

S B

170

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SB 170

SPONSOR Governor

BILL TITLE State procurement

DATE REFERRED 2-13-89

HEARING SCHEDULED 3-13-89

FISCAL NOTE PREPARED ✓

SPONSOR CONTACTED

INTERESTED PARTIES CONTACTED

7th Fl
508

✓ Bob Link, DOA 2250

✓ Brian Rogers, Univ 474-7448 in Jnu 3/11

Wendy Frank Turpin, AK Railroad 265-2403

✓ Loren Rasmussen, DOT 2960

Jim Baldwin, AG 3600 Virginia Page ✓

✓ Sen Faiks 4523 (Cheryl)

Resa Jernel 586-1740

OTHER Faiks AK bidder bill

170A.M.TXT - amendments 3/17/89

One Pearce -
time for appeals

Suzi Truch

RECEIVED

ALASKA RAILROAD CORPORATION



P.O. Box 107500 • Anchorage, Alaska 99510-7500

February 24, 1989

The Honorable Pat Pourchot, Chairman
Senate State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: Alaska Railroad Corporation Procurement Procedures

Dear Pat,

Thank you again for making time available to meet with Marv Yetter and me recently. We had a productive trip to Juneau and a highlight was visiting with you and sharing our plans to improve the appearance of the Alaska Railroad's Anchorage facility.

We also expressed our concerns with the state's procurement procedures.

As we discussed, we've prepared two proposed amendments to existing Senate bills, Nos. 170 and 58. The first proposes to exempt the Alaska Railroad Corporation ("ARRC") from a State Procurement Code requirement that it maintain procurement procedures which are "substantially equivalent" to the state's own procedures. The second relates to the Alaska bidder's preference.

The Alaska Railroad Corporation Act ("ARCA") requires that railroad procurement procedures meet accepted industry standards. This direction was in keeping with a legislative purpose that ARRC operate as a viable, self-sufficient entity subject to the same rules, regulations, and practices applicable to other railroads. It was established as a public corporation independent of and separate from the state to help insure that sound business management practices, not government regulations, would guide its operations in an extremely competitive private market. Wise procurement practices tailored to railroad needs were intended to responsibly reduce costs and thereby help insure economic viability. With this goal and public accountability in mind, ARRC's board of directors adopted procurement rules in 1985 which best served the special mission charted for the railroad.

Unfortunately and despite ARCA's earlier directions, the 1986 State Procurement Code ordered ARRC to adopt procurement

The Honorable Pat Pourchot
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procedures which mirrored those required for state agencies. Saddled by the additional costs and delays inherent in this new system, we come to you with a request that ARCA's vision and philosophy be restored. Without the flexibility enjoyed by our sister railroads and our competitors, ARRC's responsiveness in the marketplace has been crippled and its continued vitality has been threatened.

As you know, SB No. 170 contains many technical amendments to the State Procurement Code. We respectfully request that you submit our proposed amendment to this bill. The amendment will release ARRC from the "substantial equivalent" limitation, but will also require ARRC's board to insure that procurement procedures meet industry standards and adapt them to the railroad's special needs.

During our visit, we also explained our view that certain individuals are abusing the Code's Alaska bidder preference. Our second proposal suggests language to amend SB No. 58, legislation which already recommends several other modifications to this provision.

Most railroad goods (especially locomotive and railcar parts) are available only from Outside manufacturers. In the past, ARRC has received bids directly from such manufacturers when our inventory becomes depleted. Since it was not cost effective for them to do so, these manufacturers have never established dealerships in our state. Nonetheless, the broad language of the Alaska bidder's preference now permits a single Alaskan to negotiate an exclusive representation arrangement with these railroad parts manufacturers, submit a bid claiming a five percent preference, and obtain a contract on their behalf for the price of the preference or some portion of it. Not a dollar of the bidder's money need be spent on local labor, advertising, inventory, facilities, or real estate! ARRC's costs increase, but there is no return to Alaska except that portion of the bidder's fee which he may spend or save here.

The Alaska bidder's preference was instituted to promote local businesses, not to invite speculation. Accordingly, we propose that bidders promoting Outside goods be required to demonstrate their commitment to Alaska before qualifying for a preference. Our suggested amendment requires that this commitment be demonstrated by a bidder's existing inventory of Outside goods or his ongoing repair or warranty services for them.

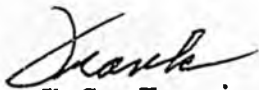
We firmly believe that these changes can meaningfully contribute to a much healthier operating environment for the state's railroad without jeopardizing those important public accountability requirements found in its enabling legislation.

The Honorable Pat Pourchot
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Your support and sponsorship of these amendments will be greatly appreciated.

Larry Wood, our General Counsel, and I plan to be in Juneau March 13 and 14 and we would like to visit with you in regard to these amendments. I will be contacting your office next week to see if this time is appropriate.

Sincerely,



F.G. Turpin
President & CEO

cc: ARRC Board of Directors

7914L

PROPOSED AMENDMENT TO SB NO. 170

A Bill for "An Act relating to state procurement."

Sec. 21. AS 36.30 is amended by adding a new section to read:

Sec. 36.30.035. ALASKA RAILROAD CORPORATION. The board of directors of the Alaska Railroad Corporation shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the corporation. The procedures must meet accepted railroad industry standards and must be adapted to the special needs of the Alaska Railroad Corporation as determined by its board of directors.

Sec. 22. AS 36.30.015(e) is amended to read:

(e) The board[S] of directors of the [ALASKA RAILROAD CORPORATION AND THE] Alaska State Building Authority shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the corporation. The procedures must be substantially equivalent to the procedures prescribed in this chapter and in regulations adopted under this chapter.

7909L

PROPOSED AMENDMENT TO SB NO. 58

A Bill for "An Act relating to the definition of 'Alaska bidder' for purposes of the Alaska bidder preference in the awarding of state contracts."

Sec. 2. AS 36.30.170 is amended by adding a new section to read:

(e) Notwithstanding the provisions of paragraph (b) above, a bidder shall not be entitled to receive the Alaska bidder preference if such bidder submits a bid which offers goods substantially manufactured, assembled, or provided by another party located outside the state, unless the bidder:

(1) has maintained an inventory of at least \$50,000 in such goods at a place of business within the state for six months immediately preceding the date of the bid; or

(2) has provided repair or warranty services for such goods at a place of business within the state for six months immediately preceding the date of the bid.

7912L



Brian Rogers
Vice President for Finance
(907) 474-7448

University of Alaska
Fairbanks, Alaska 99775-5260

March 6, 1989

The Honorable Pat Pourchot
Chair, Senate State Affairs Committee
P. O. Box V
Juneau, AK 99811

SUBJECT: Senate Bill #170 - An Act relating to state
procurement

Dear Senator Pourchot:

The University of Alaska has a keen interest in the passage of Senate Bill #170, An Act relating to state procurement, which is currently in your committee. The university participated in discussions with the state Department of Administration during the drafting of this legislation, and strongly endorses action this legislative session to improve the procurement code.

In this letter, I will discuss the university's position on the amendments made by the Governor's bill and will suggest additional areas for committee consideration to improve the procurement process for the University of Alaska.

The University of Alaska's concerns with the current law fall generally under five categories:

1. Alaska business license requirements;
2. Exemptions from the code;
3. Bid limits;
4. Protest procedures; and
5. Penalties.

I. Alaska Business License:

Section 1 of Senate Bill #170, AS 36.30.110(b), requires bidders to have a valid Alaska business license at the time designated in the invitation to bid for bid opening. This creates two problems. First, the process for obtaining an Alaska business license often takes up to six weeks, while bids are advertised for only three weeks. Vendors who may wish to bid, but have not conducted business in Alaska, are precluded from competing due to these time deadlines. This is a particular prob-

University of Alaska

The Honorable Pat Pourchot

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lem for the university when no in-state bidders are available for specialized scientific products. We believe an amendment as follows would alleviate the situation: Page 2, line 9, after "license," insert "or have made application for an Alaska business license"; and line 12, after "license," insert "or of the bidder's application for an Alaska business license."

The Alaska Business License Act defines those businesses which are required to obtain an Alaska business license in AS 43.70.110(1). Some businesses are not required to have an Alaska business license, including "fisheries businesses, fishermen, liquor licenses, insurance businesses, mining and coin-operated amusement and gaming machines, calling or vocation." Furthermore, "business" is defined as those activities or acts "with the object of financial or pecuniary gain, profit or benefit, either direct or indirect."

In AS 36.30.110(b), however, all bidders must have a valid Alaska business license at the time of bid opening. Thus, if the University of Alaska goes to bid for a service which can be provided by another college or university, for example, under AS 36.30 they must have a valid Alaska business license; but under AS 43.70, they are not required to have an Alaska business license. The university believes that AS 36.30.110(b) should be amended to only require the Alaska business license of bidders who are required under the Alaska Business License Act to have one. We believe the section should be amended as follows: Page 1, line 9, after "(b)", insert "If the bidder is required to have an Alaska business license under AS 43.70."

In context, the two amendments would thus read:

"Section 1. AS 36.30.110(b) is amended to read: (b) If the bidder is required to have an Alaska business license under AS 43.70, the bidder must have a valid Alaska business license, or have made application for an Alaska business license, at the time designated, in the invitation to bid, for bid opening. The [WHEN RESPONDING TO THE INVITATION TO BID, THE] bidder shall supply evidence of the bidder's valid Alaska business license, or of the bidder's application for an Alaska business license in accordance with regulations adopted by the commissioner. A bidder for a construction contract

The Honorable Pat Pourchot
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shall also submit evidence of the bidder's registration under AS 08.18."

A similar amendment needs to be added to the new subsection 36.30.210(e), beginning on page 3, line 29, of the bill.

II. Exemptions

The university strongly supports two exemptions contained in Senate Bill #170. These are on page 10 beginning at line 2, subsection 20, exempting "purchases of curatorial and conservation services to maintain, preserve, and interpret objects of art and items having cultural, historical, or archaeological significance to the state"; and on page 10, line 16, subsection 25, "contracts for supplies or services for research projects funded by money received from the federal government or private grants."

We believe use of standard bidding procedures is not proper for the University of Alaska Museum to obtain the curatorial services under subsection 20, and thus believe this amendment is needed.

Subsection 25 is even more important to the university, as some provisions of AS 36.30 are inconsistent with procurement procedures required by federal agencies. The university is concerned that application of all AS 36.30 procedures to our research procurements may make the University of Alaska uncompetitive with other public and private universities in obtaining federal grants or contracts.

The university would ask the committee to consider two additional exemptions from the provisions of AS 36.30 as follows:

1. Registration fees for conferences and workshops.

When a university faculty member or administrator attends a national or state conference, the payment of registration fees for the conference or workshop is a sole source purchase. The university believes that it is extremely cumbersome to require a sole source determination on each conference or workshop registration and that the registration at such a conference or workshop by definition is not a competitive procurement. A blanket exemption for these registrations would reduce

The Honorable Pat Pourchot

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March 6, 1989

paperwork without materially affecting the purpose of the act.

2. Guest speakers and entertainment. When the University of Alaska seeks a guest speaker, this professional service is currently subject to the provisions of AS 36.30 requiring, for example, three quotes for speakers between \$10,000 and \$25,000 and open competitive process over \$25,000. In most circumstances, guest speakers and entertainment are sole source purchases. If, for example, the University of Alaska wanted to bring former President Ronald Reagan to speak, we believe we should not be required to seek quotes from former Presidents Carter and Ford. Under existing law, sole source determination would be required to go directly to former President Reagan. As is the case for the preceding exemption, the university believes the requirement for a separate written determination on guest speakers and entertainers is cumbersome and does not achieve the purposes of AS 36.30.

III. Bid Limit.

AS 36.30 currently requires open competitive bidding for purchases in excess of \$5,000. Procurements under \$5,000 are subject to separate regulations for "small procurements." The university believes this \$5,000 limit is unreasonably low. The federal government, for example, uses a \$25,000 limit in similar circumstances while the state of Oregon uses a \$15,000 limit. The university believes that a \$10,000 limit for small procurements would be more appropriate for Alaska. This change would mean that for purchases under \$10,000, the university would be able to obtain informal quotes rather than going through the full advertising and competitive bid procedure. We believe that such a change would have the likely effect of increasing the amount of business done with local vendors since we would not be required to notify all out-of-state vendors who are on the bidders' list of each of these small procurements. We believe this change would simplify the procurement procedure without violating the intent of the procurement code.

IV. Protests.

On page 7 of the bill beginning on line 6, AS 36.30.575 would be reenacted to prohibit making award of a con-

University of Alaska

The Honorable Pat Pourchot

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tract if a protest is filed within the time set out in the law unless there is a written determination that "(1) if a reasonable probability exists the protest will be denied, or (2) a delay of award of the contract is contrary to the state's best interests."

The university is concerned that the proposed protest procedures make it too easy for a losing bidder to hold up the procurement process. We believe this injures the successful bidders. The university believes that the successful bidder should be able to seek damages against a protesting bidder when claims made are frivolous and damage the winning vendor. Furthermore, the university believes that the procurement officer should be able to reject those protests which fail to contain the requirement under AS 36.30.560(4) of "a detailed statement of the legal and factual grounds of the protest including copies of relevant documents." (Emphasis added) The university has received protests which do not contain details of the grounds of the protest, which has required the university to hold up the award while trying to seek the details of the grounds for protest.

V. Penalties.

The civil and criminal penalties of AS 36.30 have caused significant discomfort for university employees, who are afraid that unintentional errors and omissions might lead to liability for costs and damages or to criminal penalties. The university believes that AS 36.30.930(1) should be amended as follows:

"Section 36.30.930. Civil and criminal penalties. The following penalties apply to violations of this chapter: (1) a person who intentionally contracts for or purchases supplies, equipment for the state fleet professional services or construction in a manner the person knows to be contrary to the requirements of this chapter or the regulations adopted under the chapter is liable to all costs and damages to the state arising out of the violation;"

The university is concerned that our ability to attract high-quality professionals in the procurement field is compromised when the situation could exist that the procurement official knows the requirements of the chapter but unintentionally approves a procurement contrary to that knowledge.

University of Alaska

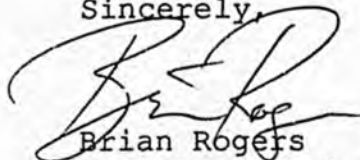
The Honorable Pat Pourchot

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March 6, 1989

The university appreciates the committee's willingness to consider this important legislation during the current legislative session. We look forward to the opportunity to testify before the committee on hearings and to answer any questions you may have on the university's position on these or any other issues related to the current or proposed procurement law.

Sincerely,



Brian Rogers
Vice President for Finance

BDR/pe

cc: Senator Jan Faiks
Don O'Dowd, President
Alice Peterson, Acting Chief Procurement Officer
Wendy Redman, Vice President University Relations
Bob Link, Director, General Services and Supply

170FAIKS.TXT

Alaska State Legislature



Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling

P.O. Box V
State Capitol
Juneau, Alaska 99811
907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senator Jan Faiks

FROM: Senator Pat Pourchot, Chairman
Senate State Affairs Committee *Pat*

RE: SB 170, Relating to state procurement

DATE: February 27, 1989

As you know, SB 170, which proposes several changes and clarifications to the state procurement code, has been referred to the State Affairs Committee.

According to the Department of Administration, the lead agency on SB 170, there was an attempt in drafting the bill to limit it to noncontroversial issues. However, I have already been approached by the Alaska Railroad Corporation and other agencies who have additional concerns with the code.

I intend to schedule the bill for a hearing, and am anticipating significant discussion on it. Because of your extensive background on the procurement code, I would greatly appreciate your taking a look at SB 170 and providing the committee with any comments or suggestions you might have.

I have attached for your convenience a copy of the bill, the Governor's transmittal letter, and the fiscal notes.

ALASKA STATE LEGISLATURE

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman

Sen. Al Adams

Sen. Tim Kelly

Sen. Rick Uehling



P.O. Box V
Juneau, AK 99811

907-465-3712

Senate State Affairs Committee

February 27, 1989

Frank G. Turpin, President
P.O. Box 107500
Anchorage, Alaska 99510-7500

Dear Frank:

Thank you for coming by my office when you were in town. I appreciated your briefing on the Ship Creek redevelopment area and your comments on procurement.

Senate Bill 170, which proposes a number of changes and clarifications to the state procurement code, has been referred to the Senate State Affairs Committee, which I chair. I intend to schedule a hearing on the bill sometime within the next several weeks, and would appreciate receiving your thoughts and comments on it in advance of the hearing.

I have enclosed a copy of SB 170 for your convenience. Please drop me a line or give my office a call with your comments. I will notify you of the hearing date once it has been set.

Thanks for you help, Frank.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat", written over a large, stylized circular flourish.

Senator Pat Pourchot
Chairman

PP/ss

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 16, 1989

SUBJECT: Constitutionality of offeror preference
 (draft CSSB 170(SA))

TO: Senator Pat Pourchot, Chair
 State Affairs Committee

FROM: Theresa L. Bannister *TLB*
 Legislative Counsel

This memo accompanies the committee substitute that you requested for SB 170. Although the primary purpose for your request was to address the procurement procedures of the Alaska Railroad Corporation, please be aware that SB 170 contains new bidder preference provisions that could be challenged under the commerce clause and the privileges and immunities clause of the federal constitution. Section 13 gives offerors who are Alaska bidders two preferences in the evaluation of offers. I have not examined the issues sufficiently yet to express an opinion on whether the challenge would be successful. If you wish a fuller examination of this issue, please advise.

TLB:gc
WKG8/025

Enclosure



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 13, 1989

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

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to state procurement.

After working with the new state procurement code for the past year, state agencies have identified a number of provisions that need clarification or change to address the practical realities of administering the code.

Sections 1, 6, and 7 of the bill clarify and make consistent the requirements that a bidder or proposer have, and provide evidence of having, a valid Alaska business license. Under these sections, bidders and proposers must possess the license at the time of bid or proposal opening, and must provide proof of the license in accordance with regulations adopted by the commissioner of administration.

Section 2 of the bill permits the commissioner of transportation and public facilities to make the state's estimate of the costs of construction confidential until after bid opening, upon a written finding that confidentiality is in the state's best interest.

Section 3 of the bill clarifies that a listed subcontractor may be replaced if the subcontractor, rather than the bidder, is determined by the procurement officer not to be responsible.

Section 4 of the bill establishes a uniform requirement that the bid security that is required for competitive sealed bids for certain construction contracts and that may be required for competitive sealed bids for other construction contracts and for contracts for supplies, services, or professional services, must be equal to at least five percent of the amount of the bid. This replaces more complicated security requirements, which the

Department of Transportation and Public Facilities found resulted in rejection of several major bids.

Section 5, besides making some technical corrections in AS 36.30.170(b)(4), recognizes the need in some situations to provide the Alaska bidder preference to partnerships in which not all partners are Alaska residents.

Section 6 of the bill also requires the list of subcontractors provided by the offeror of the proposal determined to be most advantageous to the state to include a list of the work to be performed by each subcontractor.

Sections 8 and 9 of the bill provide more specific requirements for consideration of proposers' Alaska bidder status in evaluating competitive sealed proposals. In evaluating the cost factors of a proposal, an agency must consider the proposed costs of an offeror who qualifies as an Alaska bidder to be reduced by five percent. In establishing evaluation factors, an agency must allocate at least 10 percent of the value of the rating system to the proposers' Alaska bidder status. These provisions place in statute the requirements of interpretive regulations adopted by the commissioner of administration.

Section 10 of the bill adds a new provision that permits multi-step sealed proposals, similar to AS 36.30.190 which provides for multi-step competitive sealed bidding.

Sections 11 and 12 of the bill permit delegation of the authority to make written determinations necessary for a sole source or limited competition procurement of supplies, services, or construction if the amount of the procurement does not exceed the amount for small procurements under AS 36.30.320(a). That amount is currently \$5,000.

Section 13 of the bill amends the provisions for determination of responsibility of a bidder or offeror, to require the procurement officer to make a written determination only if the bidder or offeror is found to be not responsible, rather than if he or she is found to be responsible.

Section 14 of the bill amends the requirement that the procurement officer issue a written explanation of award of a contract to an out-of-state bidder, to provide that such an explanation is not required if the award is made under competitive sealed bidding. The reason for this change is that awards under competitive sealed bidding involve no exercise of discretion.

Section 15 of the bill removes the prohibition against use of cost-plus-a-percentage-of-cost contracts, and allows use of that type of contract under regulations to be adopted by

the commissioner of administration and commissioner of transportation and public facilities in their respective areas of responsibility.

Section 16 of the bill repeals and reenacts the provision for stay of award of a contract when an appeal is filed. Currently, even if an appeal is filed, the contracting agency may proceed with the award unless the agency determines that the protest will probably be sustained or that a stay of the award is not contrary to the best interests of the state. As reenacted, AS 36.30.575 requires a stay of the award unless there is a written finding that there is a reasonable probability that the protest will be denied or that the delay is found to be contrary to the state's best interests. In other words, essentially, the provision is reversed.

Section 17 of the bill amends AS 36.30.850(b) to provide for additional exemptions from the procurement code, including exemptions of

- contracts for day care assistance (AS 44.47.250);
- contracts for purchase of standardized licensure examinations;
- disposals of supplies acquired in agricultural loan foreclosures;
- purchases of certain services connected to art and historical objects;
- acquisition of confidential seismic information for pre-sale oil and gas lease analyses;
- contracts for village public safety officers;
- expenditures for expenses for travel to meetings by persons who provide personal care and sign language interpretation for members of the Governor's Council for the Handicapped and Gifted;
- contracts for home health care services and adult residential and foster care services; and
- contracts for services and supplies for research projects that are funded with federal or private grant money.

Language is also deleted from AS 36.30.850(b)'s lead-in, and the same language is instead included in a new definition of "state money" (sec. 19 of the bill).

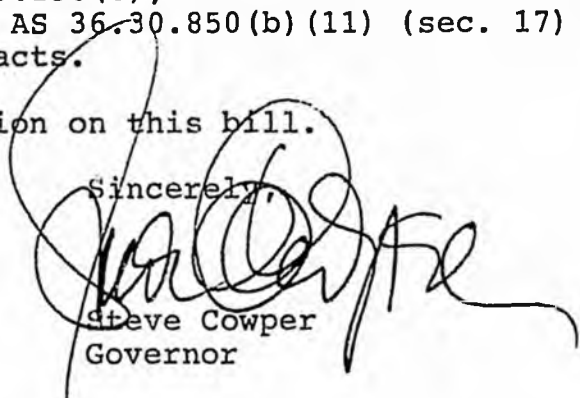
Section 18 adds a new section that allows for use of alternate procurement methods, rather than those provided in the procurement code, in specified situations in which agencies have found application of the procurement code to be impractical or disadvantageous to the state.

Section 19 adds a new definition of "state money," to clarify that only expenditure of money appropriated to an agency or spent under an appropriation (including money spent under AS 37.07.080(h)) is subject to the procurement code. Not subject to the procurement code under this definition is expenditure of money such as that of companies for which, or of individuals for whom, the state acts as the trustee, receiver, or conservator (for example, money of a bank that the state has taken possession of under AS 06.05.470, or a client's money held in trust by the Office of Public Advocacy).

Section 20 repeals AS 36.30.100(b)(1) -- (4), which are currently exemptions from competitive bidding requirements and which are relocated by the bill to proposed AS 36.30.855 (sec. 18); AS 36.30.540(4) -- (5), to delete the reporting requirements for out-of-state and state source procurements; AS 36.30.605, to delete the protest report requirement; and AS 44.47.250(c), to conform AS 44.47.250 to the exemption added to AS 36.30.850(b)(11) (sec. 17) for day care assistance contracts.

I urge your favorable action on this bill.

Sincerely,



Steve Cowper
Governor

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman

Sen. Al Adams

Sen. Tim Kelly

Sen. Rick Uehling



P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members

FROM: Senator Pat Pourchot, Chairman

RE: March 13 Committee Meeting

DATE: March 10, 1989

On Monday, March 13 at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hear the following bills:

SB 145, An Act making a special appropriation to the Department of Administration for payment as a grant to the Alaska Native Cultural Center Corporation

SB 145 would appropriate \$500,000 to the Alaska Native Cultural Center Corporation for Phase I of the Alaska Native Cultural Center in Anchorage. The bill was heard by the State Affairs Committee meeting jointly with the Special Committee on International Trade and Tourism on February 27.

A draft committee substitute has been prepared. It would require that state funds be matched by funds from non-state sources and that the state funds be spent on planning, design, engineering, and site preparation.

SB 170, An Act relating to state procurement

SB 170 makes a series of amendments to the state procurement code. The code has been in effect since January 1, 1988. During the past year state agencies have identified a number of provisions that they feel need clarification or change to address the practical realities of administering the code. Additional changes recommended by the Alaska Railroad Corporation and the University are attached.

The bill has a zero fiscal note. Any cost savings will be reflected as increased efficiencies in the procurement process.

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiko, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling



P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members
FROM: Senator Pat Pourchot, Chairman
RE: March 17 Committee Meeting
DATE: March 17, 1989

Today at 1:30 p.m. in the Beltz Room the following bills will be back before the State Affairs Committee:

SJR 3, Proposing an amendment to the Constitution of the State of Alaska relating to repeal of regulations by the legislature

A draft committee substitute providing for repeal of regulations by joint resolution rather than concurrent resolution is attached. Because Uniform Rule 49 requires that a joint resolution receive three readings and that its vote be recorded in the journal, these requirements have been deleted from SJR 3.

SJR 5, Proposing amendments to the Constitution of the State of Alaska amending provisions relating to the Alaska permanent fund; establishing temporary provisions relating to dedicated funds, the Alaska permanent fund, the expenditure limit, and the budget stabilization fund

SJR 5 would constitutionally dedicate permanent fund earnings (50% dividends, 30% inflation proofing, 20% budget stabilization fund), establish an appropriation limit, provide for deposit of revenues in excess of the appropriation limit (50% permanent fund, 50% budget stabilization fund), and allow for expenditure of up to 25% of the budget stabilization fund in years in which revenues are less than the appropriation limit.

A draft committee substitute which deletes the \$1.4 billion appropriation limit specified in the original bill is attached. Instead, annual appropriations would be limited to the level of appropriations made in the preceding year with an adjustment for inflation. Revenues within the spending limit that were not appropriated would be deposited in the Permanent Fund.

Committee Memo
March 17, 1989

SJR 30, Relating to location of a job corps center within the
Matanuska-Susitna Borough

When SJR 30 was before the committee, questions arose regarding the state's financial obligation if Alaska should be chosen as the site for a job corps center. The state's application to the federal government indicated that we would contribute \$1 million to capital costs of the center. The funding question will be addressed by the bill sponsor at today's meeting.

SB 170, An Act relating to state procurement

A draft committee substitute, which incorporates the following two provisions discussed by the committee, is attached:

1 Authorization of the Alaska Railroad Corporation to adopt procurement procedures based on the competitive principles of the state procurement code but adapted to the special needs of the corporation

2 Exemption from the procurement code for guest speakers or performers for an educational or cultural activity

Six additional amendments are also attached:

NO 1 Application of the Alaska business license

NO 2 Abuse of the Alaska bidders' preference by firms that carry on limited business enterprises exclusively for the purpose of taking advantage of the preference

yes 3 Increase of the dollar threshold for open competitive bidding

NO 4 Exemption for purchases made outside the U.S. for use outside the U.S., and for contracts for hearing officers

NO 5 Penalty for frivolous protest of a contract award

yes 6 Definition of "state money"

It is my hope that we could move all of these bills out of committee today.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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PHONE: (907) 276-3550

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FAIRBANKS, ALASKA 99701-4679

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PHONE: (907) 465-3600

March 16, 1989

The Honorable Pat Pourchot
Chair, Senate State Affairs
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: SB 170, procurement code

Dear Senator Pourchot:

At your request, I have reviewed amendments presented to the Senate State Affairs Committee for inclusion in SB 170, relating to state procurement.

The most difficult issue for consideration of the committee is a proposal by the Alaska Railroad Corporation that is intended to prevent abuse of the Alaska bidder's preference. During the hearing on March 13, I expressed some reservations about the railroad's suggestion that an inventory requirement be added to the elements of the definition of "Alaska bidder" set out in AS 36.30.170. The railroad suggested that to qualify, a bidder must have an inventory valued at \$50,000 or more. It would be difficult to predict the effect of this amendment on the array of bidders currently enjoying the benefits of the preference. It would also be difficult to determine the value of inventory at any given time during the bidding process.

