney general; and

14 (9) a list of vacancies on boards, commissions, and other
15 bodies whose members are appointed by the governor.

16 * Sec. 50. AS 44.71.010 is amended to read:

17 Sec. 44.71.010. DISPOSITION OF OBSOLETE OR SURPLUS STATE PROP-
18 ERTY. The Department of Administration shall take possession of
19 obsolete or surplus property of the state for which there is no imme-
20 diate or prospective use, except abandoned or obsolete school build-
21 ings and other school property. It shall also take possession of
22 property remaining in the control of a commission or board of the
23 state government after the commission or board stops functioning. The
24 Department of Administration shall sell, lease, license, or dispose of
25 the property on the terms it considers for the best interests of the
26 state in conformance with regulations adopted under AS 36.30 (State
27 Procurement Code).

28 * Sec. 51. AS 44.77.010(a) is amended to read:

29 (a) Except as provided in (d) of this section, every [EVERY]

1 claim for reimbursement for money expended, or for compensation for
2 labor, materials, or supplies furnished, or services given to or for
3 the state, whether based on a contract or on a ratification, shall be
4 promptly presented to the appropriate administrative or executive
5 officer for approval and payment.

6 * Sec. 52. AS 44.77.010 is amended by adding a new subsection to read:

7 (d) A claim that is governed by AS 36.30.560 - 36.30.699 is not
8 governed by this chapter.

9 * Sec. 53. AS 44.85.120 is amended to read:

10 Sec. 44.85.120. CARE AND CUSTODY OF BONDS. The bond bank
11 authority, in accordance with AS 36.30 (State Procurement Code), may
12 enter into agreements or contracts with a bank, trust company, banking
13 or financial institution inside or outside the state as may be neces-
14 sary, desirable or convenient, in the opinion of the bond bank author-
15 ity, for rendering services in connection with the care, custody or
16 safekeeping of municipal bonds or other investments held or owned by
17 the bond bank authority, for rendering services in connection with the
18 payment or collection of amounts payable as to principal or interest,
19 and for rendering services in connection with the delivery to the bond
20 bank authority of municipal bonds or other investments purchased by it
21 or sold by it, and to pay the cost of those services. The bond bank
22 authority may also, in connection with any of the services to be
23 rendered by a bank, trust company or banking or financial institution
24 as to the custody and safekeeping of its municipal bonds or invest-
25 ments, require security in the form of collateral bonds, surety agree-
26 ments or security agreements in such form and amount as, in the opin-
27 ion of the bond bank authority, is necessary or desirable.

28 * Sec. 54. AS 44.99.001 is amended to read:

29 Sec. 44.99.001. ADMINISTRATION OF HIGHWAY SAFETY PROGRAM. The

1 governor may contract and do all other things necessary on behalf of
2 this state under 23 U.S.C. 401-404 (Highway Safety Act of 1966), and
3 may cooperate with interested persons and agencies to effectuate the
4 purposes of that Act. Contracting under this section is governed by
5 AS 36.30 (State Procurement Code). The governor may designate a
6 person to serve as the governor's highway safety representative;
7 however, the governor is the official in this state having the ulti-
8 mate responsibility for dealing with the federal government with
9 respect to programs and activities under the Federal Highway Safety
10 Act of 1966. The governor shall coordinate the activities relating to
11 highway safety of state departments, agencies and subdivisions and of
12 the Governor's Commission on Transportation Safety established in
13 AS 44.19.190.

14 * Sec. 55. AS 46.04.090(a) is amended to read:

15 (a) The department, when feasible, shall enter into contracts
16 with persons or private organizations to provide the personnel, equip-
17 ment, or other services or supplies which may be required to carry out
18 this chapter. Contracts under this section are governed by AS 36.30
19 (State Procurement Code). When private contracting is not feasible,
20 the department may establish and maintain at ports, harbors, or other
21 locations in the state, the cleanup personnel, equipment, and supplies
22 which, in its judgment, are necessary to carry out this chapter.

23 * Sec. 56. AS 46.07.040(a) is amended to read:

24 (a) The commissioner shall provide for the construction of
25 facilities under this chapter, and is authorized to provide for the
26 construction by contract or through grants to public agencies or
27 private nonprofit organizations, or otherwise. A [NO] contribution
28 toward the cost of the construction of a facility may not be required
29 from its users. Construction under this section by contract is

1 governed by AS 36.30 (State Procurement Code).

2 * Sec. 57. AS 46.15.020(a) is amended to read:

3 (a) The commissioner shall exercise all those powers and do all
4 those acts necessary to carry out the provisions and objectives of
5 this chapter. The commissioner may

6 (1) subject to AS 36.30 (State Procurement Code), enter
7 into contractual agreements necessary to carry out the provisions of
8 this chapter including agreements with federal, state and local agen-
9 cies;

10 (2) apply for, accept, administer and expend grants, gifts,
11 and loans from the federal government and any other public or private
12 sources for the purposes of this chapter, and adopt procedures and do
13 acts not otherwise restricted by law which are necessary to qualify
14 the state to receive grants, gifts and loans;

15 (3) establish a division of water in the Department of
16 Natural Resources and assign to that division the responsibility for
17 carrying out the provisions of this chapter.

