

SB

260

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 15, 1987

The Honorable Jan Faiks
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

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.)

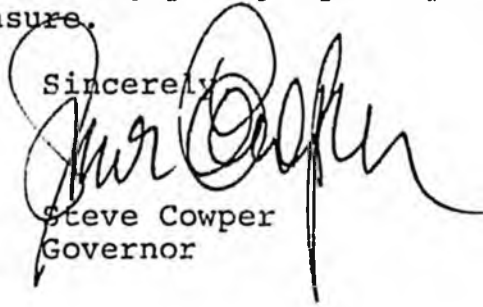
260

Hon. Jan Faiks

Page 7

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 word "Sincerely,".

Steve Cowper
Governor

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: 4/6/87

Bill Version: SB260
Publish Date: _____

Revision Date: _____

Agency Affected: DOT&PF

Title: An Act Relating to State Procurement Procedures & Providing for an Effective Date
 & Procedures: & Providing for an Effective Date

Sponsor: Governor

Design: & Construction

Engineering & Operations Standards

Requestor: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

The fiscal impact of this bill is zero. Although the attached analysis shows a reduced expenditure of \$136,000, it does not represent a true reduction. The department had to absorb an estimated expenditure of \$200,000 when the original procurement legislation was passed last session with a zero fiscal note.

Prepared by: Loren Rasmussen
 Division: Engineering & Operations Standards

Phone: 465-2960
Date: 4/8/87

Approved by Commissioner: M. L. S. [Signature]
 Agency: Transportation & Public Facilities

Date: 4/9/87

Distribution (by preparer):

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

Tracy

ANALYSIS RE:

HB _____ An Act Relating to State Procurement Practices and Procedures; and Providing for an Effective Date

NOTE:

It must be noted that the original procurement bill was passed last year with a zero fiscal note when the estimated impact was \$200,000. Therefore the cost savings shown in this fiscal note are costs that are absorbed in DOT&PF operating and CIP budgets and no actual reduction would occur.

Section by Section review and analysis:

Given data (from DOT&PF records):

1. 200 construction contracts annually.
2. Estimate 300 contractors on bidders list.
3. Estimate 300 to 500 consultants on bidders list.
4. 175 consultant contracts annually.
5. 1700 quotes on small purchases annually.
6. \$35/hr cost of an Engineer.
7. \$20/hr cost of a clerk.

Section 1. Eliminates biennial fee for getting on the construction contractors bidder list.

Assume Bidders List is 300:

$$\frac{\$25 \times 300}{2} = \$3,750 \text{ savings to the contractors*}$$

Cost of maintaining the list:

$$(3/\text{hrs/wk}) (3 \text{ regions}) (52 \text{ wk}) (\$20/\text{hr}) = \$9,360$$

Say \$10,000 savings to DOT&PF

Section 2. Listing of subcontractors 72 hours after Letter of Intent to Award and only from apparent low bidder.

$$(200 \text{ projects annually}) (4 \text{ hrs to put list together}) (\$35) = (200) (4) (\$35) = \$28,000 \text{ savings to the contractors*}$$

½ hour savings to check subs listing

$$(200) (.5) (\$35/\text{hr}) = \$3,500$$

Say \$4,000 savings to DOT&PF

Section 3. Eliminates witness at bid opening.

* does not show on fiscal note

$(.5/\text{hr})(3 \text{ regions})(52/\text{wk})(\$20/\text{hr}) = \$1,560$

Say \$2,000 savings to DOT&PF

Section 4. Amends the code so that the apparent low bidder can be announced quickly - large savings or benefit may be in preventing bidder errors.

Assume:

$\frac{1}{2}$ /hour savings at each bid opening

$(.5/\text{hr})(3 \text{ regions})(52/\text{wks})(\$35/\text{hr}) = \$2,730$

Say \$3,000

Section 5. 72 hour requirement for listing subcontracts on proposal type contracts.

These contracts are negotiated type consultant contracts and the actual savings would be in time and administrative costs.

Section 6. A procedure for contracts between sole source and emergencies.

No savings to DOT&PF - present law provides a similar system for construction contracts.

Section 7. Small purchases on a rotating basis.

$(1700 \text{ "quotes"})(.5/\text{hr "required"})(\$20/\text{hr}) = \$17,000$

Section 8. Changes "local" to "Alaska" forest products and certification on a statewide basis instead of project by project basis.