I have reviewed the statutes of other states to determine how they have dealt with this problem. New Mexico offers a good example for the committee to consider. A "resident business" is granted a preference for state contracts. To qualify, a resident business must have its principal place of business in the state or have five or more employees who are residents of the state. NMSA 13-1-21. Additionally, each resident business must apply to the chief procurement officer for a certificate evidencing resident status. A bidder is not entitled to the preference unless a copy of the certificate is presented with the bid. The procurement officer is empowered to create an application form and require sufficient proof to qualify for the preference.

Arkansas requires a "bona fide place of business and a representative inventory of the commodities on which the bid is

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submitted." ACA 19-11-259(a)(3). Apparently this requirement was successfully challenged as being vague and overbroad. Pacificorp v. Exerleben, ___ F. Supp. ___ (E.D. Ark., Sept. 30, 1988). It has been reported that Arkansas will attempt to resurrect the preference with valid, enforceable standards.

Illinois requires a "resident bidder" to have a "bona fide establishment for transacting business on the date when any bid for a public contract is first advertised or announced." IL St. ch. 127, p. 132.6. The Minnesota statute is identical. MN ST 16B.102. South Dakota allows resident bidders to qualify for a preference if they "have maintained a substantial and bona fide place of business and have conducted business therefrom within this state for at least one year prior to the date on which a contract was awarded." SDCL 5-19-4.

Based on the foregoing research, if the committee desires to pursue this matter, we recommend that you consider amending AS 36.30.170 in the following manner:

* Sec. __. AS 36.30.170(b)(3) is amended to read:

(3) has maintained a substantial bona fide place of business within the state [STAFFED BY THE BIDDER OR AN EMPLOYEE OF THE BIDDER FOR A PERIOD OF SIX MONTHS IMMEDIATELY PRECEDING THE DATE OF THE BID];

* Sec. __. AS 36.30.170 is amended by adding a new subsection to read:

(e) In this section "substantial bona fide place of business" means a place that is

(1) regularly used for the sale of the supplies or services called for in the invitation to bid;

(2) staffed by the bidder or at least one employee of the bidder who is a resident of the state;

(3) equipped and staffed to offer any maintenance, warranty, or repair services called for in the invitation to bid; and

(4) continuously used in the state at a single location for a period of six months immediately preceding the date of the invitation to bid.

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The amendments set out above are designed to eliminate firms that carry on limited business enterprises exclusively for the purpose of taking advantage of the Alaska bidder's preference. The requirement to provide in-state warranty and repair services will effectively eliminate agents or jobbers who desire to broker sales of supplies to the state. We cannot guarantee that this amendment preserves the preference of all bona fide vendors. The enforcement of Alaska bidder status would be complete if the chief procurement officer were tasked with the responsibility of granting a preference certificate similar to the procedure used in New Mexico. Under those circumstances, a case-by-case determination could be made before bids are solicited. However, we recognize that the assumption of this function will require increased appropriations to the Department of Administration and for that reason do not recommend the adoption of such a provision in the state procurement code.

We would also like to comment on the amendment proposed by Senator Faiks regarding the status of the Alaska Railroad Corporation under the procurement code. The amendment would give the state-owned railroad the same status enjoyed by the legislature. For a separate branch of government created in the state constitution, the procurement code recognizes that the separation of powers doctrine implied in the constitution requires a certain amount of freedom to tailor procurement procedures to the mission of each branch of government. However, the railroad is a creature of statute.

The Model Procurement Code proposed by the American Bar Association urges the ideal of all state agencies following uniform procedures under a single procurement code. However, the state procurement code originally enacted deviated from the ideal in an effort to accommodate various interests both inside and outside state government. Under existing law, the railroad is allowed to independently adopt procurement regulations; but those regulations must be "substantially similar" to the state procurement code. AS 36.30.015(e). If the railroad is allowed to attain a new status, we can guarantee that other public corporations will want to follow suit. It is fervently hoped that the goal of uniformity can someday be achieved. If we had our way, the Alaska Railroad Corporation and the Alaska State Building Authority would be treated as any other executive branch agency under the code.

There are two additional amendments to SB 170 that the administration favors.

The first amendment involves adding an exemption from competition for contracts for hearing officers. We are learning

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that the procurement process tends to slow down the administration of justice through administrative agencies. Often, it is desirable to obtain the services of a particular hearing officer who is experienced in resolving specialized disputes, such as environmental law or labor disputes. If an exemption is enacted, we intend to solicit qualified persons to express an interest in serving as hearing officers. After a list of interested persons is developed, appointments will be made from the list on a rotating basis. Set out below is a suggested amendment to provide the exemption we propose:

Page 10, line 15:

Delete the word "or"

Page 10, line 18:

After "grants" insert

"; or

(26) contracts for hearing officers"

The second amendment is intended to correct a drafting error currently present in the bill. Section 19 adds a definition of "state money." However, the definition, if enacted in its current form, will exclude contracts of an agency from coverage under the procurement code if the agency operates exclusively with nonappropriated money. For example, the Alaska State Building Authority is covered by the code but does not receive state general fund appropriations, nor are federal funds appropriated for its use. We recommend the committee delete the material set out between lines 15 and 19 of page 11 and adopt the amendments set out below. So that you will understand the effect of the changes we propose, we have set out the amendments here showing the insertions and deletions to the original text necessary to correct our oversight:

(17) "state money" means any money appropriated to an agency or spent by an agency [UNDER AN APPROPRIATION], irrespective of its sources, including federal assistance except as otherwise specified in AS 36.30.890 but does not include money held in trust by an agency for a person.

Thank you for the opportunity to comment on the amendments proposed by other agencies and to propose additional amendments. If you have further questions, Assistant Attorney General

The Honorable Pat Pourchot
Alaska State Senate
Re: SB 170, procurement code

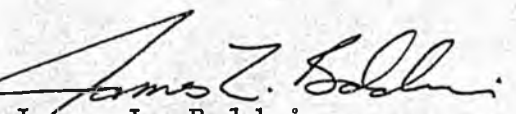
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Virginia B. Ragle will be present at the hearing scheduled for this bill on March 17.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:


James L. Baldwin
Assistant Attorney General

JLB/pjg

cc: Bob Link, Director
Div. of General Services & Supply
Dept. of Administration

Arthur H. Peterson
Assistant Attorney General
Dept. of Law - Juneau

heard 2x in Sen LaC

1 IN THE SENATE

BY FAIKS AND COGHILL

2

SENATE BILL NO. 58

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the definition of 'Alaska bidder' for purposes of the Alaska bidder preference in the awarding of state contracts."

7

8

9

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10

* Section 1. AS 36.30.170(b) is amended to read:

11

(b) The procurement officer shall award a contract based on

12

solicited bids to the lowest responsive and responsible bidder after

13

an Alaska bidder preference of five percent and an Alaska products

14

preference as described in AS 36.30.322 - 36.30.338 have been applied.

15

In this subsection, "Alaska bidder" means a person who

16

(1) holds a current Alaska business license;

17

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

18

under the name as appearing on the person's current Alaska business

19

license;

20

(3) has maintained a place of business within the state

21

staffed by the bidder or an employee of the bidder for a period of six

22

months immediately preceding the date of the bid;

23

(4) is incorporated [OR QUALIFIED TO DO BUSINESS] under the

24

laws of the state, is a sole proprietorship [,] and the proprietor is

25

a resident of the state, or is a partnership [,] and at least 50

26

percent of the [ALL] partners are residents of the state; and

27

(5) if a joint venture, is composed entirely of ventures

28

that qualify under (1) - (4) of this subsection.

29

(c) If a bidder qualifies under (b) of this section as an Alaska

SB 170
says 1 general partner
still saw deal as compared to corp.
SB 58

1 bidder, is offering services through an employment program as defined
2 under AS 36.30.100(c), and is the lowest responsible and responsive
3 bidder with a bid that is not more than 10 percent higher than the
4 lowest bid of a nonresident, the procurement officer shall award the
5 contract to that bidder.

6 (d) The procurement officer shall award an insurance-related
7 contract based on solicited bids to the lowest responsive and respon-
8 sible bidder after an Alaska bidder preference of five percent. In
9 this subsection, "Alaska bidder" means a person who meets the criteria
10 set out in (b)(1) - (5) of this section and who is an Alaska domestic
11 insurer.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An Act Relating to State BRU: General Services
Procurement
 Sponsor: Rules Components: Purchasing
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS (PHONE)	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Implementation costs will be minimal. Efficiencies gained will be reflected in improved service delivery.

Prepared By: Robert J. Link, Director *Robert J. Link* Phone: 465-2250
 Division: General Services & Supply Date: December 27, 1988
 Approved by Commissioner: John M. Andrews *John M. Andrews* Date: 1/3/89
 Agency: Department of Administration ~~December 27, 1988~~

Distribution (by preparer):

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

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE _____
IN ACCORDANCE WITH UNIFORM RULE 23

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035
2/13/89

FURTHER Finance

DATE TURNED INTO OFFICE 3-17-89

Mr. President:

State Affairs

Committee considered

SB 170

state procurement

and recommended:

replace with CS SB¹⁷⁰ (St Aff) same title
 attached amendment(s) and new title

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) attached zero
 appropriation no FN attached

fiscal impact
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
[Signature]
[Signature]
[Signature]

[Signature]
Chairman signature and recommendation

Committee backup attached

SB 170 RELATING TO STATE PROCUREMENT

TO TESTIFY

BOB LINK, DEPT. ADMINISTRATION

LOREN RASMUSSEN, D.O.T.

FRANK TURPIN, ALASKA RAILROAD CORP. *at Larry Wood*

BRIAN ROGERS, UNIVERSITY

JIM BALDWIN, A.G.'S OFFICE

RESA JERRELL, ASSOCIATED GENERAL CONTRACTORS

OTHERS (SEE WITNESS LIST)

F.Y.I.

AMENDMENTS FROM RAILROAD AND UNIVERSITY ARE TABBED IN YOUR PACKET (JUST NUMBERED IN MEMBERS' PACKETS). FAIKS HAS REVIEWED WITH JIM BALDWIN; COPIES HAVE ALSO BEEN PROVIDED TO DEPT. ADMINISTRATION. ACCORDING TO FAIKS' STAFF, SHE DOESN'T SUPPORT EXEMPTING THE RAILROAD ALTOGETHER BUT WOULD SUPPORT EASING UP -- BALDWIN IS PREPARING AMENDMENTS.

DEPT. ADMINISTRATION PUT THE BILL TOGETHER WITH INPUT FROM ALL STATE AGENCIES. PROPOSALS THAT WERE TOO CONTROVERSIAL WERE NOT INCLUDED.

SB 170 MAKES A SERIES OF UNRELATED CHANGES TO THE CODE. READ MY NOTES WRITTEN ON THE BILL ITSELF, AND THE GOVERNOR'S TRANSMITTAL LETTER.

ORIGINAL PROCUREMENT BILL DEVELOPED BY SENATE SELECT COMMITTEE ON PROCUREMENT (AFTER THE SHEFFIELD IMPEACHMENT TRIAL). FAIKS CHAIRED. HEARINGS WERE HELD AROUND THE STATE. MUCH OF OUR CODE IS BASED ON ARIZONA'S MODEL CODE.

FAIKS' GOAL WAS TO HANDLE THINGS IN A STANDARDIZED WAY WITH SOME EXCEPTIONS, BUT TO MAKE SURE THE EXCEPTIONS WERE HARD TO GET AND WERE WELL DOCUMENTED.

EFFECTIVE DATE ON BILL WAS JULY 1, 1987. LEGISLATURE EXTENDED TO JANUARY 1, 1988.

CODE APPLIES TO ALL STATE AGENCIES. D.O.A. ADMINISTERS FOR ALL EXCEPT THE LEGISLATURE, COURTS, A.S.B.A., UNIVERSITY, AND RAILROAD.

170POOPB.TXT
3/17/89

SB 170 STATE PROCUREMENT CODE

TO TESTIFY

BOB LINK, DEPT. ADMINISTRATION

VIRGINIA RAGEL, DEPT. LAW (BALDWIN IS OUT OF TOWN)

SUZANNE TRYCK, UNIVERSITY (BRIAN ROGERS IS NOT IN TOWN)

F.Y.I.

PACKET CONTAINS MEMO FROM OUR LEGAL DIVISION NOTING QUESTIONABLE CONSTITUTIONALITY OF THE ALASKA BIDDER'S PREFERENCE.

THESE AMENDMENTS WERE DROPPED BY THE UNIVERSITY AFTER DISCUSSION AT OUR LAST MEETING:

EXEMPTION FROM THE CODE FOR CONFERENCE REGISTRATION FEES
PROOF OF APPLICATION FOR BUSINESS LICENSE RATHER THAN
ACTUALLY HAVING LICENSE ITSELF
PENALTIES -- INTENTIONALLY KNOWING

ONE OTHER AMENDMENT YOU SHOULD AT LEAST BRING UP:

FAIKS' SB 58 WILL BE UP IN L&C MONDAY -- DEALS WITH MAKE-UP OF PARTNERSHIP FOR PURPOSES OF ALASKA BIDDER PREFERENCE. IN SECTION 8 OF SB 170 (PAGE 4, LINES 26-27) WE REQUIRE THAT AT LEAST ONE OF THE GENERAL PARTNERS BE AN ALASKAN RESIDENT; L&C C.S. FOR FAIKS' BILL DOESN'T REQUIRE GENERAL. DEPT. ADMIN. SAYS THEY'LL ACCEPT IT EITHER WAY -- PREFER "GENERAL PARTNERS" BECAUSE THEY'RE "MANAGEMENT". L&C IS GOING WITHOUT GENERAL BECAUSE OF A COMPLAINT FILED WITH THE OMBUDSMAN THAT THEY FEEL MIGHT TURN INTO A COURT CHALLENGE. UNDER CURRENT STATUTE, ALL PARTNERS MUST BE ALASKAN RESIDENTS.

MEMO IN PACKET FROM JIM BALDWIN, A.G. ARGUES AGAINST PROVISION IN OUR C.S. WHICH GRANTS RAILROAD LATITUDE. AFRAID RAILROAD WILL SET PRECEDENT FOR OTHER PUBLIC CORPORATIONS TO SEEK LATITUDE. "IT IS FERVENTLY HOPED THAT THE GOAL OF UNIFORMITY CAN SOMEDAY BE ACHIEVED."

original bill w/ comments Sandra
noted at each section

Sen. Pourchot
Mar. 10, 1989

SB 170, RELATING TO STATE PROCUREMENT

- Sec 1 Evidence of Alaska business license to bid
- Sec 2 Confidentiality of estimated cost of construction contract
- Sec 3 Technical: change reference from bidder to subcontractor
- Sec 4 Amount of bid security
- Sec 5 Qualification of partnership as Alaska bidder
- Sec 6-7 Evidence of Alaska business license
- Sec 8-9 Calculation of Alaska bidder preference
- Sec 10 Allow multi-step sealed proposals
- Sec 11-12 Delegation of authority to approve sole source contract for items under \$5000
- Sec 13 Determination of nonresponsibility
- Sec 14 Written statement of determination to award contract to nonresident not required for sealed competitive bids
- Sec 15 Limited use of cost-plus-a-percentage-of-cost contract
- Sec 16 Stay of award if protest filed
- Sec 17 Additional exceptions to procurement code
- Sec 18 Alternate procurement methods for specific items
- Sec 19 Revised definition of state money
- Sec 20 Conforming repealers, plus repeal requirement that list of in-state and out-of-state procurements be maintained

Baldwin - language on vendors marketing outsiders' bids
Rogers - Greenland issue
[5000] 10000 - # contracts in this category?

With staff notes.

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

SENATE BILL NO. 170

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to state procurement."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. ^{COMPETITIVE SEALED BID} AS 36.30.110(b) is amended to read:

If the bidder is required to have an Alaska business license under AS 43.70
(b) The bidder must have a valid Alaska business license at the
time designated, in the invitation to bid, for bid opening. The [WHEN ^{or have made application for an Ak bus. license.}

*Univ. wants amend-
ment; DOA10
thinks unnecessary
since ~~CEO~~ ¹¹ considers
application for a
license as hangga
license.*

RESPONDING TO THE INVITATION TO BID, THE] bidder shall supply evidence
of the bidder's valid Alaska business license ^{or of the bidder's application} in accordance with regu-
lations adopted by the commissioner. A bidder for a construction
contract shall also submit evidence of the bidder's registration under
AS 08.13.

16 * Sec. 2. AS 36.30.110 is amended by adding a new subsection to read:

*Not currently addressed
in code. DOT ¹⁷ concerned if
someone requests
this info. under FOI,
will give them "leg
up" over other bidders
Prevent bid rigging*

(c) If the commissioner of transportation and public facilities
makes a written finding that it is in the state's best interest, the
estimated cost of a construction contract is confidential information
and may not be released to the public before bid opening.

21 * Sec. 3. AS 36.30.115(b) is amended to read:

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

- (1) fails to comply with AS 08.18;
- (2) files for bankruptcy or becomes insolvent;
- (3) fails to execute a contract with the bidder involving performance of the work for which the subcontractor was listed and the bidder acted in good faith;
- (4) fails to obtain bonding;

- 1 (5) fails to obtain insurance acceptable to the state;
2 (6) fails to perform the contract with the bidder involving
3 work for which the subcontractor was listed;
4 (7) must be substituted in order for the prime contractor
5 to satisfy required state and federal affirmative action requirements;
6 (8) refuses to agree or abide with the bidder's labor
7 agreement; or
8 (9) is determined by the procurement officer not to be a
9 *clarification only* - responsible subcontractor [BIDDER].

10 * Sec. 4. AS 36.30.120(b) is amended to read:

11 (b) Bid security must be a bond provided by a surety company
12 authorized to do business in the state or otherwise supplied in a form
13 satisfactory to the commissioner. Bid security must be in an amount
14 equal to at least five percent of the amount of the bid

*because each bidder's bid
amount varies, different
bid bonds were being
required for the
same project - seemed
unreasonable, plus inefficient
to administer*

15 [(1) 10 PERCENT OF THE AMOUNT OF THE BID IF THE BID DOES NOT
16 EXCEED \$100,000; OR

17 (2) 10 PERCENT OF THE FIRST \$100,000 AND FIVE PERCENT OF
18 THE AMOUNT OF THE BID OVER \$100,000 IF THE BID EXCEEDS \$100,000 UP TO
19 A MAXIMUM OF \$200,000 IN SECURITY].

20 * Sec. 5. AS 36.30.170(b) is amended to read:

21 The procurement officer shall award a contract based on solicited
22 bids to the lowest responsive and responsible bidder after an Alaska
23 bidder preference of five percent and an Alaska products preference as
24 described in AS 36.30.322 -- 36.30.338 have been applied. In this
25 subsection, "Alaska bidder" means a person who

26 (1) holds a current Alaska business license;

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

→ Currently corporations can receive authorization from JCED to do business in the state & get the bidder's preference even though many or all of the shareholders may be non-Alaskans. Conversely, all partners in a partnership must be Alaskans in order for the preference to apply.

Sen. Fauts has introduced SB 58, which would require 50% of the partners to be Alaskan. (in Sen L-2)

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

4 (4) is incorporated or qualified to do business under the
5 laws of the state, or is a sole proprietorship[,], and the proprietor
6 is a resident of the state, or is a partnership[,], and one or more of
7 the general [ALL] partners is a resident [ARE RESIDENTS] of the state;

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

10 * Sec. 6. ^{COMPETITIVE SEALED PROPOSALS} AS 36.30.210(a) is amended to read:

11 (a) A request for competitive sealed proposals must contain the
12 date, time, and place for delivering proposals, a specific description
13 of the supplies, construction, services, or professional services to
14 be provided under the contract, and the terms under which the sup-
15 plies, construction, services, or professional services are to be
16 provided. The request shall require the offeror [TO SUBMIT EVIDENCE
17 OF THE OFFEROR'S VALID ALASKA BUSINESS LICENSE AND], no later than
18 five working days after identifying which proposal is most advanta-
19 geous to the state, to list subcontractors the offeror proposes to use
20 in the performance of the contract. The list shall include the name
21 and location of the place of business for each subcontractor, the work
22 to be subcontracted to each subcontractor, and evidence of the subcon-
23 tractor's valid Alaska business license. An offeror for a construc-
24 tion contract shall also submit evidence of the offeror's registration
25 under AS 08.18 and evidence of registration for each listed subcon-
26 tractor.

see sec. 7

27 * Sec. 7. AS 36.30.210 is amended by adding a new subsection to
28 read:

makes consistent with competitive sealed bid (e) The offeror must have a valid Alaska business license at the

1 time designated, in the request for proposals, for opening of the pro-
2 posals. The offeror shall supply evidence of the offeror's valid
3 Alaska business license in accordance with regulations adopted by the
4 commissioner.

5 * Sec. 8. AS 36.30.250(b) is amended to read:

6 (b) In determining whether a proposal is advantageous to the
7 state, the procurement officer shall take into account, in accordance
8 with regulations of the commissioner, whether the offeror [QUALIFIES
9 AS AN ALASKA BIDDER UNDER AS 36.30.170(b) OR] is offering the services
10 of an employment program as defined in AS 36.30.100(c).

11 * Sec. 9. ^{COMPETITIVE SEALED PROPOSALS} AS 36.30.250 is amended by adding new subsections to read:

12 (c) For the purpose of evaluating cost factors, the proposed
13 costs of an offeror who qualifies as an Alaska bidder under AS 36.30.-
14 170(b) shall be reduced by five percent.

15 (d) An evaluation factor must be included which takes into
16 consideration whether an offeror qualifies as an Alaska bidder under
17 AS 36.30.170(b). At least 10 percent of the value of the rating
18 system, or weighting value, used must be assigned to the Alaska bidder
19 evaluation factor.

20 * Sec. 10. AS 36.30 is amended by adding a new section to read:

21 Sec. 36.30.265. MULTI-STEP SEALED PROPOSALS. When it is con-
22 sidered impractical to initially prepare a definitive description of
23 the procurement to support an award based on stated selection crite-
24 ria, the procurement officer may issue an expression of interest
25 requesting the submission of unpriced technical offers, to be followed
26 by a request for proposals limited to the offerors whose offers are
27 determined to be technically qualified under the criteria set out in
28 the expression of interest.

29 * Sec. 11. ^{SOLE SOURCE} AS 36.30.300(a) is amended to read:

see sec. 9

currently in regulation

in consulting contracts
especially price is
a small part of
contract
evaluation

Similar to AS 36.30.190
on multi-step
competitive sealed
bidding. Used
primarily by DOT -
when open to
different approaches
to accomplish a
goal

1 (a) A contract may be awarded for supplies, services, profes-
2 sional services, or construction without competitive sealed bidding,
3 competitive sealed proposals, or other competition in accordance with
4 regulations adopted by the commissioner [OF ADMINISTRATION]. A con-
5 tract may be awarded under this section only when the chief procure-
6 ment officer or, for construction contracts or procurements for the
7 state equipment fleet, the commissioner of transportation and public
8 facilities determines in writing that there is only one source for the
9 required procurement or construction. A sole source procurement may
10 not be awarded if a reasonable alternative source exists. The written
11 determination must include findings of fact that support by clear and
12 convincing evidence the determination that only one source exists.

Except for procurements of supplies, services, or construction that do
not exceed the amount for small procurements under AS 36.30.320(a),
the [THE] authority to make the determination required by this subsec-
tion may not be delegated.

currently must be
approved by the
commissioner
(DOT or DCA) -
cumbersome for
small items

<5,000⁰⁰

16
17 * Sec. 12. AS 36.30.305(a) is amended to read:

LIMITED COMPETITION

18 (a) A contract for supplies, services, professional services, or
19 a construction contract under \$100,000, may be awarded without compe-
20 titive sealed bidding or competitive sealed proposals, in accordance
21 with regulations adopted by the commissioner [OF ADMINISTRATION]. A
22 contract may be awarded under this section only when the commissioner
23 [OF ADMINISTRATION], or, for construction contracts under \$100,000 or
24 procurements for the state equipment fleet, the commissioner of trans-
25 portation and public facilities, determines in writing that a situa-
26 tion exists that makes competitive sealed bidding or competitive
27 sealed proposals impractical or contrary to the public interest.
28 Procurements under this section shall be made with competition that is
29 practicable under the circumstance. Except for procurements of

same as
Sec. 11

1 supplies, services, or construction that do not exceed the amount for
2 small procurements under AS 36.30.320(a), the [THE] authority to make
3 a determination required by this section may not be delegated.

4 * Sec. 13. AS 36.30.360(a) is amended to read:

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exception process
is more workable.
Model Procurement
Code is "non-
responsibility."

(a) A written determination of nonresponsibility [RESPONSIBILI-
TY] of a bidder or offeror shall be made by the procurement officer in
accordance with regulations adopted by the commissioner. The unrea-
sonable failure of a bidder or offeror to promptly supply information
in connection with an inquiry with respect to responsibility is
grounds for a determination of nonresponsibility with respect to the
bidder or offeror.

* Sec. 14. AS 36.30.362 is amended to read:

written statement
would not be
required for
sealed competitive
bidding. Award
goes to the
lowest bidder,
regardless of
place of residence.
There's no
discretion.

Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESI-
DENT. Except for awards made under AS 36.30.170, if [IF] the procure-
ment officer awards a contract to a person who does not reside or
maintain a place of business in the state and if the supplies, ser-
vices, 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.

* Sec. 15. AS 36.30.370 is amended to read:

Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of
this section, any type of contract that will promote the best inter-
ests of the state may be used, except that the use of a cost-plus-a-
percentage-of-cost contract may only be used when permitted by regu-
lations adopted by the commissioner, or, for construction contracts,
by the commissioner of transportation and public facilities [IS PRO-
HIBITED]. A cost-reimbursement contract may be used only when a

Example: additions to a
construction project that
become necessary midway through a
project (like removal of additional rock, etc.)

Currently, if a bid award is protested, the award can be made anyway unless a written determination is made. Sec. 16 requires the award be stayed unless a written determination is made.

University concerned that Sec. 16 will make it too easy for losing bidders to hold up the procurement process.

1 determination is made in writing by the procurement officer that a
2 cost-reimbursement contract is likely to be less costly to the state
3 than any other type or that it is impracticable to obtain the sup-
4 plies, services, professional services, or construction required
5 except under a cost-reimbursement contract.

6 * Sec. 16. AS 36.30.575 is repealed and reenacted to read:

7 Sec. 36.30.575. STAY OF AWARD. If a protest is filed within the
8 time set out in AS 36.30.565 and before an award is made, award of the
9 contract shall be stayed until a decision is made on the protest,
10 unless the chief procurement officer, the commissioner, or, for con-
11 struction contracts or procurements for the state equipment fleet, the
12 commissioner of transportation and public facilities, makes a written
13 determination that

14 (1) a reasonable probability exists that the protest will
15 be denied; or

16 (2) delay of award of the contract is contrary to the
17 state's best interests.

