

C S H B

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*waived 5/17/87
to Rules*

w01467hN
Levy
5/16/87

*p. 4, technical
change*

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR 2d CS FOR HOUSE BILL NO. 276 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST 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. AS 36.30.005(a) is amended to read:

10 (a) Except as otherwise provided, all rights, powers, duties,
11 and authority relating to the procurement of supplies, services, and
12 professional services, and the control over supplies, services, and
13 professional services vested in or exercised by an agency on Janu-
14 ary 1, 1988 [JULY 1, 1987], are transferred to the commissioner of
15 administration and to the chief procurement officer. Authority gran-
16 ted under this subsection shall be exercised in accordance with this
17 chapter.

18 * Sec. 2. AS 36.30.005(b) is amended to read:

19 (b) Except as otherwise provided, all rights, powers, duties,
20 and authority relating to the procurement of construction and procure-
21 ments of equipment or services for the state equipment fleet and the
22 control over construction of state facilities and the state equipment
23 fleet vested in or exercised by an agency on January 1, 1988 [JULY 1,
24 1987], are transferred to the commissioner of transportation and
25 public facilities, subject to regulations adopted by the commissioner
26 of administration. Notwithstanding AS 44.71.010, authority relating
27 to disposals from the state equipment fleet is vested in the commis-
28 sioner of transportation and public facilities, subject to regulations
29 adopted by the commissioner of administration. Authority granted

1 under this subsection shall be exercised in accordance with this
2 chapter.

3 * Sec. 3. AS 36.30.050(b) is amended to read:

4 (b) A person who desires to be on a list shall submit to the
5 commissioner evidence of a valid Alaska business license. A [TOGETHER
6 WITH A] biennial fee may be established by regulation in an amount
7 reasonably calculated to pay the costs of administering this section.
8 A construction contractor shall also submit a valid certificate of
9 registration issued under AS 08.18. The commissioner, by regulation,
10 may require submission of additional information.

11 * Sec. 4. AS 36.30.115(a) is amended to read:

12 (a) Within 48 [24] hours after opening of bids, the two ap-
13 parent low bidders shall submit a list of the subcontractors the
14 bidders propose to use in the performance of the contract. The list
15 must [SHALL] include the name and location of the place of business
16 for each subcontractor and evidence of the subcontractor's valid
17 Alaska business license. A bidder for a construction contract shall
18 also submit evidence of each subcontractor's registration under
19 AS 08.18.

20 * Sec. 5. AS 36.30.115(b) is amended to read:

21 (b) A bidder may replace a listed subcontractor if the subcon-
22 tractor

23 (1) fails to comply with AS 08.18;

24 (2) files for bankruptcy or becomes insolvent;

25 (3) fails to execute a contract with the bidder involving
26 performance of the work for which the subcontractor was listed and the
27 bidder acted in good faith;

28 (4) fails to obtain bonding;

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

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

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

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

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

9 * Sec. 6. AS 36.30.140(a) is amended to read:

10 (a) The procurement officer shall open bids [PUBLICLY IN THE
11 PRESENCE OF ONE OR MORE WITNESSES] at the time and place designated in
12 the invitation to bid. All bid openings are open to the public. The
13 amount of each bid and other relevant information that is specified by
14 regulation of the commissioner, together with the name of each bidder,
15 shall be recorded.

16 * Sec. 7. AS 36.30.170(a) is amended to read:

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

22 * Sec. 8. AS 36.30.170(b) is amended to read:

23 (b) The procurement officer shall award a contract based on
24 solicited bids to the lowest responsive and responsible bidder after
25 an Alaska bidder preference of five percent and an Alaska products
26 preference as described in AS 36.30.322 - 36.30.338 have been applied.

27 [NOTWITHSTANDING AN ALASKA PRODUCT PREFERENCE UNDER AS 36.30.322 -
28 36.30.338, 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
3 person 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 or qualified to do business under the
12 laws of the state, is a sole proprietorship, and the proprietor is a
13 resident of the state or is a partnership, and all partners are resi-
14 dents 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 * Sec. 9. AS 36.30.170 is amended by adding a new subsection to read:

18 (d) The procurement officer shall award an insurance-related
19 contract based on solicited bids to the lowest responsive and respon-
20 sible bidder after an Alaska bidder preference of ~~seven~~^{five} percent. In
21 this subsection, "Alaska bidder" means a person who meets the criteria
22 set out in (b)(1) - (5) of this section and who is an Alaska domestic
23 insurer.

24 * Sec. 10. AS 36.30.210(a) is amended to read:

25 (a) A request for competitive sealed proposals must contain the
26 date, time and place for delivering proposals, a specific description
27 of the supplies, construction, services, or professional services to
28 be provided under the contract, and the terms under which the sup-
29 plies, construction, services, or professional services are to be

1 provided. The request shall require the offeror to submit evidence of
2 the offeror's valid Alaska business license and, no later than 48
3 hours after opening of bids [THE DATE BY WHICH PROPOSALS MUST BE
4 RECEIVED], to list subcontractors the offeror proposes to use in the
5 performance of the contract. The list shall include the name and
6 location of the place of business for each subcontractor and evidence
7 of the subcontractor's valid Alaska business license. An offeror for
8 a construction contract shall also submit evidence of the offeror's
9 registration under AS 08.18 and evidence of registration for each
10 listed subcontractor.

11 * Sec. 11. AS 36.30 is amended by adding a new section to read:

12 Sec. 36.30.305. LIMITED COMPETITION PROCUREMENTS. (a) A con-
13 tract for supplies, services, professional services, or a construction
14 contract under \$100,000, may be awarded without competitive sealed
15 bidding or competitive sealed proposals, in accordance with regula-
16 tions adopted by the commissioner of administration. A contract may
17 be awarded under this section only when the commissioner of adminis-
18 tration, or, for construction contracts under \$100,000 or procurements
19 for the state equipment fleet, the commissioner of transportation and
20 public facilities, determines in writing that a situation exists that
21 makes competitive sealed bidding or competitive sealed proposals
22 impractical or contrary to the public interest. Procurements under
23 this section shall be made with competition that is practicable under
24 the circumstance. The authority to make a determination required by
25 this section may not be delegated.

26 (b) The using agency shall submit written evidence to support a
27 determination under this section.

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

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

3 (d) Sole source procurements may not be made under this section.

4 (e) Architectural, engineering, and land survey contracts under
5 AS 36.30.270 may not be made under this section.

6 * Sec. 12. AS 36.30.320(e) is amended to read:

7 (e) The procurement officer shall give adequate public notice of
8 intent to make a procurement under this section in accordance with
9 regulations adopted by the commissioner. [NOTICES SHALL ALSO BE
10 PROVIDED TO THOSE ALASKA BIDDERS DESIGNATED BY THE COMMISSIONER UNDER
11 AS 36.30.050(d).]