18 * Sec. 58. AS 47.05.015(c) is amended to read:

19 (c) A contract authorized under this section is exempt from the
20 competitive bid requirements of AS 36.30 (State Procurement Code)
21 [AS 37.05.230]. In awarding a contract under this section the depart-
22 ment shall [PUBLISH A] request [FOR] proposals in accordance with
23 regulations of the Department of Administration under AS 36.30 (State
24 Procurement Code) [DEPARTMENT].

25 * Sec. 59. AS 47.30.350(a) is amended to read:

26 (a) The department shall

27 (1) develop and submit to the Surgeon General of the United
28 States Public Health Service a comprehensive program for the con-
29 structing and equipping of hospitals and other facilities for the

1 examination, observation, care, and treatment of the mentally ill;

2 (2) develop and submit to the Surgeon General plans and
3 specifications for the constructing and equipping of the hospitals and
4 other facilities;

5 (3) construct and equip the hospitals and other facilities
6 in accordance with the program, plans, and specifications approved by
7 the Surgeon General; construction and equipping under this paragraph
8 is governed by AS 36.30 (State Procurement Code);

9 (4) cooperate, coordinate, and contract, wherever indicated
10 and desirable, with other state boards, departments and agencies, and
11 agencies of the United States in the construction program, and hire
12 necessary personnel and enter into contracts with private individuals
13 and companies, to the end that the hospitals and other facilities are
14 constructed in the most economical and expeditious manner; contracting
15 and construction under this section are governed by AS 36.30 (State
16 Procurement Code).

17 * Sec. 60. AS 47.30.660 is amended to read:

18 Sec. 47.30.660. POWERS AND DUTIES OF DEPARTMENT. The depart-
19 ment is the mental health authority of the state and shall

20 (1) administer a comprehensive program for the prevention
21 of mental illness and the care and treatment of the mentally ill,
22 including inpatient and outpatient care and treatment and the procure-
23 ment of services of specialists or other persons on a contractual or
24 other basis;

25 (2) take the actions and undertake the obligations which
26 are necessary to participate in federal grants-in-aid programs and
27 accept federal or other financial aid from whatever sources for the
28 study, examination, care, and treatment of the mentally ill;

29 (3) administer AS 47.30.660 - 47.30.915;

1 (4) designate, operate, and maintain treatment facilities
2 equippe and qualified to provide inpatient and outpatient care and
3 treatment for the mentally ill;

4 (5) provide for the placement of mentally ill patients in
5 designated treatment facilities;

6 (6) enter into arrangements with governmental agencies for
7 the care or treatment of the mentally ill in facilities of the govern-
8 mental agencies in the state or in another state;

9 (7) enter into contracts with treatment facilities for the
10 custody and care or treatment of the mentally ill; contracts under
11 this paragraph are governed by AS 36.30 (State Procurement Code);

12 (8) enter into contracts which incorporate safeguards
13 consistent with AS 47.30.660 - 47.30.915 and the preservation of the
14 civil rights of the patients with another state for the custody and
15 care or treatment of patients previously committed from this state
16 under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd
17 Session, 70 Stat. 709;

18 (9) prescribe the form of applications, records, reports,
19 requests for release, and consents to medical or psychological treat-
20 ment required by AS 47.30.660 - 47.30.915;

21 (10) require reports from the head of a treatment facility
22 concerning the care of patients;

23 (11) visit each treatment facility at least annually to
24 review methods of care or treatment for patients;

25 (12) investigate complaints made by a patient or an inter-
26 ested party on behalf of a patient;

27 (13) delegate upon mutual agreement to another officer or
28 agency of it, or a political subdivision of the state, or a treatment
29 facility designated, any of the duties and powers imposed upon it by

1 AS 47.30.660 - 47.30.915; and

2 (14) adopt regulations to implement the provisions of
3 AS 47.30.660 - 47.30.915.

4 * Sec. 61. AS 47.35.010(a) is amended to read:

5 (a) The department may

6 (1) license and supervise boarding homes, foster homes,
7 group homes, nurseries, institutions caring for children and foster
8 homes, group homes and institutions caring for dependent adults;

9 (2) investigate and supervise licensees;

10 (3) enforce the standards established by it;

11 (4) contract with private or municipal agencies to investi-
12 gate and make recommendations to the department for the licensing and
13 supervision of boarding homes, foster homes, group homes, nurseries,
14 institutions caring for children and foster homes, group homes and
15 institutions caring for dependent adults under procedures and stan-
16 dards of operation established by the department; contracts with
17 private agencies under this paragraph are governed by AS 36.30 (State
18 Procurement Code).