18 * Sec. 17. AS 36.30.850(b) is amended to read:

19 (b) This chapter applies to every expenditure of state money
20 [FUNDS, IRRESPECTIVE OF THEIR SOURCES, INCLUDING FEDERAL ASSISTANCE
21 EXCEPT AS OTHERWISE SPECIFIED IN AS 36.30.890,] by the state, acting
22 through an agency, under a contract, except that this chapter does not
23 apply to

24 (1) grants;

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

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

See sec. 19

- 1 (4) contracts for medical doctors and dentists;
- 2 (5) acquisitions or disposals of real property or interest
- 3 in real property, except as provided in AS 36.30.080;
- 4 (6) disposals under AS 38.05;
- 5 (7) contracts for the preparation of ballots under AS 15.-
- 6 15.030;
- 7 (8) acquisitions or disposals of property and other con-
- 8 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
- 9 091;
- 10 (9) disposals of obsolete property under AS 19.05.060;
- 11 (10) disposals of obsolete material or equipment under
- 12 AS 35.20.060;
- 13 (11) agreements with providers of services under AS 44.47.-
- 14 250; AS 47.07; AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195,
- 15 and 47.25.310;
- 16 (12) contracts of the Department of Fish and Game for
- 17 flights that involve specialized flying and piloting skills and are
- 18 not point-to-point;
- 19 (13) purchases of income-producing assets for the state
- 20 treasury or a public corporation of the state; [.]
- 21 (14) operation of the state boarding school established
- 22 under AS 14.16, if the State Board of Education or the commissioner of
- 23 education adopts regulations for use by the state boarding school in
- 24 procurement and contracting;
- 25 (15) a contract that is a delegation, in whole or in part,
- 26 of investment powers held by the commissioner of revenue under AS 14.-
- 27 25.180, AS 14.40.400, AS 14.42.200, 14.42.210, AS 18.56.095, AS 22.-
- 28 25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or AS 39.35.-
- 29 080;

adds contracts for
day care
14
assistance
(was abs
oversight)

1 (16) a contract that is a delegation, in whole or in part,
2 of investment powers of the Board of Trustees of the Alaska Permanent
3 Fund Corporation under AS 37.13; [OR]

4 (17) the purchase of books, book binding services, news-
5 papers, periodicals, audio-visual materials, network information ser-
6 vices access, approval plans, professional memberships, archival
7 materials, objects of art, and items for museum or archival acquisi-
8 tion having cultural, historical, or archaeological significance; in
9 this paragraph

10 (A) "approval plans" means book selection services in
11 which current book titles meeting an agency's customized speci-
12 fications are provided to the agency subject to the right of the
13 agency to return those books that do not meet with the agency's
14 approval;

15 (B) "audio-visual materials" means nonbook prerecorded
16 materials, including records, tapes, slides, transparencies,
17 films, filmstrips, cassettes, videos, compact discs, laser discs,
18 and items that require the use of equipment to render them us-
19 able;

20 (C) "archival materials" means the noncurrent records
21 of an agency that are preserved after appraisal because of their
22 value;

23 (D) "network information services" means a group of
24 resources from which cataloging information, holdings records,
25 inter-library loans, acquisitions information, and other refer-
26 ence resources can be obtained;

these are purchased from the national organization
27 (18) contracts for purchase of standardized examinations for
28 licensure under AS 08;

procurement code furnished through surplus property act. to GF; in many cases, should go to loan fund
29 (19) disposals of supplies acquired through foreclosure of
30 SB0170a
The additions in this section are generally routine purchases for which a sole source justification must be written each time such a purchase is made.

University proposes additional exemptions:

conference registration fees
guest speakers + entertainment

1 loans issued under AS 03.10;

little interest in competing. Univ. supports strongly.

4

(20) purchases of curatorial and conservation services to maintain, preserve, and interpret objects of art and items having cultural, historical, or archaeological significance to the state;

DNR purchases all that's available

6

(21) acquisition of confidential seismic survey data necessary for pre-sale oil and gas lease analyses under AS 38.05.180;

intent is for services to be provided by local people.

8

(22) contracts for village public safety officers;

(23) expenditures to pay travel expenses of personal care

9

attendants and sign language interpreters needed to accompany develop-

10

mentally disabled members of the Governor's Council for the Handi-

11

capped and Gifted to meetings for which reimbursement of members'

12

expenses is authorized under AS 47.80.060;

13

(24) contracts for home health care and adult residential

flat fees

and foster care services provided under regulations adopted by the

15

Department of Health and Social Services; or

for consistency with federal requirements - Univ. supports strongly

16

(25) contracts for supplies or services for research pro-

jects funded by money received from the federal government or private grants.

19

* Sec. 18. AS 36.30 is amended by adding a new section to read:

20

Sec. 36.30.855. ALTERNATE PROCUREMENT METHODS. (a) An alter-

21

nate procurement method to the methods provided by AS 36.30.100 --

22

36.30.320 may be used, in accordance with regulations adopted by the

23

commissioner,

consistent with old law which listed

(1) if the commissioner determines in writing that food,

thing you didn't need to bid for

clothing, medical supplies, or supplies for use in laboratory or

law requires either bid or competitive

medical studies can be purchased otherwise to the best advantage of

the state;

28

(2) if rates are fixed by law or ordinance;

sealed proposal; this would allow an alternative method.

29

(3) to purchase products or services manufactured or

1 provided by an employment program operated by a nonprofit organization
2 to increase employment opportunities for individuals with physical or
3 mental disabilities that constitute substantial handicaps to employ-
4 ment;

5 (4) to purchase products or services provided by the cor-
6 rectional industries program established under AS 33.32.

7 (b) An alternate procurement method to the methods provided by
8 AS 36.30.100 -- 36.30.320 may be used for purchases of supplies and
9 services to support operations of the division of Alaska state troop-
10 ers or the division of fish and wildlife protection if the procurement
11 officer for the Department of Public Safety makes a written determina-
12 tion that publicity of the purchases would jeopardize the safety of
13 personnel or the success of the operation.

14 * Sec. 19. AS 36.30.990 is amended by adding a new paragraph to read:

15 *excludes money the state spends on others' behalf (i.e. when the state acts as agent)*
16 (17) "state money" means any money appropriated to an
17 agency or spent by an agency (under an appropriation) irrespective of
18 its sources, including federal assistance except as otherwise spec-
19 ified in AS 36.30.890.

Conforming
19 * Sec. 20. AS ^(now in Sec. 18) 36.30.100(b)(1) -- (4), 36.30.540(4) -- (5), ^(per sec. 16) 36.30.605;
20 ^(per sec. 17) and AS 44.47.250(c) are repealed. *list of in-state & out-of-state procurements (too long & involved.)*

Additional amendment proposals:

University: bid limit: require open competitive bidding above \$10,000 [\$5,000]
penalties: if intentionally contract in a manner you know to be contrary

Railroad: remove RR Corp. from procurement code
require additional proof that vendors are Alaska bidders

FISCAL NOTE

REQUEST:

Revision Date: March 20, 1989 Agency Affected: Department of Administration
 Title: An Act Relating to State BRU: General Services
Procurement
 Sponsor: Rules Components: Purchasing
 Requestor: Senate, State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS (PHONE)	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

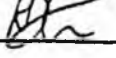

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Implementation costs will be minimal. Efficiencies gained will be reflected in improved service delivery.

Prepared By: Robert J. Link, Director  Phone: 465-2250
 Division: General Services & Supply Date: _____
 Approved by Commissioner: John M. Andrews  Date: 3/21/89
 Agency: Department of Administration

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

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 170 (b)
PUBLISH DATE: 2/13/89

REQUEST: **FISCAL NOTE**

Revision Date: 12/27/88
Title: An Act Relating to State Procurement

Agency Affected: DOT&PF
BRU: Design & Construction, Maintenance & Operations: State Equipment Fleet
Components: _____

Sponsor: Rules
Requestor: Governor

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Although the fiscal note and impact of this bill is shown as zero there will be some positive effects. The cost savings will be in the form of increased efficiencies in the procurement process.

Prepared by: Loren Rasmussen
Division: Engineering & Operations, Standards
Approved by Commissioner: M-K & H
Agency: DOT & PF

Phone: 465-2960
Date: 12/28/88
Date: 12/30/88

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

State affairs

Sen. Fourchot
March 17, 1989

PROPOSED AMENDMENTS

CS SB 170 PROCUREMENT CODE

AMENDMENT #1
(Requested by University)

page 2, line 28 and page 5, line 27

If the bidder is required to have an Alaska business license under AS 43.70, the bidder must have a valid Alaska business license at the time designated, in the invitation to bid, for bid opening.

NOTE: AS 43.70.110 defines "business" for the purposes of the Alaska business license. Those not required to have a license include: fisheries businesses, fishermen, liquor licenses, insurance businesses, mining, and coin-operated amusement and gaming machines.

The procurement code, by not referencing this definition, requires that all businesses that bid on state contracts have an Alaska business license.

AMENDMENT #2
(Requested by Alaska Railroad, Univerity)

Page 4, lines 21-23

(3) has maintained a substantial bona fide place of business within the state [STAFFED BY THE BIDDER OR AN EMPLOYEE OF THE BIDDER FOR A PERIOD OF SIX MONTHS IMMEDIATELY PRECEDING THE DATE OF THE BID];

Add a new subsection to read:

(e) In this section "substantial bona fide place of business" means a place that is

(1) regularly used for the sale of the supplies or services called for in the invitation to bid;

(2) staffed by the bidder or at least one employee of the bidder who is a resident of the state;

(3) equipped and staffed to offer any maintenance, warranty, or repair services called for in the invitation to bid; and

(4) continuously used in the state at a single location for a period of six months immediately preceding the date of the invitation to bid.

NOTE: This language, prepared by the Attorney General's office, is designed to eliminate firms that carry on limited business enterprises exclusively for the purpose of taking advantage of the Alaska bidder's preference. It was drafted after review of some other states' statutes (see attached letter from Jim Baldwin).

The Railroad had suggested that bidders be required to have an inventory of \$50,000; the AG feels that this would be difficult to determine and may have undesirable effects on legitimate Alaska bidders.

AMENDMENT #3
(Requested by University)

Page 8, after line 1 -- add a new section

AS 36.30.320(a) is amended to read:

(a) A procurement for supplies, services, or construction that does not exceed an aggregate dollar amount of \$10,000 [\$5,000] may be made in accordance with regulations adopted by the commissioner for small procurements.

NOTE: Open competitive bidding is not required for small procurements. The Department of Administration is preparing for presentation to the committee a summary of recent procurements in the \$5,000 to \$10,000 range.

The University notes that the federal government uses a \$25,000 limit and the state of Oregon a \$10,000 limit.

AMENDMENT #4
(Requested by University)

page 12, after line 19

(27) contracts for supplies or services purchased outside
the United States for use outside the United States

NOTE: This addresses the Greenland and Antarctica research
camp concern.

(Requested by Department of Law)

(28) contracts for hearing officers

NOTE: The department asserts that the procurement process
slows down the administration of justice through
administrative agencies. If this exemption is enacted, the
department intends to develop a list of qualified persons
interested in serving as hearing officers. Appointments of
hearing officers would be made from this list on a rotating
basis.

AMENDMENT #5
(Requested by University)

page 13, after line 16

AS 36.30.930 is amended by adding a new subsection to read:

(3) a person who files a protest to halt the award of a contract under AS 36.30.560 which is determined to be frivolous or unfounded is liable for all costs and damages to the state and the contractor arising out of the protest.

NOTE: Under current law, if a bid award is protested the award is made anyway unless there is a written determination that it shouldn't be. SB 170 would shift this burden, requiring that the award be stayed unless there is a written determination that it should be awarded anyway. The University is concerned that the new procedure will make it too easy for a losing bidder to hold up the procurement process, thus injuring the successful bidder.

The determination that a protest is frivolous would be made by the courts.

AMENDMENT #6
(Requested by Department of Law)

page 13, line 22

(17) "state money" means any money appropriated to an agency or spent by an agency [UNDER AN APPROPRIATION] irrespective of its sources, including federal assistance except as otherwise specified in AS 36.30.890 but does not include money held in trust by an agency for a person.

NOTE: SB 170 proposes a new definition of "state money" to clarify that only expenditure of money appropriated to an agency or spent under an appropriation is subject to the procurement code. Not subject would be money such as that of companies for which the state acts as the trustee, receiver, or conservator (for example, money of a bank that the state has taken possession of or a client's money held in trust by the Office of Public Advocacy).

However, it has come to the department's attention that the definition in SB 170 would exclude contracts of an agency from the code if the agency operates exclusively with nonappropriated money (ASBA for example).

Original sponsor: Rules/Governor

pp. 1, 8, 12, 14

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR SENATE BILL NO. 170 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state procurement."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 36.30.015(e) is amended to read:

9 (e) The board [BOARDS] of directors of the [ALASKA RAILROAD
10 CORPORATION AND THE] Alaska State Building Authority shall adopt
11 procedures to govern the procurement of supplies, services, profes-
12 sional services, and construction by the authority [CORPORATION]. The
13 procedures must be substantially equivalent to the procedures pre-
14 scribed in this chapter and in regulations adopted under this chapter.

15 * Sec. 2. AS 36.30.015 is amended by adding a new subsection to read:

16 (f) The board of directors of the Alaska Railroad Corporation
17 shall adopt and publish procedures to govern the procurement of sup-
18 plies, services, professional services, and construction by the corpo-
19 ration. The procedures must be based on the competitive principles
20 consistent with this chapter and must be adapted to the special needs
21 of the corporation as determined by the board of directors.

22 * Sec. 3. AS 36.30.040(b) is amended to read:

23 (b) The commissioner shall adopt regulations pertaining to the
24 following:

25 (1) suspension, debarment, and reinstatement of prospective
26 bidders and contractors;

27 (2) bid protests;

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

added
RAILROAD

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

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

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

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

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

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

12 (10) definitions and classes of contractual services and
13 procedures for acquiring them;

14 (11) providing for conducting price analysis;

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

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

19 (14) conditions under which an agency may use the services
20 of an employment program [AS DEFINED UNDER AS 36.30.100(c)];

21 (15) a bidder's or offeror's duties under AS 36.30.115 and
22 36.30.210; and

23 (16) the elimination and prevention of discrimination in
24 state contracting because of race, religion, color, national origin,
25 sex, age, marital status, pregnancy, parenthood, handicap, or politi-
26 cal affiliation.

27 * Sec. 4. AS 36.30.110(b) is amended to read:

28 (b) The bidder must have a valid Alaska business license at the
29 time designated in the invitation to bid for bid opening. The [WHEN

1 RESPONDING TO THE INVITATION TO BID, THE] bidder shall supply evidence
2 of the bidder's valid Alaska business license in accordance with
3 regulations adopted by the commissioner. A bidder for a construction
4 contract shall also submit evidence of the bidder's registration under
5 AS 08.18.

6 * Sec. 5. AS 36.30.110 is amended by adding a new subsection to read:

7 (c) If the commissioner of transportation and public facilities
8 makes a written finding that confidentiality is in the state's best
9 interest, the estimated cost of a construction contract is confiden-
10 tial information and may not be released to the public before bid
11 opening.

12 * Sec. 6. AS 36.30.115(b) is amended to read:

13 (b) A bidder may replace a listed subcontractor if the subcon-
14 tractor

15 (1) fails to comply with AS 08.18;

16 (2) files for bankruptcy or becomes insolvent;

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

20 (4) fails to obtain bonding;

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

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

24 (7) must be substituted in order for the prime contractor
25 to satisfy required state and federal affirmative action requirements;

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

28 (9) is determined by the procurement officer not to be a
29 responsible subcontractor [BIDDER].

1 * Sec. 7. AS 36.30.120(b) is amended to read:

2 (b) Bid security must be a bond provided by a surety company
3 authorized to do business in the state or otherwise supplied in a form
4 satisfactory to the commissioner. Bid security must be in an amount
5 equal to at least five percent of the amount of the bid

6 [(1) 10 PERCENT OF THE AMOUNT OF THE BID IF THE BID DOES NOT
7 EXCEED \$100,000; OR

8 (2) 10 PERCENT OF THE FIRST \$100,000 AND FIVE PERCENT OF
9 THE AMOUNT OF THE BID OVER \$100,000 IF THE BID EXCEEDS \$100,000 UP TO
10 A MAXIMUM OF \$200,000 IN SECURITY].

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

12 (b) The procurement officer shall award a contract based on
13 solicited bids to the lowest responsive and responsible bidder after
14 an Alaska bidder preference of five percent and an Alaska products
15 preference as described in AS 36.30.322 - 36.30.338 have been applied.
16 In this subsection, "Alaska bidder" means a person who

17 (1) holds a current Alaska business license;

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

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

24 (4) is incorporated or qualified to do business under the
25 laws of the state, is a sole proprietorship [,] and the proprietor is
26 a resident of the state, or is a partnership [,] and one or more of
27 the general [ALL] partners is a resident [ARE RESIDENTS] of the state;
28 and

29 (5) if a joint venture, is composed entirely of venturers

1 [VENTURES] that qualify under (1) - (4) of this subsection.

2 * Sec. 9. AS 36.30.170(c) is amended to read:

3 (c) If a bidder qualifies under (b) of this section as an Alaska
4 bidder, is offering services through an employment program [AS DEFINED
5 UNDER AS 36.30.100(c)], and is the lowest responsible and responsive
6 bidder with a bid that is not more than 10 percent higher than the
7 lowest bid of a nonresident, the procurement officer shall award the
8 contract to that bidder.

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

10 (a) A request for competitive sealed proposals must contain the
11 date, time, and place for delivering proposals, a specific description
12 of the supplies, construction, services, or professional services to
13 be provided under the contract, and the terms under which the sup-
14 plies, construction, services, or professional services are to be
15 provided. The request must [SHALL] require the offeror [TO SUBMIT
16 EVIDENCE OF THE OFFEROR'S VALID ALASKA BUSINESS LICENSE AND], no later
17 than five working days after the [IDENTIFYING WHICH] proposal that is
18 the most advantageous to the state is identified, to list subcontrac-
19 tors the offeror proposes to use in the performance of the contract.
20 The list must [SHALL] include the name and location of the place of
21 business for each subcontractor, the work to be subcontracted to each
22 subcontractor, and evidence of the subcontractor's valid Alaska busi-
23 ness license. An offeror for a construction contract shall also
24 submit evidence of the offeror's registration under AS 08.18 and
25 evidence of registration for each listed subcontractor.

26 * Sec. 11. AS 36.30.210 is amended by adding a new subsection to read:

27 (e) The offeror must have a valid Alaska business license at the
28 time designated, in the request for proposals, for opening of the pro-
29 posals. The offeror shall supply evidence of the offeror's valid

1 Alaska business license in accordance with regulations adopted by the
2 commissioner.

3 * Sec. 12. AS 36.30.250(b) is amended to read:

4 (b) In determining whether a proposal is advantageous to the
5 state, the procurement officer shall take into account, in accordance
6 with regulations of the commissioner, whether the offeror [QUALIFIES
7 AS AN ALASKA BIDDER UNDER AS 36.30.170(b) OR] is offering the services
8 of an employment program [AS DEFINED IN AS 36.30.100(c)].

9 * Sec. 13. AS 36.30.250 is amended by adding new subsections to read:

10 (c) For the purpose of evaluating cost factors, the proposed
11 costs of an offeror who qualifies as an Alaska bidder under AS 36.30.-
12 170(b) shall be reduced by five percent.

13 (d) The request for proposals must include an Alaska bidder
14 evaluation factor that takes into consideration whether an offeror
15 qualifies as an Alaska bidder under AS 36.30.170(b). At least 10
16 percent of the value of the rating system or weighting value used
17 shall be assigned to the Alaska bidder evaluation factor.

18 * Sec. 14. AS 36.30 is amended by adding a new section to read:

19 Sec. 36.30.265. MULTI-STEP SEALED PROPOSALS. When it is con-
20 sidered impractical to initially prepare a definitive purchase
21 description to support an award based on listed selection criteria,
22 the procurement officer may issue an expression of interest requesting
23 the submission of unpriced technical offers, and then later issue a
24 request for proposals limited to the offerors whose offers are deter-
25 mined to be technically qualified under the criteria set out in the
26 expression of interest.

27 * Sec. 15. AS 36.30.300(a) is amended to read:

28 (a) A contract may be awarded for supplies, services, profes-
29 sional services, or construction without competitive sealed bidding,

1 competitive sealed proposals, or other competition in accordance with
2 regulations adopted by the commissioner [OF ADMINISTRATION]. A con-
3 tract may be awarded under this section only when the chief procure-
4 ment officer or, for construction contracts or procurements for the
5 state equipment fleet, the commissioner of transportation and public
6 facilities determines in writing that there is only one source for the
7 required procurement or construction. A sole source procurement may
8 not be awarded if a reasonable alternative source exists. The written
9 determination must include findings of fact that support by clear and
10 convincing evidence the determination that only one source exists.
11 Except for procurements of supplies, services, or construction that do
12 not exceed the amount for small procurements under AS 36.30.320(a),
13 the [THE] authority to make the determination required by this subsec-
14 tion may not be delegated.

15 * Sec. 16. AS 36.30.305(a) is amended to read:

16 (a) A contract for supplies, services, professional services, or
17 a construction contract under \$100,000, may be awarded without compet-
18 itive sealed bidding or competitive sealed proposals, in accordance
19 with regulations adopted by the commissioner [OF ADMINISTRATION]. A
20 contract may be awarded under this section only when the commissioner
21 [OF ADMINISTRATION], or, for construction contracts under \$100,000 or
22 procurements for the state equipment fleet, the commissioner of trans-
23 portation and public facilities, determines in writing that a situa-
24 tion exists that makes competitive sealed bidding or competitive
25 sealed proposals impractical or contrary to the public interest.
26 Procurements under this section shall be made with competition that is
27 practicable under the circumstance. Except for procurements of sup-
28 plies, services, or construction that do not exceed the amount for
29 small procurements under AS 36.30.320(a), the [THE] authority to make

1 a determination required by this section may not be delegated.

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* Sec. 17. AS 36.30.320(a) is amended to read:

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(a) A procurement for supplies, services, or construction that does not exceed an aggregate dollar amount of \$10,000 [\$5,000] may be made in accordance with regulations adopted by the commissioner for small procurements.

15 * Sec. 18. AS 36.30.360(a) is amended to read:

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(a) A written determination of nonresponsibility [RESPONSIBILITY] of a bidder or offeror shall be made by the procurement officer in accordance with regulations adopted by the commissioner. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination of nonresponsibility with respect to the bidder or offeror.

25 * Sec. 19. AS 36.30.362 is amended to read:

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1 regulations adopted by the commissioner, or, for construction con-
2 tracts, by the commissioner of transportation and public facilities
3 [IS PROHIBITED]. A cost-reimbursement contract may be used only when
4 a determination is made in writing by the procurement officer that a
5 cost-reimbursement contract is likely to be less costly to the state
6 than any other type or that it is impracticable to obtain the sup-
7 plies, services, professional services, or construction required
8 except under a cost-reimbursement contract.

9 * Sec. 21. AS 36.30.575 is repealed and reenacted to read:

10 Sec. 36.30.575. STAY OF AWARD. If a protest is filed within the
11 time set out in AS 36.30.565 and before an award is made, award of the
12 contract shall be stayed until a decision is made on the protest,
13 unless the chief procurement officer, the commissioner, or, for con-
14 struction contracts or procurements for the state equipment fleet, the
15 commissioner of transportation and public facilities, makes a written
16 determination that

17 (1) a reasonable probability exists that the protest will
18 be denied; or

19 (2) delay of award of the contract is contrary to the
20 state's best interests.

21 * Sec. 22. AS 36.30.850(b) is amended to read:

22 (b) This chapter applies to every expenditure of state money
23 [FUNDS, IRRESPECTIVE OF THEIR SOURCES, INCLUDING FEDERAL ASSISTANCE
24 EXCEPT AS OTHERWISE SPECIFIED IN AS 36.30.890,] by the state, acting
25 through an agency, under a contract, except that this chapter does not
26 apply to

27 (1) grants;

28 (2) contracts for professional witnesses to provide for
29 professional services or testimony relating to existing or probable

- 1 lawsuits in which the state is or may become a party;
- 2 (3) contracts of the University of Alaska where the work is
3 to be performed substantially by students enrolled in the university;
- 4 (4) contracts for medical doctors and dentists;
- 5 (5) acquisitions or disposals of real property or interest
6 in real property, except as provided in AS 36.30.080;
- 7 (6) disposals under AS 38.05;
- 8 (7) contracts for the preparation of ballots under AS 15.-
9 15.030;
- 10 (8) acquisitions or disposals of property and other con-
11 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
12 091;
- 13 (9) disposals of obsolete property under AS 19.05.060;
- 14 (10) disposals of obsolete material or equipment under
15 AS 35.20.060;
- 16 (11) agreements with providers of services under AS 44.47.-
17 250; AS 47.07; AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195,
18 and 47.25.310;
- 19 (12) contracts of the Department of Fish and Game for
20 flights that involve specialized flying and piloting skills and are
21 not point-to-point;
- 22 (13) purchases of income-producing assets for the state
23 treasury or a public corporation of the state; [.]
- 24 (14) operation of the state boarding school established
25 under AS 14.16, if the State Board of Education or the commissioner of
26 education adopts regulations for use by the state boarding school in
27 procurement and contracting;
- 28 (15) a contract that is a delegation, in whole or in part,
29 of investment powers held by the commissioner of revenue under

1 AS 14.25.180, AS 14.40.400, AS 14.42.200, 14.42.210, AS 18.56.095,
2 AS 22.25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or
3 AS 39.35.080;

4 (16) a contract that is a delegation, in whole or in part,
5 of investment powers of the Board of Trustees of the Alaska Permanent
6 Fund Corporation under AS 37.13; [OR]

7 (17) the purchase of books, book binding services, newspa-
8 pers, periodicals, audio-visual materials, network information ser-
9 vices access, approval plans, professional memberships, archival
10 materials, objects of art, and items for museum or archival acquisi-
11 tion having cultural, historical, or archaeological significance; in
12 this paragraph

13 (A) "approval plans" means book selection services in
14 which current book titles meeting an agency's customized specifi-
15 cations are provided to the agency subject to the right of the
16 agency to return those books that do not meet with the agency's
17 approval;

18 (B) "audio-visual materials" means nonbook prerecorded
19 materials, including records, tapes, slides, transparencies,
20 films, filmstrips, cassettes, videos, compact discs, laser discs,
21 and items that require the use of equipment to render them
22 usable;

23 (C) "archival materials" means the noncurrent records
24 of an agency that are preserved after appraisal because of their
25 value;

26 (D) "network information services" means a group of
27 resources from which cataloging information, holdings records,
28 inter-library loans, acquisitions information, and other refer-
29 ence resources can be obtained;

1 (18) contracts for the purchase of standardized examinations
2 for licensure under AS 08;

3 (19) disposals of supplies acquired through foreclosure of
4 loans issued under AS 03.10;

5 (20) purchases of curatorial and conservation services to
6 maintain, preserve, and interpret

7 (A) objects of art; and

8 (B) items having cultural, historical, or archaeologi-
9 cal significance to the state;

10 (21) acquisition of confidential seismic survey data neces-
11 sary for pre-sale oil and gas lease analyses under AS 38.05.180;

12 (22) contracts for village public safety officers;

13 (23) expenditures to pay travel expenses of personal care
14 attendants and sign language interpreters needed to accompany develop-
15 mentally disabled members of the Governor's Council for the Handi-
16 capped and Gifted to meetings for which reimbursement of members'
17 expenses is authorized under AS 47.80.060;

18 (24) contracts for home health care and adult residential
19 and foster care services provided under regulations adopted by the
20 Department of Health and Social Services;

21 (25) contracts for supplies or services for research pro-
22 jects funded by money received from the federal government or private
23 grants; or

24 (26) guest speakers or performers for an educational or
25 cultural activity.

26 * Sec. 23. AS 36.30.850(e) is amended to read:

27 (e) AS 36.30.170 applies to all insurance contracts involving
28 state money. In this subsection, "state money" includes [, INCLUDING]
29 state grants and reimbursement to municipalities, school districts,

Added

1 and other entities.

2 * Sec. 24. AS 36.30 is amended by adding a new section to read:

3 Sec. 36.30.855. ALTERNATE PROCUREMENT METHODS. (a) In place of
4 the methods provided by AS 36.30.100 - 36.30.320, an alternate pro-
5 curement method may be used in the following situations, in accordance
6 with regulations adopted by the commissioner:

7 (1) if the commissioner determines in writing that food,
8 clothing, medical supplies, or materials for use in laboratory or
9 medical studies can be purchased otherwise to the best advantage of
10 the state;

11 (2) if rates are fixed by law or ordinance;

12 (3) to purchase products or services manufactured or pro-
13 vided by an employment program;

14 (4) to purchase products or services provided by the cor-
15 rectional industries program established under AS 33.32.

16 (b) An alternate procurement method to the methods provided by
17 AS 36.30.100 - 36.30.320 may be used for purchases of supplies and
18 services to support operations of the division of Alaska state troop-
19 ers or the division of fish and wildlife protection if the procurement
20 officer for the Department of Public Safety makes a written determina-
21 tion that publicity of the purchases would jeopardize the safety of
22 personnel or the success of the operation.

23 * Sec. 25. AS 36.30.990 is amended by adding new paragraphs to read:

24 (17) "employment program" means a nonprofit program to
25 increase employment opportunities for individuals with physical or
26 mental disabilities that constitute substantial handicaps to employ-
27 ment;

28 (18) "state money" means any money appropriated to an
29 agency or spent by an agency irrespective of its source, including

added

1 federal assistance except as otherwise specified in AS 36.30.890, but
2 does not include money held in trust by an agency for a person.
3 * Sec. 26. AS 36.30.100(b)(1), 36.30.100(b)(2), 36.30.100(b)(3), 36.-
4 30.100(b)(4), 36.30.100(c), 36.30.540(4), 36.30.540(5), 36.30.605, and
5 AS 44.47.250(c) are repealed.