$(200 \text{ projects annually})(2/\text{hrs to put certification together})(\$35/\text{hr}) = \$14,000 \text{ to DOT\&PF}$

(The same type of savings to the contractors*)

Section 9. Added record section for keeping requirements for Alaska products.

No cost savings to DOT&PF

Added cost to contractors: $(200)(2/\text{hrs})(\text{annually})(\$35) = \$14,000^*$

Section 10. Deleting reference to "manufacturer's quoted price"

No cost savings to DOT&PF.

Section 11. Same as Section 10.

Section 12. Provides for awarding a construction contract in 5 days.

There would be a savings to DOT&PF mainly in time - the amendment would save 5 days in awarding contracts - but not all contracts can or would be actually awarded in 5 days. It is not practical to put a cost for this section.

Section 13
and 14.

Eliminates bid protests during the advertising time of a project (before bid openings).

Although there could be substantial savings to the DOT&PF for this section (by allowing a critical project to proceed to the bid opening stage) it is not practical to compute an actual savings.

Section 15. Cleans up language for Alaska products (forest products).

No fiscal impact on DOT&PF.

Section 16. Repeals several sections.

AS 36.30.050(d) - small procurement using a contractor list (see section 7)

AS 36.30.362 - eliminates the written statements explaining awards for out-of-state contractors.

(200 projects annually) (10% out-of-state contractors) (1/hr for letter) (\$35/hr) = \$700
Say \$1,000

AS 36.30.380 - Eliminates approval of contractors accounting system.

(175 consultant contracts) (1.4 contracts/consultants) = 125
(125) (2 days) (7.5 hr/day) (\$35/hr) = \$65,625
Travel (10% of 125) (1 trip) (\$1,500/trip) = \$18,750
\$84,375

Say \$85,000

AS 36.30.540(4) & (5) - Eliminates making a list of in-and-out-of-state contractors.

(3 days) (7.5/hr) (\$20/hr) = \$450

Section 17. Effective date of July 1, 1987 but note HB 192 proposes a delay.

Summary:

Section 1.	10,000	
Section 2.	4,000	
Section 3.	2,000	
Section 4.	3,000	
Section 5.	-	(Time only)
Section 6.	-	(DOA)
Section 7.	17,000	
Section 8.	14,000	
Section 9.	-	(DC&ED)
Section 10.	-	(DC&ED)
Section 11.	-	(DC&ED)
Section 12.	-	(Time only)
Section 13.	-	(Impractical to estimate)
Section 14.	-	(Impractical to estimate)
Section 15.	0	
Section 16		
AS 36.30.050(d)	-	(See section 7)
AS 36.30.362	1,000	
AS 36.30.380	85,000	
Section 17.	-	(Effective date
	<u>\$136,000**</u>	

** \$85,000 would be assumed to be in the Capital Budget the remaining \$51,000 would be in the Operating Budget.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____
 Revision Date: _____
 Title: An Act relating to state
procurement practices
 Sponsor: Governor
 Requestor: _____

Bill Version: 773-87-0146
 Publish Date: _____

Agency Affected: Comm. & Econ. Dev.
 BRU: Advocates

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Becky Bear, Information Officer Phone: 465-2504
 Division: Administrative Services Date: April 14, 1987

Approved by Commissioner: *Anthony Smith*, Commissioner Date: April 14, 1987
 Agency: Department of Commerce and Economic Development

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

LAW LOG #773-87-0146

Bill-Version: _____

Publish Date: _____

REQUEST _____

Revision Date: _____

Title: An Act Relating to State

Procurement Practices and Procedures

and Providing Effective Date.

Sponsor: Rules Committee by Request

of the Governor

Requestor: _____

Agency Affected: Administration

BRU: General Services & Supply

Components: Purchasing

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS:

N/A

Prepared By: Robert J. Link *Robert J. Link*
Division: General Services & Supply

Phone: 465-2250

Date: April 6, 1987

Approved by Commissioner: Garrey Peska *Garrey Peska*
Agency: Department of Administration

Date: 4/7/87

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

DEPARTMENT OF ADMINISTRATION COMMENTS

Section 36.30.050 (d). Small procurements have traditionally been secured by getting quotations from three or more vendors. This portion of the law would have two impacts. The first would be to require Department of Administration (DOA) to revise its bid list program to provide names on a rotating basis. The estimated cost to revise the existing is \$20,000. The second requirement would be that departments use the names provided. That would be fine if the purchaser were in an office with computer accessibility. Numerous offices do not have computer accessibility. Additionally the requirement to contact vendors does not take into account the vendor's location or real interest in the specific procurement. A perhaps exaggerated example would be a Department of Fish and Game employee in Soldotna calling the Anchorage office to get the names of three vendors who turn out to be located in Nome, Ketchikan, and Haines. The purchaser would have to make three long-distance telephone calls to get quotations. Since they would be allowed to secure additional quotations the purchaser would probably get a local quotation which would turn out to be the low cost bid.

