

2/3/89

**Security
Contracts**



Official Business

Alaska State Legislature

House of Representatives

Committee on Rules

P. O. Box V
Juneau, Alaska 99811

Phone:
(907) 465-3764
465-3765

MEMORANDUM

February 3, 1989

TO: House Rules Committee Members

FROM: Representative Ben Grussendorf, Chairman
House Rules Committee

SUBJECT: HOUSE RULES COMMITTEE MEETING -
Securities Contracts

Current procurement procedures require approval of the sole source justification for the security contracts and approval of an expenditure amount which is over \$5,000.

I have attached the sole source justification for the two security contracts which require the approval of a majority of the House Rules Committee.

ATTACHMENT (1)

SOLE SOURCE JUSTIFICATION

The House Rules Committee has decided to contract with Terry Hanson and David Friedrichs to provide armed security services for the First Session of the Sixteenth Legislative Session (with the option to extend during session extensions and special sessions) on the basis of Section 040 of the Legislative Procurement Procedures.

The bases for this decision are:

- 1) Terry Hanson and David Friedrichs have the qualifications necessary to carry a concealed firearm and receive a special police commission.
- 2) The Department of Public Safety indicates that they are the only two persons who currently hold special police commissions in Juneau. A contractor must have a special police commission in order to provide armed security services. The minimum qualifications necessary to qualify for a special police commission include a minimum of 320 hours of police schooling and an additional 40 hours of firearms training.
- 3) Armed security services provided by Terry Hanson and David Friedrichs would be acceptable to the Department of Public Safety.
- 4) Terry Hanson and David Friedrichs provided armed security services to the Second Session of the Fifteenth Alaska Legislature and are therefore familiar with the requirements of the services to be performed.

CONTRACT BETWEEN

HOUSE RULES COMMITTEE

AND

DAVID E. FRIEDRICHS
9447 Patricia Place
Juneau, AK 99801

CONTRACT AMOUNT: \$10,240
(Excluding Extensions)

The parties to this agreement are the House Rules Committee, hereinafter referred to as the "Agency," and David Friedrichs, hereinafter referred to as the "Contractor."

THE PURPOSE OF THIS CONTRACT is to provide the Legislature with armed security services.

IT IS MUTUALLY AGREED THAT:

CLAUSE I - STATEMENT OF WORK

The Contractor shall provide armed security services for the Legislature as directed by the Project Director.

CLAUSE II - PERIOD AND DATES OF PERFORMANCE AND TERMINATION

- (A) The work under this contract shall be performed from February 13, 1989 through May 9, 1989.
- (B) The contract may be extended on a day-to-day basis for any extension of the First (regular) Session of the Sixteenth Legislature or any special session called before the convening of the Second (regular) Session of the Sixteenth Legislature.
- (C) This contract may be terminated by the Agency upon delivery of written notice to the Contractor.

CLAUSE III - PROJECT DIRECTOR

The Project Director shall be Malcolm McGregor, Building Manager.

CLAUSE IV - COMPENSATION AND METHOD OF PAYMENT

- (A) For the work specified in this contract the Contractor shall be compensated at the rate of One Hundred Twenty and No/100 Dollars (\$120.00) per day.
- (B) Payments under this contract shall be made by the Agency within 90 days after receipt of a proper billing. If a payment is not made within this period, the Agency shall pay interest on the unpaid balance of the billing at the rate of 1.5 percent per month from, and including, the 91st day through the date payment is made. A payment is considered made on the date it is mailed or personally delivered to the Contractor.
- (C) Billings must be approved by the Project Director.
- (D) Total payments under this contract may not exceed Ten Thousand Two Hundred Forty and No/100 Dollars (\$10,240.00), unless the contract is extended under Clause II(B).

CLAUSE V - EXPENSES

The uniform for the Contractor will be supplied by the Agency at no cost to the Contractor. The firearm to be carried by the Contractor will be supplied by the Contractor at no cost to the Agency.

CLAUSE VI - RECORDS. DOCUMENTS. AUDITS

The Contractor shall accurately maintain those records that are required by the Project Director. The records are subject to inspection by the Agency or the Project Director at all reasonable times. All documents, reports and writings generated as a consequence of work done under this contract shall become the property of the Agency and, upon completion of the work or at the termination of this contract, shall be delivered to the Project Director.

CLAUSE VII - INDEMNIFICATION

The Contractor shall indemnify, save harmless, and defend the Agency, and the Agency's officer's, agents and employees from liability for any claim, including costs arising from the claim, arising from Contractor's negligence in the performance of Contractor's obligations under this contract.

CLAUSE VIII - ASSIGNMENT

Assignment of this contract is subject to sec. 160 of the Legislature's Procurement Procedures.

CLAUSE IX - CERTIFICATION

Execution of this contract was authorized by a majority of the members of the House Rules Committee on February 3, 1989. The sole source justification for this contract was authorized by the House Rules Committee on February 3, 1989. Execution of this contract by the chair of the Committee constitutes the signed authorization required by Procurement Procedures sec. 150 (b) and sec. 040; the committee members who authorized the contract delegated their sec. 150 and sec. 040 signature responsibilities to the chair on February 3, 1989.

Execution of this contract by the Executive Director or his designee hereby constitutes a certification that funds have been appropriated and encumbered for the amount of this contract, excluding any extensions.

CLAUSE X - MODIFICATION AND PREVIOUS AGREEMENT

This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind either of the parties to this agreement. This contract may not be modified unless in writing and signed by the parties to this contract.

IN WITNESS WHEREOF, the parties have executed this contract on the dates indicated below.

CONTRACTOR

David Friedrichs 2-3-89
DAVID FRIEDRICHS DATE
Soc. Sec. No.: 535-34-4892
Bus. Lic. No.:

HOUSE RULES COMMITTEE

Ben Grussendorf 1/23/89
REP. BEN GRUSSENDORF DATE
Chair, House Rules Committee
Procurement Officer

ACCEPTED:

Malcolm McGregor 1/23/89
MALCOLM MCGREGOR DATE
Building Manager, Legislative
Affairs Agency
Project Director

CERTIFYING AUTHORITY

Warren W. Endicott 2/3/89
WARREN W. ENDICOTT DATE
Executive Director
Legislative Affairs Agency

APPROVED AS TO FORM

Meresa L. Bannister
LEGAL COUNSEL DATE 1-20-89

SOLE SOURCE JUSTIFICATION

The House Rules Committee has decided to contract with Terry Hanson and David Friedrichs to provide armed security services for the First Session of the Sixteenth Legislative Session (with the option to extend during session extensions and special sessions) on the basis of Section 040 of the Legislative Procurement Procedures.

The bases for this decision are:

- 1) Terry Hanson and David Friedrichs have the qualifications necessary to carry a concealed firearm and receive a special police commission.
- 2) The Department of Public Safety indicates that they are the only two persons who currently hold special police commissions in Juneau. A contractor must have a special police commission in order to provide armed security services. The minimum qualifications necessary to qualify for a special police commission include a minimum of 320 hours of police schooling and an additional 40 hours of firearms training.
- 3) Armed security services provided by Terry Hanson and David Friedrichs would be acceptable to the Department of Public Safety.
- 4) Terry Hanson and David Friedrichs provided armed security services to the Second Session of the Fifteenth Alaska Legislature and are therefore familiar with the requirements of the services to be performed.

CONTRACT BETWEEN

HOUSE RULES COMMITTEE

AND

TERRY HANSON
P.O. Box 32304
Juneau, AK 99803

CONTRACT AMOUNT: \$10,240
(Excluding Extensions)

The parties to this agreement are the House Rules Committee, hereinafter referred to as the "Agency," and Terry Hanson, hereinafter referred to as the "Contractor."

THE PURPOSE OF THIS CONTRACT is to provide the Legislature with armed security services.

IT IS MUTUALLY AGREED THAT:

CLAUSE I - STATEMENT OF WORK

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- (A) The work under this contract shall be performed from February 13, 1989 through May 9, 1989.
- (B) The contract may be extended on a day-to-day basis for any extension of the First (regular) Session of the Sixteenth Legislature or any special session called before the convening of the Second (regular) Session of the Sixteenth Legislature.
- (C) This contract may be terminated by the Agency upon delivery of written notice to the Contractor.

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The Project Director shall be Malcolm McGregor, Building Manager.