Original sponsor: Rules/Governor

pp - 1, 14

OK

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2

CS FOR SENATE BILL NO. 170 (Finance)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to state procurement."

Per Dr. Pearce's constituent who had problem during Christmas holidays (see p.14)

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 01.10.080 is amended to read:

9 Sec. 01.10.080. COMPUTATION OF TIME. The time in which an act
10 provided by law is required to be done is computed by excluding the
11 first day and including the last, unless the last day is a holiday,
12 and then it is also excluded. This section does not apply to AS 36.-

added

13

30. See p.14

Procurement code

14 * Sec. 2. AS 36.30.015(e) is amended to read:

15 (e) The board [BOARDS] of directors of the [ALASKA RAILROAD
16 CORPORATION AND THE] Alaska State Building Authority shall adopt
17 procedures to govern the procurement of supplies, services, profes-
18 sional services, and construction by the authority [CORPORATION]. The
19 procedures must be substantially equivalent to the procedures pre-
20 scribed in this chapter and in regulations adopted under this chapter.

21 * Sec. 3. AS 36.30.015 is amended by adding a new subsection to read:

22 (f) The board of directors of the Alaska Railroad Corporation
23 shall adopt and publish procedures to govern the procurement of sup-
24 plies, services, professional services, and construction by the corpo-
25 ration. The procedures must be based on the competitive principles
26 consistent with this chapter and must be adapted to the special needs
27 of the corporation as determined by the board of directors.

28 * Sec. 4. AS 36.30.040(b) is amended to read:

29 (b) The commissioner shall adopt regulations pertaining to the

- 1 following:
- 2 (1) suspension, debarment, and reinstatement of prospective
3 bidders and contractors;
- 4 (2) bid protests;
- 5 (3) conditions and procedures for the procurement of per-
6 ishables and items for resale;
- 7 (4) conditions and procedures for the use of source selec-
8 tion methods authorized by this chapter, including sole source pro-
9 curements, emergency procurements, and small procurements;
- 10 (5) the opening or rejection of bids and offers, and waiver
11 of informalities in bids and offers;
- 12 (6) confidentiality of technical data and trade secrets
13 submitted by actual or prospective bidders or offerors;
- 14 (7) partial, progressive, and multiple awards;
- 15 (8) storerooms and inventories, including determination of
16 appropriate stock levels and the management of agency supplies;
- 17 (9) transfer, sale or other disposal of supplies;
- 18 (10) definitions and classes of contractual services and
19 procedures for acquiring them;
- 20 (11) providing for conducting price analysis;
- 21 (12) use of payment and performance bonds in connection with
22 contracts for supplies, services, and construction;
- 23 (13) guidelines for use of cost principles in negotiations,
24 adjustments, and settlements;
- 25 (14) conditions under which an agency may use the services
26 of an employment program [AS DEFINED UNDER AS 36.30.100(c)];
- 27 (15) a bidder's or offeror's duties under AS 36.30.115 and
28 36.30.210; and
- 29 (16) the elimination and prevention of discrimination in

1 state contracting because of race, religion, color, national origin,
2 sex, age, marital status, pregnancy, parenthood, handicap, or politi-
3 cal affiliation.

4 * Sec. 5. AS 36.30.110(b) is amended to read:

5 (b) The bidder must have a valid Alaska business license at the
6 time designated in the invitation to bid for bid opening. The [WHEN
7 RESPONDING TO THE INVITATION TO BID, THE] bidder shall supply evidence
8 of the bidder's valid Alaska business license in accordance with
9 regulations adopted by the commissioner. A bidder for a construction
10 contract shall also submit evidence of the bidder's registration under
11 AS 08.18.

12 * Sec. 6. AS 36.30.110 is amended by adding a new subsection to read:

13 (c) If the commissioner of transportation and public facilities
14 makes a written finding that confidentiality is in the state's best
15 interest, the estimated cost of a construction contract is confiden-
16 tial information and may not be released to the public before bid
17 opening.

18 * Sec. 7. AS 36.30.115(b) is amended to read:

19 (b) A bidder may replace a listed subcontractor if the subcon-
20 tractor

21 (1) fails to comply with AS 08.18;

22 (2) files for bankruptcy or becomes insolvent;

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

26 (4) fails to obtain bonding;

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

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

1 (7) must be substituted in order for the prime contractor
2 to satisfy required state and federal affirmative action requirements;

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

5 (9) is determined by the procurement officer, not to be a
6 responsible subcontractor [BIDDER].

7 * Sec. 8. AS 36.30.120(b) is amended to read:

8 (b) Bid security must be a bond provided by a surety company
9 authorized to do business in the state or otherwise supplied in a form
10 satisfactory to the commissioner. Bid security must be in an amount
11 equal to at least five percent of the amount of the bid

12 [(1) 10 PERCENT OF THE AMOUNT OF THE BID IF THE BID DOES NOT
13 EXCEED \$100,000; OR

14 (2) 10 PERCENT OF THE FIRST \$100,000 AND FIVE PERCENT OF
15 THE AMOUNT OF THE BID OVER \$100,000 IF THE BID EXCEEDS \$100,000 UP TO
16 A MAXIMUM OF \$200,000 IN SECURITY].

17 * Sec. 9. AS 36.30.170(b) is amended to read:

18 (b) The procurement officer shall award a contract based on
19 solicited bids to the lowest responsive and responsible bidder after
20 an Alaska bidder preference of five percent and an Alaska products
21 preference as described in AS 36.30.322 - 36.30.338 have been applied.
22 In this subsection, "Alaska bidder" means a person who

23 (1) holds a current Alaska business license;

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

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

1 (4) is incorporated or qualified to do business under the
2 laws of the state, is a sole proprietorship [,] and the proprietor is
3 a resident of the state, or is a partnership [,] and one or more of
4 the general [ALL] partners is a resident [ARE RESIDENTS] of the state;
5 and

6 (5) if a joint venture, is composed entirely of venturers
7 [VENTURES] that qualify under (1) - (4) of this subsection.

8 * Sec. 10. AS 36.30.170(c) is amended to read:

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

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

16 (a) A request for competitive sealed proposals must contain the
17 date, time, and place for delivering proposals, a specific description
18 of the supplies, construction, services, or professional services to
19 be provided under the contract, and the terms under which the sup-
20 plies, construction, services, or professional services are to be
21 provided. The request must [SHALL] require the offeror [TO SUBMIT
22 EVIDENCE OF THE OFFEROR'S VALID ALASKA BUSINESS LICENSE AND], no later
23 than five working days after the [IDENTIFYING WHICH] proposal that is
24 the most advantageous to the state is identified, to list subcontrac-
25 tors the offeror proposes to use in the performance of the contract.
26 The list must [SHALL] include the name and location of the place of
27 business for each subcontractor, the work to be subcontracted to each
28 subcontractor, and evidence of the subcontractor's valid Alaska busi-
29 ness license. An offeror for a construction contract shall also

1 submit evidence of the offeror's registration under AS 08.18 and
2 evidence of registration for each listed subcontractor.

3 * Sec. 12. AS 36.30.210 is amended by adding a new subsection to read:

4 (e) The offeror must have a valid Alaska business license at the
5 time designated, in the request for proposals, for opening of the pro-
6 posals. The offeror shall supply evidence of the offeror's valid
7 Alaska business license in accordance with regulations adopted by the
8 commissioner.

9 * Sec. 13. AS 36.30.250(b) is amended to read:

10 (b) In determining whether a proposal is advantageous to the
11 state, the procurement officer shall take into account, in accordance
12 with regulations of the commissioner, whether the offeror [QUALIFIES
13 AS AN ALASKA BIDDER UNDER AS 36.30.170(b) OR] is offering the services
14 of an employment program [AS DEFINED IN AS 36.30.100(c)].

15 * Sec. 14. AS 36.30.250 is amended by adding new subsections to read:

16 (c) For the purpose of evaluating cost factors, the proposed
17 costs of an offeror who qualifies as an Alaska bidder under AS 36.30.-
18 170(b) shall be reduced by five percent.

19 (d) The request for proposals must include an Alaska bidder
20 evaluation factor that takes into consideration whether an offeror
21 qualifies as an Alaska bidder under AS 36.30.170(b). At least 10
22 percent of the value of the rating system or weighting value used
23 shall be assigned to the Alaska bidder evaluation factor.

24 * Sec. 15. AS 36.30 is amended by adding a new section to read:

25 Sec. 36.30.265. MULTI-STEP SEALED PROPOSALS. When it is con-
26 sidered impractical to initially prepare a definitive purchase de-
27 scription to support an award based on listed selection criteria, the
28 procurement officer may issue an expression of interest requesting the
29 submission of unpriced technical offers, and then later issue a

1 request for proposals limited to the offerors whose offers are deter-
2 mined to be technically qualified under the criteria set out in the
3 expression of interest.

4 * Sec. 16. AS 36.30.300(a) is amended to read:

5 (a) A contract may be awarded for supplies, services, profes-
6 sional services, or construction without competitive sealed bidding,
7 competitive sealed proposals, or other competition in accordance with
8 regulations adopted by the commissioner [OF ADMINISTRATION]. A con-
9 tract may be awarded under this section only when the chief procure-
10 ment officer or, for construction contracts or procurements for the
11 state equipment fleet, the commissioner of transportation and public
12 facilities determines in writing that there is only one source for the
13 required procurement or construction. A sole source procurement may
14 not be awarded if a reasonable alternative source exists. The written
15 determination must include findings of fact that support by clear and
16 convincing evidence the determination that only one source exists.
17 Except for procurements of supplies, services, or construction that do
18 not exceed the amount for small procurements under AS 36.30.320(a),
19 the [THE] authority to make the determination required by this subsec-
20 tion may not be delegated.

21 * Sec. 17. AS 36.30.305(a) is amended to read:

22 (a) A contract for supplies, services, professional services, or
23 a construction contract under \$100,000, may be awarded without compet-
24 itive sealed bidding or competitive sealed proposals, in accordance
25 with regulations adopted by the commissioner [OF ADMINISTRATION]. A
26 contract may be awarded under this section only when the commissioner
27 [OF ADMINISTRATION], or, for construction contracts under \$100,000 or
28 procurements for the state equipment fleet, the commissioner of trans-
29 portation and public facilities, determines in writing that a

1 situation exists that makes competitive sealed bidding or competitive
2 sealed proposals impractical or contrary to the public interest.
3 Procurements under this section shall be made with competition that is
4 practicable under the circumstance. Except for procurements of sup-
5 plies, services, or construction that do not exceed the amount for
6 small procurements under AS 36.30.320(a), the [THE] authority to make
7 a determination required by this section may not be delegated.

8 * Sec. 18. AS 36.30.320(a) is amended to read:

9 (a) A procurement for supplies, services, or construction that
10 does not exceed an aggregate dollar amount of \$10,000 [\$5,000] may be
11 made in accordance with regulations adopted by the commissioner for
12 small procurements.

13 * Sec. 19. AS 36.30.360(a) is amended to read:

14 (a) A written determination of nonresponsibility [RESPONSIBIL-
15 ITY] of a bidder or offeror shall be made by the procurement officer
16 in accordance with regulations adopted by the commissioner. The
17 unreasonable failure of a bidder or offeror to promptly supply infor-
18 mation in connection with an inquiry with respect to responsibility is
19 grounds for a determination of nonresponsibility with respect to the
20 bidder or offeror.

21 * Sec. 20. AS 36.30.362 is amended to read:

22 Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESI-
23 DENT. Except for awards made under AS 36.30.170, if [IF] the procure-
24 ment officer awards a contract to a person who does not reside or
25 maintain a place of business in the state and if the supplies, ser-
26 vices, professional services, or construction that is the subject of
27 the contract could have been obtained from sources in the state, the
28 procurement officer shall issue a written statement explaining the
29 basis of the award. The statement required under this section shall

1 be kept in the contract file.

2 * Sec. 21. AS 36.30.370 is amended to read:

3 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of
4 this section, any type of contract that will promote the best inter-
5 ests of the state may be used, except that the use of a cost-plus-a-
6 percentage-of-cost contract may only be used when permitted by regula-
7 tions adopted by the commissioner, or, for construction contracts, by
8 the commissioner of transportation and public facilities [IS PROHIB-
9 ITED]. A cost-reimbursement contract may be used only when a deter-
10 mination is made in writing by the procurement officer that a cost-
11 reimbursement contract is likely to be less costly to the state than
12 any other type or that it is impracticable to obtain the supplies,
13 services, professional services, or construction required except under
14 a cost-reimbursement contract.

15 * Sec. 22. AS 36.30.575 is repealed and reenacted to read:

16 Sec. 36.30.575. STAY OF AWARD. If a protest is filed within the
17 time set out in AS 36.30.565 and before an award is made, award of the
18 contract shall be stayed until a decision is made on the protest,
19 unless the chief procurement officer, the commissioner, or, for con-
20 struction contracts or procurements for the state equipment fleet, the
21 commissioner of transportation and public facilities, makes a written
22 determination that

23 (1) a reasonable probability exists that the protest will
24 be denied; or

25 (2) delay of award of the contract is contrary to the
26 state's best interests.

27 * Sec. 23. AS 36.30.850(b) is amended to read:

28 (b) This chapter applies to every expenditure of state money
29 [FUNDS, IRRESPECTIVE OF THEIR SOURCES, INCLUDING FEDERAL ASSISTANCE

1 EXCEPT AS OTHERWISE SPECIFIED IN AS 36.30.890,] by the state, acting
2 through an agency, under a contract, except that this chapter does not
3 apply to

4 (1) grants;

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

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

10 (4) contracts for medical doctors and dentists;

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

13 (6) disposals under AS 38.05;

14 (7) contracts for the preparation of ballots under AS 15.-
15 15.030;

16 (8) acquisitions or disposals of property and other con-
17 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
18 091;

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

20 (10) disposals of obsolete material or equipment under
21 AS 35.20.060;

22 (11) agreements with providers of services under AS 44.47.-
23 250; AS 47.07; AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195,
24 and 47.25.310;

25 (12) contracts of the Department of Fish and Game for
26 flights that involve specialized flying and piloting skills and are
27 not point-to-point;

28 (13) purchases of income-producing assets for the state
29 treasury or a public corporation of the state; [.]

1 (14) operation of the state boarding school established
2 under AS 14.16, if the State Board of Education or the commissioner of
3 education adopts regulations for use by the state boarding school in
4 procurement and contracting;

5 (15) a contract that is a delegation, in whole or in part,
6 of investment powers held by the commissioner of revenue under AS 14.-
7 25.180, AS 14.40.400, AS 14.42.200, 14.42.210, AS 18.56.095, AS 22.-
8 25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or AS 39.35.-
9 080;

10 (16) a contract that is a delegation, in whole or in part,
11 of investment powers of the Board of Trustees of the Alaska Permanent
12 Fund Corporation under AS 37.13; [OR]

13 (17) the purchase of books, book binding services, newspa-
14 pers, periodicals, audio-visual materials, network information ser-
15 vices access, approval plans, professional memberships, archival
16 materials, objects of art, and items for museum or archival acquisi-
17 tion having cultural, historical, or archaeological significance; in
18 this paragraph

19 (A) "approval plans" means book selection services in
20 which current book titles meeting an agency's customized specifi-
21 cations are provided to the agency subject to the right of the
22 agency to return those books that do not meet with the agency's
23 approval;

24 (B) "audio-visual materials" means nonbook prerecorded
25 materials, including records, tapes, slides, transparencies,
26 films, filmstrips, cassettes, videos, compact discs, laser discs,
27 and items that require the use of equipment to render them us-
28 able;

29 (C) "archival materials" means the noncurrent records

1 of an agency that are preserved after appraisal because of their
2 value;

3 (D) "network information services" means a group of
4 resources from which cataloging information, holdings records,
5 inter-library loans, acquisitions information, and other refer-
6 ence resources can be obtained;

7 (18) contracts for the purchase of standardized examinations
8 for licensure under AS 08;

9 (19) disposals of supplies acquired through foreclosure of
10 loans issued under AS 03.10;

11 (20) purchases of curatorial and conservation services to
12 maintain, preserve, and interpret

13 (A) objects of art; and

14 (B) items having cultural, historical, or archaeologi-
15 cal significance to the state;

16 (21) acquisition of confidential seismic survey data neces-
17 sary for pre-sale oil and gas lease analyses under AS 38.05.180;

18 (22) contracts for village public safety officers;

19 (23) expenditures to pay travel expenses of personal care
20 attendants and sign language interpreters needed to accompany develop-
21 mentally disabled members of the Governor's Council for the Handi-
22 capped and Gifted to meetings for which reimbursement of members'
23 expenses is authorized under AS 47.80.060;

24 (24) contracts for home health care and adult residential
25 and foster care services provided under regulations adopted by the
26 Department of Health and Social Services;

27 (25) contracts for supplies or services for research pro-
28 jects funded by money received from the federal government or private
29 grants; or

1 (26) guest speakers or performers for an educational or
2 cultural activity.

3 * Sec. 24. AS 36.30.850(e) is amended to read:

4 (e) AS 36.30.170 applies to all insurance contracts involving
5 state money. In this subsection, "state money" includes [, INCLUDING]
6 state grants and reimbursement to municipalities, school districts,
7 and other entities.

8 * Sec. 25. AS 36.30 is amended by adding a new section to read:

9 Sec. 36.30.855. ALTERNATE PROCUREMENT METHODS. (a) In place of
10 the methods provided by AS 36.30.100 - 36.30.320, an alternate pro-
11 curement method may be used in the following situations, in accordance
12 with regulations adopted by the commissioner:

13 (1) if the commissioner determines in writing that food,
14 clothing, medical supplies, or materials for use in laboratory or
15 medical studies can be purchased otherwise to the best advantage of
16 the state;

17 (2) if rates are fixed by law or ordinance;

18 (3) to purchase products or services manufactured or pro-
19 vided by an employment program;

20 (4) to purchase products or services provided by the cor-
21 rectional industries program established under AS 33.32.

22 (b) An alternate procurement method to the methods provided by
23 AS 36.30.100 - 36.30.320 may be used for purchases of supplies and
24 services to support operations of the division of Alaska state troop-
25 ers or the division of fish and wildlife protection if the procurement
26 officer for the Department of Public Safety makes a written determina-
27 tion that publicity of the purchases would jeopardize the safety of
28 personnel or the success of the operation.

29 * Sec. 26. AS 36.30 is amended by adding a new section to read:

added

Effectively increases time by limiting to work days

1
2 Sec. 36.30.960. COMPUTATION OF TIME. The time in which an act
3 under this chapter is required to be done is computed by excluding the
4 first day and including the last.

5 * Sec. 27. AS 36.30.990 is amended by adding new paragraphs to read:

6 (17) "day" or "working day" means a state working day;

7 (18) "employment program" means a nonprofit program to
8 increase employment opportunities for individuals with physical or
9 mental disabilities that constitute substantial handicaps to employ-

10 (19) "state money" means any money appropriated to an agency
11 or spent by an agency irrespective of its source, including federal
12 assistance except as otherwise specified in AS 36.30.890, but does not
13 include money held in trust by an agency for a person.

14 * Sec. 28. AS 36.30.100(b)(1), 36.30.100(b)(2), 36.30.100(b)(3), 36.-
15 30.100(b)(4), 36.30.100(c), 36.30.540(4), 36.30.540(5), 36.30.605, and
16 AS 44.47.250(c) are repealed.

I. provided by Bob Link, DOA 3-17-89

Competitive Procurements less than \$10,000
Items on list ... 194

Department Tracking Number	Contractor Vendor *****	Dollar Amount *****	Date of Award *****	Description *****	IN *
1 -0-	JEFFUS & WILLIAMS CO INC	\$2,512.00	05/11/88	NEW TELEPHONE SYSTEM PURCHASE AND INSTALLATION	Y
1 77659	The Computer Center	\$1,255.00	05/23/88	Computer Hardware and Software	y
1 77661	IBM	\$3,001.00	05/23/88	Computer Software.	y
1 77662	Paper Trail	\$447.00	05/23/88	Computer Peripherals	y
1 77901	Club America Technologies , Inc.	\$213.00	08/17/88	Computer Modem Everex Evercom 24E.	n
2 0201111988	UNITEE CONSTRUCTION INC	\$9,203.00	03/04/88	MICROWAVE TOWERS	Y
2 BID51129	Ak Janitoria I	\$9,295.80	02/16/88	Janitorial Services - Fbks Yth FacI	y
2 BID51130	BERT'S ENTERPRI	\$9,200.44	01/04/88	Janitorial Service, 5800 SF, Anch.	y
2 BID51158	Royal Printing	\$6,560.00	02/22/88	Contract for Printing F&G Booklet	y
2 BID51168	Van Waters & Rogers	\$6,556.56	03/15/88	Can Liners	y
2 BID51177	Color Art Print	\$9,471.55	03/22/88	Governor's Letterhead Stationery	y
2 BID51178	Ak Biomedica I Service	\$9,155.54	03/09/88	X Ray Film and Related Supplies	y
2 BID51195	ASETS	10,000.00	02/11/88	Print Establishing a Business in Ak	y
2 BID12189	MICROAGE, AND COMPUTER CENTER	\$5,395.00	07/08/88	COMPUTER SOFTWARE/FIR MWARE, JUNEAU.	Y
2 BID51210	Brodie/Dohrm an	\$8,901.88	04/25/88	Transport Cart	y
2 BID51217	Employment Trai	\$9,551.00	03/14/88	Print Catalog	y
2 BID51233	TEAMWORKS	\$8,550.00	05/09/88	JANITORIAL FOR EKLUTNA LAKE	y

2	BID51237	Refrigeratio n & Food Equipment	\$5,863.00	05/03/88	Pressure Steamer, Kitchen Equip.	y
2	BID51260	A T Publishing	\$3,375.00	07/05/88	Print Maps	y
2	BID51262	Sitka Pharmacy	\$9,942.48	07/14/88	Vidio Camera and acces.	y
2	BID51264	KIEIN-Northl igh	\$7,826.00	06/08/88	Matting, Framing & Mounting, Pho to's	y
2	BID51276	VARIOUS	\$7,168.00	06/27/88	Payroll Warrants	y
2	BID51280	A-1 CESSPOOL	\$5,250.00	09/23/88	SEPTIC TANK PUMPING (PALMER CORR)	y
2	BID51304	AK GENERAL ALARM	\$6,603.60	08/12/88	VIDEO CAMERAS & MONITORS	y
2	BID51309	Van Cleve Print	\$9,520.00	08/04/88	Warrant Envelops	y
2	BID8140	LYNN CANAL CORPORATION	\$8,086.00	03/11/88	LEASE DNR IN HAINES	Y
2	23352	YOUNGS CLEANING SERVICE	\$9,996.00	12/09/88	JANITORIAL SERVICES	Y
2	BID51326	Automated Laundry	\$7,095.00	10/12/88	Apparel Press and compressor	y
2	BID51329	COLUMBIA RESTAURANT & BAR	\$7,635.00	11/04/88	WALK IN FREEZER-	y
2	BID51336	Nat Computer Pr	\$2,040.00	10/10/88	Printing of Loan Repayment Books	y
2	BID12084	American Canvas Co., Inc.	\$6,000.00	06/14/88	Visual indent. neck collars for caribou , deer, and moose	n
2	BID11934	VARIOUS	\$6,977.00	04/06/88	MICRO EQUIPMENT	n
2	BID11996	BROADHEAD/GA RET	\$6,810.75	05/05/88	METAL LATHE	n
2	BID12017	LUMMI FISHERY	\$4,960.00	04/01/88	NET MODIFICATION	n
2	BID12020	THETA SCIENTIFI	\$4,960.00	05/23/88	MICRO SOFTWARE	n
2	BID12028	J.T. WILLIS	\$5,805.00	04/27/88	NETPENS, GILL NETS&BEACHSE INES DFG	n
2	BID12052	VARIOUS	\$608.40	04/22/88	METAL	n
2	BID12056	FUNCO	\$4,545.00	04/25/88	comb. basketball/v olleyball wrest.	n
2	BID12064	MICROAGE	\$1,424.90	06/30/88	MICRO HARDWARE	n

2	BID12105	J & S SERVICE	\$6,698.00	07/07/88	LAB EQUIPMENT	n
2	BID12123	MICROAGE COMP	\$207.76	06/08/88	MICRO STUFF	n
2	BID12153	800 SOFTWARE	\$6,204.00	06/22/88	Micro Software	n
2	BID12163	ADF SYSTEMS, IN	\$5,390.00	09/23/88	AWARD REVISION	n
2	BID12184	SYSTEM INDUST.	\$7,250.00	07/25/88	COMPUTER HARDWARE/SOF TWARE	n
2	BID12288	J. L. EAGAR INC	\$6,548.00	09/26/88	FIBERGLASS TROUGHES	n
2	BID51169	A T Publishing	\$6,262.00	02/29/88	Alaska Trapping Regulations #29	Y
2	BID51224	VARIOUS	\$2,040.24	05/25/88	GROC. KETCH.- JULY	n
2	BID51226	VARIOUS	\$8,552.31	05/25/88	GROC. VOC TEC SEWARD - JULY	n
2	BID51255	OLYMPIC GRAPHIC	\$6,765.50	06/14/88	PRINT MAP ATLAS (HABITAT DIV.)	y
2	BID51281	Photo & Sound	\$7,997.00	07/06/88	Purchase Video/RGB Projector	Y
2	BID51297	VARIOUS	\$4,586.15	08/30/88	GROCERIES - SEWARD SKILL CTR. - OCT	n
2	BID51355	VARIOUS	\$1,480.55	12/07/88	GROC. - JAN. CONSUMPTION - WILDWOOD	n
2	6503988	A T PUBLISHING	\$4,000.00	02/19/88	EMS NEWSLETTER RENEW CA 23534 (AT PUBLISHING)	Y
2	2519188	CAPITAL CITY CLEANERS	\$8,070.00	06/15/88	LAUNDRY SERVICE FOR THE FERRY LACONTE	Y
2	2525388	ALTERNATIVE FENCE CO	\$5,000.00	04/08/88	RENEW CA 25967 ALTERNATIVE FENCE CO	y
2	5J1589	DUDS &SUDS	\$9,000.00	08/19/88	Renew CA-23484/Lau ndry Service	Y
2	5SC01189	ECONOMIC LAB	\$8,317.56	10/17/88	Renew CA-23515/Eco nomic Laboratory	Y
2	120088789	DUDS & SUDS	\$9,334.52	06/03/88	Renew CA-23576/Lau ndry & Dry Clean	Y
2	1201689	MARY RUDOLPH	\$3,000.00	11/02/88	JANITORIAL Lease #1999	Y

2	BID50833	ALPAC CORP	\$5,000.00	07/22/88	Renew CA-23480 - Soda Dispenser	Y
2	BID51254	Asplund Supply	\$5,152.32	05/12/88	Laundry Detergents FOR navil mountain corrrections	y
2	BID51159	Burkhardt Dental	\$3,912.65	03/09/88	Dental supplies & Equipment FOR correctional centers	y
2	BID11991	AURORA N. FUEL	\$9,185.00	03/22/88	drums of fuel in Dutch Harbor	y
2	BID11961	GREER TANK INC.	\$7,178.00	02/24/88	fabrication of 8000 gal Tank	y
2	2018388	ANCHORAGE CRYSLER	\$9,912.00	04/13/88	LEASE VAN	Y
2	BID11898	M & M JANITORIAL	\$5,422.00	01/05/88	CA26439 JANITORIAL CONTRACT -DOUGLAS LAB	Y
2	BID12360	Space Unlimited	\$1,400.00	12/02/88	Storage lease	y
2	BID12414	RUSSELL CHUN	\$4,280.40	12/13/88	ADDIT.SPACE DOL KETCHIKAN	y
2	BID51052	Fast Print	\$6,585.00	06/02/88	multipart carbonless forms	y
2	BID51121	Ridgway's Inc.	\$6,575.00	01/07/88	Print General Safety Code Books	y
2	BID12162	FURBISH CHEMICA	\$6,225.00	07/27/88	CARPET MAINTENANCE EQUIPMENT	y
2	BID12172	RENT A CAN	\$9,954.00	07/19/88	PORTABLE toilets	y
2	BID12189	VARIOUS	\$4,928.00	07/25/88	LOTUS 1-2-3 NETWORK SOFTWARE	y
2	BID12213	Galena Construc	\$750.00	05/20/88	L. 1072 extend Mo. to Mo.	y
2	BID12222	COOKS WAREHOUSI	\$8,530.00	07/26/88	SUBMERISBLE PUMPS	y
2	BID12232	VARIOUS	\$970.00	07/07/88	GS&S MICRO UPGRADE	y
2	BID12236	3M ALASKA BRANC	\$9,407.92	09/27/88	ROTARY DOCUMENT CAMERA	y
2	BID51209	A T Publishing	\$6,875.00	04/01/88	Print Alaska Mineral Industry 1987	y