Section 36.30.140 (a). This requires the presence of a witness during bid openings. Many bid openings have public attendance but numerous have no attendance. In cases where there was no attendance we would have to assign an employee to be witness. We estimate it would take over several hundred staff hours per year to provide witnesses.

Section 36.30.300. The existing statute allows sole source procurements under very restrictive circumstances. The State needs a method to procure which is broader than sole source but does not require all the details of a competitive sealed process. The substitute language provides broader purchasing capability. The impact of not adding this section is that we would have to write significantly more bids with our reduced staff. This section is the most work intensive of the entire statute.

Section 36.30.320 (e). This section would require procurement officers wishing to make a small procurement to contact DOA for a listing of people to call. This is the second half of 36.30.050 (d).

Section 36.30.360 (a). This requires a written determination. No written determinations of responsibility have ever been used. It would add time and complexity to the bidding process.

Section 36.30.362. This requires the State to provide a superfluous written statement. Bids are awarded to low responsive bidder even if they are located outside. A written statement explaining the award accomplishes nothing.

Section 36.30.390 (b). Another superfluous written determination is required.

Section 36.30.460 (i). Another superfluous written determination.

Section 36.30.540 (4),(5). This requires us to make listings of all procurements made instate and out-of-state.

Section 36.30.560-620. Protest Procedure. The existing procedure is lengthy and complex. The substitute deletes the procurement officer level of protest and has all appeals go to the commissioner. Additionally the appeals are limited to those of the award. The appeal before a bid is opened is deleted. This is an attempt to simplify the process.

Section 36.30.860. Hearing Officer advises that this adds nothing to the process.

DEPARTMENT OF ADMINISTRATION REVISIONS

Section 36.30.050. (d) [THE LISTS SHALL BE USED IN PROVIDING NOTICE OF INTENT TO MAKE SMALL PROCUREMENTS TO ALASKA BIDDERS AS DEFINED UNDER AS 36.30.170,c). A PROCUREMENT OFFICER WHO INTENDS TO MAKE A PROCUREMENT UNDER AS 36.30.320 SHALL REQUEST NAMES FROM THE DEPARTMENT AND THE DEPARTMENT SHALL FURNISH NAMES OF ALASKAN BIDDERS ON A ROTATING BASIS FROM THE LIST IN RESPONSE TO EACH REQUEST.]

Section 36.30.140. BID OPENING. The procurement officer shall open bids publicly [IN THE PRESENCE OF ONE OR MORE WITNESSES] at the time and place designated in the invitation to bid.

Section 36.30.305. LIMITED COMPETITION PROCUREMENTS. (a) A contract may be awarded for supplies, services, professional services or construction without competitive sealed bidding or competitive sealed proposals in accordance with regulations adopted by the commissioner of Administration. A contract may be awarded under this section only when the commissioner of Administration, or for construction contracts or procurements for the State equipment fleet, the commissioner of Transportation and Public Facilities, determines in writing that a situation exists that makes competitive sealed bidding or competitive sealed proposals impractical or contrary to the public interest. Procurements under this section shall be made with competition that is practicable under the circumstance. The authority to make a determination required by this section may not be delegated.

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

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

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

Section 36.30.320(e). The procurement officer shall give adequate public notice of intent to make a procurement under this section in accordance with regulations adopted by the commissioner. [NOTICES SHALL ALSO BE PROVIDED TO THOSE ALASKA BIDDERS DESIGNATED BY THE COMMISSIONER UNDER AS 36.30.050.]

Section 36.30.360 DETERMINATION OF RESPONSIBILITY. (a) A [WRITTEN] determination of responsibility of a bidder or offeror shall be made by the procurement officer in accordance with regulations adopted by the commissioner.

Section 36.30.362 [DETERMINATION TO AWARD A CONTRACT TO A NONRESIDENT. IF THE PROCUREMENT OFFICER AWARDS A CONTRACT TO A PERSON WHO DOES NOT RESIDE OR MAINTAIN A PLACE OF BUSINESS IN THE STATE AND IF THE SUPPLIES, SERVICES, PROFESSIONAL SERVICES, OR CONSTRUCTION THAT IS THE SUBJECT OF THE CONTRACT COULD HAVE BEEN OBTAINED FROM SOURCES IN THE STATE, THE PROCUREMENT OFFICER SHALL ISSUE A WRITTEN STATEMENT EXPLAINING THE BASIS OF THE AWARD. THE STATEMENT REQUIRED UNDER THIS SECTION SHALL BE KEPT IN THE CONTRACT FILE.