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- (A) For the work specified in this contract the Contractor shall be compensated at the rate of One Hundred Twenty and No/100 Dollars (\$120.00) per day.
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The Contractor shall accurately maintain those records that are required by the Project Director. The records are subject to inspection by the Agency or the Project Director at all reasonable times. All documents, reports and writings generated as a consequence of work done under this contract shall become the property of the Agency and, upon completion of the work or at the termination of this contract, shall be delivered to the Project Director.

CLAUSE VII - INDEMNIFICATION

The Contractor shall indemnify, save harmless, and defend the Agency, and the Agency's officer's, agents and employees from liability for any claim, including costs arising from the claim, arising from Contractor's negligence in the performance of Contractor's obligations under this contract.

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Assignment of this contract is subject to sec. 160 of the Legislature's Procurement Procedures.

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Execution of this contract by the Executive Director or his designee hereby constitutes a certification that funds have been appropriated and encumbered for the amount of this contract, excluding any extensions.

CLAUSE X - MODIFICATION AND PREVIOUS AGREEMENT

This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind either of the parties to this agreement. This contract may not be modified unless in writing and signed by the parties to this contract.

IN WITNESS WHEREOF, the parties have executed this contract on the dates indicated below.

CONTRACTOR

Terry P. Hanson
TERRY HANSON DATE
Soc. Sec. No.: 387-30-2585
Bus. Lic. No.: 104801

HOUSE RULES COMMITTEE

Ben Grussendorf 1/23/89
REP. BEN GRUSSENDORF DATE
Chair, House Rules Committee
Procurement Officer

ACCEPTED:

Malcolm McGregor 1/22/89
MALCOLM MCGREGOR DATE
Building Manager, Legislative
Affairs Agency
Project Director

CERTIFYING AUTHORITY

Warren W. Endicott 2/3/89
WARREN W. ENDICOTT DATE
Executive Director
Legislative Affairs Agency

APPROVED AS TO FORM

Theresa L. Bannister
LEGAL COUNSEL DATE 1-20-89

SOLE SOURCE JUSTIFICATION

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The bases for this decision are:

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- 3) Armed security services provided by Terry Hanson and David Friedrichs would be acceptable to the Department of Public Safety.
- 4) Terry Hanson and David Friedrichs provided armed security services to the Second Session of the Fifteenth Alaska Legislature and are therefore familiar with the requirements of the services to be performed.

HOUSE RULES COMMITTEE MEETING
FRIDAY, FEBRUARY 3, 1989
8:30 A.M.

HOUSE RULES COMMITTEE MEMBERS (INDICATE PRESENCE/ABSENCE)

GRUSSENDORF (CHAIR)
DAVIDSON (VICE-CHAIR)
CATO
COTTEN
DONLEY
MARTIN
TAYLOR

AGENDA: SECURITY CONTRACTS - WHICH PROVIDE THE LEGISLATURE WITH ARMED SECURITY SERVICES. *David Friedrichs*
Terry Hansen

MOTION: MOVE THE RULES COMMITTEE MEMBERS DELEGATE THEIR SIGNATURE AUTHORITY TO REP. GRUSSENDORF, HOUSE RULES CHAIRMAN, TO SIGN UNDER THE PROCUREMENT PROCEDURES SECTION 150B AND SECTION 040 FOR THE CONTRACTS APPROVED BY THE HOUSE RULES COMMITTEE THIS DAY.

SOLE SOURCE JUSTIFICATION ATTACHED TO COVER MEMO IN PACKETS.
CONTRACT RUNS FROM FEBRUARY 13, 1989 THRU MAY 9, 1989.

CONTRACT MAY BE EXTENDED ON DAY-TO-DAY BASIS FOR ANY EXTENSION OF THIS 1ST SESSION 16TH LEGISLATURE, OR ANY SPECIAL SESSION CALLED BEFORE THE CONVENING OF 2ND SESSION.

CONTRACT MAY BE TERMINATED BY AGENCY UPON DELIVERY OF WRITTEN NOTICE TO CONTRACTOR.

CONTRACTOR PAID \$120 PER DAY.

EACH CONTRACT AMOUNT: \$10,240 EXCLUDING EXTENSIONS.

TIME MEETING ADJOURNED:

As amended January 25, 1989

PROCUREMENT PROCEDURES

* Section 1. The Administrative Services Policy and Procedures Manual is amended by adding new sections to read:

Sec. 010. PURPOSE. The purpose of these procurement procedures is to adopt competitive procurement principles applicable to the Legislature that ensure the fair and equitable treatment of all persons who deal with the procurement system of the Legislature.

Sec. 020. APPLICATION. (a) These procedures apply to all contracts entered into after December 31, 1987, for services, professional services, supplies, or construction to be provided to a legislative agency or legislative committee except:

- (1) employment contracts;
- (2) contracts that do not exceed \$5,000; and
- (3) contracts for utilities; in this paragraph, "utilities" includes water, heat, sewer, telephone services and garbage.

(b) Only section 150(b) of these procedures applies to contracts under which the required services are to be provided by a municipality in the state or an agency of the state, including the University of Alaska, a department, or a public corporation.

Sec. 030. NOTICE OF SOLICITATIONS. (a) A solicitation to procure services, professional services, supplies, or construction under a contract must be extended to a sufficient number of firms or persons to insure that public interest in competition is adequately served. Bids or proposals from at least six firms or persons listed on the appropriate contractor list maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be solicited for contracts equal to or greater than \$100,000. Bids or proposals from at least three firms or persons listed on the appropriate contractor list maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be solicited for contracts of less than \$100,000. Lists of contractors maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be used in soliciting bids or proposals under this section.

(b) Advertising in a medium that will reasonably bring the invitation or proposal to the attention of persons able to provide the required services, professional services, supplies, or construction may be substituted for direct solicitation or used jointly with direct solicitation of bids or proposals.

(c) The procurement officer shall give notice of the solicitation at least 21 days before the date for the opening of bids or proposals unless the officer makes a determination in writing that a shorter notice period is necessary for a particular solicitation.

(d) If an insufficient number of firms or persons have the expertise required to enable an agency to solicit the number of bids or proposals required under (a) of this section, the agency shall solicit bids or proposals

(1) from each person or firm listed on the appropriate contractor list that appears to possess the required expertise;

(2) from any person or firm with the required expertise of which the contracting agency or committee may be aware.

(e) A legislator or the procurement officer for a legislative committee may request the Legislative Affairs Agency to carry out the solicitation responsibilities under this section.

Sec. 040. EXEMPTIONS. (a) A contract is exempt from the solicitation requirements of sec. 030 of these procedures if

(1) there is a single source of the required services or supplies;

(2) one person or firm can clearly provide the required services more satisfactorily because of the person's or firm's prior work; or

(3) the contract is with a contractor that the Department of Administration has selected by competitive bidding to provide to state agencies the service, product, or construction that is the subject of the contract.

(b) An exemption in (a)(1) - (2) of this section applies only if it is approved by the procurement officer, and in the case of a contract for a legislative committee, by a majority of the committee members. A written justification signed by the procurement officer that details the reasons for the exemption shall be attached to the contract and filed under sec. 200 of these procedures as a public record. The written justification shall also be

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signed by the committee members that approve the exemption in the case of a contract for a legislative committee. A contract proposed for award under the exemptions in (a)(1) - (2) of this section is not valid unless the required approval is received.

(c) Sections 142, 147, and 210 of these procedures do not apply to a contract that is exempt under (a)(3) of this section.

Sec. 045. SMALL PROCUREMENTS. (a) Professional services contracts that do not exceed \$25,000 are small procurements and are not subject to the solicitation methods set forth in sec. 030 of these procedures. Small procurements are subject to the provisions of sec. 147 of these procedures. A small procurement that is made by a solicitation of bids is subject to the Alaska bidder preference set out in sec. 145(c) of these procedures. In making a small procurement, the procurement officer shall take steps that are reasonable under the circumstances to ensure that adequate competition is obtained.

(b) A contract awarded as a small procurement under this section may be amended so that the contract amount exceeds the amounts set out in (a) of this section, without complying with the solicitation methods set forth in sec. 030 of these procedures. However, a contract may not be artificially divided to avoid the solicitation methods set forth in sec. 030 of these procedures.

Sec. 050. ONLY ONE BID OR PROPOSAL RECEIVED. (a) If only one responsive bid is received in response to an invitation for bids, including multi-step bidding, an award may be made to the single bidder if the procurement officer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise the bid may be rejected and:

(1) new bids or offers may be solicited;

(2) the proposed procurement may be cancelled; or

(3) if the procurement officer determines in writing that the need for the supply or service continues, but that the price of the one bid is not fair and reasonable and there is not time for resolicitation or resolicitation would likely be futile, the procurement may then be conducted as a sole source procurement under sec. 040 of these procedures.