19 * Sec. 62. AS 47.37.030 is amended to read:

20 Sec. 47.37.030. POWERS OF OFFICE. The office may

21 (1) plan, establish, and maintain treatment programs as
22 appropriate;

23 (2) make contracts and award grants necessary or incidental
24 to the performance of its duties and the execution of its powers,
25 including contracts with and grants to public and private agencies,
26 organizations, and individuals, to pay them for services rendered or
27 furnished to alcoholics or intoxicated persons; to the maximum extent
28 possible, contracts and grants shall be for a period of two years;
29 contracts under this paragraph are governed by AS 36.30 (State

1 Procurement Code);

2 (3) solicit and accept for use a gift of money or property
3 or a grant of money, services, or property from the federal govern-
4 ment, the state, or a political subdivision of it or a private source,
5 and do all things necessary to cooperate with the federal government
6 or any of its agencies in making an application for a grant;

7 (4) administer or supervise the administration of the
8 provisions relating to alcoholics and intoxicated persons of any state
9 plan submitted for federal funding under federal health, welfare, or
10 treatment legislation;

11 (5) coordinate its activities and cooperate with alcoholism
12 programs in this and other states, and make contracts and other joint
13 or cooperative arrangements with state, local, or private agencies for
14 the treatment of alcoholics and intoxicated persons and for the common
15 advancement of alcoholism programs in this and other states;

16 (6) keep records and engage in research and the gathering
17 of relevant statistics;

18 (7) do other acts necessary to implement the authority
19 expressly granted to it;

20 (8) acquire, hold, or dispose of real property or any
21 interest in it, and construct, lease, or otherwise provide treatment
22 facilities for alcoholics and intoxicated persons; however, the office
23 shall encourage local initiative, involvement and financial participa-
24 tion under grants-in-aid whenever possible in preference to the con-
25 struction or operation of facilities directly by the office; contract-
26 ing and construction under this paragraph are governed by AS 36.30
27 (State Procurement Code).

28 * Sec. 63. AS 47.37.130(g) is amended to read:

29 (g) The office may contract for the use of any facility as an

1 approved public treatment facility if the coordinator, subject to the
2 regulations of the department, considers this an effective and econom-
3 ical course to follow. Contracting under this subsection is governed
4 by AS 36.30 (State Procurement Code).

5 * Sec. 64. AS 47.40.041(b) is amended to read:

6 (b) Notices published by the department concerning the opening
7 of the application process for a grant award shall specify the geo-
8 graphical area in which services are needed, the type of services, the
9 number of beds anticipated to be needed, the maximum number of days of
10 care, and any other requirements established by the department.
11 Grants authorized under this section are exempt from the competitive
12 bid requirements of AS 36.30 [AS 37.05.230].

13 * Sec. 65. AS 47.90.010(a) is amended to read:

14 (a) The commissioner, in consultation with state and local
15 government agencies, community groups, and groups concerned with
16 displaced homemakers, may

17 (1) contract with eligible private profit and nonprofit
18 corporations for multipurpose service centers for displaced home-
19 makers; contracting under this paragraph is governed by AS 36.30
20 (State Procurement Code); and

21 (2) coordinate existing state programs for displaced home-
22 makers.

23 * Sec. 66. AS 47.40.041(b) is amended to read:

24 (b) Notices published by the department concerning the opening
25 of the application process for a grant award shall specify the geo-
26 graphical area in which services are needed, the type of services, the
27 number of beds anticipated to be needed, the maximum number of days of
28 care, and any other requirements established by the department.
29 Grants authorized under this section are exempt from AS 36.30 (State

1 Procurement Code) [THE COMPETITIVE BID REQUIREMENTS OF AS 37.05.230].

2 * Sec. 67. REPORT. By December 1, 1987, the commissioner of adminis-
3 tration and the commissioner of transportation and public facilities shall
4 report to the legislature concerning procurements by state agencies during
5 the first six months of 1987. The report must include

6 (1) the records prepared under AS 36.30.510(4);

7 (2) recommendations for changes in AS 36.30 or other laws based
8 on implementation of AS 36.30 in those six months; and

9 (3) a description of any matters that involved litigation con-
10 cerning AS 36.30 during those six months.

11 * Sec. 68. REGULATIONS DEADLINE. The regulations required under
12 AS 36.30 as added by sec. 2 of this Act, shall be adopted by January 1,
13 1987 and shall be effective on that date. Regulations adopted under laws
14 repealed in sec. 69 of this Act become ineffective January 1, 1987.

15 * Sec. 69. REPEALER. The following laws are repealed: AS 14.40.340;
16 AS 19.10.190, 19.10.210; AS 24.23; AS 35.15.030, 35.15.050; AS 36.98;
17 AS 37.05.220, 37.05.230, 37.05.231, 37.05.240, 37.05.250, 37.05.260, 37.-
18 05.270, 37.05.280, 37.05.290, 37.05.400(2) and (3); AS 44.65; AS 44.77.-
19 010(c); and AS 47.90.010(c).

20 * Sec. 70. Section 68 of this Act takes effect immediately in accor-
21 dance with AS 01.10.070(c).

22 * Sec. 71. Except as provided in sec. 70, this Act takes effect Janu-
23 ary 1, 1987.