12 * Sec. 13. AS 36.30.322(a) is amended to read:

13 (a) Only timber, lumber, and manufactured lumber products orig-
14 inating in this state from Alaska [LOCAL] forests may be procured by
15 an agency or used in construction projects of an agency unless [THE
16 COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT CERTIFIES THAT] the
17 manufacturers and suppliers who have notified the commissioner of
18 commerce and economic development of their willingness to manufacture
19 or supply Alaska forest products

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

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

25 * Sec. 14. AS 36.30.322 is amended by adding a new subsection to read:

26 (c) During the period of performance of a state contract, the
27 contractor shall maintain records showing efforts made in using Alaska
28 forest products or evidence of Alaska forest products not being avail-
29 able or reasonably competitive. The contractor shall provide the

1 records to the procurement officer on a periodic basis, as required by
2 regulations adopted by the commissioner of commerce and economic
3 development.

4 * Sec. 15. AS 36.30.332(b) is amended to read:

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

7 (1) more than 25 percent and less than 50 percent produced
8 or manufactured in the state are [OF THE MANUFACTURER'S QUOTED PRICE
9 IS A] Class I products [PRODUCT];

10 (2) 50 percent or more and less than 75 percent produced or
11 manufactured in the state are [OF THE MANUFACTURER'S QUOTED PRICE IS
12 A] Class II products [PRODUCT]; and

13 (3) 75 percent or more produced or manufactured in the
14 state are [OF A MANUFACTURER'S QUOTED PRICE IS A] Class III products
15 [PRODUCT].

16 * Sec. 16. AS 36.30.336 is amended to read:

17 Sec. 36.30.336. APPLICATION. Notwithstanding other provisions
18 of this chapter, AS 36.30.322 - 36.30.338 apply to all procurements
19 subject to this chapter [AS 36.30], except as provided in AS 36.30.-
20 322(b) [AS 36.30.170(b) AND 36.30.322(b)].

21 * Sec. 17. AS 36.30.338(1) is amended to read:

22 (1) "Alaska product" means a product of which not less than
23 25 percent of the value, as determined in accordance with regulations
24 adopted under AS 36.30.332(a), has been added by manufacturing or
25 production in the state [PRODUCED OR MANUFACTURED IN THE STATE IF THE
26 VALUE ADDED IN THE STATE IS NOT LESS THAN 25 PERCENT OF THE QUOTED
27 PRICE OF THE MANUFACTURER];

28 * Sec. 18. AS 36.30.365 is amended to read:

29 Sec. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT. At least

1 10 days before the formal award of a contract that is not for con-
2 struction, and at least five days before the award of a construction
3 contract, under this chapter, except for a contract awarded under
4 AS 36.30.300 - 36.30.320, the procurement officer shall provide to
5 each bidder or offeror notice of intent to award a contract. The
6 notice shall conform to regulations adopted by the commissioner.

7 * Sec. 19. AS 36.30.565 is amended to read:

8 Sec. 36.30.565. TIME FOR FILING A PROTEST. (a) A protest based
9 upon alleged improprieties in an award of a contract or a proposed
10 award of a contract must [A SOLICITATION INVOLVING COMPETITIVE SEALED
11 BIDDING THAT ARE APPARENT BEFORE THE BID OPENING SHALL BE FILED BEFORE
12 THE BID OPENING. A PROTEST BASED ON ALLEGED IMPROPRIETIES IN A SOLIC-
13 ITATION 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. 20. AS 36.30.610 is amended by adding a new subsection to read:

26 (c) The commissioner of administration or the commissioner of
27 transportation and public facilities, as appropriate, shall, within 15
28 days after receipt of an appeal, notify the appellant of the accep-
29 tance or rejection of the appeal and, if rejected, the reasons for the

1 rejection.

2 * Sec. 21. AS 36.30.850(a) is amended to read:

3 (a) This chapter applies only to contracts solicited or entered
4 into after January 1, 1988 [JULY 1, 1987], unless the parties agree to
5 its application to a contract solicited or entered into before that
6 date.

7 * Sec. 22. AS 36.30.850 is amended by adding a new subsection to read:

8 (e) AS 36.30.170 applies to all insurance contracts involving
9 state money including state grants and reimbursement to municipal-
10 ities, school districts, and other entities.

11 * Sec. 23. AS 36.30.900 is amended to read:

12 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
13 does not modify [, AMEND, OR ALTER] AS 36.15.010 and 36.15.020 regard-
14 ing preference for Alaska forest products, [OR AS 36.20.010 REGARDING
15 PREFERENCE TO PRODUCERS OR DEALERS IN ALASKA] except as provided in
16 AS 36.30.170(b) and (c).

17 * Sec. 24. AS 36.30.050(d) and 36.30.380 are repealed.

18 * Sec. 25. Section 65, ch. 106, SLA 1986 is amended to read:

19 Sec. 65. REPORT. By December 1, 1989 [1988], the commissioner
20 of administration and the commissioner of transportation and public
21 facilities shall report to the legislature concerning procurements by
22 state agencies during fiscal year 1988 [1987]. The report must in-
23 clude

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

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

27 (3) a description of any matters that involved litigation
28 concerning AS 36.30 during those 12 months.

29 * Sec. 26. Section 66, ch. 106, SLA 1986 is amended to read:

1 Sec. 66. REGULATIONS DEADLINE. The regulations required under
2 AS 36.30 as added by sec. 2 of this Act, shall be adopted by Jan-
3 uary 1, 1988; [JULY 1, 1987] and shall be effective on that date.
4 Regulations adopted under laws repealed in sec. 67 of this Act become
5 ineffective January 1, 1988 [JULY 1, 1987].

6 * Sec. 27. Section 69, ch. 106, SLA 1986 is amended to read:

7 Sec. 69. Except as provided in sec. 68, this Act takes effect
8 January 1, 1988 [JULY 1, 1987].

9 * Sec. 28. Sections 1, 2, 21, and 25 - 27 of this Act take effect
10 immediately under AS 01.10.070(c).

11 * Sec. 29. Sections 3 - 20 and 22 - 24 of this Act take effect January
12 1, 1988.

wol467hN
Levy
5/14/87

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR 2d CS FOR HOUSE BILL NO. 276 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST 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. AS 36.30.005(a) is amended to read:

10 (a) Except as otherwise provided, all rights, powers, duties,
11 and authority relating to the procurement of supplies, services, and
12 professional services, and the control over supplies, services, and
13 professional services vested in or exercised by an agency on Janu-
14 ary 1, 1988 [JULY 1, 1987], are transferred to the commissioner of
15 administration and to the chief procurement officer. Authority gran-
16 ted under this subsection shall be exercised in accordance with this
17 chapter.