(b) If only one proposal is received in response to a request for proposals, the procurement officer may, as the officer deems appropriate, make an award, cancel the pro-

curement, or if time permits, resolicit for the purpose of obtaining competitive sealed proposals.

Sec. 070. BID AND PERFORMANCE BONDS FOR SUPPLY CONTRACTS OR SERVICE CONTRACTS. Bid and performance bonds or other security may be required for supply contracts or service contracts as the procurement officer deems advisable to protect the interest of the agency. These requirements shall be set forth in the solicitation. Bid or performance bonds may not be used as a substitute for a determination of bidder or offeror responsibility.

Sec. 080. CONDITIONING BIDS OR PROPOSALS UPON OTHER AWARDS NOT ACCEPTABLE. A bid or proposal that is conditioned upon receiving award of both the particular contract being solicited and another legislative contract is nonresponsive and not acceptable.

Sec. 090. DETERMINATION OF TERMS AND CONDITIONS. The procurement officer is authorized to determine the provisions, terms and conditions of solicitations and contracts, provided the provisions, terms and conditions are not contrary to statutory or other requirements governing the procurement.

Sec. 100. UNSOLICITED OFFERS. (a) An unsolicited offer is an offer other than one submitted in response to a solicitation.

(b) The procurement officer shall consider an unsolicited offer as provided in this section. To be considered for evaluation an unsolicited offer:

- (1) must be in writing;
- (2) must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the agency;
- (3) must be unique or innovative;
- (4) must demonstrate that the proprietary character of the offering warrants consideration of the use of sole source procurement; and
- (5) may be subject to testing under terms and conditions specified by the agency.

(c) The unsolicited offer must be evaluated to determine its use to the agency and whether it would be to the agency's advantage to enter into a contract based on the offer.

(d) A written request for confidentiality of technical data and trade secrets contained in an unsolicited offer that is made in writing shall be honored. If an award is

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made, confidentiality of data shall be agreed upon by the parties and governed by the provisions of the contract. Confidential data not contained in the contract are not open to public inspection under sec. 200 of these procedures. If agreement cannot be reached on confidentiality, the agency may reject the unsolicited offer.

Sec. 110. POLICY FOR CANCELLATION OF SOLICITATIONS. Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only. The solicitation must give the status of funding for the procurement. Preparing and distributing a solicitation requires the expenditure of state time and funds. Businesses also incur expense in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation may be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the agency's best interest.

Sec. 120. CANCELLATION OF SOLICITATION: REJECTION OF ALL BIDS OR PROPOSALS. (a) A solicitation issued by an agency must state that the solicitation may be cancelled as provided in this section.

(b) Before opening, a solicitation may be cancelled in whole or in part when the procurement officer determines in writing that cancellation is in the agency's best interest. Reasons for cancellation include:

(1) the agency no longer requires the supplies, services, or construction;

(2) the agency no longer can reasonably expect to fund the procurement; or

(3) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(c) When a solicitation is cancelled before opening, notice of cancellation shall be sent to all businesses solicited. The notice of cancellation must:

(1) identify the solicitation;

(2) briefly explain the reason for cancellation;
and

(3) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar supplies, services, professional services, or construction.

(d) After opening but before award, all bids or proposals may be rejected in whole or in part when the procurement officer determines in writing that rejection is in the agency's best interest. Reasons for rejection include:

(1) the supplies, services, professional services, or construction being procured are no longer required;

(2) ambiguous or otherwise inadequate specifications were part of the solicitation;

(3) the solicitation did not provide for consideration of all factors of significance to the agency;

(4) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

(5) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or

(6) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(e) A notice of rejection that includes the information required under (c) of this section shall be sent to all businesses that submitted bids or proposals.

(f) In this section, "opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

(g) The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

Sec. 125. BID OR PROPOSAL PREPARATION COSTS. If for any reason a contract is not awarded after a solicitation, an agency of the legislature may not be held liable for bid or proposal preparation costs.

Sec. 130. REJECTION OF INDIVIDUAL BIDS OR PROPOSALS. (a) A solicitation issued by an agency shall provide that a bid or proposal may be rejected in whole or in part when in the best interest of the agency as provided in this section.

(b) Reasons for rejecting a bid submitted in competitive sealed bidding or in the second phase of multi-step sealed bidding include:

(1) the business that submitted the bid is nonresponsible as determined under sec. 210 of these procedures;

(2) the bid is not responsive, that is, it does not conform in all material respects to the invitation for bids;

(3) the supply, service, professional service, or construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the invitation for bids.

(c) In this section "proposal" means an offer submitted in response to a solicitation other than a bid. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and the stated requirement in the solicitation may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or part of a proposal. Reasons for rejecting proposals include:

(1) the business that submitted the proposal is nonresponsible as determined under sec. 210 of these procedures;

(2) the proposal ultimately fails to meet the announced requirements of the agency in a material respect; or

(3) the proposed price is clearly unreasonable.

(d) Upon request, unsuccessful bidders or offerors shall be advised of the reasons for the rejection.

Sec. 140. ALL-OR-NONE BIDS OR PROPOSALS. Unless a solicitation permits a bid or proposal to limit acceptance to the entire bid or proposal offering, a bid or proposal so limited is nonresponsive. If the solicitation permits such a limitation, the agency may not reject part of the bid or proposal and award on the remainder.

Sec. 142. ALASKA PRODUCT PREFERENCE. In a contract involving the purchase of supplies, including a construction contract, only products manufactured, produced, or harvested in the state may be purchased if the supplies are competitively priced, available, and of like quality compared with products manufactured, produced, or harvested outside the state.

Sec. 145. CONTRACT AWARD. (a) Except as provided in (c) of this section, the procurement officer shall award a contract based on a solicitation of bids with reasonable promptness to the lowest responsible and responsive bidder whose bid

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conforms in all material respects to the requirements and criteria set out in the solicitation.

(b) In this section, "Alaska bidder" means a person who

(1) holds a current Alaska business license;

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

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

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

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

(c) The procurement officer shall award a contract based on a solicitation of bids to the lowest responsible and responsive Alaska bidder if the bid is not more than five percent higher than the lowest nonresident bidder's.

(d) The procurement officer shall award a contract based on a solicitation of proposals with reasonable promptness to the responsible and responsive offeror whose proposal is determined in writing by the procurement officer to be the most advantageous to the state after taking into consideration price and the evaluation factors set out in the request for proposals. Other factors and criteria may not be used in the evaluation. When determining whether a proposal is advantageous to the state, the procurement officer shall consider whether the offeror qualifies as an Alaska bidder under (b) of this section.

Sec. 147. 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.

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Sec. 150. PREPARATION AND AWARD OF CONTRACTS. (a) A contract must be self-contained and written with care and thoroughness.

(b) An authorization signed by the persons required to authorize a contract or amendment to a contract shall be attached to the contract or amendment and filed under sec. 200 of these procedures. Contracts and amendments to contracts must be authorized as follows:

(1) contracts involving House operating funds must be authorized by the Speaker of the House and a majority of the members of the Legislative Council in a meeting, except that contracts for legal services need be authorized by the Speaker only;

(2) contracts involving Senate operating funds must be authorized by the President of the Senate and a majority of the members of the Legislative Council in a meeting, except that contracts for legal services need be authorized by the President only;

(3) contracts of a legislative committee must be authorized by a majority of the members of the committee in a meeting;

(4) contracts of the Legislative Affairs Agency must be authorized by a majority of the members of the Legislative Council in a meeting of the Legislative Council;

(5) contracts of the Legislative Finance Division and the Legislative Audit Division must be authorized by a majority of the members of the Legislative Budget and Audit Committee in a meeting of the committee;

(6) contracts of the House Research Agency and the Senate Advisory Council and any research agency established by the legislature must be authorized by a majority of the members of the Legislative Council in a meeting, and by the Speaker of the House for the House Research Agency and the President of the Senate for the Senate Advisory Council.

(c) A contract must be executed by the provider of the service, professional service, supply, or construction, and the procurement officer and shall be approved as to form by legislative legal counsel.

(d) A contract must contain

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

(2) the date for the work to begin or the supplies to be delivered;

(3) the date by which the work must be completed;

(4) a description of the services to be performed or the supplies to be procured under the contract; and

(5) a certification that sufficient money is available in an appropriation to be encumbered for the amount of the contract.

(e) Subsections (a), (c), and (d) of this section do not apply when a State of Alaska delivery order form is used.