2	BID11982	NYLON NET	\$7,000.00	03/07/88	Hoop Nets	y
2	BID12004	GLACIER REFRIG.	\$6,024.00	04/25/88	REFRIG.REPAI RS/SERV	y
2	BID12035	VARIOUS	\$3,499.40	05/20/88	FROB renovation and move ITB	y
2	BID12036	ALASTEK	\$9,806.80	04/29/88	IBM COPIER MAINTENANCE	y
2	BID12043	DURAN ENT.	\$5,244.64	04/26/88	BOILER/BURNE R	y
2	BID12047	Wright Services	\$7,800.00	05/10/88	CA 20530, Archives & Records	y
2	BID12049	VARIOUS	\$1,471.50	06/01/88	REBID GS&S NETWORK	y
2	BID12052	VARIOUS	\$7,271.85	04/22/88	METAL	y
2	BID12054	BROWN & SONS	\$5,753.70	05/23/88	TEN 20 TON JACKS	y
2	BID12055	STERO NORTH	\$4,780.00	05/20/88	FOUR VIDEO CAMCORDERS	y
2	BID12064	VARIOUS	\$9,784.09	06/27/88	IBM Desktop Publishing - sole sourc	y
2	BID12079	CHRISITNA'S	\$3,000.00	04/01/88	janitorial services, temp. P/S bldg	y
2	BID12080	The Office Pl.	\$5,981.25	06/17/88	Industrial Shredders	y
2	BID12081	Capital Office	\$790.00	04/06/88	Inventory of systems furniture Juno	y
2	BID12085	VARIOUS	\$5,808.00	05/20/88	software-Ras pb. Road, Anchorage, Ak	y
2	BID12091	VARIOUS	\$7,916.36	06/06/88	software-bra nd specific and other	y
2	BID12092	VARIOUS	\$7,858.00	06/21/88	Lease 1990 convert space to Lab	y
2	BID12098	Arctic Office P	\$4,350.00	06/03/88	purchase-te lecopiers-3	y
2	BID12105	J & S SERVICE	\$6,195.00	07/07/88	ASPHALT CONTENT GAUGE	y
2	BID12107	C & R Window Cl	\$9,250.00	06/14/88	window washing contract 5 bldgs.	y
2	BID12109	HOWSER'S SUPRMK	\$9,120.00	04/27/88	Negotiate Mo. to Mo. L. 0889 for dept 12	y
2	BID12132	LEWIS & LEWIS	\$9,000.00	06/08/88	PLOTTER	y
2	BID12147	MICROAGE COMPUTERS	\$6,200.00	08/01/88	EXPANDED MEMORY ADAPTOR	y

2	BID12161	Thibodeau	\$9,671.00	07/12/88	Craig-Lease- Bid	y
2	BID12271	REFRIGERATIO N &	\$8,742.00	09/27/88	REFUSE COMPACTOR	y
2	BID12285	TRANSALASKA	\$5,550.00	10/10/88	SLAVE TERMINALS FOR STATE MAINFRAME	y
2	BID12290	C & C Custodia!	\$7,305.00	10/17/88	janitorial services	y
2	BID12298	NATIONAL COMPUT	\$624.00	11/04/88	NON CONTRACT PERIPHERALS PS2'S	y IBM
2	BID12306	Arctic Couriers	\$7,740.00	10/17/88	courier services in the Fairbanks	y
2	BID12310	Transalaska D.S	\$6,893.00	12/13/88	Telex Display Terminal	y
2	BID12320	Transalaska D.S	\$9,264.56	10/24/88	controller 32 Port	y
2	BID12239	CROWLEY ENVIRO	\$6,338.00	09/23/88	OIL POLLUTION CLEANUP EQUIP.	y
2	BID12241	Audio Video Inc	\$5,825.00	08/24/88	metal detection system/weapo	y ns
2	BID12240	AK DIVING SERVC	\$5,892.50	10/11/88	AIR COMPRESSOR	y
2	BID12252	ACTION ENTERPRISES	\$7,751.70	09/02/88	NOVELL SOFTWARE	N
2	BID12257	PACIFIC RIM TCH	\$6,993.00	09/26/88	DIGITIZED MAPPING	y
2	BID12259	AK BUILDERS CAC	\$5,429.98	09/13/88	ROOFING MATERIAL	y
2	BID12262	TRANSALASKA	\$8,747.00	09/13/88	CONTROLLER	y
2	BID12268	ACTION ENTERPRISES	\$3,317.52	09/27/88	3/4" VIDEOCASSETT E RECORDER	N
2	BID12270	TAKU SMOKERIES	\$9,600.00	12/13/88	REBID CA25968 FREEZER REQUIREMENTS	y
2	BID12338	Computer Centr.	\$5,995.00	11/14/88	CRT typewriter	y
2	BID12341	The Office Pla.	\$8,196.86	10/28/88	library shelving	y
2	BID12350	C&C CUSTODIAL	\$1,850.00	09/28/88	janitorial temporary serv. Tronpers	y
2	BID51310	AAA Moving & Storage	\$9,688.00	09/29/88	DFYS Move	y
2	BID51312	Van Waters & Rogers	\$6,083.40	08/12/88	Lignosite	y

2	BID12328	World Wide Move	\$403.75	09/08/88	Move 30 l.f of partition s to FROB	y
2	BID11955	Circle Plumbing	\$5,630.00	02/23/88	Boiler repair @ Trail Lakes Hatchery	y
2	BID12354	REFRIGeratio n & FOOD EQ	\$5,970.00	12/09/88	COOLER UNIT COUNTER	y
2	BID51377	JAMES T STANLEY	\$2,928.00	11/10/88	Lease, DEC Hazardous Waste Room	y
4	81963	A T PUBLISHING	\$8,437.50	06/16/88	PRINTING OF PERMANENT FUND ANNUAL REPORTS FOR THE AK PERMANENT FUND CORPORATION.	Y
4	po 81968	DATA PROCESSING SUPPLIES OF ALASKA	\$6,655.00	07/22/88	PRINT AND DELIVER SPECIAL WARRANT ENVELOPES FOR THE ALASA PERMANENT FUND.	Y
5	05J2588	IUNIO	\$4,545.00	04/25/88	CUSTODIAL SERVICES	Y
5	880252	ANN FITZGIBRONS	\$6,048.00	01/15/88	CURATORIAL ASSISTANCE FOR THE ART BANK LOAN PROGRAM	Y
5	05VR2188	COMTEL INC	\$1,515.00	02/25/88	TELEPHONE SYSTEM FOR TACOMA VOCATIONAL REHABILITATI ON	N
5	-0-	JEFFUS & WILLIAMS CO INC	\$3,942.00	07/11/88	NEW TELEPHONE SYSTEM PURCHASE AND INSTALLATION	Y
6	12035	DENALI TRANSPORTATI ON CORP	\$1,939.00	06/06/88	MOVING SERVICES FOR FROB	Y
6	06910	NORCOM	\$7,916.00	06/06/88	COMPUTER STUFF	N
7	CA12035	DENALI TRANSPORTATI ON CORP	\$2,909.00	06/06/88	MOVING SERVICES FOR FROB	Y
7	07882217	THE OFFICE PLACE	\$5,340.00	04/06/88	LEASE COPIER RICOH	Y
7	07882632	MOORE BUSINESS FORMS	\$9,797.00	05/23/88	FORM 07-1004 EMPLOYER'S QUARTERLY REPORT.	Y

7	0701272A	SAFETY & SUPPLY CO	\$8,217.75	09/16/88	SAFETY EQUIPMENT DOL ANCHORAGE BOTH RENTAL/REGIS TRATION FEES NORTHWEST SPORTSHOW IN MINNEAPOL	15	Y
7	10762	B.M.J. ENTERPRISES	\$4,338.00	08/09/88	JANITORIAL SERVICES IN KODIAK.		Y
8	CA23702	NATIONAL COMPUTER PRINT INC	\$2,040.00	10/10/88	PRINT ,ASSEMBLE AND DISTRIBUTE LOAN COUPON BOOKS		N
8	-0-	AURORATRONIC S CO INC	\$5,229.66	06/13/88	NEW TELEPHONE SYSTEM PURCHASE AND INSTALLATION		Y
8	CA23381	E & S DIVERSIFIED SERVICES INC	\$6,410.00	02/28/88	JANITORIAL SERVICES FOR OIL & GAS COMMISSION IN ANCHORAGE	10	Y
880312		Stutzmann Engineering Assco., Inc.	\$3,800.00	06/29/88	survey trust lands		Y
10	1009605288	OMNI DISTRIBUTERS	\$8,050.00	03/23/88	CHAINSAWS		N
11	880273	REEVE CONSULTING ENGINEERS	\$8,000.00	02/25/88	EVLAUATE EXISTING ELECTRICAL SYSTEM AT BIG LAKE HATCHERY		Y
11	IHP880041	DESIGN 2	\$5,000.00	04/15/88	ESTABLISH PROCEDURE FOR ARCHITECTUAL BARRIER REGULATIONS		Y
11	IHP88050	HORAN, CORAK & CO	\$9,500.00	06/22/88	APPRAISAL PETERSON CREEK 2		Y
11	77638	James T. Willis	\$5,005.00	04/26/88	net pens.		n
11	77801	Craig Taylor	\$8,530.00	07/25/88	Flygt Gumbersible pumps		Y
11	11554A87	TRANSALASKA DATA SYSTEMS	\$2,038.00	03/22/88	COMPUTER HARDWARE		Y
11	IHP88043A	APPRAISERS CO	\$5,395.00	07/27/88	FIELDING LAKE LAND APPRAISAL		Y

11	1114088	NELSON MARINE & EQUIPMENT	\$8,207.00	04/14/88	BOAT TO BETHEL	Y
11	IHP89032	AUDREY MAGOUN	\$2,000.00	09/27/88	DEV. OF MARTEN AGING TECH.	Y 11
1126988	NYLON NET		\$7,000.00	01/18/88	FABRICATION N OF ALUMINUM START TANKS	
11	77654	Swanson's Marine	\$8,600.00	05/20/88	18ft. boat	y
11	1152388	NELSON MARINE & EQUIPMENT	\$7,646.00	04/14/88	BOAT	Y
12	124379888	GTE ALASKA INC	\$7,399.00	02/23/88	TELEPHON SYSTEM FOR BETHEL	Y
12	DMV188	JOHNSON & HOLEN	\$5,500.00	04/13/88	HEARING OFFICER TRAINING	N
12	12J10188	JEFFUS & WILLIAMS	\$3,500.00	03/01/88	TELEPHONE MAINTENANCE	Y
12	130805	GOLDEN NORTH VAN LINES	\$6,562.00	09/05/88	MOVE HOUSEHOLD GOODS BRIAN LESTER TRANSFER FROM SITKA TO COOPER LANDING	Y
12	DO 130799	MAYFLOWER WORLD WIDE MOVERS	\$9,107.00	08/15/88	MOVING - HOUSEHOLD GOODS DILLINGHAM TO FAIRBANKS TRANSFER	Y
12	L1473	TRI-VALLEY VOLUNTEER FIRE DEPARTMENT	\$5,825.00	03/29/88	TROOPER'S OFFICE IN HEALY	Y
12	DO 130797	MAYFLOWER WORLD WIDE MOVERS	\$7,866.00	08/29/88	MOVING HOUSEHOLD GOODS HAINES TO SITKA TRANSFER	Y
12	130866	MAYFLOWER WORLD WIDE MOVERS	\$5,448.00	10/20/88	HOUSEHOLD GOODS TRANSFER AST FROM JUNEAU TO TALKEETNA	Y
12	DO 130808	MAYFLOWER WORLD WIDE MOVERS	\$5,900.00	09/08/88	MOVING HOUSEHOLD GOODS FAIRBANKS TO YAKUTAT TRANSFER	Y

12 DO 130809	MAYFLOWER WORLD WIDE MOVERS	\$8,638.00	09/12/88	MOVING HOUSEHOLD GOODS CORDOVA TO SITKA TRANSFER	Y
12 D000996262	MOVER'S WORLD	\$6,895.00	03/01/88	HOUSEHOLD GOODS MOVE FISH AND WILDLIFE PROTECTION TROOPER ANCHORAGE TO KOTZEBUE.	Y
12 PO 79396	IMAGE CONTROL SYSTEMS	\$7,275.00	12/28/88	FILM PROCESSOR	Y
12 CA21621	NORTHWAY NATIVES INC	\$5,160.00	03/29/88	STATE TROOPER OFFICE LEASE IN NORTHWAY	Y
12 DO 130760	MAYFLOWER WORLD WIDE MOVERS	\$6,350.00	08/19/88	MOVING HOUSEHOLD GOODS KETCHIKAN TO ANCHORAGE TRANSFER	Y
12 DO 130747	GOLDEN NORTH VAN LINES	\$7,875.00	08/15/88	MOVING HOUSEHOLD GOODS ANIAK TO DILLINGHAM TRANSFER	Y
12 1202888	MOUNTAIN VIEW COMMUNITY COUNCIL	\$2,000.00	04/14/88	LEASE IN ANCHORAGE	Y
12 D0996228	GOLDEN NORTH	\$6,475.00	02/10/88	HOUSEHOLD MOVE	Y
12 DO 130762	AK TERMINAL INC	\$7,075.00	08/22/88	MOVING HOUSEHOLD GOODS FAIRBANKS TO BETHEL TRANSFER	Y
12 0996274	GOLDEN NORTH VAN LINES	\$6,250.00	03/03/88	HOUSEHOLD GOODS MOVE ALASKA STATE TROOPER STEVE STANTON ANCHORAGE TO NOME.	Y
12 0996240	WORLD WIDE MOVERS	\$8,115.00	02/29/88	HOUSEHOLD GOODS MOVE KOTZEBUE TO KETCHIKAN; STATE TROOPER.	Y

12	0996236	QUALITY MOVING AND STORAGE	\$9,900.00	02/12/88	HOUSEHOLD GOODS MOVE NOME TO KETCHIKAN AST.	Y
12	0996278	WORLD WIDE MOVERS	\$6,786.00	02/19/88	HOUSEHOLD GOODS MOVE ALASKA STATE TROOPER JUNEAU TO KOTZEBUE.	Y
18	12092	VWR SCIENTIFIC INC.	\$3,929.00	06/21/88	PURCHASE OF LAB AND EQUIPMENT.	Y
20	880187	FAMILY MEDICAL CLINIC	\$5,580.00	04/08/88	TRAINING FOR NURSES AT SPRING CREEK	Y
20	2020888	EXECUTONE OF ALASKA	\$1,417.00	04/27/88	BARROW PHONE INSTALLATION	Y
20	2008689	ANCH COLD STORAGE CO.	\$8,767.00	09/22/88	PROVIDE/INST MULTIPLE FLAVOR SODA DISPENSOR.	Y
25	2530688	AURORATRONIC S	\$1,505.00	04/12/88	TELEPHONE SYSTEM FOR DOT	N
25	2513088	WIEN & ASSOCIATES	\$9,452.00	03/22/88	COMPUTER HARDWARE	Y
25	CA23728	SNOW WHITE AMERICAN LINES	10,000.00	11/09/88	COONTRAT TO PROVIDE LAUNDRY SERVICE FOR THE MV TRESTUMEND	Y
25	2517888	JEFFUS & WILLIAMS COMPANY	\$3,108.00	02/24/88	MAINTENANCE FOR COMPUTER SYSTEM	Y
25	P081776	ELLE	\$8,531.00	03/14/88	BATH TOWELS FOR MARINE HIGHWAYS	N
25	77870	COMPUTER CENTER	\$596.00	11/08/88	DISPLAY WRITE	Y
25	77916	NATIONAL COMPUTER SPECIALITES	\$770.00	11/08/88	D BASE II PLUS	N
25	BID119378	AK RURAL INVESTMENTS	\$9,180.00	02/15/88	LEASE	Y
25	2526388	AK POWER & TELEPHONE	\$5,539.00	04/27/88	TOK PHONE INSTALLATION	Y
25	77869	JUNEAU ELECTRONICS	\$624.00	11/08/88	LOTUS	Y
25	77904	Bergh Inc.	\$8,803.00	08/31/88	Wheel Chair Lifts	n

City/State

B

Audit questions governor's contracts

By ROBERT LAURIE
Times Juneau Bureau

JUNEAU — A legislative audit questions whether having the governor's "personal trust and confidence" is adequate justification for sole-source contracts issued by the governor's office.

The newly-released audit of state contracts issued to out-of-state firms in the first nine months of 1988 uncovered a number of flaws in the state's new procurement code and offered recommendations to remedy the problems.

"I think they have made some progress, but there's still work to be done," said Sen. Jan Falks, who requested the evaluation of the code last fall.

The Anchorage Republican pushed adoption of the procurement code in the

wake of contracting abuses revealed in the 1985 Senate impeachment hearings of former Gov. Bill Sheffield. The Senate decided that there was not enough proof to level formal charges against Sheffield.

After it was adopted by the legislature, the code went into effect in 1988.

Falks says the audit, accepted earlier this month by the Legislative Budget and Audit Committee, shows that "there's too many contracts going to out-of-staters under the justification of 'well, we like this guy better' or 'he has the governor's trust' or 'that's not part of the procurement code.'" So even though I feel state government is doing a little better, they still have a tendency to go Outside for that special person under sole-source more

See Audit, page B-5

State procurement means mired in confusion

By ROBERT LAURIE
Times Juneau Bureau

JUNEAU — The state's contracting of foreign nationals to staff its offices in Tokyo and Seoul runs afoul of the state's procurement code, according to the legislative audit. It says confusion over which procurement method should be used needs to be cleared up.

The state's chief procurement officer says the services performed by the six individuals do not constitute a professional service, instead their du-

ties appear to create an employer-employee relationship. The governor's office, on the other hand, says the opposite. It maintains that the state's computerized payroll system cannot handle the differences in foreign employee benefits and taxes.

Either way, the audit concludes, "the contracts were improperly awarded."

It recommends that the Department of Administration take the lead to seek legal clarification of statutes governing the hiring of foreign na-

tionals. If current law cannot be practiced, amendments should be sought to make it work.

"The continuity of services provided by the foreign nationals is essential for the expansion of Alaska's foreign markets. Services cannot be expected to cease due to ambiguity in the procurement laws," the audit reads.

Department of Administration Commissioner John Andrews agrees in a written reply to the audit. He

See Procurement, page B-5

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Audit: 'Personal trust and confidence'

Continued from page B-1

than I think they can adequately justify."

Of 117 state contracts issued to out-of-state companies in the first nine months of 1988, competitive bids were used to find 43 contractors, while 48 contracts skipped the competitive bid process and were awarded to sole-source contractors.

According to the audit, the most frequently cited reason for awarding sole-source contracts was the "unequaled expertise" of the selected firm, or that no other source could perform the required services.

Of 11 professional service contracts issued by the governor's office, nine were awarded sole-source. Three of the contracts were awarded to advisers on the basis of the governor's personal "trust and confidence."

Richard Walker, former ambassador to South Korea, received two contracts worth up to \$130,000 for his work in opening doors for the state in Taiwan and South Korea.

"He is beyond repute," said David Ramseur, spokesman for Gov. Steve Cowper.

Bob Poe, Cowper's director of the office of International Trade, said Walker's contracts covered two years of work. He says the state plans to extend the contracts for another two years.

Poe says Walker was instrumental in gaining Cowper's introduction to South Korean President Noh Tae Woo, "something no other governor has done."

Wall Street oil analyst Kurt Wulff also won the governor's personal "trust and confidence" — even before Cowper met him. Wulff was awarded a \$35,000 contract to advise the state on oil in-

dustry issues.

"That doesn't necessarily imply the governor knew him beforehand," Ramseur said of the personal trust justification. He says Cowper read of Wulff in a magazine and was impressed with his independent appraisal of the oil industry.

A June 1987 article in Business Week says Wulff's "brutally frank breakup appraisals have helped set the stage for most of the big oil takeovers in recent years."

"We question whether the Governor's personal trust and confidence substantiates clear and convincing evidence that only one source exists," the audit concludes.

Falks says as far as she's concerned, the justification doesn't hold water.

"That's not part of the law. That is not why we had the pro-

urement code. It was to avoid cronyism. It was to avoid the political hire," said Falks.

Asked if she thought there was any cronyism in the governor's hiring, Falks replied "according to the audit, there appears to have been, even though they're doing better. My overall point has got to be, they appear to have done better since the last time we looked at this, but there's still that justification and I don't think that justification is good enough. So that would lead one to believe that there's some cronyism going on here but it's hard to prove. I can't prove it."

"Kurt Wulff and (Richard) Walker are eminently qualified for those contracts," Ramseur said. "Sen. Falks, the queen of questionable state spending practices, is barking up the wrong tree."

SPECIAL REPORT ON STATEWIDE PROFESSIONAL SERVICE
CONTRACTS AWARDED TO OUT-OF-STATE FIRMS

January 1, 1988 - September 30, 1988

Audit Control Number

02-4323-89-S

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

January 3, 1989

Members of the Legislative Budget
and Audit Committee:

In accordance with a Legislative Budget and Audit Committee special request and the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

**A SPECIAL REPORT ON STATEWIDE PROFESSIONAL SERVICE
CONTRACTS AWARDED TO OUT-OF-STATE FIRMS**

January 1, 1988 - September 30, 1988

Audit Control Number

02-4323-89-S

As stated in the Report Objectives, Scope, and Methodology Section, the audit primarily involved a review of professional services contracts awarded to out-of-state firms. In accordance with the request from the Budget and Audit Committee, the contracts were reviewed to determine agency justification for awarding the contracts to non-Alaskan firms and agency compliance with applicable laws and regulations. The audit was conducted in accordance with generally accepted governmental performance auditing standards.



Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit

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REPORT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with a Legislative Budget and Audit Committee request and the provisions of Title 24 of the Alaska Statutes, a review was conducted of professional service contracts awarded to out-of-state firms. The objectives, scope, and methodology of our review follows.

Objectives

The objectives of our review were to:

1. Identify the total number of professional service contracts over \$5,000 awarded sole source and the justification given by the agency for awarding the contract.
2. Identify the total number of professional service contracts over \$5,000 awarded by competitive sealed proposal and justification for awarding the contract.
3. Evaluate agency compliance with applicable laws and regulations.
4. Identify protests by other bidders and categorize reasons for the protests.

Scope and Methodology

The scope of our review includes all out-of-state professional service contracts in excess of \$5,000 which were initially awarded or amended between January 1, 1988 and September 30, 1988. Contract information was requested from all executive branch agencies, Legislative Affairs, the University of Alaska, the Alaska Railroad Corporation, and the Alaska State Building Authority. Contract information for the Alaska Railroad and the Alaska State Building Authority were obtained from the Department of Commerce and Economic Development.

Contracts exempt from procurement regulations were excluded from our review. Exclusions include contracts awarded for medical services, grants, and expert witness costs. Also excluded from our review were contract amendments awarded by the Department of Law for ongoing legal services. Section 8154.1 of the administrative manual permits contract amendments for legal services which will enable counsel to continue to advise or represent the State in specific legal proceedings.

For each contract identified, agency justification for awarding the contract to an out-of-state firm was determined. Agency procedures used to award initial

contracts were also reviewed to determine compliance with applicable laws and regulations. In conjunction with this review any associated appeals filed in protest against contract awards were identified.

ORGANIZATION AND FUNCTION

The State Procurement Code, Alaska Statute 36.30, governs the procurement procedures used by state agencies. The impetus of the procurement code was to establish consistent procedures for all state agencies. To accomplish this the authority regulating the procurement practices of the State has been delegated as follows:

Executive branch agencies

AS 36.30.005 transfers all rights, powers, duties, and authority relating to the procurement of supplies, services, and professional services to the commissioner of administration and to the chief procurement officer (CPO). The commissioner of transportation and public facilities has been transferred authority relating to the procurement of construction and procurement of equipment or services for the state equipment fleet.

The CPO is appointed by the commissioner of administration to a partially exempt position and can only be removed for cause. The concept of a CPO supports uniformity of state procurement and provides for a certain degree of autonomy for ensuring that the State's best interests are being met.

The commissioner of administration may delegate procurement authority for the executive branch, for other than construction or the State's equipment fleet, to other departments after making a determination that the department is capable of implementing the delegated authority. Delegation does not include the authority to enter into contracts under alternative procurement methods without prior approval. Alternative procurement methods include sole source, limited competition, and emergency purchases.

University of Alaska

The Board of Regents have been transferred all rights, powers, duties, and authority relating to procurement for the University. The Board must adopt procurement regulations that are substantially equivalent to the regulations adopted by the commissioner of administration.

Alaska Railroad Corporation and the Alaska State Building Authority

The board of directors of the Alaska Railroad Corporation and the Alaska State Building Authority must adopt procedures to govern procurement by the corporation. The procedures must be substantially equivalent to the procedures and regulations prescribed in AS 36.30.

Legislature

The Legislative Council is required to adopt procedures to govern the procurement by the legislative branch. The procedures must be based on the competitive principles consistent with AS 36.30 and must be adapted to the special needs of the legislative branch as determined by the Legislative Council.

AUDITOR'S COMMENTS

Alaska Statute 36.30, effective January 1, 1988, provides for laws and regulations governing the procurement of goods, services, and professional services by state agencies. State agencies can procure professional services through the following five procurement methods:

1. Competitive Sealed Proposals - Required for all professional service contracts over \$25,000.
2. Small Purchase - A contract for professional services that does not exceed \$25,000. Small purchases need not be made under competitive sealed proposals but made with competition that is practicable under the circumstances.
3. Sole Source - Sole source procurements must be accompanied by clear and convincing evidence that only one source exists or an explanation that no other source is acceptable to fulfill the required service. Prior approval must be obtained from the CPO.
4. Emergency Procurement - There are two types of emergency procurement. Type A exists when there is a threat to public health, welfare, or safety. Type B is when a situation exists that makes the procurement through competitive sealed proposals impracticable or contrary to public interest. Prior approval must be obtained from the CPO, the commissioner of administration, or the commissioner of transportation and public facilities.
5. Limited Competition - Procurement which is restricted to several potential contractors. The contract amount cannot exceed \$100,000. Prior approval must be obtained from the commissioner of administration or the commissioner of transportation and public facilities depending on the type of service.

The primary objective of our review was to ascertain agency justification for awarding professional service contracts to out-of-state firms. Agency justification was determined through verifying that the out-of-state firm was evaluated the highest under the competitive sealed proposal evaluation process and that proper approvals were obtained when an alternative procurement method was used. The chief procurement officer (CPO) has the exclusive authority for approving sole source determinations. It is the CPO's responsibility to determine that only one source exists and that it is in the State's best interest to award the contract.

A total of 117 professional service contracts were reviewed. The type of procurement method used and the percentage to total contracts is as follows:

<u>Procurement Method</u>	<u># of Contracts</u>	<u>% of Total</u>
Sole Source	48	41.0%
Competitive Sealed Proposal	43	36.5%
Limited Competition	3	2.5%
Emergency	9	8.0%
Small Purchase	14	12.0%
<u>Total</u>	<u>117</u>	<u>100.0%</u>

As indicated 41% of all professional service contracts awarded to out-of-state firms were awarded under the sole source procurement method. The most frequently cited reason for awarding sole source contracts was that the individual and/or firm awarded the contract possessed unequalled expertise, and no other source could perform the required services.

The Office of the Governor awarded 11 professional service contracts of which 9 were awarded sole source. Contracted services include consultants, advisors, and foreign nationals. The CPO approved the award of sole source contracts to the consultants and advisors since the individuals possessed the necessary professional qualifications and have the Governor's personal "trust and confidence." As discussed more fully in Recommendation No. 2, we question whether the Governor's personal trust and confidence substantiates clear and convincing evidence that only one source exists. Additionally as noted in Recommendation No. 1, proper procurement procedures were not adhered to when contracting with the foreign nationals.

Scientific research and consulting services comprised the major types of services procured by the University of Alaska. A total of 23 professional services contracts were awarded of which 15 were awarded sole source. University procurement regulations allow for limited solicitation of goods and services under \$10,000. The majority of sole source contracts awarded by the University are for amounts under the \$10,000 threshold. As discussed in Recommendation 5 and 6 of this report, the University needs to strengthen controls over the procurement of professional services.