18 * Sec. 2. AS 36.30.005(b) is amended to read:

19 (b) Except as otherwise provided, all rights, powers, duties,
20 and authority relating to the procurement of construction and procure-
21 ments of equipment or services for the state equipment fleet and the
22 control over construction of state facilities and the state equipment
23 fleet vested in or exercised by an agency on January 1, 1988 [JULY 1,
24 1987], are transferred to the commissioner of transportation and
25 public facilities, subject to regulations adopted by the commissioner
26 of administration. Notwithstanding AS 44.71.010, authority relating
27 to disposals from the state equipment fleet is vested in the commis-
28 sioner of transportation and public facilities, subject to regulations
29 adopted by the commissioner of administration. Authority granted

1 under this subsection shall be exercised in accordance with this
2 chapter.

3 * Sec. 3. AS 36.30.050(b) is amended to read:

4 (b) A person who desires to be on a list shall submit to the
5 commissioner evidence of a valid Alaska business license. A [TOGETHER
6 WITH A] biennial fee may be established by regulation in an amount
7 reasonably calculated to pay the costs of administering this section.
8 A construction contractor shall also submit a valid certificate of
9 registration issued under AS 08.18. The commissioner, by regulation,
10 may require submission of additional information.

11 * Sec. 4. AS 36.30.115(a) is amended to read:

12 (a) Within 48 [24] hours after opening of bids, the [TWO]
13 apparent low bidder [BIDDERS] shall submit a list of the
14 subcontractors the bidder proposes [BIDDERS PROPOSE] to use in the
15 performance of the contract. The list must [SHALL] include the name
16 and location of the place of business for each subcontractor and
17 evidence of the subcontractor's valid Alaska business license. A
18 bidder for a construction contract shall also submit evidence of each
19 subcontractor's registration under AS 08.18.

20 * Sec. 5. AS 36.30.115(b) is amended to read:

21 (b) A bidder may replace a listed subcontractor if the subcon-
22 tractor

23 (1) fails to comply with AS 08.18;

24 (2) files for bankruptcy or becomes insolvent;

25 (3) fails to execute a contract with the bidder involving
26 performance of the work for which the subcontractor was listed and the
27 bidder acted in good faith;

28 (4) fails to obtain bonding;

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

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

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

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

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

9 * Sec. 6. AS 36.30.140(a) is amended to read:

10 (a) The procurement officer shall open bids [PUBLICLY IN THE
11 PRESENCE OF ONE OR MORE WITNESSES] at the time and place designated in
12 the invitation to bid. All bid openings are open to the public. The
13 amount of each bid and other relevant information that is specified by
14 regulation of the commissioner, together with the name of each bidder,
15 shall be recorded.

16 * Sec. 7. AS 36.30.170(a) is amended to read:

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

22 * Sec. 8. AS 36.30.170(b) is amended to read:

23 (b) The procurement officer shall award a contract based on
24 solicited bids to the lowest responsive and responsible bidder after
25 an Alaska bidder preference of five percent and an Alaska products
26 preference as described in AS 36.30.322 - 36.30.338 have been applied.

27 [NOTWITHSTANDING AN ALASKA PRODUCT PREFERENCE UNDER AS 36.30.322 -
28 36.30.338, 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
3 person 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 or qualified to do business under the
12 laws of the state, is a sole proprietorship, and the proprietor is a
13 resident of the state or is a partnership, and all partners are resi-
14 dents 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 * Sec. 9. AS 36.30.170 is amended by adding a new subsection to read:

18 (d) The procurement officer shall award an insurance-related
19 contract based on solicited bids to the lowest responsive and respon-
20 sible bidder after an Alaska bidder preference of seven percent. In
21 this subsection, "Alaska bidder" means a person who meets the criteria
22 set out in (b)(1) - (5) of this section and who is an Alaska domestic
23 insurer.

24 * Sec. 10. AS 36.30.210(a) is amended to read:

25 (a) A request for competitive sealed proposals must contain the
26 date, time and place for delivering proposals, a specific description
27 of the supplies, construction, services, or professional services to
28 be provided under the contract, and the terms under which the sup-
29 plies, construction, services, or professional services are to be

1 provided. The request shall require the offeror to submit evidence of
2 the offeror's valid Alaska business license and, no later than 72
3 hours after receiving notice of intent to award [THE DATE BY WHICH
4 PROPOSALS MUST BE RECEIVED], to list subcontractors the offeror pro-
5 poses to use in the performance of the contract. The list shall
6 include the name and location of the place of business for each sub-
7 contractor and evidence of the subcontractor's valid Alaska business
8 license. An offeror for a construction contract shall also submit
9 evidence of the offeror's registration under AS 08.18 and evidence of
10 registration for each listed subcontractor.

11 * Sec. 11. AS 36.30 is amended by adding a new section to read:

12 Sec. 36.30.305. LIMITED COMPETITION PROCUREMENTS. (a) A con-
13 tract for supplies, services, professional services, or a construction
14 contract under \$100,000, may be awarded without competitive sealed
15 bidding or competitive sealed proposals, in accordance with regula-
16 tions adopted by the commissioner of administration. A contract may
17 be awarded under this section only when the commissioner of adminis-
18 tration, or, for construction contracts under \$100,000 or procurements
19 for the state equipment fleet, the commissioner of transportation and
20 public facilities, determines in writing that a situation exists that
21 makes competitive sealed bidding or competitive sealed proposals
22 impractical or contrary to the public interest. Procurements under
23 this section shall be made with competition that is practicable under
24 the circumstance. The authority to make a determination required by
25 this section may not be delegated.

26 (b) The using agency shall submit written evidence to support a
27 determination under this section.

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

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

3 (d) Sole source procurements may not be made under this section.

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5 AS 36.30.270 may not be made under this section.

6 * Sec. 12. AS 36.30.320(e) is amended to read:

7 (e) The procurement officer shall give adequate public notice of
8 intent to make a procurement under this section in accordance with
9 regulations adopted by the commissioner. [NOTICES SHALL ALSO BE
10 PROVIDED TO THOSE ALASKA BIDDERS DESIGNATED BY THE COMMISSIONER UNDER
11 AS 36.30.050(d).]