Sec. 160. NOVATION OR CHANGE OF NAME. (a) A legislative contract is not transferable, or otherwise assignable, without the written consent of the procurement officer, and in the case of a contract for a committee, a majority of the members of that committee. However, a contractor may assign money receivable under a contract after due notice to the procurement officer.

(b) When it is in the best interest of the agency, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee must agree that:

(1) the transferee assume all of the transferor's obligations;

(2) the transferor waives all rights under the contract as against the agency; and

(3) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

(c) When a contractor requests to change the name in which it holds a contract with an agency, the procurement officer responsible for the contract shall, upon receipt of a document indicating a change of name, enter into an agreement with the requesting contractor to effect the change of name. The agreement changing the name must specifically indicate that no other terms and conditions of the contract are thereby changed.

Sec. 170. CONTRACTING FOR INSTALLMENT PURCHASE PAYMENTS, INCLUDING INTEREST. Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints and must be justified in

writing by the procurement officer. The justification shall be attached to the contract and filed under sec. 200 of these procedures. An installment payment agreement may not be used unless a provision for installment payments is included in the solicitation document.

Sec. 180. STANDARD OVERHEAD RATE. (a) If the University of Alaska or any other state agency has established an applicable standard overhead rate, the standard overhead rate shall be included in a proposal for a contract submitted by the University of Alaska or the state agency.

(b) In this section, "standard overhead rate" means a charge established by the University of Alaska or a state agency that is designed to compensate the University of Alaska or the state agency for administration and support services incidentally provided with the services.

Sec. 190. EVALUATION. If a services or professional services contract is awarded by a legislative committee, the committee or the procurement officer shall provide a written evaluation of the services provided under the contract before final payment on the contract may be made. The evaluation shall be filed under sec. 200 of these procedures.

Sec. 200. PROCUREMENT FILES. (a) A copy of each solicitation or unsolicited offer that does not result in a contract together with relevant documents shall be filed, as is appropriate, with the Legislative Affairs Agency, the legislative finance division, or the legislative audit division. The invitation to bid or request for proposals and each bid or proposal submitted shall be filed with the filed contract copy unless the contract is one in which an invitation to bid or a request for proposals is not required. Except as otherwise provided in sec. 100 of these procedures, procurement files are open for public inspection.

(b) A contract for services provided to the legislative audit division in the preparation of an audit report does not have to be filed under (a) of this section until the audit report is released under AS 24.20.311.

Sec. 210. RESPONSIBILITY OF PROSPECTIVE CONTRACTORS. Before awarding a contract, the procurement officer must be satisfied that the prospective contractor is responsible. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination must be made part of the procurement file.

Sec. 220. STANDARDS OF RESPONSIBILITY. (a) Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:

(1) the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;

(2) a satisfactory record of performance;

(3) a satisfactory record of integrity;

(4) qualified legally to contract with the agency; and

(5) supplied all necessary information in connection with the inquiry concerning responsibility.

(b) The prospective contractor shall supply information requested by the procurement officer concerning the responsibility of the contractor. If the contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if the failure is unreasonable.

(c) The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(1) evidence that the contractor possesses the necessary items;

(2) acceptable plans to subcontract for the necessary items; or

(3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

Sec. 230. FILING OF A PROTEST. An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction by an agency. The protest shall be filed with the procurement officer in writing and 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 at issue;

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

(5) the form of relief requested.

Sec. 240. TIME FOR FILING A PROTEST (a) A protest based upon alleged improprieties in a solicitation involving competitive sealed bidding that are apparent before the bid opening shall be filed before the bid opening. A protest based on alleged improprieties in a solicitation involving competitive sealed proposals that are apparent

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

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

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

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

Sec. 250. NOTICE OF A PROTEST. The procurement officer shall immediately give notice of a protest filed under sec. 240 of these procedures to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

Sec. 260. STAY OF AWARD. If a protest is filed the award may be made unless the procurement officer of the contracting agency determines in writing that a

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

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

Sec. 270. DECISION BY THE PROCUREMENT OFFICER (a) The procurement officer of the contracting agency shall issue a written decision containing the basis of the decision within 14 days after a protest has been filed. A copy of the

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decision shall be furnished to the protester by certified mail or other method that provides evidence of receipt.

(b) The time for a decision may be extended up to 26 days for good cause by the Legislative Council. If an extension is granted, the procurement officer shall notify the protester in writing of the date the decision is due.

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

Sec. 280. PROTEST REMEDIES. (a) If the procurement officer sustains a protest in whole or in part, the procurement officer shall implement an appropriate remedy.

(b) In determining an appropriate remedy, the procurement officer shall consider the circumstances surrounding the solicitation or procurement including the seriousness of the procurement deficiencies, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to the agency and other impacts on the agency of a proposed remedy, and the urgency of the procurement to the welfare of the state.

Sec. 290. APPEAL ON A PROTEST. (a) An appeal from a decision of a procurement officer on a protest may be filed by the protester with the Legislative Council. An appeal shall be filed within five days after the decision is received by the protester. The protester shall file a copy of the appeal with the procurement officer.

(b) An appeal must contain the information required under sec. 230 of these procedures. In addition, the appeal must include

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

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

Sec. 300. NOTICE OF A PROTEST APPEAL. (a) The procurement officer shall immediately give notice of an appeal filed under sec. 290 of these procedures to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

(b) The Legislative Council shall, on request, furnish a copy of the appeal to a person notified under (a) of this section, except that confidential material shall be deleted from the copy.

Sec. 310. STAY OF AWARD DURING PROTEST APPEAL. If a protest appeal is filed before a contract is awarded and the award was stayed under sec. 260 of these procedures, the filing of the appeal automatically continues the stay until the Legislative Council makes a written determination that the award of the contract without further delay is necessary to protect substantial interests of the state.

Sec. 320. PROTEST REPORT. (a) The procurement officer of the contracting agency shall file a complete report on the protest and decision with the Legislative Council within seven days after a protest appeal is filed. The procurement officer shall furnish a copy of the report to the protester and to interested parties that have requested a copy of the appeal under sec. 300(b) of these procedures.

(b) The procurement officer may request an extension of time to prepare the protest report. The request must be in writing listing the reasons for the request. The Legislative Council shall respond to the request in writing. If an extension is granted, the Legislative Council shall list the reasons for granting the extension and indicate the date the protest report is due. The Legislative Council shall notify the protester in writing that the time for submission of the report has been extended and the date the report is due.

(c) The protester may file comments on the protest report with the Legislative Council within seven days after the report is received. The protester shall provide copies of the comments to the procurement officer and to interested parties that have requested a copy of the appeal under sec. 300(b) of these procedures.

(d) The protester may request an extension of time to prepare the comments on the protest report. The request must be in writing listing the reasons for the request. The Legislative Council shall respond to the request in writing. If an extension is granted, the Legislative Council shall list the reasons for granting the extension and indicate the date the comments are due. The Legislative Council shall notify the procurement officer in writing that the time for submission of the comments has been extended and the date the comments are due.

Sec. 330. DECISION WITHOUT HEARING. (a) The Legislative Council shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely under sec. 290 of these procedures.

(b) The Legislative Council may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.

(c) Within 15 days after receipt of a protest appeal the Legislative Council may adopt the decision of the procurement officer as the final decision without a hearing.

Sec. 340. HEARING ON PROTEST APPEAL. A hearing on a protest appeal shall be conducted in accordance with sec. 450 of these procedures.

Sec. 350. 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 these procedures 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 officer constitutes a waiver of the claim. Before issuing the decision the procurement officer shall review the facts relating to the controversy and obtain necessary assistance from legal, fiscal, and other advisors.

(c) The time for issuing a decision under (b) of this section may be extended for good cause by the Legislative Council if the controversy concerns an amount in excess of \$50,000. The procurement officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and of the date by which a decision shall be issued.

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

- (1) description of the controversy;
- (2) reference to the pertinent contract provisions;
- (3) statement of the agreed upon and disputed facts;
- (4) statement of reasons supporting the decision; and

(5) statement substantially as follows:

"This is the final decision of the procurement officer. This decision may be appealed to the Legislative Council. If you appeal, you must file a written notice of appeal with the Legislative Council within 14 days after you receive this decision."

(e) If a decision is not made by the date it is due, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor.

(f) If a controversy asserted by the Legislature concerning a contract awarded under this chapter cannot be resolved by agreement the matter shall be immediately referred to the Legislative Council.