Of the 117 contracts awarded 43 were awarded under the competitive sealed proposal method. The out-of-state firms were evaluated the highest in 29 instances and were awarded the contracts. The requirement that an evaluation factor must be included which takes into consideration whether an offeror qualifies as an Alaskan bidder did not become effective until May 1988. The majority of the 29 contracts were awarded prior to the effective date. No Alaskan firm submitted a proposal in 13 of the remaining 14 contracts.

The final contract was awarded to an out-of-state firm because the department wanted to advertise in an outside publication.

The appendix presented at the end of this report summarizes agency justification for awarding the contract to an out-of-state firm; agency justification for limiting solicitation; and type of service performed.

Compliance with procurement laws and regulations by state agencies were reviewed. Procurement regulations dictate the type of procurement method to be used, requirements for releasing request for proposals, standardization of proposal evaluation, application of the Alaska bidder's preference, and contract award. Tests of compliance were limited to these areas. Test results indicate that agencies are materially complying with the procurement regulations. Deviations from the prescribed regulations are noted in the findings and recommendations section of this report.

In conjunction with our compliance review any associated protest filed against a contract award was identified. Three official protests were filed. The basic contention of all three protests is that the contracts should have been awarded to an Alaskan firm. The out-of-state firms were evaluated the highest using the competitive sealed proposal (CSP) evaluation criteria and were awarded the contract. The commissioner of administration reviewed each appeal and rejected the protest based on unsubstantiated evidence.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Department of Administration (DOA) should pursue legal clarification of existing laws regulating contracting with foreign nationals and enforce them or should seek amendments of those laws if deemed unworkable.

The Office of the Governor, Office of International Trade, and the Department of Commerce and Economic Development contract with foreign nationals to work in their Asian offices. Services are procured through the use of professional service contracts. There is confusion and/or differences of opinion as to which procurement method should be used to contract for these staff positions.

The chief procurement officer alleges that the services performed by these individuals do not constitute a professional service and are exempt from the procurement code. He feels that the duties performed by the foreign nationals appear to create an employer/employee relationship. Section 8105 of the administrative manual requires that any employment contract should be reviewed by the Division of Personnel and the Department of Law.

The Office of the Governor contends that services performed do not constitute an employer/employee relationship and consider these individuals as contractors. The rationale for not entering into employment contracts is that filling the office positions through the State's personnel system would be impractical and cumbersome. They also cite that the State's payroll system could not easily accommodate the differences in foreign employee benefits and taxes.

The services were acquired through the sole source procurement method. AS 36.30.300 specifies that a contract may be awarded under sole source only when the CPO determines in writing that there is only one source for the required procurement. Under the assumption that the services were correctly classified as professional the contracts were awarded without prior approval by the CPO. However, if an employee/employer relationship exists then the contracts should have been reviewed by the Department of Law and the Division of Personnel. Under either scenario the contracts were improperly awarded. Independent approval was not obtained.

DOA should take the initiative to seek legal clarification of existing statutes and enforce them. In the event the present laws are not practicable, amendments should be

sought to make the procurement code more workable. The continuity of services provided by the foreign nationals is essential for the expansion of Alaska's foreign markets. Services cannot be expected to cease due to ambiguity in the procurement laws.

Recommendation No. 2

The Department of Administration should seek amendments to the Alaska statutes to clarify sections of the procurement code.

During the course of our review we noted areas that were either unclear or not addressed in the procurement code.

- A. Under the state procurement code, it is permissible to issue sole source contracts if the State's chief procurement officer (CPO) determines in writing that there is only one source for the requested procurement. AS 36.30.300(a) requires such determination must include findings of fact that support by clear and convincing evidence the determination that only one source exists. The authority to make the determination may not be delegated.

DOA has further defined the term, "clear and convincing evidence that only one source exists," for certain professional services contracts entered into by the governor's office. In a December 22, 1987 memorandum DOA has agreed in instances where it is essential that the Governor have the personal trust and confidence in the individual receiving the contract, and there is only one person available who has both the Governor's trust and the necessary professional qualifications, then clear and convincing evidence for sole source contracts exist. The memorandum also points out that, "whether or not another source exists is entirely a matter of his (the Governor) opinion and that a hypothetical future existence of another person in whom the Governor might come to have personal trust and confidence is irrelevant to the facts of the current situation."

Essentially an assumption has been made that the normal process may be flawed in such a way that a competitively awarded contract may result in the State contracting with an individual who is not trustworthy, truthful, or reliable. DOA is also implying that the relationship between the Governor and a potential contractor is so critical and sensitive that only the Governor can make the sole source determination.

We appreciate DOA's efforts of assuring that the chief policymaker of the State has the latitude to hire

advisors in which he has personal confidence. No doubt such an approach regarding extremely sensitive issues could enhance the effectiveness of the Office of the Governor operations.

However, we must take exception to DOA's interpretation of the state procurement code for the following reasons:

** When drafting the statute lawmakers have already made a concerted effort under AS 36.30.850 to exempt professional services that were of a unique and sensitive nature from the procurement code. For example, they exempted flight contracts where specialized flying and piloting skills were required. Nowhere in this section does it acknowledge that because of the sensitivity between the Governor and a contracted advisor, such contracts should be excluded from the code or handled in a specialized manner.

** The latitude DOA has allowed the Governor conflicts with the CPO's duties and responsibilities, which by law cannot be delegated. Since only the Governor can make the determination that he "personally trusts" someone and the department has established this as clear and convincing evidence that justifies award of a sole source contract, essentially the CPO has delegated his responsibilities.

Though we admit that a required contractual uniqueness between the Governor and a contractor may develop, we feel such instances would be rare and best handled through an amendment to the code. To acknowledge such latitude via a blanket memorandum may not only establish an undesirable precedent but also foster potential abuse in an area that is already difficult to administer due to the subjective nature and complexity of evaluating professional qualifications.

- B. As a general rule the procurement of professional services must be obtained through competitive sealed proposals. The use of other procurement methods are alternatives available to state agencies if the use of the competitive process is determined to be impracticable or not in the state's best interest. Sole source procurement can only be used when the CPO determines that there is clear and convincing evidence that only one source exists. The authority to make this determination can only be made by the CPO and cannot be delegated.

During our review several instances were noted where the authority to make the determination had been delegated. Delegation of authority occurred only when the CPO was absent from the office. Delegations were supported by a memorandum which authorized an individual to be the acting CPO. Random delegation was not perceived; however, delegation has occurred. We recognize that the law must be practicable, and no one can expect the CPO to be present at all times. It is unclear whether the delegation is in violation with state statutes. Clarification on what constitutes a delegation should be addressed.

- C. The CPO has been delegated exclusive authority to make sole source procurement determinations. A contract may only be awarded using sole source when there is clear and convincing evidence that only one source exists. The CPO has determined that court-ordered appointments fulfill these requirements. Although the departments may be legally bound by the order other procurement alternatives may exist. Amendments to the law should be enacted addressing court-ordered appointments.

Recommendation No. 3

The Division of General Services and Supply should strengthen controls over procurement reporting.

Alaska Statute 36.30.540 specifies that beginning with December 1, 1989 the Commissioner of Administration shall report to the legislature concerning procurements by state agencies. The procurement code requires that certain types of procurement information must be reported to the Department of Administration, Division of General Services and Supply (GSS). Procurement reporting is required when the purchasing agency use either competitive sealed proposals in excess of \$25,000 or any type of alternative procurement method regardless of dollar amount. Alternative methods include sole source, limited competition, and emergency purchases.

During the course of our review discrepancies were noted between procurement information obtained directly from departmental agencies versus that from GSS' procurement reporting system. Agencies are not reporting all required information. We realize that some confusion would exist when the procurement code was implemented. However, the procurement code has been in effect for approximately eleven months and reporting has not substantially improved. Accurate procurement information is essential for informed management decisions. GSS should implement procedures which will effectively monitor and control procurement reporting.

Recommendation No. 4

The Alaska Railroad Corporation should amend their procurement procedures to include the "Chief Procurement Officer" concept within their purchasing operations.

Under AS 36.30.015(e) the board of directors of the Alaska Railroad Corporation (ARRC) shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the corporation. The procedures must be substantially equivalent (emphasis added) to the procedures prescribed in the state procurement code.

When the Legislature enacted the state code, they recognized the importance of centralizing the authority of procurement, related activities. To assure that competitive and fair principles were utilized, the concept of the "chief procurement officer" (CPO) was adopted. As outlined in AS 36.30.010, the CPO must meet minimum experience requirements, is appointed to a fixed term of office and can only be removed from that position for cause. Such language obviously lends support that this position not only be qualified in public procurement but also have a certain degree of autonomy so that objective and fair procurement decisions can be made.

Further importance of the CPO methodology is recognized especially in the high-risk noncompetitive areas of procurement allowed in the state code. Under sole source procurements, a contract may be awarded only after the CPO has determined in writing that there is only one source, regardless of dollar limit. When emergency procurements are made under AS 36.30.310 and 2 AAC 12.440(b), again the CPO is involved in determining if public interest is being protected. In both cases, state law and regulations emphasize the key role played by the CPO by not allowing the authority to make such determinations to be delegated.

Based upon our review of ARRC procurement regulations and procedures, we have found that the CPO concept has not been adopted. Presently, procurement authority, including alternative procurement determinations, have been delegated to several individuals within the organizational structure. It is our opinion that because the state code has reiterated the importance of the CPO throughout the procurement process, that a purchasing system without such a functional counterpart cannot be "substantially equivalent" as mandated by AS 36.30.015(e).

Though it could be argued that ARRC, through its quasi-governmental status and its for-profit legislative mandate, is unique enough to be exempted from a near identical following of the state code, we feel such an interpretation has little merit for the following reasons:

1. As mentioned above the CPO concept is such an integral part of the state code, that to exclude that facet, would render the comparability highly questionable.
2. Though ARRC is excluded in the definition of an "agency" per AS 36.30.990 as is the Alaska State Building Authority, the latter entity has adopted the CPO concept.
3. The Legislature obviously desired a higher degree of likeness of those procedures adopted by ARRC to the state procurement code, than they required of themselves or the Court System. Under AS 36.30.020-.030 the Legislature and the Court System are required to adopt procedures based on the competitive principles consistent with the state procurement code. Conversely, ARRCs' procedures must be "substantially equivalent."

If management finds that the operations of the railroad would be seriously impeded by the adoption of the CPO scheme, the proper avenue would be to seek legal amendments through the legislative process. Until then, the Board of Directors should adopt, and management should adhere to, regulations that incorporate the CPO concept.

Recommendation No. 5

The University of Alaska should strengthen controls over the procurement of professional services.

Alaska Statute 36.30.005(c) authorizes the procurement of services, supplies, professional services, and construction for the University of Alaska to the Board of Regents. The Board of Regents has adopted regulations governing procurement management and control. A chief procurement officer has been appointed to supervise the procurement needs of the University. In order to facilitate the procurement process purchasing authority has been delegated to specified individuals on the statewide campuses. Authority is limited as to type of procurement and within designated dollar limits.

We performed a limited review on 23 professional services contracts awarded to out-of-state firms. Contracts for professional services which are exempt from procurement code regulations were not reviewed. Acquisition of services on four of the contracts were unauthorized. Individuals, who have not been delegated purchasing authority, are obligating university funds without prior approval. The contracts were later ratified since the vendors performed in good faith and the University received benefit from the services.

Strong internal controls dictate that only those individuals who are authorized to obligate state funds be allowed to do so. Proper and adequate control in the handling of public funds is the responsibility of all state administrators. The University should adhere to adopted procedures to ensure that funds are obligated by only authorized personnel.

Recommendation No. 6

The University of Alaska should adhere to statutes governing sole source procurement.

Alaska Statute 36.30.300 governs the sole source procurement of goods and services. A contract may be awarded using sole source only when the chief procurement officer determines in writing that there is only one source for the required procurement. The written determination must include clear and convincing evidence which support the use of the single source. The authority to make the determination cannot be delegated.

Alaska Statute 36.30.005(c) requires the University to adopt procurement regulations which are substantially equivalent to those adopted by the commissioner of administration. Deputy procurement officers have been authorized to make sole source determinations in accordance with Section 23 AAC 05.245(b) of the University's proposed procurement regulations. Authority is limited to procurements which do not exceed \$10,000. We do not believe that this regulation is equivalent to those adopted by the commissioner of administration. Section 2 AAC 12.410 of the Alaska Administrative Code prohibits delegation.

It is our understanding that legislation is currently being drafted which would allow the delegation of sole source determination for small purchases. Delegation would be limited to supplies and services. Sole source determination for professional services would still require the CPO's approval. We recommend that the delegation of authority be rescinded until the proposed legislation is enacted.

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APPENDIX

<u>Department/Firm</u>	<u>Contract Amount</u>	<u>Type of Solicitation</u>	<u>Contracted Service</u>	<u>Agency justification for using outside vendor</u>	<u>Agency justification for restricting solicitation</u>
<u>Office of the Governor</u>					
Richard L. Walker	50,000	Sole Source	Foreign Affairs Advisor	Sole source located outside of Alaska.	Unequaled skills, experience in furthering Alaskan business, trade, & government interests in the Pacific Rim. Also, Walker has Governor's personal trust and confidence.
The Michie Co.	80,000	CSP	Printing the AK Administrative Code.	Cost advantages. Firm evaluated the highest.	Solicitation not limited.
Kurt Wulff	35,000	Sole Source	Advisor on Oil Industry Issues	Sole source located outside of Alaska.	Industry leader, also has Governor's personal trust and confidence.
O'Connor & Hannon	55,000	CSP	Lobbyist for Div. of State & Federal Relations	Contract for lobbying activities in Wash. D.C.	Solicitation not limited.
Kazunaga Hayashi	113,879	Sole Source	Foreign National	Sole source located outside of Alaska.	Very knowledgeable in AK and host country. Has already served as AK State Rep.
Mariko Kuroda	46,917	Sole Source	Foreign National	Sole source located outside of Alaska.	Worked in AK office 7 years.
Kimiko Muguruma	41,352	Sole Source	Foreign National	Sole source located outside of Alaska.	Worked in AK office 7 years.
Kyung Sun Yang	50,000	Sole Source	Foreign National	Sole source located outside of Alaska.	Unique qualifications.
In Hye Kim	12,715	Sole Source	Foreign National	Sole source located outside of Alaska.	Worked in AK office 2 years.
Richard L. Walker	80,000	Sole Source	Foreign Affairs Advisor	Sole source located outside of Alaska.	See Walker contract above. Same justification given.
Dong Ha Cho	20,000	Sole Source	Korean Affairs Advisor	Sole source located outside of Alaska.	Expertise in AK and host country relations. Clout in Korean government.
<u>Department of Administration</u>					
Housing Mgt Specialist	42,600	CSP	Consultant for Pioneer Benefit	Firm evaluated the highest.	Solicitation not limited.

STATE OF ALASKA

-17-

DIVISION OF LEGISLATIVE AUDIT

<u>Department/Firm</u>	<u>Contract Amount</u>	<u>Type of Solicitation</u>	<u>Contracted Service</u>	<u>Agency justification for using outside vendor</u>	<u>Agency justification for restricting solicitation</u>
<u>Department of Administration (cont.)</u>					
Information Tech Group	14,790	CSP	Consultant to write RFP for the Combined Retirement System	Firm evaluated the highest.	Solicitation not limited.
Justex Systems	131,800	CSP	Test Development	Firm evaluated the highest.	Solicitation not limited.
McCarthy & Assoc.	25,000	Sole Source	Risk Management Consultant	Sole source located outside of Alaska.	Extension of previous contract.
Mercer-Meidinger	34,400	CSP	Actuarial	Firm evaluated the highest.	Solicitation not limited.
Mercer-Meidinger	105,000	CSP	Actuarial	Firm evaluated the highest.	Solicitation not limited.
Mercer-Meidinger	152,000	CSP	Actuarial	Firm evaluated the highest.	Solicitation not limited.
Nat'l Institute of Gov. Purchasing	24,900	Sole Source	Procurement Training	Sole source located outside of Alaska.	Firm has prior experience with training AK state employees.
Software AG	59,200	CSP	Data Processing Training	Firm evaluated the highest.	Solicitation not limited.
<u>Department of Law</u>					
Bogle & Gates	50,000	Sole Source	Attorney for case filed in bankruptcy court	Law suit filed in an out-of-state jurisdiction.	Firm was originally hired by the state's co-defendant and has been working with them since June 1987. As such, they have acquired considerable knowledge in this matter & are in the best position to represent the interest of the co-defendant & state.
Morrison & Foerster	85,000	Emergency	Tax Attorney	Source located outside of Alaska.	Emergency purchase originally for \$50,000. Considered an emergency purchase due to confidentiality of tax matter. Formal solicitation not used because of confidentiality & advice needed prior to filing deadline, formal procurement time-consuming.

<u>Department/Firm</u>	<u>Contract Amount</u>	<u>Type of Solicitation</u>	<u>Contracted Service</u>	<u>Agency justification for using outside vendor</u>	<u>Agency justification for restricting solicitation</u>
<u>Department of Law (cont.)</u>					
Hopkins, Sutter, et al.	15,000	Small Purchase	Attorney for Public Broadcast Issues	No AK firms were contacted.	Solicitation not limited.
<u>Department of Revenue</u>					
ADS Assoc. Inc.	20,200	Sole Source	Software Design	Sole source located outside of Alaska.	Expansion of existing system. ADS holds copyright to system along with ownership rights to the software codes.
First Pennsylvania Bank	360,000	CSP	Custody and safekeeping of treasury investments	No AK firms responded.	Solicitation not limited.
Financial Collection Agencies	150,000	CSP	Collection Agency to pursue monies owed by non-residents	Firm evaluated the highest.	Solicitation not limited.
SEI Corp.	38,400	CSP	Investment Management Consultant	No AK firms responded.	Solicitation not limited.
State Street Bank & Trust	3,000,000	Limited	Investment firm for PERS & TRS funds	No AK firms responded.	Solicitation not limited.
<u>Department of Education</u>					
Howatt, Krahn, & Todd	5,800	Small Purchase	Historical Preservation	No AK firms responded.	Solicitation not limited.
Library Info Systems	6,000	Sole Source	Software Design	Sole source located outside of Alaska.	Library Info Systems, (LIS) was awarded a contract in 1986 for installation of Phase II of the automated system which was approved by IRMEAC. This request is for enhancements & additions to the existing system. LIS has the copyright on the software and is the only vendor authorized by copyright law to change the software.

<u>Department/Firm</u>	<u>Contract Amount</u>	<u>Type of Solicitation</u>	<u>Contracted Service</u>	<u>Agency justification for using outside vendor</u>	<u>Agency justification for restricting solicitation</u>
<u>Department of Health and Social Services</u>					
Professional Review Org. for Washington	211,000	CSP	Review of the Medicare program	No AK firms submitted proposals.	Solicitation not limited.
Myers & Stauffer	77,450	CSP	Consultant for Pharmacy Program	No AK firms submitted proposals.	Solicitation not limited.
The Orkand Corp.	75,000	Emergency	Pharmacy Program Design	No AK firms submitted proposals.	Services originally solicited under RFP. Failed to receive a responsive/affordable bid. Inadequate time to resolicit. Services are required within 3 months.
Banerjee Assoc.	24,971	CSP	Cost study of residential care	Firm evaluated the highest.	Solicitation not limited.
N.W. Resource Assoc.	18,100	Sole Source	Adoption Exchange	Sole source located outside of Alaska.	Only adoption exchange agency in the Northwest region.
Institute for Human Svc.	220,000	Sole Source	Consultant to maximize federal revenues	Sole source located outside of Alaska.	Second phase of a 3-phase project. Contractor performed phase 1.
Susan Shacklett	24,350	Small Purchase	Software Design	No AK firms submitted proposals.	Solicitation not restricted.
Paul J. Carling, M.D.	8,054	Small Purchase	AK Housing Symposium Seminar	No AK firms submitted proposals.	Solicitation not restricted.
D. Mandt & Assoc.	10,250	Emergency	Client Management Training	No providers in AK.	H&SS was unsuccessful in finding 3 providers to perform services. Two were located. The other provider proved to be more costly.
Mary K. Benson	20,000	Sole Source	Consultant to analyze medicaid rate setting	Sole source located outside of Alaska.	Benson only person who meets the specialized requirements set by H&SS. No one in the department or in the private sector possesses the combined rate setting and federal and state programmatic expertise to complete project.

<u>Department/Firm</u>	<u>Contract Amount</u>	<u>Type of Solicitation</u>	<u>Contracted Service</u>	<u>Agency justification for using outside vendor</u>	<u>Agency justification for restricting solicitation</u>
<u>Department of Labor</u>					
Pansophic Systems, Inc.	8,000	Sole Source	Data Processing Training	Sole source located outside of Alaska.	Company designed software in use. Since firm developed software they are in a unique position to provide quality training.
Runzheimer and Company	54,500	Sole Source	Data Analysis for cost of living index	Sole source located outside of Alaska.	Requested sole source because Runzheimer could provide more comprehensive geographic data specific to needs. Only one who would provide expert testimony in court.
<u>Department of Commerce and Economic Development</u>					
Kojiro Abe, Japan	390,000	Sole Source	Office Staff for Asian office	Sole source located outside of Alaska.	Individual has served as representative in Asia since 1982. Few individuals possess qualities sought. Training orientation of new firm would be costly & time-consuming.
Rathe Pty. Ltd	272,400	Sole Source	Expo 88 Consultant	Sole source located outside of Alaska.	Important that the same consulting team that is working on the marketing strategy for meeting the exhibits' goals should also be charged with developing the measurement strategy. State will save since it won't have to pay for the learning curve.
The Travel Industry Assoc.	17,000	Sole Source	Tourism Promotion with Yukon Government	Sole source located outside of Alaska.	Contract represents the continuation of a joint marketing effort between AK and the Yukon government. The specific service is available only from Travel Industry.
AKA Business Services	600,000	CSP	Printing of tourism promotions	Firm ranked the highest. Contractor will subcontract majority of the work to an Alaskan firm.	Solicitation not limited.

<u>Department/Firm</u>	<u>Contract Amount</u>	<u>Type of Solicitation</u>	<u>Contracted Service</u>	<u>Agency justification for using outside vendor</u>	<u>Agency justification for restricting solicitation</u>
<u>Department of Commerce and Economic Development (cont.)</u>					
Milliman & Robertson	30,000	Emergency	Actuarial Analysis	Emergency source for work outside of Alaska.	Recognized expert in workers' compensation issues. Immediate actuarial evaluation & expert recommendations were needed due to planned fast passage of legislation.
Plants, Sites, and Parks	20,000	CSP	Advertising	No in-state firms were contacted. Dept. wanted out-of-state publication.	Solicitation not limited.
Nat'l Council of Architect	9,000	Emergency	Examinations	Contracts for national examinations. Only source for examination.	Solicitation restricted since some exams are required to be used. Exams were developed. Time to request a CSP would not allow yearly exams for some occupations.
Nat'l Council of Engineer	10,000	Emergency	Examinations		
Nat'l Assessment Institute	6,000	Emergency	Examinations		
Lubow, McKay et al.	70,000	Sole Source	Auditors for APUC	Firm evaluated the highest.	Work expanded beyond original contract specifications.
Ben Johnson	280,000	CSP	Consultant for APUC	Firm evaluated the highest.	Solicitation not limited.
Pannell, Kerr, Forster	99,999	Limited	Feasibility Analysis for AIDEA	Limited solicitation to two firms. Both out of state.	Two nationally recognized accounting firms with extensive credentials in resort feasibility analysis. Limited to these firms.
<u>Department of Military and Veterans Affairs</u>					
No outside contracts reported.					
<u>Department of Natural Resources</u>					
Sno Engineering	18,500	CSP	Ski Area Development	Necessary expertise did not exist in AK to do development planning.	Solicitation not limited.
Barry Thompson	80,000	CSP	Real Estate Appraisal	Firm evaluated the highest.	Solicitation not limited

<u>Department/Firm</u>	<u>Contract Amount</u>	<u>Type of Solicitation</u>	<u>Contracted Service</u>	<u>Agency justification for using outside vendor</u>	<u>Agency justification for restricting solicitation</u>
<u>Department of Fish and Game</u>					
Sport'en Art	Revenue Contract	CSP	Commercial Art	No AK firms responded.	Solicitation not limited.
Dr. Richard Thorne	15,000	Sole Source	Fisheries Research	Sole source located outside of Alaska.	Has provided service since 1982. Familiarity with equipment. Politically beneficial due to independence of firm.
Jones & Stokes	237,725	CSP	Fisheries Study	Firm evaluated the highest.	Solicitation not limited.
Pacific Marine Fisheries	6,000	Sole Source	Isozyme Analysis	Sole source located outside of Alaska.	Firm only one qualified. No one else doing this kind of work.
<u>Department of Public Safety</u>					
SEARCH Group, Inc.	171,000	Sole Source	Contract Support	No AK vendors submitted proposals.	Initially not limited. Only SEARCH submitted proposal. Alternative procurement approved to award contract.
<u>Department of Environmental Conservation</u>					
NEA, Inc	8,500	CSP	Air Analysis	No AK vendors submitted proposals.	Solicitation not limited.
Jellinek, Schwartz, Connolly	24,500	CSP	Environmental Lobbyist	No AK vendors submitted proposals.	Solicitation not limited.
<u>Department of Community and Regional Affairs</u>					
No outside contracts reported.					
<u>Department of Corrections</u>					
Loche Systems, Inc.	16,800	Sole Source	Software	Sole source located outside of Alaska.	System has been specifically customized for Correction's use and can only be serviced by Loche Systems.
Loche Systems, Inc.	38,250	Sole Source	Design		

<u>Department/Firm</u>	<u>Contract Amount</u>	<u>Type of Solicitation</u>	<u>Contracted Service</u>	<u>Agency justification for using outside vendor</u>	<u>Agency justification for restricting solicitation</u>
<u>Department of Corrections</u>					
Design Systems, Inc.	9,280	Emergency	Prison Security Specialist	Emergency source outside Alaska.	Contractor was initially involved on the Spring Creek transition team in 1986. Continued expertise and services of this particular prison security specialist.
Law Enforce. Psychol. Svc.	8,000	Sole Source	Psychological Testing	Sole source located outside of Alaska.	Department has previously worked with firm.
Mt. Canine Training	48,000	Sole Source	4 dogs & Training	No AK firms can provide service.	Department contacted other state departments and the National Institute of Corrections. Contacts stated that this was only firm that could provide training & dogs.
<u>Department of Transportation and Public Facilities</u>					
<u>Alaska Marine Highways</u>					
Coriphen Enterprises	13,000	CSP	Terminal operations	Evaluated the highest.	Solicitation not limited.
Glosten & Assoc.	101,652	CSP	Naval Engineer	There are no Naval Engineers in AK.	Solicitation not limited.
Glosten & Assoc.	326,600	CSP	Naval Engineer	No AK firms submitted proposals.	Solicitation not limited.
Elliott Bay Design Group	165,015	CSP	Naval Engineer	No AK firms submitted proposals.	Solicitation not limited.
<u>Southeast Region</u>					
Donald G. Montgomery	9,000	Small Purchase	Appraisals Real Estate	Evaluated the highest.	Solicitation not limited.
Jack Rutherford R.M.	500	CSP	Appraisals Real Estate	Evaluated the highest.	Solicitation not limited.
Jack Rutherford R.M.	15,000	Small Purchase	Appraisals Real Estate	No AK firms submitted informal proposals.	Solicitation not limited.
R.W. Beck & Assoc.	164,857	CSP	Engineer for Snettisham Hatchery Project	Evaluated the highest.	Solicitation not limited.