Section 36.30.390 (b) Before using a multi-term contract, the procurement officer shall determine [IN WRITING] that

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

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

Section 36.30.460 MODIFICATION OF STANDARD CLAUSES. The procurement officer or the head of a contracting agency may vary the clauses adopted under 36.30.430 for inclusion in a particular state contract if [THE

(1) VARIATIONS ARE SUPPORTED BY A WRITTEN DETERMINATION THAT STATES THE CIRCUMSTANCES JUSTIFYING THE VARIATION: AND

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

Section 36.30.540 [(4) A LIST OF PROCUREMENTS MADE UNDER THIS CHAPTER FROM OUT-OF-STATE SOURCES DURING THE PREVIOUS TWO FISCAL YEARS TOGETHER WITH THE TOTAL NUMBER OF PROCUREMENT CONTRACTS ENTERED INTO DURING THAT PERIOD WITH OUT-OF-STATE CONTRACTORS AND THE TOTAL VALUE OF THESE CONTRACTS; THIS PARAGRAPH DOES NOT APPLY TO PROCUREMENTS MADE UNDER AS 36.30.320; AND

(5) A LIST OF PROCUREMENTS MADE UNDER THIS CHAPTER FROM STATE SOURCES DURING THE PREVIOUS TWO FISCAL YEARS TOGETHER WITH THE TOTAL NUMBER OF PROCUREMENT CONTRACTS ENTERED INTO DURING THAT PERIOD WITH STATE CONTRACTORS AND THE TOTAL VALUE OF THESE CONTRACTS; THIS PARAGRAPH DOES NOT APPLY TO PROCUREMENTS MADE UNDER AS 36.30.320.]

Section 6.30.560 - 36.30.620(b). Repeal and replace with:

Section 36.30.560. FILING OF AN APPEAL. An interested party may appeal the proposed award of a contract for supplies, services, professional services, or construction by an agency. The protest shall be filed with the Commissioner of Department of Administration or Department of Transportation and Public Facilities and all interested parties as appropriate in writing and must include the following information:

- (1) the name, address, and telephone number of the protester;
- (2) the signature of the protester or the protester's representative;
- (3) identification of the contracting agency and the solicitation or contract as issue;
- (4) a detailed statement and explanation of the legal and factual grounds of the appeal, including copies of relevant documents; and

(5) the form of relief requested.

Section 36.30.565. TIME FOR FILING AN APPEAL.

An appeal based upon alleged improprieties in award of a contract involving competitive sealed bidding or competitive sealed proposals shall be received ten days after a notice of intent to award the contract is issued by the procurement officer.

Section 36.30.610. The Commissioner will, within 15 days of receipt of an appeal notify the appellant of the acceptance or rejection of the appeal and if rejected, the reasons for rejection.

The commissioner of the Department of Administration or the commissioner of the Department of Transportation and Public Facilities, as appropriate, shall reject an appeal if it is determined that the appeal is:

- (a) untimely under AS 36.30.590(a);
- (b) does not otherwise meet the requirement of an appeal;
- (c) the appeal does not present a prima facie case for acceptance on its merits;
- (d) the commissioner of the Department of Administration or the commissioner of the Department of Transportation and Public Facilities, as

appropriate, may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.

Section 36.30.615. HEARING ON PROTEST APPEAL. A hearing on an appeal shall be conducted in accordance with AS 36.30.670 and regulations adopted by the commissioner.

Section 36.30.620. CONTRACT CONTROVERSIES.

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

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

Sec. 36.30.860 [SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE.
UNLESS DISPLACED BY THE PARTICULAR PROVISIONS OF THIS CHAPTER, THE PRINCIPLES
OF LAW AND EQUITY, INCLUDING THE UNIFORM COMMERCIAL CODE (AS 45.01 -
AS 45.09), THE LAW MERCHANT, AND LAW RELATIVE TO CAPACITY TO CONTRACT, AGENCY,
FRAUD, MISREPRESENTATION, DURESS, COERCION, MISTAKE, OR BANKRUPTCY SHALL
SUPPLEMENT THE PROVISIONS OF THIS CHAPTER.]