Sec. 360. APPEAL ON A CONTRACT CONTROVERSY. (a) An appeal from a decision of the procurement officer on a contract controversy may be filed by the contractor with the Legislative Council. The appeal shall be filed within 14 days after the decision is received by the contractor. The contractor shall file a copy of the appeal with the procurement officer.

(b) An appeal shall contain a copy of the decision being appealed and identification of the factual or legal errors in the decision that form the basis for the appeal.

Sec. 370. HEARING ON A CONTRACT CONTROVERSY. (a) Except as provided in (b) of this section, a hearing shall be conducted according to sec. 450 of these procedures on a contract controversy appealed to the Legislative Council or referred to the Legislative Council under sec. 350(f) of these procedures.

(b) Within 15 days after receipt of an appeal on a contract controversy the Legislative Council may adopt the decision of the procurement officer as the final decision without a hearing.

Sec. 380. AUTHORITY TO DEBAR OR SUSPEND. (a) After consultation with the using agency and the attorney general and after a hearing conducted according to sec. 450 of these procedures the Legislative Council may debar a person for cause from consideration for award of contracts. Notice of a debarment hearing shall be provided in writing at least seven days before the hearing. The debarment may not be for a period of more than three years.

(b) The Legislative Council, after consultation with the using agency and the attorney general, may suspend a person from consideration for award of contracts if there is

probable cause for debarment and compelling reasons require suspension to protect state interests. The suspension may not be for a period exceeding three months.

Sec. 390. CAUSES FOR DEBARMENT OR SUSPENSION. The causes for debarment or suspension include the following:

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

(2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a state contractor;

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

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

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

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

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

(6) any violation of these procedures or other cause determined to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity.

Sec. 400. WRITTEN DETERMINATIONS. (a) The Legislative Council shall issue a written decision to debar or suspend. The decision must

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

(2) inform the debarred person of rights to judicial appeal or inform the suspended person of rights to administrative and judicial appeal.

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

Sec. 410. HEARING ON A SUSPENSION. (a) A person suspended under sec. 380 of these procedures is entitled to a hearing conducted according to sec. 450 of these procedures if the person files a written request for a hearing with the Legislative Council within seven days after receipt of the notice of suspension under sec. 400 of these procedures.

(b) If a suspended person requests a hearing the Legislative Council shall schedule a prompt hearing unless the attorney general determines that a hearing at the proposed time is likely to jeopardize an investigation. A hearing may not be delayed longer than six months after notice of the suspension is provided under sec. 400 of these procedures.

Sec. 420. LIST OF PERSONS DEBARRED OR SUSPENDED. The chairman of the Legislative Council shall maintain a list of all persons debarred or suspended from consideration for award of contracts.

Sec. 430. REINSTATEMENT. (a) The Legislative Council may at any time after a final decision to debar a person from consideration for award of contracts reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

(b) A debarred person may request reinstatement by submitting a petition to the Legislative Council supported by evidence showing that the cause for debarment no longer exists or has been substantially mitigated.

(c) The Legislative Council may require a hearing on a reinstatement petition. A decision on reinstatement shall be made in writing within seven days after a reinstatement petition is submitted. The decision shall specify the factors on which it is based.

Sec. 440. LIMITED PARTICIPATION. The Legislative Council may permit a debarred person to participate in a contract on a limited basis during the debarment period if the Legislative Council determines in writing that the participation is advantageous to the state. The determination shall specify the factors on which it is based and the limits imposed on the debarred person.

Sec. 450. HEARING PROCEDURES. (a) The chairman of the Legislative Council shall act as a hearing officer or appoint a hearing officer for a hearing conducted under

these procedures. The hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing. The hearing shall be conducted in an informal manner.

(b) The hearing officer may

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

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

(3) require parties to produce for examination those relevant witnesses and documents under their control;

(4) rule on motions and other procedural matters;

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

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

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

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

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

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

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

(9) administer oaths or affirmations.

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

Sec. 460. RECOMMENDATION BY THE HEARING OFFICER. (a) The hearing officer shall recommend a decision to the Legislative Council based on the evidence presented. The recommen-

dation shall include findings of fact and conclusions of law.

(b) The Legislative Council may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or take other appropriate action.

Sec. 470. FINAL DECISION BY LEGISLATIVE COUNCIL. A final decision by the Legislative Council after a hearing under these procedures shall be sent within 20 days after the hearing to all parties by personal service or certified mail.

Sec. 480. APPEAL. The decision of the Legislative Council under sec. 470 may be appealed to the Superior Court in accordance with the procedures established in AS 44.62.560 - 44.62.570 for appeals from decisions of executive branch agencies. A claimant may also bring an action under AS 09.50.250 - 09.50.300 at any time after one year has elapsed since the presentation of the claim under sec. 360, if no decision has been made by the Legislative Council.

Sec. 900. DEFINITIONS. In these procedures, unless the context in which a term is used clearly requires a different meaning,

(1) "agency" means any subdivision of the legislative branch that conducts procurements, including legislative committees;

(2) "interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract; whether an actual or prospective bidder or offeror has an economic interest depends on the circumstances;

(3) "procurement officer" means

(A) the chairman of the Finance Committee with respect to contracts of that committee and the chairman of the Rules Committee with respect to contracts of that committee;

(B) the chairman of a legislative committee, other than the Finance Committees and the Rules Committees, with respect to a contract of that committee;

(C) the Speaker of the House with respect to House leadership and House Research Agency contracts;

(D) the President of the Senate with respect to Senate leadership and Senate Advisory Council contracts;

(E) the chairman of the Legislative Council with respect to contracts of the Legislative Affairs Agency;

(F) the chairman of the Legislative Budget and Audit Committee with respect to contracts of the Legislative Finance Division and the Legislative Audit Division.

(4) "professional services" means professional, technical, or consultant's services that are predominantly intellectual in character and that

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

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

(5) "solicitation" means an invitation for bids, a request for proposals, or any other document issued by the legislature for the purpose of soliciting bids or proposals to perform a contract.

* Sec. 2. The following sections of the Administrative Services Policy and Procedures Manual are repealed:

(1) the section headed "Contracts" on page 1.13;

(2) the section headed "Purchasing" on page 3.1.

* Sec. 3. These procedures take effect January 1, 1988.

TLB:gc
G6/052

As amended January 25, 1989

PROCUREMENT PROCEDURES

* Section 1. The Administrative Services Policy and Procedures Manual is amended by adding new sections to read:

Sec. 010. PURPOSE. The purpose of these procurement procedures is to adopt competitive procurement principles applicable to the Legislature that ensure the fair and equitable treatment of all persons who deal with the procurement system of the Legislature.

Sec. 020. APPLICATION. (a) These procedures apply to all contracts entered into after December 31, 1987, for services, professional services, supplies, or construction to be provided to a legislative agency or legislative committee except:

- (1) employment contracts;
- (2) contracts that do not exceed \$5,000; and
- (3) contracts for utilities; in this paragraph, "utilities" includes water, heat, sewer, telephone services and garbage.

(b) Only section 150(b) of these procedures applies to contracts under which the required services are to be provided by a municipality in the state or an agency of the state, including the University of Alaska, a department, or a public corporation.

Sec. 030. NOTICE OF SOLICITATIONS. (a) A solicitation to procure services, professional services, supplies, or construction under a contract must be extended to a sufficient number of firms or persons to insure that public interest in competition is adequately served. Bids or proposals from at least six firms or persons listed on the appropriate contractor list maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be solicited for contracts equal to or greater than \$100,000. Bids or proposals from at least three firms or persons listed on the appropriate contractor list maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be solicited for contracts of less than \$100,000. Lists of contractors maintained by the Department of Administration and the Department of Transportation and Public Facilities shall be used in soliciting bids or proposals under this section.

(b) Advertising in a medium that will reasonably bring the invitation or proposal to the attention of persons able to provide the required services, professional services, supplies, or construction may be substituted for direct solicitation or used jointly with direct solicitation of bids or proposals.

(c) The procurement officer shall give notice of the solicitation at least 21 days before the date for the opening of bids or proposals unless the officer makes a determination in writing that a shorter notice period is necessary for a particular solicitation.

(d) If an insufficient number of firms or persons have the expertise required to enable an agency to solicit the number of bids or proposals required under (a) of this section, the agency shall solicit bids or proposals

(1) from each person or firm listed on the appropriate contractor list that appears to possess the required expertise;

(2) from any person or firm with the required expertise of which the contracting agency or committee may be aware.