12 * Sec. 13. AS 36.30.322(a) is amended to read:

13 (a) Only timber, lumber, and manufactured lumber products orig-
14 inating in this state from Alaska [LOCAL] forests may be procured by
15 an agency or used in construction projects of an agency unless [THE
16 COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT CERTIFIES THAT] the
17 manufacturers and suppliers who have notified the commissioner of
18 commerce and economic development of their willingness to manufacture
19 or supply Alaska forest products

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

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

25 * Sec. 14. AS 36.30.322 is amended by adding a new subsection to read:

26 (c) During the period of performance of a state contract, the
27 contractor shall maintain records showing efforts made in using Alaska
28 forest products or evidence of Alaska forest products not being avail-
29 able or reasonably competitive. The contractor shall provide the

1 records to the procurement officer on a periodic basis, as required by
2 regulations adopted by the commissioner of commerce and economic
3 development.

4 * Sec. 15. AS 36.30.332(b) is amended to read:

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

7 (1) more than 25 percent and less than 50 percent produced
8 or manufactured in the state are [OF THE MANUFACTURER'S QUOTED PRICE
9 IS A] Class I products [PRODUCT];

10 (2) 50 percent or more and less than 75 percent produced or
11 manufactured in the state are [OF THE MANUFACTURER'S QUOTED PRICE IS
12 A] Class II products [PRODUCT]; and

13 (3) 75 percent or more produced or manufactured in the
14 state are [OF A MANUFACTURER'S QUOTED PRICE IS A] Class III products
15 [PRODUCT].

16 * Sec. 16. AS 36.30.336 is amended to read:

17 Sec. 36.30.336. APPLICATION. Notwithstanding other provisions
18 of this chapter, AS 36.30.322 - 36.30.338 apply to all procurements
19 subject to this chapter [AS 36.30], except as provided in AS 36.30.-
20 322(b) [AS 36.30.170(b) AND 36.30.322(b)].

21 * Sec. 17. AS 36.30.338(1) is amended to read:

22 (1) "Alaska product" means a product of which not less than
23 25 percent of the value, as determined in accordance with regulations
24 adopted under AS 36.30.332(a), has been added by manufacturing or
25 production in the state [PRODUCED OR MANUFACTURED IN THE STATE IF THE
26 VALUE ADDED IN THE STATE IS NOT LESS THAN 25 PERCENT OF THE QUOTED
27 PRICE OF THE MANUFACTURER];

28 * Sec. 18. AS 36.30.365 is amended to read:

29 Sec. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT. At least

1 10 days before the formal award of a contract that is not for con-
2 struction, and at least five days before the award of a construction
3 contract, under this chapter, except for a contract awarded under
4 AS 36.30.300 - 36.30.320, the procurement officer shall provide to
5 each bidder or offeror notice of intent to award a contract. The
6 notice shall conform to regulations adopted by the commissioner.

7 * Sec. 19. AS 36.30.565 is amended to read:

8 Sec. 36.30.565. TIME FOR FILING A PROTEST. (a) A protest based
9 upon alleged improprieties in an award of a contract or a proposed
10 award of a contract must [A SOLICITATION INVOLVING COMPETITIVE SEALED
11 BIDDING THAT ARE APPARENT BEFORE THE BID OPENING SHALL BE FILED BEFORE
12 THE BID OPENING. A PROTEST BASED ON ALLEGED IMPROPRIETIES IN A SOLIC-
13 ITATION 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. 20. AS 36.30.610 is amended by adding a new subsection to read:

26 (c) The commissioner of administration or the commissioner of
27 transportation and public facilities, as appropriate, shall, within 15
28 days after receipt of an appeal, notify the appellant of the accep-
29 tance or rejection of the appeal and, if rejected, the reasons for the

1 rejection.

2 * Sec. 21. AS 36.30.850(a) is amended to read:

3 (a) This chapter applies only to contracts solicited or entered
4 into after January 1, 1988 [JULY 1, 1987], unless the parties agree to
5 its application to a contract solicited or entered into before that
6 date.

7 * Sec. 22. AS 36.30.850 is amended by adding a new subsection to read:

8 (e) AS 36.30.170 applies to all insurance contracts involving
9 state money including state grants and reimbursement to municipal-
10 ities, school districts, and other entities.

11 * Sec. 23. AS 36.30.900 is amended to read:

12 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
13 does not modify [, AMEND, OR ALTER] AS 36.15.010 and 36.15.020 regard-
14 ing preference for Alaska forest products, [OR AS 36.20.010 REGARDING
15 PREFERENCE TO PRODUCERS OR DEALERS IN ALASKA] except as provided in
16 AS 36.30.170(b) and (c).

17 * Sec. 24. AS 36.30.050(d) and 36.30.380 are repealed.

18 * Sec. 25. Section 65, ch. 106, SLA 1986 is amended to read:

19 Sec. 65. REPORT. By December 1, 1989 [1988], the commissioner
20 of administration and the commissioner of transportation and public
21 facilities shall report to the legislature concerning procurements by
22 state agencies during fiscal year 1988 [1987]. The report must in-
23 clude

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

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

27 (3) a description of any matters that involved litigation
28 concerning AS 36.30 during those 12 months.

29 * Sec. 26. Section 66, ch. 106, SLA 1986 is amended to read:

1 Sec. 66. REGULATIONS DEADLINE. The regulations required under
2 AS 36.30 as added by sec. 2 of this Act, shall be adopted by Jan-
3 uary 1, 1988; [JULY 1, 1987] and shall be effective on that date.
4 Regulations adopted under laws repealed in sec. 67 of this Act become
5 ineffective January 1, 1988 [JULY 1, 1987].

6 * Sec. 27. Section 69, ch. 106, SLA 1986 is amended to read:

7 Sec. 69. Except as provided in sec. 68, this Act takes effect
8 January 1, 1988 [JULY 1, 1987].

9 * Sec. 28. Sections 1, 2, 21, and 25 - 27 of this Act take effect
10 immediately under AS 01.10.070(c).

11 * Sec. 29. Sections 3 - 20 and 22 - 24 of this Act take effect January
12 1, 1988.

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 2d CS FOR HOUSE BILL NO. 276 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST 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. AS 36.30.005(a) is amended to read:

10 (a) Except as otherwise provided, all rights, powers, duties,
11 and authority relating to the procurement of supplies, services, and
12 professional services, and the control over supplies, services, and
13 professional services vested in or exercised by an agency on Janu-
14 ary 1, 1988 [JULY 1, 1987], are transferred to the commissioner of
15 administration and to the chief procurement officer. Authority gran-
16 ted under this subsection shall be exercised in accordance with this
17 chapter.