<u>Department/Firm</u>	<u>Contract Amount</u>	<u>Type of Solicitation</u>	<u>Contracted Service</u>	<u>Agency justification for using outside vendor</u>	<u>Agency justification for restricting solicitation</u>
<u>Department of Transportation and Public Facilities (cont.)</u>					
R.W. Beck & Assoc.	6,659	CSP	Engineer for N Tongass Project	Evaluated the highest.	Solicitation not limited.
Reynolds Appraisal	9,900	Small Purchase	Appraisals Real Estate	No AK firms submitted proposals.	Solicitation not limited.
<u>Anchorage Internat'l Airport</u> David A. Hall Assoc.	37,500	CSP	Marketing Consultant	Evaluated the highest.	Solicitation not limited.
David A. Hall Assoc.	5,000	Small Purchase	Marketing Consultant	No AK firms submitted proposals.	Solicitation not limited.
Peat, Marwick, & Main	176,050	CSP	Consultant for Terminal Plan	Evaluated the highest.	Solicitation not limited.
Peat, Marwick, & Main	25,000	Small Purchase	Consultant for Concessions Contract	No AK firms submitted proposals.	Solicitation not limited.
<u>Northern Region</u> Gary Hoagland	35,750	CSP	Appraisals Real Estate	Evaluated the highest.	Solicitation not limited.
Gary Hoagland	81,575	CSP	Appraisals Real Estate	Evaluated the highest.	Solicitation not limited.
Jack Rutherford, R.M.	10,000	Small Purchase	Appraisals Real Estate	Evaluated the highest.	Solicitation not limited.
Jack Rutherford, R.M.	83,010	CSP	Appraisals Real Estate	Evaluated the highest.	Solicitation not limited.
Jack Rutherford, R.M.	22,950	CSP	Appraisals Real Estate	Evaluated the highest.	Solicitation not limited.
Donald Palmer, Appraiser	17,700	CSP	Appraisals Real Estate	Evaluated the highest.	Solicitation not limited.
Texas A&M University	8,470	Sole Source	Training in Paving Methods	Expert in training.	Solicited through a memorandum of agreement.
<u>Alaska State Legislature</u>					
No outside contracts reported.					

<u>Department/Firm</u>	<u>Contract Amount</u>	<u>Type of Solicitation</u>	<u>Contracted Service</u>	<u>Agency justification for using outside vendor</u>	<u>Agency justification for restricting solicitation</u>
<u>University of Alaska</u>					
Abisko Naturvetenskapliga	7,500	Sole Source	Tree Line Research	Sole source located outside of Alaska.	Only individual providing service.
Abisko Naturvetenskapliga	7,286	Sole Source	Tree Line Research	Sole source located outside of Alaska.	Only individual providing service.
Int'l Trade Research	15,000	Sole Source	Timber Market Research	Sole source located outside of Alaska.	Chinese government controls all research in country.
Forestry Research Institute	5,000	Sole Source	Forestry Research	Sole source located outside of Alaska.	Authority in field.
K.K. Seo. Consultant	24,375	Sole Source	Consultant Fisheries Information	Sole source located outside of Alaska.	Highly qualified and agreed to perform services at reduced cost.
Walks of Nation	9,000	Sole Source	Consultant for planning AK Native Development Program	Sole source located outside of Alaska.	Continuation of services.
Hope	5,625	Sole Source	Speaker for Workshop	Sole source located outside of Alaska.	Featured speaker for seminar.
Institute for Counsel & Training	9,388	Sole Source	Speaker for Workshop	Sole source located outside of Alaska.	Featured speaker for seminar.
Resource Development, Inc	9,700	Sole Source	Training in estate planning	Sole source located outside of Alaska.	University regulations allow for limited competition under \$10,000.
Trinity Consultants, Inc.	14,750	Sole Source	Dispersion Modeling	Sole source located outside of Alaska.	Firm specifically listed in combined proposal as part of an expert team.
L. Diane Bernard	15,000	Sole Source	Consultant to initiate a masters program in social work	Sole source located outside of Alaska.	Unequaled experience in developing social work curriculum.
David Born	5,000	Sole Source	Consultant to develop program evaluation plans for children's services	Sole source located outside of Alaska.	Expert in children's services.

<u>Department/Firm</u>	<u>Contract Amount</u>	<u>Type of Solicitation</u>	<u>Contracted Service</u>	<u>Agency justification for using outside vendor</u>	<u>Agency justification for restricting solicitation</u>
<u>University of Alaska (cont.)</u>					
James E. McMahon, PHD.	13,900	Small Purchase	Energy Research	No AK firms submitted proposals.	Solicitation not limited.
Esherick, Hornsey, Dodge	672,200	CSP	Architect for University consolidation	Stayed with same firm who designed original building.	Cost advantages.
Ackley/Jensen, Inc.	6,000			Unable to locate file.	
Ballard & Co.	10,000	Small Purchase	Risk Management Consultant	Evaluated the highest.	Solicitation not limited.
Coopers & Lybrand	6,000	Sole Source	Actuarial Services	Sole source located outside of Alaska.	Firm has previously provided services and has established data base.
Canter & Assoc.	6,500	Sole Source	Instructor for course	Sole source located outside of Alaska.	University regulations allow for limited competition under \$10,000.
Government Finance	10,000	CSP	Financial Consultant	Evaluated the highest.	Firm originally contracted with the Dept. of Revenue. Services being performed under an agreement with them.
Government Finance	10,286	CSP			
Enres Consultants	6,678	Sole Source	Consultant for setting up a management training workshop	Sole source located outside of Alaska.	Firm on campus for prior obligation. Cost advantages.
Pcat, Marwick, Main & Co.	45,000	Emergency	Data Processing Consultant	Most qualified.	Solicitation not limited.
Risk Ngmt. Society Pub.	7,000			Unable to locate file.	
<u>Alaska Railroad Corporation</u>					
Greg Maxwell & Assoc.	25,000	CSP	Auditor for annual audit	No AK firms submitted proposals.	Solicitation not limited.
Heller, Ehrman, White	60,000	Sole Source	Attorney for legal advice in land issues	Sole source located outside of Alaska.	Prior experience with the Railroad Corp.

<u>Department/Firm</u>	<u>Contract Amount</u>	<u>Type of Solicitation</u>	<u>Contracted Service</u>	<u>Agency justification for using outside vendor</u>	<u>Agency justification for restricting solicitation</u>
<u>Alaska Railroad Corporation</u>					
Preston, Thorgrimson, Ellis	8,500	Sole Source	Attorney for legal advice in antitrust and regulations.	Sole source located outside of Alaska.	Prior experience with the Railroad Corp.
<u>Alaska Power Authority</u>					
P.E. Sperry	45,000	Limited	Consultant for Bradley Lake Hydro Project	Source located outside of Alaska.	Solicitation not limited to one source. Four consultants were appointed to board.
R.W. Beck & Assoc.	22,497	CSP	Consulting Engineer	Evaluated the highest.	Solicitation not limited.
<u>Alaska State Building Authority</u>					
No outside contracts reported.					

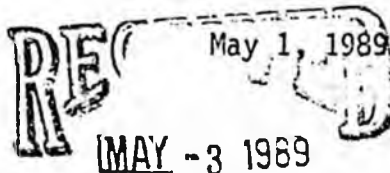
STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX C
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200



Mr. Randy S. Welker
Legislative Auditor
Division of Legislative Audit
Legislative Affairs Agency
P.O. Box W
Juneau, AK 99811-3300

LEGISLATIVE
AUDIT

Dear Mr. Welker:

Re: Audit 02-4323-89-S

I am responding to the recommendations provided in Audit 02-4323-89-S applicable to the Department of Administration.

Recommendation 1

At the time of your original interviews, we had an incomplete understanding regarding the types of contracts being issued to foreign nationals for work in other countries. That situation has changed. We agree that there are and have been difficulties establishing the foreign contracts. We will hold a meeting with the Division of General Services and Supply, Division of Personnel, and those agencies who contract with foreign nationals. If indeed a statutory change is required, we will propose it next year.

Recommendation 2

- A. We disagree with some of your observations and hence your recommendations. We have not made an assumption that the normal procurement process would yield untrustworthy, untruthful, or unreliable contractors. Further we have not implied that only the Governor can make a sole source determination on specific contracts.

When we receive requests for approval of sole source contracts, we review available evidence as required by statute. Part of that evidence is the statement made by the requestor. Anybody requesting a sole source could provide a statement that the requirement for trust limits the selection of contractors. We have determined that only statements from the Governor will be considered as acceptable evidence that no other source will do. The Governor has a unique position in Alaska and as such has unique responsibilities and burdens. Therefore, necessary qualifications of parties to provide advisory services go beyond simple honesty, reliability, or expertise. When the Governor makes decisions that will

affect the State, he is entitled to advisors he trusts. We must disagree with your interpretation of the procurement code. It is apparent that the writers effectively identified three areas of procurement. Category (1). The first area covers those items which should be procured by one of the processes described in the procurement code. Category (2). The second area provides exceptions (sole source, limited competition, emergency). These exceptions are for supplies or services which would normally be procured under the procurement code processes but meet the requirements to be exceptions. Category (3). The third area (Alaska Statute (AS) 36.30.860(b)(1)-(17)) lists supplies and services the legislature has chosen to exclude from the application of the procurement code. To address your example, the Department of Fish and Game contracts for over 200 flights a year under the exemption provided. These routine procurements are not covered by the procurement code. Your audit lists three contracts involving the Governor's trust and confidence. The service provided involves foreign trade and the oil industry. The routine way to procure information regarding foreign trade and the oil industry would be to utilize procurement code processes category (1). These have been procured as exceptions to those processes category (2). We see no reason to place them in category (3).

We disagree with your contention that our consideration of the Governor's requirement for trust as evidence constitutes a delegation. Each of the requests was reviewed. If we needed more information, we requested it. When we were satisfied, they were approved. The fact that the three contracts listed in your audit were approved should not be taken to indicate that every request would automatically be approved or that authority has effectively been delegated.

You appear to see a threat that some future Governor might be tempted to abuse the present process. It is possible. However, the opportunity for abuse is less in the present process which requires review and reporting. Placement in category (3) would remove all the procurements from the requirements of the procurement code.

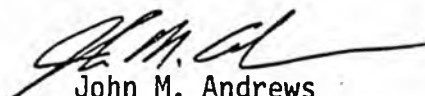
- B. We have received informal Attorney General's advice that the present delegation process is acceptable and reasonable. (The only delegations occur during absences when an acting CPO or commissioner is appointed. The person in the acting position then has the authority to make the determinations. When appointing persons to act as commissioner or CPO, we have selected people who would qualify for the position in the first place.)
- C. We have received informal advice from the Attorney General's office that approval of court appointments as sole sources is acceptable. It meets the requirements of the regulations (2 AAC 12.410) which requires an explanation why no other source is acceptable because the court has not appointed any other source.

We will ask the Attorney General's office to see if revised statutory language is appropriate for the above.

Recommendation No. 3

We plan on having the reports required by law. As you pointed out, the law requires reports beginning with December 1, 1989. In order to be ready for that date, we planned to run our first trial after January 1, 1989, in order to review a full year. At your request, we accelerated the process. We did not expect the first effort to be perfect and were developing controls at the time of your audit. Since provision of the report, we have implemented procedures to monitor procurement reporting.

Sincerely,



John M. Andrews
Commissioner

JMA/RJL/cjk

4/11D1/042408-9

cc: Division of General Services and Supply
Department of Administration



Brian Rogers
Vice President for Finance
(907) 474-7448

University of Alaska
Fairbanks, Alaska 99775-5260

May 1, 1989

RECEIVED
MAY - 2 1989

Randy S. Welker
Legislative Auditor
Division of Legislative Audit
P. O. Box W
Juneau, AK 99811-3300

LEGISLATIVE
AUDIT

Dear Mr. Welker:

The University of Alaska has reviewed your preliminary audit report on: "A Special Report on Statewide Professional Service Contracts Awarded to Out-of-State Firms, January 1, 1988 through September 30, 1988."

The report makes two recommendations concerning the University of Alaska:

Recommendation No. 5

The University of Alaska should strengthen controls over the procurement of professional services. [The controls are necessary because individuals, who have not been delegated purchasing authority are obligating university funds without prior approval.]

The University of Alaska agrees with this recommendation and took action to strengthen controls immediately following the exit conference with the legislative auditor. Departments involved in unauthorized procurements are now trained by university deputy chief procurement officers. Procurement personnel work with the department to preplan requirements and advise departments to seek purchasing assistance when unforeseen needs arise. Should these steps fail to correct a pattern of unauthorized purchases, the chief procurement officer does not ratify further unauthorized purchases, and such purchases become the personal liability of the offender. Additionally, top management of the university will review on a quarterly basis the performance of all university departments to ensure that funds are obligated only by authorized personnel.

University of Alaska

Randy Welker
Page 2
May 1, 1989

Recommendation No. 6

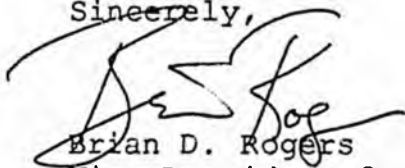
The University of Alaska should adhere to statutes governing sole source procurement. [We recommend that the university rescind delegations of authority by the chief procurement officer to other purchasing personnel to make determinations that only one source for a procurement exists.]

The University of Alaska agrees with this recommendation. Upon notification by the legislative auditor that university regulations were out of compliance with AS 36.30.005(c) on December 14, 1988, the chief procurement officer rescinded all delegations for sole source procurement.

The university is seeking corrective legislation which would allow the delegation of sole source determination for small purchases. Senate Bill #170, currently under consideration in the state House of Representatives, contains such a change. If adopted by the full legislature and signed by the Governor, university regulations would then be consistent with the law. If the law is not changed, the university will, through the administrative procedures act processes, amend our regulations.

Thank you for the opportunity to respond to the report.

Sincerely,



Brian D. Rogers
Vice President for Finance

cc: Donald O'Dowd, President
Barbara Joy, Director of Internal Audit
Diane Mayer-Pearson, Acting Chief Procurement Officer

ALASKA RAILROAD CORPORATION



P.O. Box 107500 • Anchorage, Alaska 99510-7500

April 25, 1989

Mr. Randy S. Welker
Legislative Auditor
Division of Legislative Audit
P.O. Box W
Juneau, Alaska 99811-3300

APR 28 1989

LEGISLATIVE
AUDIT

Re: Preliminary Audit Report on Statewide Professional Service Contracts, Audit Control Number 02-4323-89-S

Dear Mr. Welker:

Thank you for the opportunity to respond to your preliminary audit report relating your findings about the Alaska Railroad Corporation (ARRC).

Legislative Audit Recommendation No. 4:

"The Alaska Railroad Corporation should amend their procurement procedures to include the 'Chief Procurement Officer' concept within their purchasing operations."

ARRC Response:

As you are aware, we have previously discussed the unique status of ARRC and why this uniqueness must be taken into account when comparing the railroad corporation to other executive agencies. We fully agree with your statement that the corporation must adopt procedures which are substantially equivalent to the procedures prescribed in the state procurement code. However, we strongly disagree with your findings that make it appear we are not substantially equivalent. Your concern that the apparent lack of a comparable Chief Procurement Officer (CPO) position at ARRC would render the substantial equivalency "highly questionable" is unfounded.

As you know, ARRC employees are not state employees and therefore, are employed under separate corporate personnel policies. All professional employees of the corporation are employed on an "at will" basis. The concept of the CPO which requires appointment to a fixed term of office and removal from that office only for cause is meaningless to the corporation. Additionally, the CPO is a position which is appointed by the Commissioner of Administration

and responsible for supervising and coordinating procurement for state agencies to insure proper accountability of public funds, and fairness and equality in purchasing decisions. ARRC does not receive any public funds and in fact, as you correctly pointed out, is not a state agency for the purposes of the procurement code.

However, ARRC is fully cognizant of its unique role as a quasi-private corporation and is particularly concerned with the image it projects. As a result, ARRC has established an approval process which is recognized and accepted in the business world and which meets the test of equivalency to the concept of the state CPO. All purchasing decisions are placed at the level where the actual need for the service or material exists. The request to procure such items is in strict accordance with the corporate Approval Authority Guide (attached) which establishes dollar limits within the organization for purposes of control. The actual process of obtaining bids, proposals, controlling the awarding of contracts and the final signatory responsibility rests within the Contracts Branch. Any request for an Alternative Procurement Method must be approved by the Contracts Branch and, in the event of a request for sole source procurement, only the Contracts Branch may approve a finding and determination of justification. Hence, the main concern of the legislation surrounding the concept of the CPO, that of accountability, control and objectivity, is met by the process currently in place at ARRC.

I must also take exception to your equating the Alaska Railroad Corporation's procurement methodology with that of the Alaska State Building Authority. With the exception of the Alaska Permanent Fund, there is no state agency, to my knowledge, which is charged with the specific mission of operating on a self-sustaining basis, for profit, and in as competitive an environment as the Alaska Railroad. Of necessity, our policies and procedures must be tailored differently.

We fully adopt your position that ARRC should seek legislative remedy. We appreciate the difficulty you find in trying to fit us into a mold which is cast separately from other executive branch agencies. To that end, amendments to the state procurement code have been introduced which would make more explicit the procurement methodology which ARRC can utilize.

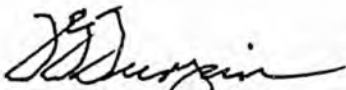
I have also attached a copy of a letter dated 15 December 1988 to your division which more fully explains ARRC's position on these matters. I believe this document should be part of the record which goes forth to the entire Legislative Budget and Audit Committee.

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In closing, I want to personally reiterate ARRC's total commitment to a fair, equitable and accountable procurement process. We cannot expect to survive and be successful in the business world unless we have the trust and respectability of not only our customers but also that of our suppliers.

Once again, thank you for your consideration of our response.

Sincerely,



F. G. Turpin
President & Chief Executive Officer

cc: M. J. Yetter, Vice President, Finance, ARRC
B. E. Carr, Manager, Financial Services, ARRC
W. R. Hupprich, Senior Business Attorney, ARRC

att

ALASKA RAILROAD CORPORATION



P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

Anchorage, Alaska
December 15, 1988

Ms. Connie Eidson-Smith
Senior Auditor
Division of Legislative Audit
P.O. Box W
Juneau, Alaska 99811-3300

Dear Ms. Smith:

Thank you for the opportunity to respond to your interim findings relating to your recent review of the Alaska Railroad Corporation (ARRC) procurement regulations and 3 professional service contracts. I understand this audit is part of a larger audit effort directed by the Budget and Audit Committee towards all quasi-public corporations in the executive branch.

In response to your recommendation that ARRC should adopt procedures substantially equivalent to the procedures prescribed in A.S. 36.30., please be advised that ARRC has already adopted such rules. Our legal department took the lead by writing the rules which were adopted by the ARRC Board of Directors on April 21, 1988. These are the same rules that you reviewed in your compliance audit. Your conclusion that our rules are not "substantially equivalent" to the State code appears to be based on your determination that our President & Chief Executive Officer is the "Chief Procurement Officer" (CPO) for the Corporation and that as a consequence, he must personally approve all Sole Source Contracts and he may not delegate this authority. Because ARRC rules allow a procurement officer to approve a sole source determination, you concluded that the entire body of procurement rules adopted by the ARRC board are not "substantially equivalent" to the procedures found in AS 36.30.

I believe that due to the short period of time given to audit the corporation, you did not have sufficient time to adequately consider all of the legal and factual circumstances surrounding the creation and continued operation of the corporation and how the same affect ARRC's procurement function. These circumstances include AS 42.40. (Alaska Railroad Corporation Act (ARCA)) and the procurement code itself which exempts the corporation from the rules applicable to other executive branch agencies. I will address each of these issues separately to give you a better understanding of the corporation's position.

1. The State Procurement Code governs the procurement procedures for state agencies and not the Alaska Railroad. The State Procurement Code was adopted by the legislature for the express purpose of centralizing, coordinating and regulating the procurement of supplies, services and professional services by state agencies. A review of the general scheme and actual provisions of the code confirms that the literal language of the code applies only to state agencies and not to quasi-government entities such as ARRC. See AS 36.30.990 where the term "agency" is defined to specifically exclude the Alaska Railroad Corporation.

ARRC's exemption from the literal provisions of the State Procurement Code evidences the legislature's recognition of ARRC's unique status. Pursuant to AS 42.40.010, ARRC is a state instrumentality which has a legal existence independent and separate from the state and, pursuant to AS 42.40.100(8), ARRC's procurement procedures are required to be in accordance with accepted Railroad Industry Standards.

ARRC is the only public corporation in the State of Alaska which is subject to a legislative mandate to be operated as a private, self-sufficient, for-profit corporation. I might also point out that our funds are generated from private sector resources and are not public funds as stated in your letter.

Because of ARRC's unique status, and the fact that ARRC does not receive any state appropriations, ARRC's procurement function must be viewed in the light of its overall mission and not by any specific State statutes or regulations that pertain to state agencies. Consequently, the "substantially equivalent" requirement which you have cited from AS 36.30.015(e) must be interpreted in conjunction with the requirements of the Alaska Railroad Corporation Act (ARCA) and the federal Alaska Railroad Transfer Act (ARTA), 45 USC 1201 et seq. When the "substantially equivalent" provision is analyzed in this context, it becomes clear that many of the provisions of the state procurement code simply do not apply to ARRC.

Your statement that ARRC's CEO has been appointed "Chief Procurement Officer" (CPO) puzzles me. The position of "CPO" does not exist at ARRC. Our Board has never made such an appointment and further, it is not required to do so. Under AS 36.30.010, the "CPO" is a person appointed by the commissioner of administration to a partially exempt position for a four year term. The CPO is responsible for supervising and coordinating procurement by all state agencies. As indicated above, ARRC

is not a state agency. Common sense dictates that neither the concept of a "CPO" nor the duties specified in AS 36.30.010 have any applicability to ARRC. If the legislature had intended ARRC to have a "CPO", they would have said so just as they did for the University of Alaska in AS 36.30.005(c)(3).

2. ARRC may delegate sole source procurement responsibility to its procurement section. AS 42.40.100 charges the Board of Directors with the management of the corporation and authorizes the board to delegate day to day responsibility of managing the corporation to the Chief Executive Officer and his designees. ARRC's Approval Authority Guide (AAG) represents that delegation of authority. The AAG authorizes various corporate employees to approve requests for sole source contracts. Notwithstanding any delegation of authority, no contract can be executed without being reviewed and approved by ARRC's procurement section. The AAG establishes dollar limits within which each designee can authorize the procurement section to proceed with the proper execution of a contract with a vendor. The concept of the "Chief Procurement Officer" which is embodied in the State procurement code ensures that state agencies are not operating autonomously. ARRC procurement rules and AAG accomplish the same thing thus ensuring we are substantially equivalent to the code.

3. ARRC's Procurement Rules are substantially equivalent to the procedures prescribed in the State Procurement Code. As previously mentioned, ARRC's legal department wrote the procurement rules which were adopted by the board of directors. In their opinion, the rules meet and in fact surpass the requirement of substantial equivalence. The very fact the corporation was specifically excluded from the definition of "agency" by the code indicates a legislative intent that the corporation continue to operate in a manner which is consistent with ARCA and ARTA. At the same time, the "substantial equivalence" language indicates a legislative desire that the corporation adopt rules which fulfill the purpose of the procurement code, that being honest, fair and equitable procurement procedures. The legislature did not require the corporation to adopt the same rules and procedures as state agencies because they recognized the unique status and function of the corporation.

Notwithstanding the foregoing, a careful review of ARRC's rules will reveal that most of the rules are virtually the same as those in the State procurement code. The only differences are in those areas where a rule conflicted or interfered with the

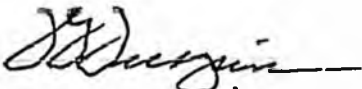
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page 4

corporation's mandate under ARCA and ARTA and those provisions which, on their face, were clearly only applicable to a state agency. However, even in areas where our rules differ, our rules comply with both the spirit and purpose of the code.

I would also like to point out that we have had discussions with officials in the Department of Administration and the Attorney General's office and the issue of substantial equivalence of our rules has not been questioned. Further, as I am sure you are aware, the Anchorage office of your division has had a copy of our rules since shortly after their adoption. We have had no indication of concern expressed as to the substantial equivalence of our rules from that office either.

In conclusion, I appreciate the opportunity to reply to your interim letter and I am sure you can see that the recommendation you have made is unnecessary. I look forward to discussing any further questions you may have before you issue your final letter.

Sincerely,



F. G. Turpin
President & Chief Executive Officer

ALASKA RAILROAD CORPORATION



APPROVAL AUTHORITY GUIDE



December 1986

Routine Temporary Delegation

To: Manager, Accounting

From: _____

(Signed)

I will be out of the office from _____ through _____ inclusive. During this time, I delegate to _____ the authority of my position as _____ for routine items as designated in the Approval Authority Guide.

cc: Distribution B or Human Resources, Accounting, Supply, Procurement, and Administrative Services

Full Temporary Delegation

To: Manager, Accounting

From: _____

(Signed)

I will be out of the office from _____ through _____ inclusive. During this time, I request the full authority of my position as _____ be delegated to _____.

Approved by: _____

cc: Distribution B or Human Resources, Accounting, Supply, Procurement, and Administrative Services

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Forward

Policy

The Board of Directors has delegated to the President of the Alaska Railroad the authority necessary to conduct the day-to-day business of the company, including the Presidents' capacity to delegate to specific positions within the company the authority to approve certain business actions. The formal delegation of authority is effected through the President's approval of an approval authority guide ("The Guide") which specifies the authorities granted to each position. The guide incorporates the authorities specifically delegated by the Board of Directors to the President and to the President's delegation to the Corporate Managers. All changes to the Approval Authority Guide will be endorsed by the Vice President-Finance and by the President.

Responsibilities

A basic premise of the above policy is that delegated authority bears with it a corresponding obligation to exercise sound discretion and good business judgment. Any action being considered for approval must be necessary and, for financially oriented actions, within the approved operating budget. Good internal control dictates that the limitations of authority set forth in this guide be complied with by all concerned. There can be no deviations from the established authority levels without the formal approval of the President.

Because of the need for prompt handling of company business and to avoid unnecessary delays, each incumbent is responsible for becoming familiar with the policy and procedures governing approval authority and the authority elements and limits delegated to his/her position including the endorsements, if any, required prior to approval of certain actions.

Limitations

Approval authority is limited by the scope of responsibility associated with the related position. Accordingly, approval authority does not general cross departmental or divisional lines. Further, unless otherwise specifically indicated, incumbents do not have the authority to approve any action in their own behalf.

Provisions in Bargaining Unit Agreements may override any section.

Temporary Delegation

The Incumbent Manager will approve temporary delegation of authority. Where absence is known to exceed one week or where the next higher position will not be available for approvals, authority can be delegated by the Incumbent Manager to another position normally reporting to the incumbent.

The authority delegated to each position will be based on the job scope and approval requirements actually necessary to conduct day-to-day business.

For temporary delegations of Department Managers and subordinates see procedure on page 3.

Interpretations

Any questions regarding interpretation of this guide should be directed to the Manager, Accounting.

Legend:

k	\$000
M	\$000,000
A	Has authority
E	Endorsement within area of responsibility or required as noted.
F	Final approval when limits in the Alaska Railroad are exceeded.

Definitions

Approver - An incumbent of a position designated as having approval under the guide. (It is the position, not the incumbent, which carries the authority.) Approvers have the responsibility of exercising the authority of their positions in accordance with all of the rules governing approval authority.

Endorser - An incumbent of a position responsible for technical review of a request. Endorsement indicates agreement with and support of the technical aspects of an action related to the corporate responsibilities of the Endorser (e.g., the Legal Department reviews and endorses the legal language of a contract.) The endorser, therefore, is usually in a staff department such as Legal, Accounting, Procurement, and Human Resource. Endorsement must be obtained prior to final approval.

Temporary Delegations Procedures

There are two types of temporary delegations - "Routine" and "Full."

A "Routine" temporary delegation can be made by providing written notice to Accounting. The purpose of this type of delegation is to allow for routine business in the absence of an incumbent. Items of a non-routine nature may not be approved under this type of temporary delegation. Authority elements which can be delegated on a routine basis include the following section and or specifically identified approval authority line items.

Contracts and Letters of Agreement

Approve Contractor Time Sheets (For Reimbursement)

Purchasing

(Approved Budget)

Transportation

(Approved Budget)

Disbursements

Routine

Organization and Personnel

Approve Alaska Railroad Time Cards
Authorize Overtime

A "Full" delegation is to be used for non-routine absences (generally in excess of two weeks.) Such a delegation carries with it the full authority of the incumbent and requires the advance written approval of the immediate supervisor of the individual whose authority is being delegated. After securing this approval, Accounting must be notified of the delegation in writing.

Examples of memos which may be used to temporarily delegate authority on a "Routine" and "Full" basis are shown on the inside of the front cover.

Temporary delegation of authority may only be made for periods of one week or more except for the President and Vice Presidents who may delegate their authority for any given period of time.