(e) A legislator or the procurement officer for a legislative committee may request the Legislative Affairs Agency to carry out the solicitation responsibilities under this section.

Sec. 040. EXEMPTIONS. (a) A contract is exempt from the solicitation requirements of sec. 030 of these procedures if

(1) there is a single source of the required services or supplies;

(2) one person or firm can clearly provide the required services more satisfactorily because of the person's or firm's prior work; or

(3) the contract is with a contractor that the Department of Administration has selected by competitive bidding to provide to state agencies the service, product, or construction that is the subject of the contract.

(b) An exemption in (a)(1) - (2) of this section applies only if it is approved by the procurement officer, and in the case of a contract for a legislative committee, by a majority of the committee members. A written justification signed by the procurement officer that details the reasons for the exemption shall be attached to the contract and filed under sec. 200 of these procedures as a public record. The written justification shall also be

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signed by the committee members that approve the exemption in the case of a contract for a legislative committee. A contract proposed for award under the exemptions in (a)(1) - (2) of this section is not valid unless the required approval is received.

(c) Sections 142, 147, and 210 of these procedures do not apply to a contract that is exempt under (a)(3) of this section.

Sec. 045. SMALL PROCUREMENTS. (a) Professional services contracts that do not exceed \$25,000 are small procurements and are not subject to the solicitation methods set forth in sec. 030 of these procedures. Small procurements are subject to the provisions of sec. 147 of these procedures. A small procurement that is made by a solicitation of bids is subject to the Alaska bidder preference set out in sec. 145(c) of these procedures. In making a small procurement, the procurement officer shall take steps that are reasonable under the circumstances to ensure that adequate competition is obtained.

(b) A contract awarded as a small procurement under this section may be amended so that the contract amount exceeds the amounts set out in (a) of this section, without complying with the solicitation methods set forth in sec. 030 of these procedures. However, a contract may not be artificially divided to avoid the solicitation methods set forth in sec. 030 of these procedures.

Sec. 050. ONLY ONE BID OR PROPOSAL RECEIVED. (a) If only one responsive bid is received in response to an invitation for bids, including multi-step bidding, an award may be made to the single bidder if the procurement officer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise the bid may be rejected and:

(1) new bids or offers may be solicited;

(2) the proposed procurement may be cancelled; or

(3) if the procurement officer determines in writing that the need for the supply or service continues, but that the price of the one bid is not fair and reasonable and there is not time for resolicitation or resolicitation would likely be futile, the procurement may than be conducted as a sole source procurement under sec. 040 of these procedures.

(b) If only one proposal is received in response to a request for proposals, the procurement officer may, as the officer deems appropriate, make an award, cancel the pro-

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curement, or if time permits, resolicit for the purpose of obtaining competitive sealed proposals.

Sec. 070. BID AND PERFORMANCE BONDS FOR SUPPLY CONTRACTS OR SERVICE CONTRACTS. Bid and performance bonds or other security may be required for supply contracts or service contracts as the procurement officer deems advisable to protect the interest of the agency. These requirements shall be set forth in the solicitation. Bid or performance bonds may not be used as a substitute for a determination of bidder or offeror responsibility.

Sec. 080. CONDITIONING BIDS OR PROPOSALS UPON OTHER AWARDS NOT ACCEPTABLE. A bid or proposal that is conditioned upon receiving award of both the particular contract being solicited and another legislative contract is nonresponsive and not acceptable.

Sec. 090. DETERMINATION OF TERMS AND CONDITIONS. The procurement officer is authorized to determine the provisions, terms and conditions of solicitations and contracts, provided the provisions, terms and conditions are not contrary to statutory or other requirements governing the procurement.

Sec. 100. UNSOLICITED OFFERS. (a) An unsolicited offer is an offer other than one submitted in response to a solicitation.

(b) The procurement officer shall consider an unsolicited offer as provided in this section. To be considered for evaluation an unsolicited offer:

- (1) must be in writing;
- (2) must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the agency;
- (3) must be unique or innovative;
- (4) must demonstrate that the proprietary character of the offering warrants consideration of the use of sole source procurement; and
- (5) may be subject to testing under terms and conditions specified by the agency.

(c) The unsolicited offer must be evaluated to determine its use to the agency and whether it would be to the agency's advantage to enter into a contract based on the offer.

(d) A written request for confidentiality of technical data and trade secrets contained in an unsolicited offer that is made in writing shall be honored. If an award is

made, confidentiality of data shall be agreed upon by the parties and governed by the provisions of the contract. Confidential data not contained in the contract are not open to public inspection under sec. 200 of these procedures. If agreement cannot be reached on confidentiality, the agency may reject the unsolicited offer.

Sec. 110. POLICY FOR CANCELLATION OF SOLICITATIONS. Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only. The solicitation must give the status of funding for the procurement. Preparing and distributing a solicitation requires the expenditure of state time and funds. Businesses also incur expense in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation may be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the agency's best interest.

Sec. 120. CANCELLATION OF SOLICITATION: REJECTION OF ALL BIDS OR PROPOSALS. (a) A solicitation issued by an agency must state that the solicitation may be cancelled as provided in this section.

(b) Before opening, a solicitation may be cancelled in whole or in part when the procurement officer determines in writing that cancellation is in the agency's best interest. Reasons for cancellation include:

(1) the agency no longer requires the supplies, services, or construction;

(2) the agency no longer can reasonably expect to fund the procurement; or

(3) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(c) When a solicitation is cancelled before opening, notice of cancellation shall be sent to all businesses solicited. The notice of cancellation must:

(1) identify the solicitation;

(2) briefly explain the reason for cancellation;
and

(3) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar supplies, services, professional services, or construction.

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(d) After opening but before award, all bids or proposals may be rejected in whole or in part when the procurement officer determines in writing that rejection is in the agency's best interest. Reasons for rejection include:

(1) the supplies, services, professional services, or construction being procured are no longer required;

(2) ambiguous or otherwise inadequate specifications were part of the solicitation;

(3) the solicitation did not provide for consideration of all factors of significance to the agency;

(4) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

(5) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or

(6) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(e) A notice of rejection that includes the information required under (c) of this section shall be sent to all businesses that submitted bids or proposals.

(f) In this section, "opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

(g) The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

Sec. 125. BID OR PROPOSAL PREPARATION COSTS. If for any reason a contract is not awarded after a solicitation, an agency of the legislature may not be held liable for bid or proposal preparation costs.

Sec. 130. REJECTION OF INDIVIDUAL BIDS OR PROPOSALS. (a) A solicitation issued by an agency shall provide that a bid or proposal may be rejected in whole or in part when in the best interest of the agency as provided in this section.

(b) Reasons for rejecting a bid submitted in competitive sealed bidding or in the second phase of multi-step sealed bidding include:

(1) the business that submitted the bid is nonresponsible as determined under sec. 210 of these procedures;

(2) the bid is not responsive, that is, it does not conform in all material respects to the invitation for bids;

(3) the supply, service, professional service, or construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the invitation for bids.

(c) In this section, "proposal" means an offer submitted in response to a solicitation other than a bid. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and the stated requirement in the solicitation may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or part of a proposal. Reasons for rejecting proposals include:

(1) the business that submitted the proposal is nonresponsible as determined under sec. 210 of these procedures;

(2) the proposal ultimately fails to meet the announced requirements of the agency in a material respect; or

(3) the proposed price is clearly unreasonable.

(d) Upon request, unsuccessful bidders or offerors shall be advised of the reasons for the rejection.

Sec. 140. ALL-OR-NONE BIDS OR PROPOSALS. Unless a solicitation permits a bid or proposal to limit acceptance to the entire bid or proposal offering, a bid or proposal so limited is nonresponsive. If the solicitation permits such a limitation, the agency may not reject part of the bid or proposal and award on the remainder.

Sec. 142. ALASKA PRODUCT PREFERENCE. In a contract involving the purchase of supplies, including a construction contract, only products manufactured, produced, or harvested in the state may be purchased if the supplies are competitively priced, available, and of like quality compared with products manufactured, produced, or harvested outside the state.

Sec. 145. CONTRACT AWARD. (a) Except as provided in (c) of this section, the procurement officer shall award a contract based on a solicitation of bids with reasonable promptness to the lowest responsible and responsive bidder whose bid

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conforms in all material respects to the requirements and criteria set out in the solicitation.

(b) In this section, "Alaska bidder" means a person who

(1) holds a current Alaska business license;

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

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

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

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

(c) The procurement officer shall award a contract based on a solicitation of bids to the lowest responsible and responsive Alaska bidder if the bid is not more than five percent higher than the lowest nonresident bidder's.