18 * Sec. 2. AS 36.30.005(b) is amended to read:

19 (b) Except as otherwise provided, all rights, powers, duties,
20 and authority relating to the procurement of construction and procure-
21 ments of equipment or services for the state equipment fleet and the
22 control over construction of state facilities and the state equipment
23 fleet vested in or exercised by an agency on January 1, 1988 [JULY 1,
24 1987], are transferred to the commissioner of transportation and
25 public facilities, subject to regulations adopted by the commissioner
26 of administration. Notwithstanding AS 44.71.010, authority relating
27 to disposals from the state equipment fleet is vested in the commis-
28 sioner of transportation and public facilities, subject to regulations
29 adopted by the commissioner of administration. Authority granted

1 under this subsection shall be exercised in accordance with this
2 chapter.

3 * Sec. 3. AS 36.30.050(b) is amended to read:

4 (b) A person who desires to be on a list shall submit to the
5 commissioner evidence of a valid Alaska business license. A [TOGETHER
6 WITH A] biennial fee may be established by regulation in an amount
7 reasonably calculated to pay the costs of administering this section.
8 A construction contractor shall also submit a valid certificate of
9 registration issued under AS 08.18. The commissioner, by regulation,
10 may require submission of additional information.

11 * Sec. 4. AS 36.30.115(a) is amended to read:

12 (a) Within 48 [24] hours after receiving notice of intent to
13 award [OPENING OF BIDS], the [TWO] apparent low bidder [BIDDERS] shall
14 submit a list of the subcontractors the bidder proposes [BIDDERS
15 PROPOSE] to use in the performance of the contract. The list must
16 [SHALL] include the name and location of the place of business for
17 each subcontractor and evidence of the subcontractor's valid Alaska
18 business license. A bidder for a construction contract shall also
19 submit evidence of each subcontractor's registration under AS 08.18.

20 * Sec. 5. AS 36.30.115(b) is amended to read:

21 (b) A bidder may replace a listed subcontractor if the subcon-
22 tractor

- 23 (1) fails to comply with AS 08.18;
24 (2) files for bankruptcy or becomes insolvent;
25 (3) fails to execute a contract with the bidder involving
26 performance of the work for which the subcontractor was listed and the
27 bidder acted in good faith;
28 (4) fails to obtain bonding;
29 (5) fails to obtain insurance acceptable to the state;

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

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

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

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

9 * Sec. 6. AS 36.30.140(a) is amended to read:

10 (a) The procurement officer shall open bids [PUBLICLY IN THE
11 PRESENCE OF ONE OR MORE WITNESSES] at the time and place designated in
12 the invitation to bid. All bid openings are open to the public. The
13 amount of each bid and other relevant information that is specified by
14 regulation of the commissioner, together with the name of each bidder,
15 shall be recorded.

16 * Sec. 7. AS 36.30.170(b) is amended to read:

17 (b) The procurement officer shall award a contract based on
18 solicited bids to the lowest responsive and responsible bidder after
19 an Alaska bidder preference of five percent and an Alaska products
20 preference as described in AS 36.30.322 - 36.30.338 have been applied.

21 [NOTWITHSTANDING AN ALASKA PRODUCT PREFERENCE UNDER AS 36.30.322 -
22 36.30.338, THE PROCUREMENT OFFICER SHALL AWARD A CONTRACT BASED ON
23 SOLICITED BIDS TO THE LOWEST RESPONSIBLE AND RESPONSIVE ALASKA BIDDER
24 IF THE BID IS NOT MORE THAN FIVE PERCENT HIGHER THAN THE LOWEST NON-
25 RESIDENT BIDDER'S.] In this subsection, "Alaska bidder" means a
26 person who

27 (1) holds a current Alaska business license;

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

1 license;

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

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

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

11 * Sec. 8. AS 36.30.210(a) is amended to read:

12 (a) A request for competitive sealed proposals must contain the
13 date, time and place for delivering proposals, a specific description
14 of the supplies, construction, services, or professional services to
15 be provided under the contract, and the terms under which the sup-
16 plies, construction, services, or professional services are to be
17 provided. The request shall require the offeror to submit evidence of
18 the offeror's valid Alaska business license and, no later than 72
19 hours after receiving notice of intent to award [THE DATE BY WHICH
20 PROPOSALS MUST BE RECEIVED], to list subcontractors the offeror pro-
21 poses to use in the performance of the contract. The list shall
22 include the name and location of the place of business for each sub-
23 contractor and evidence of the subcontractor's valid Alaska business
24 license. An offeror for a construction contract shall also submit
25 evidence of the offeror's registration under AS 08.18 and evidence of
26 registration for each listed subcontractor.

27 * Sec. 9. AS 36.30 is amended by adding a new section to read:

28 Sec. 36.30.305. LIMITED COMPETITION PROCUREMENTS. (a) A con-
29 tract for supplies, services, professional services, or a construction

1 contract under \$100,000, may be awarded without competitive sealed
2 bidding or competitive sealed proposals, in accordance with regula-
3 tions adopted by the commissioner of administration. A contract may
4 be awarded under this section only when the commissioner of adminis-
5 tration, or, for construction contracts under \$100,000 or procurements
6 for the state equipment fleet, the commissioner of transportation and
7 public facilities, determines in writing that a situation exists that
8 makes competitive sealed bidding or competitive sealed proposals
9 impractical or contrary to the public interest. Procurements under
10 this section shall be made with competition that is practicable under
11 the circumstance. The authority to make a determination required by
12 this section may not be delegated.

13 (b) The using agency shall submit written evidence to support a
14 determination under this section.

15 (c) Procurement requirements may not be artificially divided,
16 fragmented, aggregated, or structured so as to constitute a purchase
17 under this section or to circumvent the source selection procedures
18 required by AS 36.30.100 - 36.30.270.

19 (d) Sole source procurements may not be made under this section.

20 (e) Architectural, engineering, and land survey contracts under
21 AS 36.30.270 may not be made under this section.

22 * Sec. 10. AS 36.30.320(e) is amended to read:

23 (e) The procurement officer shall give adequate public notice of
24 intent to make a procurement under this section in accordance with
25 regulations adopted by the commissioner. [NOTICES SHALL ALSO BE
26 PROVIDED TO THOSE ALASKA BIDDERS DESIGNATED BY THE COMMISSIONER UNDER
27 AS 36.30.050(d).]

28 * Sec. 11. AS 36.30.322(a) is amended to read:

29 (a) Only timber, lumber, and manufactured lumber products

1 originating in this state from Alaska [LOCAL] forests may be procured
2 by an agency or used in construction projects of an agency unless [THE
3 COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT CERTIFIES THAT] the
4 manufacturers and suppliers who have notified the commissioner of
5 commerce and economic development of their willingness to manufacture
6 or supply Alaska forest products

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

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

12 * Sec. 12. AS 36.30.322 is amended by adding a new subsection to read:

13 (c) During the period of performance of a state contract, the
14 contractor shall maintain records showing efforts made in using Alaska
15 forest products or evidence of Alaska forest products not being avail-
16 able or reasonably competitive. The contractor shall provide the
17 records to the procurement officer on a periodic basis, as required by
18 regulations adopted by the commissioner of commerce and economic
19 development.