(d) The procurement officer shall award a contract based on a solicitation of proposals with reasonable promptness to the responsible and responsive offeror whose proposal is determined in writing by the procurement officer to be the most advantageous to the state after taking into consideration price and the evaluation factors set out in the request for proposals. Other factors and criteria may not be used in the evaluation. When determining whether a proposal is advantageous to the state, the procurement officer shall consider whether the offeror qualifies as an Alaska bidder under (b) of this section.

Sec. 147. 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.

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Sec. 150. PREPARATION AND AWARD OF CONTRACTS. (a) A contract must be self-contained and written with care and thoroughness.

(b) An authorization signed by the persons required to authorize a contract or amendment to a contract shall be attached to the contract or amendment and filed under sec. 200 of these procedures. Contracts and amendments to contracts must be authorized as follows:

(1) contracts involving House operating funds must be authorized by the Speaker of the House and a majority of the members of the Legislative Council in a meeting, except that contracts for legal services need be authorized by the Speaker only;

(2) contracts involving Senate operating funds must be authorized by the President of the Senate and a majority of the members of the Legislative Council in a meeting, except that contracts for legal services need be authorized by the President only;

(3) contracts of a legislative committee must be authorized by a majority of the members of the committee in a meeting;

(4) contracts of the Legislative Affairs Agency must be authorized by a majority of the members of the Legislative Council in a meeting of the Legislative Council;

(5) contracts of the Legislative Finance Division and the Legislative Audit Division must be authorized by a majority of the members of the Legislative Budget and Audit Committee in a meeting of the committee;

(6) contracts of the House Research Agency and the Senate Advisory Council and any research agency established by the legislature must be authorized by a majority of the members of the Legislative Council in a meeting, and by the Speaker of the House for the House Research Agency and the President of the Senate for the Senate Advisory Council.

(c) A contract must be executed by the provider of the service, professional service, supply, or construction, and the procurement officer and shall be approved as to form by legislative legal counsel.

(d) A contract must contain

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

(2) the date for the work to begin or the supplies to be delivered;

(3) the date by which the work must be completed;

(4) a description of the services to be performed or the supplies to be procured under the contract; and

(5) a certification that sufficient money is available in an appropriation to be encumbered for the amount of the contract.

(e) Subsections (a), (c), and (d) of this section do not apply when a State of Alaska delivery order form is used.

Sec. 160. NOVATION OR CHANGE OF NAME. (a) A legislative contract is not transferable, or otherwise assignable, without the written consent of the procurement officer, and in the case of a contract for a committee, a majority of the members of that committee. However, a contractor may assign money receivable under a contract after due notice to the procurement officer.

(b) When it is in the best interest of the agency, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee must agree that:

(1) the transferee assume all of the transferor's obligations;

(2) the transferor waives all rights under the contract as against the agency; and

(3) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

(c) When a contractor requests to change the name in which it holds a contract with an agency, the procurement officer responsible for the contract shall, upon receipt of a document indicating a change of name, enter into an agreement with the requesting contractor to effect the change of name. The agreement changing the name must specifically indicate that no other terms and conditions of the contract are thereby changed.

Sec. 170. CONTRACTING FOR INSTALLMENT PURCHASE PAYMENTS, INCLUDING INTEREST. Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints and must be justified in

writing by the procurement officer. The justification shall be attached to the contract and filed under sec. 200 of these procedures. An installment payment agreement may not be used unless a provision for installment payments is included in the solicitation document.

Sec. 180. STANDARD OVERHEAD RATE. (a) If the University of Alaska or any other state agency has established an applicable standard overhead rate, the standard overhead rate shall be included in a proposal for a contract submitted by the University of Alaska or the state agency.

(b) In this section, "standard overhead rate" means a charge established by the University of Alaska or a state agency that is designed to compensate the University of Alaska or the state agency for administration and support services incidentally provided with the services.

Sec. 190. EVALUATION. If a services or professional services contract is awarded by a legislative committee, the committee or the procurement officer shall provide a written evaluation of the services provided under the contract before final payment on the contract may be made. The evaluation shall be filed under sec. 200 of these procedures.

Sec. 200. PROCUREMENT FILES. (a) A copy of each solicitation or unsolicited offer that does not result in a contract together with relevant documents shall be filed, as is appropriate, with the Legislative Affairs Agency, the legislative finance division, or the legislative audit division. The invitation to bid or request for proposals and each bid or proposal submitted shall be filed with the filed contract copy unless the contract is one in which an invitation to bid or a request for proposals is not required. Except as otherwise provided in sec. 100 of these procedures, procurement files are open for public inspection.

(b) A contract for services provided to the legislative audit division in the preparation of an audit report does not have to be filed under (a) of this section until the audit report is released under AS 24.20.311.

Sec. 210. RESPONSIBILITY OF PROSPECTIVE CONTRACTORS. Before awarding a contract, the procurement officer must be satisfied that the prospective contractor is responsible. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination must be made part of the procurement file.

Sec. 220. STANDARDS OF RESPONSIBILITY. (a) Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:

(1) the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;

(2) a satisfactory record of performance;

(3) a satisfactory record of integrity;

(4) qualified legally to contract with the agency; and

(5) supplied all necessary information in connection with the inquiry concerning responsibility.

(b) The prospective contractor shall supply information requested by the procurement officer concerning the responsibility of the contractor. If the contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if the failure is unreasonable.

(c) The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(1) evidence that the contractor possesses the necessary items;

(2) acceptable plans to subcontract for the necessary items; or

(3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

Sec. 230. FILING OF A PROTEST. An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction by an agency. The protest shall be filed with the procurement officer in writing and 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 at issue;

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

(5) the form of relief requested.

Sec. 240. TIME FOR FILING A PROTEST (a) A protest based upon alleged improprieties in a solicitation involving competitive sealed bidding that are apparent before the bid opening shall be filed before the bid opening. A protest based on alleged improprieties in a solicitation involving competitive sealed proposals that are apparent

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

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

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

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

Sec. 250. NOTICE OF A PROTEST. The procurement officer shall immediately give notice of a protest filed under sec. 240 of these procedures to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

Sec. 260. STAY OF AWARD. If a protest is filed the award may be made unless the procurement officer of the contracting agency determines in writing that a

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

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

Sec. 270. DECISION BY THE PROCUREMENT OFFICER (a) The procurement officer of the contracting agency shall issue a written decision containing the basis of the decision within 14 days after a protest has been filed. A copy of the

decision shall be furnished to the protester by certified mail or other method that provides evidence of receipt.

(b) The time for a decision may be extended up to 26 days for good cause by the Legislative Council. If an extension is granted, the procurement officer shall notify the protester in writing of the date the decision is due.

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

Sec. 280. PROTEST REMEDIES. (a) If the procurement officer sustains a protest in whole or in part, the procurement officer shall implement an appropriate remedy.

(b) In determining an appropriate remedy, the procurement officer shall consider the circumstances surrounding the solicitation or procurement including the seriousness of the procurement deficiencies, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to the agency and other impacts on the agency of a proposed remedy, and the urgency of the procurement to the welfare of the state.

Sec. 290. APPEAL ON A PROTEST. (a) An appeal from a decision of a procurement officer on a protest may be filed by the protester with the Legislative Council. An appeal shall be filed within five days after the decision is received by the protester. The protester shall file a copy of the appeal with the procurement officer.

(b) An appeal must contain the information required under sec. 230 of these procedures. In addition, the appeal must include

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

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

Sec. 300. NOTICE OF A PROTEST APPEAL. (a) The procurement officer shall immediately give notice of an appeal filed under sec. 290 of these procedures to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

(b) The Legislative Council shall, on request, furnish a copy of the appeal to a person notified under (a) of this section, except that confidential material shall be deleted from the copy.

Sec. 310. STAY OF AWARD DURING PROTEST APPEAL. If a protest appeal is filed before a contract is awarded and the award was stayed under sec. 260 of these procedures, the filing of the appeal automatically continues the stay until the Legislative Council makes a written determination that the award of the contract without further delay is necessary to protect substantial interests of the state.

Sec. 320. PROTEST REPORT. (a) The procurement officer of the contracting agency shall file a complete report on the protest and decision with the Legislative Council within seven days after a protest appeal is filed. The procurement officer shall furnish a copy of the report to the protester and to interested parties that have requested a copy of the appeal under sec. 300(b) of these procedures.