20 * Sec. 13. AS 36.30.332(b) is amended to read:

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

23 (1) more than 25 percent and less than 50 percent produced
24 or manufactured in the state are [OF THE MANUFACTURER'S QUOTED PRICE
25 IS A] Class I products [PRODUCT];

26 (2) 50 percent or more and less than 75 percent produced or
27 manufactured in the state are [OF THE MANUFACTURER'S QUOTED PRICE IS
28 A] Class II products [PRODUCT]; and

29 (3) 75 percent or more produced or manufactured in the

1 state are [OF A MANUFACTURER'S QUOTED PRICE IS A] Class III products
2 [PRODUCT].

3 * Sec. 14. AS 36.30.338(1) is amended to read:

4 (1) "Alaska product" means a product of which not less than
5 25 percent of the value, as determined in accordance with regulations
6 adopted under AS 36.30.332(a), has been added by manufacturing or
7 production in the state [PRODUCED OR MANUFACTURED IN THE STATE IF THE
8 VALUE ADDED IN THE STATE IS NOT LESS THAN 25 PERCENT OF THE QUOTED
9 PRICE OF THE MANUFACTURER];

10 * Sec. 15. AS 36.30.365 is amended to read:

11 Sec. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT. At least
12 10 days before the formal award of a contract that is not for con-
13 struction, and at least five days before the award of a construction
14 contract, under this chapter, except for a contract awarded under
15 AS 36.30.300 - 36.30.320, the procurement officer shall provide to
16 each bidder or offeror notice of intent to award a contract. The
17 notice shall conform to regulations adopted by the commissioner.

18 * Sec. 16. AS 36.30.565 is amended to read:

19 Sec. 36.30.565. TIME FOR FILING A PROTEST. (a) A protest based
20 upon alleged improprieties in an award of a contract or a proposed
21 award of a contract must [A SOLICITATION INVOLVING COMPETITIVE SEALED
22 BIDDING THAT ARE APPARENT BEFORE THE BID OPENING SHALL BE FILED BEFORE
23 THE BID OPENING. A PROTEST BASED ON ALLEGED IMPROPRIETIES IN A SOLIC-
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25 (1) BEFORE THE DUE DATE FOR RECEIPT OF INITIAL PROPOSALS
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28 SHALL BE FILED BEFORE THE NEXT DUE DATE FOR RECEIPT OF ADJUSTED PRO-
29 POSALS THAT OCCURS AFTER THE IMPROPRIETIES ARE APPARENT.

1 (b) IN SITUATIONS NOT COVERED UNDER (a) OF THIS SECTION, PRO-
2 TESTS SHALL] be filed within 10 days after a notice of intent to award
3 the contract is issued by the procurement officer.

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

7 * Sec. 17. AS 36.30.610 is amended by adding a new subsection to read:

8 (c) The commissioner of administration or the commissioner of
9 transportation and public facilities, as appropriate, shall, within 15
10 days after receipt of an appeal, notify the appellant of the accep-
11 tance or rejection of the appeal and, if rejected, the reasons for the
12 rejection.

13 * Sec. 18. AS 36.30.850(a) is amended to read:

14 (a) This chapter applies only to contracts solicited or entered
15 into after January 1, 1988 [JULY 1, 1987], unless the parties agree to
16 its application to a contract solicited or entered into before that
17 date.

18 * Sec. 19. AS 36.30.900 is amended to read:

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 regard-
21 ing 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. 20. AS 36.30.050(d) and 36.30.380 are repealed.

25 * Sec. 21. Section 65, ch. 106, SLA 1986 is amended to read:

26 Sec. 65. REPORT. By December 1, 1989 [1988], the commissioner
27 of administration and the commissioner of transportation and public
28 facilities shall report to the legislature concerning procurements by
29 state agencies during fiscal year 1988 [1987]. The report must

1 include

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

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

5 (3) a description of any matters that involved litigation
6 concerning AS 36.30 during those 12 months.

7 * Sec. 22. Section 66, ch. 106, SLA 1986 is amended to read:

8 Sec. 66. REGULATIONS DEADLINE. The regulations required under
9 AS 36.30 as added by sec. 2 of this Act, shall be adopted by Jan-
10 uary 1, 1988, [JULY 1, 1987] and shall be effective on that date.
11 Regulations adopted under laws repealed in sec. 67 of this Act become
12 ineffective January 1, 1988 [JULY 1, 1987].

13 * Sec. 23. Section 69, ch. 106, SLA 1986 is amended to read:

14 Sec. 69. Except as provided in sec. 68, this Act takes effect
15 January 1, 1988 [JULY 1, 1987].

16 * Sec. 24. Sections 1, 2, 18, and 21 - 23 of this Act take effect
17 immediately under AS 01.10.070(c).

18 * Sec. 25. Sections 3 - 17, 19, and 20 of this Act take effect January
19 1, 1988.

STATE OF ALASKA
THE LEGISLATURE

FOUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 14, 1987

SUBJECT: Comparison of versions of HB 276
(State procurement practices)

TO: Senator Don Bennett

FROM: Keith B. Levy ^{KBL}
Legislative Counsel

You have requested a comparison of 2d CSHB 276 (State Affairs), the version of HB 276 that passed the House, with the two enclosed drafts of SCS 2d CSHB 276 (Finance). Both drafts of the Senate version are identical with the exception of sec. 4.

Section 4 of the Senate version numbered WO 1467hN requires the subcontractor list to be submitted within 48 hours after the opening of bids. In contrast, sec. 4 of the Senate version numbered WO 1467hX and sec. 4 of the House version require the list to be submitted within 48 hours after the bidder receives notice of the intent to award.

Sections 7, 9, 16, and 22 of both Senate versions of HB 276 are not found in the House version. These sections amend the State Procurement Code to provide a seven percent Alaska bidder preference for insurance contracts involving state money.

Section 7 of the Senate versions makes a technical amendment to conform to the change in sec. 9. Section 9 requires the procurement officer to award an insurance related contract based on solicited bids to the lowest bidder after giving an Alaska bidder preference of seven percent (AS 36.30.170(d)), in contrast to the five percent preference for all other contracts (AS 36.30.170(b)). To qualify for the seven percent preference, a bidder must meet the existing requirements set out in AS 36.30.170(b) and must also be an Alaska domestic insurer. Section 16 makes a technical change to AS 36.30.336. Section 22 provides that the bidder preference

Senator Bennett

Page 2

May 14, 1987

for insurance contracts applies to all insurance contracts involving state money including state grants and reimbursement to municipalities, school districts, and other entities.