(b) The procurement officer may request an extension of time to prepare the protest report. The request must be in writing listing the reasons for the request. The Legislative Council shall respond to the request in writing. If an extension is granted, the Legislative Council shall list the reasons for granting the extension and indicate the date the protest report is due. The Legislative Council shall notify the protester in writing that the time for submission of the report has been extended and the date the report is due.

(c) The protester may file comments on the protest report with the Legislative Council within seven days after the report is received. The protester shall provide copies of the comments to the procurement officer and to interested parties that have requested a copy of the appeal under sec. 300(b) of these procedures.

(d) The protester may request an extension of time to prepare the comments on the protest report. The request must be in writing listing the reasons for the request. The Legislative Council shall respond to the request in writing. If an extension is granted, the Legislative Council shall list the reasons for granting the extension and indicate the date the comments are due. The Legislative Council shall notify the procurement officer in writing that the time for submission of the comments has been extended and the date the comments are due.

Sec. 330. DECISION WITHOUT HEARING. (a) The Legislative Council shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely under sec. 290 of these procedures.

(b) The Legislative Council may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.

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(c) Within 15 days after receipt of a protest appeal the Legislative Council may adopt the decision of the procurement officer as the final decision without a hearing.

Sec. 340. HEARING ON PROTEST APPEAL. A hearing on a protest appeal shall be conducted in accordance with sec. 450 of these procedures.

Sec. 350. 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 these procedures 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 officer constitutes a waiver of the claim. Before issuing the decision the procurement officer shall review the facts relating to the controversy and obtain necessary assistance from legal, fiscal, and other advisors.

(c) The time for issuing a decision under (b) of this section may be extended for good cause by the Legislative Council if the controversy concerns an amount in excess of \$50,000. The procurement officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and of the date by which a decision shall be issued.

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

- (1) description of the controversy;
- (2) reference to the pertinent contract provisions;
- (3) statement of the agreed upon and disputed facts;
- (4) statement of reasons supporting the decision; and

(5) statement substantially as follows:

"This is the final decision of the procurement officer. This decision may be appealed to the Legislative Council. If you appeal, you must file a written notice of appeal with the Legislative Council within 14 days after you receive this decision."

(e) If a decision is not made by the date it is due, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor.

(f) If a controversy asserted by the Legislature concerning a contract awarded under this chapter cannot be resolved by agreement the matter shall be immediately referred to the Legislative Council.

Sec. 360. APPEAL ON A CONTRACT CONTROVERSY. (a) An appeal from a decision of the procurement officer on a contract controversy may be filed by the contractor with the Legislative Council. The appeal shall be filed within 14 days after the decision is received by the contractor. The contractor shall file a copy of the appeal with the procurement officer.

(b) An appeal shall contain a copy of the decision being appealed and identification of the factual or legal errors in the decision that form the basis for the appeal.

Sec. 370. HEARING ON A CONTRACT CONTROVERSY. (a) Except as provided in (b) of this section, a hearing shall be conducted according to sec. 450 of these procedures on a contract controversy appealed to the Legislative Council or referred to the Legislative Council under sec. 350(f) of these procedures.

(b) Within 15 days after receipt of an appeal on a contract controversy the Legislative Council may adopt the decision of the procurement officer as the final decision without a hearing.

Sec. 380. AUTHORITY TO DEBAR OR SUSPEND. (a) After consultation with the using agency and the attorney general and after a hearing conducted according to sec. 450 of these procedures the Legislative Council may debar a person for cause from consideration for award of contracts. Notice of a debarment hearing shall be provided in writing at least seven days before the hearing. The debarment may not be for a period of more than three years.

(b) The Legislative Council, after consultation with the using agency and the attorney general, may suspend a person from consideration for award of contracts if there is

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probable cause for debarment and compelling reasons require suspension to protect state interests. The suspension may not be for a period exceeding three months.

Sec. 390. CAUSES FOR DEBARMENT OR SUSPENSION. The causes for debarment or suspension include the following:

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

(2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a state contractor;

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

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

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

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

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

(6) any violation of these procedures or other cause determined to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity.

Sec. 400. WRITTEN DETERMINATIONS. (a) The Legislative Council shall issue a written decision to debar or suspend. The decision must

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

(2) inform the debarred person of rights to judicial appeal or inform the suspended person of rights to administrative and judicial appeal.

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

Sec. 410. HEARING ON A SUSPENSION. (a) A person suspended under sec. 380 of these procedures is entitled to a hearing conducted according to sec. 450 of these procedures if the person files a written request for a hearing with the Legislative Council within seven days after receipt of the notice of suspension under sec. 400 of these procedures.

(b) If a suspended person requests a hearing the Legislative Council shall schedule a prompt hearing unless the attorney general determines that a hearing at the proposed time is likely to jeopardize an investigation. A hearing may not be delayed longer than six months after notice of the suspension is provided under sec. 400 of these procedures.

Sec. 420. LIST OF PERSONS DEBARRED OR SUSPENDED. The chairman of the Legislative Council shall maintain a list of all persons debarred or suspended from consideration for award of contracts.

Sec. 430. REINSTATEMENT. (a) The Legislative Council may at any time after a final decision to debar a person from consideration for award of contracts reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

(b) A debarred person may request reinstatement by submitting a petition to the Legislative Council supported by evidence showing that the cause for debarment no longer exists or has been substantially mitigated.

(c) The Legislative Council may require a hearing on a reinstatement petition. A decision on reinstatement shall be made in writing within seven days after a reinstatement petition is submitted. The decision shall specify the factors on which it is based.

Sec. 440. LIMITED PARTICIPATION. The Legislative Council may permit a debarred person to participate in a contract on a limited basis during the debarment period if the Legislative Council determines in writing that the participation is advantageous to the state. The determination shall specify the factors on which it is based and the limits imposed on the debarred person.

Sec. 450. HEARING PROCEDURES. (a) The chairman of the Legislative Council shall act as a hearing officer or appoint a hearing officer for a hearing conducted under

these procedures. The hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing. The hearing shall be conducted in an informal manner.

(b) The hearing officer may

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

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

(3) require parties to produce for examination those relevant witnesses and documents under their control;

(4) rule on motions and other procedural matters;

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

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

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

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

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

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

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

(9) administer oaths or affirmations.

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

Sec. 460. RECOMMENDATION BY THE HEARING OFFICER. (a) The hearing officer shall recommend a decision to the Legislative Council based on the evidence presented. The recommen-

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dation shall include findings of fact and conclusions of law.

(b) The Legislative Council may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or take other appropriate action.

Sec. 470. FINAL DECISION BY LEGISLATIVE COUNCIL. A final decision by the Legislative Council after a hearing under these procedures shall be sent within 20 days after the hearing to all parties by personal service or certified mail.

Sec. 480. APPEAL. The decision of the Legislative Council under sec. 470 may be appealed to the Superior Court in accordance with the procedures established in AS 44.62.560 - 44.62.570 for appeals from decisions of executive branch agencies. A claimant may also bring an action under AS 09.50.250 - 09.50.300 at any time after one year has elapsed since the presentation of the claim under sec. 360, if no decision has been made by the Legislative Council.

Sec. 900. DEFINITIONS. In these procedures, unless the context in which a term is used clearly requires a different meaning,

(1) "agency" means any subdivision of the legislative branch that conducts procurements, including legislative committees;

(2) "interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract; whether an actual or prospective bidder or offeror has an economic interest depends on the circumstances;

(3) "procurement officer" means

(A) the chairman of the Finance Committee with respect to contracts of that committee and the chairman of the Rules Committee with respect to contracts of that committee;

(B) the chairman of a legislative committee, other than the Finance Committees and the Rules Committees, with respect to a contract of that committee;

(C) the Speaker of the House with respect to House leadership and House Research Agency contracts;

(D) the President of the Senate with respect to Senate leadership and Senate Advisory Council contracts;

(E) the chairman of the Legislative Council with respect to contracts of the Legislative Affairs Agency;

(F) the chairman of the Legislative Budget and Audit Committee with respect to contracts of the Legislative Finance Division and the Legislative Audit Division.

(4) "professional services" means professional, technical, or consultant's services that are predominantly intellectual in character and that

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

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

(5) "solicitation" means an invitation for bids, a request for proposals, or any other document issued by the legislature for the purpose of soliciting bids or proposals to perform a contract.

* Sec. 2. The following sections of the Administrative Services Policy and Procedures Manual are repealed:

(1) the section headed "Contracts" on page 1.13;

(2) the section headed "Purchasing" on page 3.1.

* Sec. 3. These procedures take effect January 1, 1988.

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