If I may be of further assistance, please advise.

KBL:mkr

m12/020

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

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(State procurement practices)

TO: Senator Don Bennett

FROM: Keith B. Levy ^{KBL}
Legislative Counsel

You have requested a comparison of 2d CSHB 276 (State Affairs), the version of HB 276 that passed the House, with the enclosed draft of SCS 2d CSHB 276 (Finance).

Section 4 of the Senate version requires the two apparent low bidders to submit the subcontractor list within 48 hours after the opening of bids. Section 10 of the Senate version amends AS 36.30.210(a) to conform to this change. In contrast, secs. 4 and 8 of the House version require the list to be submitted by only one bidder within 48 hours after the bidder receives notice of the intent to award.

Sections 7, 9, 16, and 22 of the Senate version of HB 276 are not found in the House version. These sections amend the State Procurement Code to provide a ~~five~~ ^{seven} percent Alaska bidder preference for insurance contracts involving state money.

Section 7 of the Senate version makes a technical amendment to conform to the change in sec. 9. Section 9 requires the procurement officer to award an insurance related contract based on solicited bids to the lowest bidder after giving an Alaska bidder preference of seven percent (AS 36.30.170(d)), ~~in contrast to the five percent preference for all other contracts (AS 36.30.170(b))~~. To qualify for the ~~seven~~ ^{seven} percent preference, a bidder must meet the existing requirements set out in AS 36.30.170(b) and must also be an Alaska domestic insurer. Section 16 makes a technical change to AS 36.30.336. Section 22 provides that the bidder preference for insurance contracts applies to all insurance

Senator Bennett
Page 2
May 16, 1987

contracts involving state money including state grants and reimbursement to municipalities, school districts, and other entities.

If I may be of further assistance, please advise.

KBL:lmb
m12/035

Enclosure

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

CU

REQUEST: _____
 Revision Date: _____
 Title: Procurement Practices and
Procedures; provide for effect. date
 Sponsor: Governor
 Requestor: House Finance

Bill Version CSHB 276(SA)
 Publish Date: HOUSE 5/6/87

Agency Affected: DOT&PF
 BRU: Design & Construction
Engineering & Operations Standards
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary) Minor reductions in costs are spread throughout the department; however, none are of significant magnitude that could be identified in specific operating budgets. No additional funds were provided when the procurement bill passed last session.

Prepared by: Loren Rasmussen Phone: 465-2960
 Division: Engineering & Operations Standards Date: 5-5-87
 Approved by Commissioner: M. L. S. H. Date: 5-5-87
 Agency: Transportation & Public Facilities

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 15, 1987

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making necessary amendments to the state procurement code that was enacted last year (ch. 106, SLA 1986) with a July 1, 1987 effective date. HB 192, the bill deferring the effective date of the procurement code, proposed a two-year deferment; the House State Affairs Committee, in CSHB 192(SA), recommended a one-year deferment. The attached bill combines various substantive amendments with only a six-month deferment.

The legislature's conference committee on the budget last year reduced the procurement code's fiscal note to zero. However, several of its provisions, such as those pertaining to handling sole-source procurements, the extended and revised protest period, the appeals requirements, and the small procurement requirement are very "work intensive." The problem is exacerbated by the state's current fiscal crisis. There simply is no way to implement the provisions of the code right now. This bill's six-month postponement will give the state a chance to begin to regain its fiscal footing before taking on the new procedures set out in the procurement code. In addition, the amendments in this bill help tailor the code to conditions in Alaska. This bill is not, however, a general clean-up of the code.

To aid in your analysis of this bill, here is a section-by-section commentary on it:

Sections 1, 2, 15, 18, and 21 -- 23:

These are the deferment sections. Section 23, amending sec. 69, ch. 106, SLA 1986, is the most significant in that it changes the overall effective date of the procurement code. The other sections in this group make corresponding amendments in other time-related provisions that were enacted in ch. 106, SLA 1986.

Section 3:

AS 36.30.050(b) is amended to delete the blanket requirement of a biennial fee for getting on a list of contractors. Charging contractors to be on a bidder's list is prohibited by federal regulations on federally assisted construction projects. Even though using a bidder's list is only an available option in advertising for construction projects, it is impractical to maintain separate lists or systems for state-funded versus federally assisted projects. This amendment's proposed discretionary language would allow construction bidders list fees to be optional or to be eliminated if that would be appropriate.

Section 4:

AS 36.30.115(a) is amended to change the 24-hour requirement to a 72-hour requirement for submitting a list of subcontractors and to change the triggering event from the opening of bids to the receipt of the notice of intent to award. These amendments are necessary to provide appropriate flexibility in the handling of bids and subcontractor lists, and are consistent with the amendment in sec. 7 of this bill. With these changes, it is also advisable to delete the requirement that the two lowest bidders submit the list of subcontractors, as sec. 4 does. These amendments will be more cost-effective for both the state and the contractors.

Section 5:

AS 36.30.140(a) is amended to delete the requirement of the presence of a witness during bid openings. Although bid openings are open to the public, many of them have no members of the public in attendance. When no member of the public attends, it is necessary to assign an employee to be a witness. The effectiveness of such a procedure is questionable, and the use of employee time for such a function is wasteful. With the current and impending cutbacks in staff, such a procedure would be especially troublesome. Therefore, this amendment is necessary.

Section 6:

AS 36.30.170(b) is amended so that the apparent low bidder at a bid opening can be quickly announced. The current statute can be awkward to put into practice.

Section 7:

AS 36.30.210(a) is amended to conform to the 72-hour amendment of AS 36.30.115(a) (in sec. 4 of this bill). The requirements for listing subcontractors should be consistent among the various methods of procurement.

Section 8:

A proposed new section, AS 36.30.305, establishes a procedure in between the "sole source" procurements of AS 36.30.-300 and the "emergency" procurements of AS 36.30.310. It is thus a "semi" or "modified" sole source procurement provision. This new statute will serve the state's need for a method to procure which is broader than sole-source procurement but does not require all of the details of a competitive sealed process. This language provides broader purchasing capability. Failure to add this section would mean that the Department of Administration would have to write significantly more bids with a reduced staff.

Section 9:

AS 36.30.320(e) is amended to delete the requirement of sending notices to Alaska bidders designated by the commissioner under AS 36.30.050(d). The latter statute, which is being repealed in sec. 20 of this bill, pertains to small procurements. For every small procurement an agency might wish to make, it would be required by the current provision to contact the Department of Administration which would provide from the computerized list of contractors three names on a rotating basis. The requesting agency would have to contact those three contractors for quotes. We estimate that there are more than 70,000 small procurements made each year. The repeal of AS 36.30.050(d) is discussed below in connection with sec. 20 of the bill.

Section 10:

AS 36.30.322(a) is amended in two respects. First, "Alaska" is substituted for "local" to make clear that the requirement for use of timber and lumber products originating in this state means originating in an Alaska forest, not necessarily a southeastern forest or a southcentral forest, etc. The current language could produce an undesirable regionalism within the state, and I do not believe that that is what was intended with the original enactment. Second, an unnecessary step, certification by the commissioner of commerce and economic development, is removed so that the Department

of Commerce and Economic Development does not have to check up on each contract to see that sufficient notice has been given and that Alaska manufacturers were in fact unable to provide the product within the seven percent margin. The requirements for reasonable notice, etc., are not being changed.

Section 11:

A new subsection is added to AS 36.30.322 to establish a record-keeping procedure that will serve in the case of a challenge to the bid practices. This will assure that proper records will exist to document the use of preferred products.

Section 12:

AS 36.30.332(b) is amended by deleting references to the "manufacturer's quoted price" to make the language consistent with subsec. (a) and to ensure that the certification process does not become excessively complex, burdensome, or time-consuming. As currently written, the references in subsec. (b) to "manufacturer's quoted price" could require a certified public accountant's audit and statement detailing incoming materials costs and providing a detailed cost analysis of the manufacturing process. The amendment would allow the broad categories and criteria established by regulations adopted under subsec. (a) to be the basis for the determination required by subsec. (b). It would thus make the whole certification process more efficient.

Technical, grammatical corrections are also being made in AS 36.30.332(b).

Section 13:

AS 36.30.338(1), the definition of "Alaska product," is amended to delete the reference to the "quoted price of the manufacturer," consistent with the changes made in sec. 12 of the bill. The re-wording of this definition also ties in the regulations that existing AS 36.30.332(a) requires, and thus makes the definition clearer.

Section 14:

AS 36.30.365 is amended so that construction contracts are not unduly delayed. For many years, the applicable statute allowed five rather than 10 days for construction contract award protests, and it is desirable to continue that fair

and efficient practice. This statute is also amended to make clear that contracts awarded under the sole-source statute (AS 36.30.300), the limited competition procurements statute (AS 36.30.305, proposed in sec. 8 of the bill), the emergency procurement statute (AS 36.30.310), or the small procurements statute (AS 36.30.320) are not covered by the 10-day or five-day requirement for providing to each bidder or offeror notice of intent to award a contract. The 10-day, and even the five-day, requirement could cause unnecessary delay in the award of contracts that should not be delayed.

Sections 16 and 17:

The amendment, in secs. 16 and 17, of AS 36.30.565 and AS 36.30.610, respectively, will make the appeal process more efficient by limiting appeals to those of the award or proposed award. Language relating to an appeal before a bid is opened is deleted. This will simplify the whole procedure while still assuring fair treatment of all parties.

Section 19:

AS 36.30.900 is amended in two ways. First, two redundant verbs are deleted, in order to simplify and streamline the language. Second, a reference to AS 36.20.010 is deleted because that statute was repealed by sec. 67, ch. 106, SLA 1986.

Section 20:

Several statutes are repealed, as follows:

AS 36.30.050(d), the requirement that lists of contractors be used in providing notice of intent to make a small procurement, is repealed because it would require the Department of Administration to revise its bid-list program to provide names on a rotating basis. The estimated cost of the computer software alone is \$20,000. Also, the current provision requires that all departments use the names provided, something that would be relatively simple if the purchaser were always in an office with access to a computer. However, numerous offices do not have that access. In addition, the requirement to contact vendors does not take into account the vendor's location or real interest in the specific procurement. For example, a Department of Fish and Game employee in Soldotna could be required to call the Anchorage office to get the names of three vendors who turn out to be located in Nome, Ketchikan,

and Haines. The purchaser would then have to make three long-distance calls to get quotations. Since the purchaser would be allowed to secure additional quotations, he or she could probably get a local quotation that turns out to be well below those obtained through this elaborate procedure. Thus, this statute is wasteful at a time when it is critical that the state government be more efficient.

AS 36.30.362, a provision requiring the state to provide a superfluous written statement (explaining the basis of an award to a person who does not reside or maintain a place of business in Alaska) is repealed. Bids are awarded to low responsive bidders even if they are located outside the state. A written statement explaining the award accomplishes nothing.

AS 36.30.380, which requires approval of proposed contractors' accounting systems, would be repealed. This section appears to require the state to approve all accounting systems for contracts awarded by the sealed proposal method. Some bidders will be major corporations, and it would be foolish to waste state staff time reviewing, analyzing, and approving their accounting systems. This would be very costly, and, if it is not done properly, could expose the state to claims or overcharges.

AS 36.30.540(4) and (5), requiring the state to make listings of all procurements made within the state and outside the state, are being repealed. These lists are never consulted and provide no usable information.

Section 24:

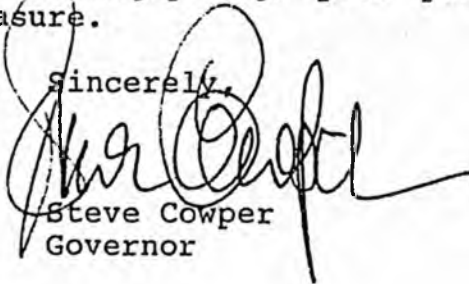
The deferment sections of this bill have been given an immediate effective date so that everyone involved in dealing with the procurement code, both the public and the administrators, will be able to make appropriate plans. The other sections of this bill have been given a January 1, 1988 effective date to coincide with the proposed deferred effective date of all but one section of ch. 106, SLA 1986. (Section 66 of last year's Act was given an immediate effective date at that time to enable the regulations-adoption project to get started.)

Hon. Ben Grussendorf

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Enactment of this bill will streamline procurement activities of the state and will result in an enormous cost-savings at this critical time. It is necessary to enact this bill this session. I strongly urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name and title.

Steve Cowper
Governor

SENATE COMMITTEE REPORT

FURTHER: FINANCE

5/9/87

DATE TURNED INTO OFFICE

Mr. President:

LABOR & COMMERCE Committee considered 2d CSHB 276(SA)

state procurement practices and procedures; efd.

and recommended:

[] replace with CS FOR _____) [] same title
[] or adopt CS FOR _____) [] new title

[] attached amendment(s) and

[] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted _____

Committee [] attached or [] adopted fiscal note(s)

[] new [] updated or [] previous
[] zero [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Chairman signature and recommendation

[] Committee Backup Attached