ALASKA RAILROAD CORPORATION



Management

Board of Directors

President & CEO

V.P., Finance

V.P., Operations

V.P., Marketing

Director, Administration

Director, Human Resources

Chief Counsel

Manager, Corporate Communications

Manager, Internal Control

Budgets

Annual Capital Budget	F	E	E	E	E	E			
Annual Operating Budget	F	E	E	E	E	E			
Charitable Contributions	F	E(1)							
Annual Divisional/Departmental Operating Budget	F	F	A/E(2)		A	A	A		
Long Range Plans	F	E	E	E	E	E	E		

Authorization for Expenditure (AFE) (4)

Capital AFE (Approved Budget)	F	500k(3)	100k	250k	100k	100k	50k	10k	
Item Overrun	A	500k	25k	25k					
Items Not in Budget	F	100k	25k	25k					
Expense AFE (Approved Budget)		A	100k	250k	250k	100k	100k	250k	
Deferred AFE for Design Work									
Item In Approved Budget	F	500k	E	E					
Item Not in Approved Budget	F	100k	E	E					
Reimbursable AFE	F	500k	E	250k					
Budgeted Items Not Specifically Identified									
Capital	F	100k	25k	25k					
Expense		A	100k	A	100k	100k		100k	
Emergency Expenditure	F	500k	25k	100k					

Contracts & Letters of Agreement (6) (15)

Request for Contract		5M(5)	100k/E	250k	100k	100k	25k	25k	5k	5k
Request for Professional Service Contract										
30 Months or Less (14)		2M(5)	5k	5k	5k	5k	5k	5k	5k	5k
Over 30 Months		2M(5)	E	E	E	E				
Request for Lease (annual amount)										
36 Months or Less		5M(5)	100k	250k	100k	100k	20k			
Over 36 Months		2M(5)	50k	100k	50k	50k	10k			
Request for Sole Source Contract (Approved Budget)	F	2M(5)	15k	25k	15k	15k	10k	25k	1k	1k
Execution of Home Sale Equity Purchase		A				E				
Execution of Contracts		A(7)	500k					E		
Right-of-Way & Easements										
Acquisition of R-O-W Under Approved AFE		A						E		
Approve Contractor Time Sheets for Reimbursement		A	A	A	A	A	A	A	A	A
Obtain Management Audit	A	E								

Purchasing (Approved Budget) (15)

Material Requisitions (6)		A	100k	250k	100k	100k	15k	25k	5k	1k
Establish BPO (6)		A	100k	150k	100k	100k	15k	25k	5k	1k
P.O.'s & Amendments (7)		A	1M							
Establish FPO Releaser (25)		A	A	A	A	A	A	A	A	A

Transportation (Approved Budget)

Authorize Transportation - Business and Training (may approve own T/A)										
Intrastate (11)		A	A	A	A	A	A	A	A	A
Interstate (11)		A	A	A	A	A	A	A	A	A
Approve Use of Charter Aircraft		A		A						
Rail Pass Issuance										
Annual Pass		A	A	A	A	A	A			
Trip Pass		A	A	A	A	A		A		

ALASKA RAILROAD CORPORATION



Management

	Management									
	Board of Directors	President & CEO	V.P., Finance	V.P., Operations	V.P., Marketing	Director, Administration	Director, Human Resources	Chief Counsel	Manager, Corporate Communications	Manager, Internal Control
Disbursement										
Invoices										
Covered by Contract		A	100k	250k	100k	50k	50k	50k	10k	5k
Covered by P.O. (8)		A	150k	50k						
Transportation - MFLS		A	10k	10k						
Charter Aircraft		A								
Employment Service Fee		A					10k			
Legal, Professional, Government A		A						100k		
Property Damage & Injury Claims(10)	500k			100k				25k		
All Other (Including Check Request Without Invoice)	500k		10k	10k	10k	10k	4k	2k	1k	1k
Annual Budgeted Cash Contributions	A(1)								1k	
Drafts										
Right-Of-Way & Easements		A	E					E		
Expense Accounts										
Regular Travel, Training Travel, & Business Expense		A	5k	5k	5k	5k	3k	3k	500	500
Relocation		A	E	E	E		25k/E			
Expense Advances (11)										
Regular Travel, Training Travel, & Business Expense		A	2k	2k	2k	2k	1k	1k	500	500
Relocation		A	E	E	E		5k/E			
Utility Bills		A	A	A	A	A				
Petty Cash Replenishment		A	5k	3k	1k	1k				
Payment of Taxes		A	A							
Insurance & Bond Premiums, Brokers, Fees		A	A							
Benefit Payments		A					A			
Disposal of Land, Materials & Equipment										
Materials & Equipment										
Declare Excess to Department		A	A	A	A	A	A	A		
Declare Materials & Equipment Surplus (Book Value)		A								
Approve Sales	A	IM	500k	500k	IM					E
Execute Sales Agreement		A	500k							
Sign Title Certificate		A	A	A						
Land										
Declare Excess to Company	A	E	E	E	E	E				E
Approve Sales (18)	E	E	E		E					
Banking and Finance										
Contract External Auditors	A	E	E							E
Open, Close Bank Account		A	A							
Establish Authorized Signature for Bank Accounts		A	A							
Transfer Funds		A	E							
Request to Borrow Funds		A	IM							
Procure/Negotiate/Execute Financial Instruments										
Execute Master Loan Agreements		A	IM						E	
Issuance of Railroad Bonds (19)	E	E	E						E	
Establish Security for Bonds	F	E	E						E	
Purchase Railroad Bonds		A	E							
Establish Petty Cash Funds		A	A							
Legislative Appropriation of Grants (20)	E	E	E							
Litigation, Claims & Insurance										
Answer and Appeal Claims against ARRC										
Settle Claims Against ARRC	F	500k	5k	5k					A/E	20k/E
Corporate Claims Against Others										
Initiate		A	A	A	A				A/E	
Settle		A	A	A	A				A/E	
Release of ARRC Claims		A	A	A	A				A/E	
Approve Insurance Coverage		A	E						E	
Acquire Insurance Coverage		A	A							
Write Off Bad Debts	F	100k	25k						E	
Issue Customer Credits/Reduce Invoices	F	100k	25k							

**ALASKA RAILROAD
CORPORATION**



Management

Board of Directors	President & CEO	V.P., Finance	V.P., Operations	V.P., Marketing	Director, Administration	Director, Human Resources	Chief Counsel	Manager, Corporate Communications	Manager, Internal Control
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Organization & Personnel

Organizational Changes

- Major Corporate Reorganization (9)
- Reorganization Within Department (9)
- Sale of the Corporation (21)
- Establish or Change Company Policy
- Corporate Policy & By-Laws Administrative
- Approve Exceptions to Policy
- Corporate Administrative
- Establish or Change Company Approval Authority & Approval Limit (Approval Authority Guide) (9)
- Grant Powers of Attorney
- Grant Authority to Execute Instruments on Behalf of Railroad
- Employee Benefit Program (Qualified)(9)

Staffing

- Approve President-CEO
- Approve Staffing Level (9)
- Establish New Position (With Approved Level) (9)
- Approve Personnel Requisition (Currently Authorized) (9)
- Requisition Temporary Personnel (9)

Personnel

- Offer Employment Under Approved Requisition (9)
- Execute Employment Contract
- Approve Transfers or Changes of Assignment Within Approved Staffing (9)
- Approve Relocations
- Authorize Overtime
- Approve Time Cards
- Approve Vacation Carry Over
- Advance Leave
- Salary Actions
 - Non-Represented Employees Salary Merit Program (9)
 - Approve Budgeted Merit Salary Increase (9)
 - Approve Non-Budgeted Merit Salary Increase (9)
 - Compensation for Executive Officers
 - Approve Other Adjustments (9)

A	E	E	E	E	E	E			
F	A/E	A/E	A/E	A/E	A/E	A/E	A/E		
E	E	E	E				E		
A	E	E	E	E	E	E	E		
A	E	E	E	E	E	E	E		
A	E	E	E	E	E	E	E		
A	E	E	E	E	E	E	E		E
A							E		
F	E	E				A			
A									
A	E	E	E	E	E	E	E		
A	E	E	E	E	E	E	E		
A	A	A	A	A	A	A	A	A	A
A	A	A	A	A	A	A	A	A	A
A							A		
A							E		
A	A	A	A	A	A	A	A	A	A
A	A	A	A	A	A	A	A	A	A
A	A	A	A	A	A	A	A	A	A
A	A	A	A	A	A	A	A	A	A
A	E	E	E	E	E	E	E		
A	A	A	A	A	A	A	A	A	A
A	E	E	E	E	E	E	E		
A	E								
A	A	A	A	A	A	A/E	A		

**ALASKA RAILROAD
CORPORATION**



Management

Board of Directors

President & CEO

V.P., Finance

V.P., Operations

V.P., Marketing

Director, Administration

Director, Human Resources

Chief Counsel

Manager, Corporate Communications

Manager, Internal Control

Salary Actions - continued
All Employees

Approve Termination by ARRC for Any Reason (9) (16)	A	A	A	A	A	A/E	A		
Approve Promotion (9) (16)	A	A	A	A	A	A/E	A		
Approve Leave Without Pay	A	A	A	A	A	A	A	15 days	5 days
Approve Suspension for Any Reason (9) (16)	A	A	A	A	A	A/E	A		
Approve Memberships, Attendance at Professional Meetings, Seminars and Reimbursable Course of Study	A	A	A	A	A	A	A	A	
Represented Employees Labor Agreements Negotiable with Unions (9)		E		E			E(17)		
Sign Labor Agreements (9) F	E		E			E(17)	E		

Public Relations

Speeches, Publications, Press Releases, Advertising									
Having Significant Financial or Public Affairs Implications on the Railroad	A	E	E	E	E	E	E	A	
All Others	A	A	A	A	A	A	E	A	
Approve Company Position and Technical Papers on Internal Operations for Use by Company Personnel in Making Public Speeches, Answering Inquiries, Granting Press Interviews, Etc.	A	A	A	A	A	A	E	E	
Presentation of Company Position to Government and Other Agencies in Proceedings, Hearings or Pending Court Actions	A	A	A	A	A	A	A	E	

Miscellaneous

Assign Company Vehicle	A	A	A	A	A				
Assign Company Take Home Vehicle	A								
Approve Issue of Firearms	A								
Approve Destruction of Corporate Records	A		E		A		E		
Approve Tours of Railroad Facilities	A	A	A	A	A	A			E

Operational Changes

Extend Railroad Lines (22)	E	E	E	E					
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Tariffs - Freight Rates (12)

Establishing Tariffs		E		A					
Exempt Rates		E		A			E		
Contract Rates		E		A			E		
General Rate Increase		E		A					

Real Estate

Approve Lease of Corporation Property									
Less than 3 yrs		A	E	E					
Over 3 yrs	A	E	E	E					
Over 35 yrs (23)	E	E	E	E			E		
Exercise Eminent Domain (24)	E	E	E	E			E		
Execute the Contract									
Less than 10 yrs			A				E		
Over 10 yrs		A	E				E		E

Footnotes and Comments

Footnotes

1. Charitable contributions will be included in the annual operating budget as a single line item. The Railroad will provide the Board of Directors an itemized list of proposed contributions. Prior to committing any fund from the contingent amount in the itemized budget of \$1k or of a possible sensitive nature, management will inform the Board.
2. V.P., Finance will endorse all divisional budgets before submission to the President.
3. Requires a Board approval if over \$500k or one year in scope. (Per the Transfer Agreement)
4. The Vice President, Finance; Manager, Financial Services; Manager, Accounting, and Operations Senior Financial Analyst shall endorse all AFE's prior to approval. Once the AFE has been approved no action will be taken until the Manager, Accounting approves the availability of funds.
5. For all contracts and letters of agreement exceeding the stated limit, a request for contract (RFC) enumerating business terms and conditions will be provided to the Board of Directors for informational purposes prior to final approval by the President.
6. V. P., Finance and Manager, Financial Services endorsement is required for requests for contracts and material requisitions in excess of \$50,000.
7. The Legal Department shall endorse all contracts. Copies of draft contracts exceeding \$5,000,000 to be made available to Board of Directors for informational purposes.
8. Disbursements for purchase order invoices do not require additional signature authority when verification is made that a valid purchase order exists and the receiving documentation substantiates receipt.
9. Human Resources endorsement required prior to final company action.
10. Loss & Damage Claims and Legal endorsement required.
11. Manager, Human Resources Development must endorse all Training Travel.
12. The Accounting Manager; Marketing Manager and the Financial Services Manager shall endorse all new freight contracts, tariffs and changes in existing freight contracts, tariffs. Legal shall endorse all contracts. The Vice President, Marketing has the final approval on rates. The Sales Department has the authority to execute the contract once the rate has been endorsed and approved.
13. Manager, Personnel offers employment and negotiates the contract. President and CEO or Manager, Human Resources executes the contract after Legal endorsement.
14. Professional Service Contracts must follow Alaska Statute 36.98; contact Contracts for the appropriate procedures and State forms. Normal contracting procedures are used if the contract is under \$5k. Professional Services is defined as "any professional, technical, or consultant services predominantly intellectual in character."
15. Financial Services only, commits the company to the purchase of supplies or services. This approval level is the amount each manager may request Contracts to initiate purchasing actions. Blanket Purchase Orders (BPO) allow departments to obtain supplies directly from vendors up to the total BPO limit.
16. Manager, Labor Relations endorsement required prior to final company action relating to represented employees.
17. The Manager, Labor Relations may tentatively approve Labor Agreements subject to final approval by the Board of Directors.
18. The Legislature approves the sale of Railroad land.
19. The Legislature approves the issuance of Railroad bonds.
20. The Governor shall endorse the Legislative Appropriation of Grants and the Legislature shall approve.
21. The Governor approves the sale of the Railroad.
22. The Legislature approves the extension of Railroad Lines.
23. The Legislature approves the leasing of railroad property over 35 years.
24. The Governor must approve the Exercise of Eminent Domain by the Railroad.
25. Field Purchase Order (FPO). Division/Department Managers may recommend the employees that receive the FPO Booklets with final approval by Financial Services.

ALASKA RAILROAD CORPORATION



Department Managers

Superintendent, Transportation

Chief Engineer

Chief Mechanical Officer

Chief, Security

Manager, Sales

Manager, Marketing

Manager, Passenger Services

Director, Real Estate

Manager, Financial Services

Manager, Administrative Services

Manager, Accounting

Manager, Information Systems

Authorization for Expenditures
Capital AFE (Approved Budget) (1)
Expense AFE (Approved Budget)

100k 100k 100k 10k 10k 10k 10k 10k 25k 10k 10k/E 10k
250k 250k 250k 100k 100k 100k 100k 100k 100k 100k 100k 100k

Contracts & Letters of Agreement(3)
Request for Contract
Request for Sole Source Contract
(Approved Budget)
Request for Personal Services
Contract
Approve Contractor Time Sheets for
Reimbursement
Execution of Contracts (4)
Lease ARRC Equip to others for less
than one year

25k 25k 25k 10k 5k 5k 5k 5k 5kE(2) 5k 5k 5k
10k 10k 10k 10k 2k 2k 2k 5k 2k 2k 2k 2k
3k 3k 5k 3k 3k 3k 3k 3k 3k 3k 3k 3k
A A A A A A A A A A A A
250k
A
E

Purchasing (Approved Budget) (3)
Material Requisition
BPO Establishment
Establish FPO Releaser (17)
P.O.'s and Amendments (4)

25k 25k 25k 10k 5k 5k 5k 5k 5k 5k 5k 10k
1k 1k 1k 1k 5k 5k 5k 5k 5k 5k 5k 10k
A A A A A A A A A A A A
500k 250k/E

Transportation (Approved Budget)
Authorized Transportation - Business
and Training (8)
Intrastate (May Approve Own
Travel Authorization)
Approve Use of Charter Aircraft
(Emergency)
Rail Trip Pass

A A A A A A A A A A A A
A A A A A A A A A
A A A A A A A A

Disbursements
Invoices

Covered by Contracts
Covered by P.O.'s (6)
Transportation - MTL5
Charter Aircraft
Property Damage & Injury Claim
All Other (Including Check Requests
Without Invoice)
Payroll (Replacement Checks)
Expense Accounts
Regular Travel, Training Travel,
& Business Expense
Expense Advances
Regular Travel, Training Travel,
& Business Expense
Utility Bills
Petty Cash Replenishment
Manual Checks

50k(15) 50k 50k 20k 5k 5k 25k 10k 10k 10k 10k(7) 10k
75k 50k/E
5k 5k 5k 5k
10k(13)10k(16)
1k 1k 1k 1k 1k 1k 1k 1k 1k 1k(9) 1k 1k
2,500
1,500 1,500 1,500 1k 2k 1k 1k 1k 500 500 500 500
1k 1k 1k 1k 1k 1k 1k 1k 500 500 500 500
A
1k
5k(11)

Disposal of Material & Equipment
Declare Excess to Department (Book
Value)
Declare MTL5 & Equipment Surplus to
the ARRC
Approve Sales
Execute Sales Agreement
Sign Title Certificate

10k 10k 5k 5k A A A A A A A A
100k
100k
100k
A

Banking and Finance
Transfer Funds
Establish Petty Cash Funds
Request to Borrow Funds
Procure/Negotiate/ Execute
Loan Contracts
Execute Master Loan Agreements

A
2k
E
E
A
E

Litigation, Claims, & Insurance
Claims Against Vendors, Suppliers,
Contractors, Common Carriers
Issue Customer Credits/Reduce Invoices
Write off Bad Debts

E
E
E
5k
1k

ALASKA RAILROAD CORPORATION



Department Managers

Superintendent, Transportation
 Chief Engineer
 Chief Mechanical Officer
 Chief, Security
 Manager, Sales
 Manager, Marketing
 Manager, Passenger Services
 Director, Real Estate
 Manager, Financial Services
 Manager, Administrative Services
 Manager, Accounting
 Manager, Information Systems

Organization & Personnel

Organizational Changes -
 Reorganization Within
 Division (10) (14)

Staffing

Approve Personnel Requisition
 (Currently Authorized) (10)

Personnel

Approve Transfer or Change of
 Assignments within Approved
 Staffing (10)

Authorize Overtime

Approve Time Cards

Salary Actions

Approve Budgeted Merit Salary
 Increases (10)

Approve Promotions (10)

Approve Suspension for any
 Reason (10)

Approve Termination for any
 Reason (10)

Approve Leave of Absence Without
 Pay

E	E	E	E	E	E	E	E	E	E	E	E	E
A	A	A	A	A	A	A	A	A	A	A	A	A
A	A	A	A	A	A	A	A	A	A	A	A	A
A	A	A	A	A	A	A	A	A	A	A	A	A
A	A	A	A	A	A	A	A	A	A	A	A	A
A	A	A	A	A	A	A	A	A	A	A	A	A
E	E	E	E	E	E	E	E	E	E	E	E	E
A	A	A	A	A	A	A	A	A	A	A	A	A
E	E	E	E	E	E	E	E	E	E	E	E	E
15 day	15 day	15 day	15 day	10 day	10 day	10 day	10 day	5 day	5 day	5 day	5 day	5 day

Real Estate

Approve Lease of Corporate Property
 Less than 3 yrs or 50k/annum (12)

Over 3 yrs or 50k/annum (12)

Execute the Contract

Less than 10 yrs (12)

Over 10 yrs (12)

E	E	E	E	E	E	E	E	E	E	E	E	E
E	E	E	E	E	E	E	E	E	E	E	E	E

Miscellaneous

Approve Issue of Firearms

A

Footnotes and Comments

Footnotes

- Requires Vice President of Finance, Manager of Financial Services, Manager of Accounting, and Operations Financial Coordinator endorsement.
- Requires Manager, Financial Services endorsement before being sent to Board of Directors.
- Vice President, Finance and Manager, Financial Services shall endorse all requests for contracts and material requisitions in excess of \$50,000.
- The Legal Department shall endorse all contracts. Procurement Specialists may execute purchase orders up to \$25k.
- Disbursements for purchase order invoices do not require additional signature authority when verification is made that a valid purchase order exists and the receiving documentation substantiates receipt.
- \$500k authority for routine Mileage Allowances and Freight Settlements.
- Manager, Human Resource Development must endorse all Training Travel.
- Manager, Administrative Services has specific authority for disbursement for postage to \$5k.
- Requires the endorsement of Human Resources prior to company action.
- Manual checks over \$5k require two signatures among the following four: President; Vice President, Finance; Manager, Accounting; Supervisor, Revenue and Accounts Payable. Checks over 25k must include either the President or Vice President, Finance signature.
- As appropriate, affected Department Managers shall endorse, i.e. Superintendent of Transportation, Chief Engineer and Chief of Security. Legal Department shall endorse all contracts.
- Freight Car Damage Settlements only. Manager, Loss & Damage Claims must receive a copy of all settlements.
- Manager, Organization, Compensation & Benefits shall endorse all major Divisional Reorganizations.
- Superintendent, Transportation, may approve Car Hire/Mileage invoices up to \$75k.
- Claims paid over \$2,500 require Legal endorsement.
- Field Purchase Order (FPO). Division/Department Managers may recommend the employees that receive the FPO Booklets with final approval by Financial Services.

ALASKA RAILROAD CORPORATION



Operations Division

	Engineering		Mechanical			Transportation		Other	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)		
	Group One	Group Two	Foreman	Group One	Group Two	Foreman	Group One	Group Two	Operations Financial Analyst
Contracts & Letters of Agreement Approve Contractor Time Sheets for Reimbursement	A	A		A	A		A		A
Purchasing (Approved Budget) Material Requisition BPO Establishment Establish FPO Releasor	10k 1k	5k		10k 1k	5k		10k 1k	250	3k 1k A
Transportation (Approved Budget) Authorize Transportation - Business Travel (May not approve own Travel Authorization) Intrastate	A			A			A		
Disbursements Invoices Covered by Contracts All Other -(Including Check Request Without Invoice) Expense Accounts Regular Travel & Business Expense Expense Advances Utility Bills 25k	10k	1k		10k	1k	500	25k		1k 500
Organization & Personnel Personnel Authorize Overtime Approve Time Cards Salary Actions Approve Leave of Absence Without Pay Approve Suspension for Any Reason	A	A	A	A	A	A	A	A	A A
Footnotes and Comments									
Footnotes	<ol style="list-style-type: none"> Includes the Engineer of Structures, Telecom & Signaling Manager, General Roadmaster, General B & B Supervisor, and Engineering Office Supervisor. Includes Assistant General Roadmaster, Equipment Supervisor, District Roadmasters, Telecommunications and Signaling Supervisor, and B & B Supervisors. Includes Manager, MP&E Operations, Administrative Officer, and Chief Mechanical Engineer. Includes Heavy Equipment Supervisor, General Supervisor of Locomotives, Terminal Supervisor Fairbanks, and Superintendent Car Department. Includes Trainmasters/Road Foreman of Engines, and Administrative Assistant. Includes Chief Train Dispatcher, Anchorage Terminal Superintendent, Seward Trainmaster, Manager Intermodal Services, Fairbanks Terminal Superintendent, Van Terminal Coordinator, and General Yardmaster. Endorses all Operations Departments AFE's, Budgets and Accruals prior to the V.P. Operations approval and/or distribution of document to other Departments. 								

ALASKA RAILROAD CORPORATION



Finance Division

Accounting

Info Systems

Financial Services

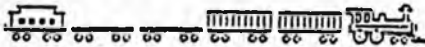
Supervisor, Revenue & A/P	Supervisor, Payroll & Systems Acctg.	Supervisor, Cash Mgmt. & Accts. Rec.	Manager, Systems & Programming	Manager, User Support	Manager, Computer Operations	Supervisor, Contracts	Supervisor, Document Support	Supervisor, Warehousing
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Purchasing (Approved Budget)									
Material Requisition	200	200	200	1k	200	1k(3)	1k(3)	1k	1k(1)
BPO Establishment	200	200	200	200	200	200	200	200	200
Request for Contract	200	200	200	2k	2k	2k	2k	2k	2k
Approve Contractor Timesheets	A	A	A	A	A	A	A	A	A
Transportation (Approved Budget)									
Request Transportation - MTLs									
Authorize Transportation - Business (May Not Approve Own Travel Authorization)									
Intrastate									
Rail Trip Pass									
Disbursements									
Invoices									
Covered by Contracts	1k	1k	1k	5k	5k	10k	5k	5k	5k
All Other (Including Check Requests Without Invoice)									
Expense Accounts									
Regular Travel & Business Expense									
Organization & Personnel									
Personnel									
Approve Time Cards	A	A	A	A	A	A	A	A	A
Salary Actions									
Approve Leave of Absence Without Pay	1 Day	1 Day	1 Day	1 Day	1 Day	1 Day	1 Day	1 Day	1 Day
Banking and Finance									
Replacement Payroll Checks	2,500								
Manual Checks	3k								

Footnotes

- \$15k authority for warehouse stock and \$1k authority for departmental purchases; declare materials and equipment excess to ARRC (50k); approve and execute sales agreements (50k).
- Manager, Computer Operations has \$10k approval for computer related supplies, such as paper and tapes.
- Supervisor, Contracts shall have authority to execute contracts up to 100k and endorse all contracts.

ALASKA RAILROAD CORPORATION



	Marketing Div								Legal
	Passenger Svc.	Human Resources							
Supervisor, Passenger Relations									
Supervisor, Stations									
Manager, Personnel									
Manager, Labor Relations									
Manager, Human Resource Development									
Manager, Health Safety & Environment									
Manager, Organization, Compensation & Benefits									
Assistant Chief Counsel									
Office Administrator									
Manager, Loss & Damage Claims									

Contracts & Letters of Agreement
 Approve Contractor Time Sheets for Reimbursement

A

Purchasing (Approved Budget)

Material Requisition	200	200	1k	1k	1k	1k	1k	1k	1k	200
BPO Establishment			1k	1k	1k	1k	1k	1k	1k	
Request for Contract	500	500	5k	5k	5k	5k	5k	5k	5k	
Approve Contractor Timesheets	A	A	A	A	A	A	A	A	A	

Transportation (Approved Budget)
 Authorize Transportation - Business
 (May Not Approve Own Travel Authorization)
 Intrastate

(1)

Disbursements

Invoices										
Covered by Contracts	1k	1k	5k	5k	5k	5k	5k	5k	1k	5k
All Other (Including Check Requests Without Invoice)										
Property Damage & Injury Claims										2,500
Expense Accounts										
Regular Travel & Business Expense										

Organization & Personnel

Personnel										
Approve Time Cards			A	A	A	A	A	A	A	
Salary Actions										
Approve Leave of Absence Without Pay	2 Day	2 Day	2 Day	2 Day	2 Day	2 Day	2 Day	2 Day	2 Day	
Represented - Labor Agreement (2)										
Negotiate			A							
Execute					A					

Footnotes

1. Manager, Human Resource Development endorses all training travel.
2. The Manager, Labor Relations may tentatively approve Labor Agreements subject to final approval by the Board of Directors.

TO Pat, FROM Sandra 4/1/90
RE Your request for info. on amendments to SB 427 relating to
procurement by the Railroad

1. Last session Governor signed into law SB 170, which made series of amendments to state procurement code.
2. When the bill was in State Affairs, Railroad requested amendment exempting them from language in existing law that requires adopting "procurement procedures substantially equivalent to the state's", on grounds that Railroad Act requires them to "meet industry [procurement] standards".
3. State Affairs CS accommodated Railroad's concern by replacing "substantially similar" with "procedures based on competitive principles consistent with this chapter".
4. This language was removed in House State Affairs, and did not appear in the final bill.
5. CSSB 427(Rules) restores the State Affairs language. (Governor's version didn't address this issue at all; Banking Committee amended to exempt Railroad from procurement code altogether; Finance/Rules replaced "substantially similar" with "competitive principles".)

Amendment #1 (Faiks)

Requires that the Railroad's competitive principles include Alaska bidder/product preferences, but:

Gives Railroad latitude by requiring them to adopt "substantially similar" preferences.

Exempts railroad equipment/supplies produced or manufactured outside Alaska. This addresses concern Railroad had last year over some firm(s) carrying on limited business enterprise exclusively for purpose of taking advantage of bidder's preference. AG drafted language for State Affairs to address (requiring maintain "substantial bona fide place of business") -- State Affairs didn't make a motion to adopt.

Amendment #2 (Szymanski/Pearce)

Requires that the Railroad's competitive principles comply with current statute regarding Alaska bidder/product preference -- no latitude.

Rules version
SB 427

RAILROAD

1 U.S.C. (Internal Revenue Code) [UNDER 26 U.S.C. 103A].

2 * Sec. 8. AS 36.90.015(e) ~~is amended to read:~~

3 (e) The boards of directors of the Alaska Railroad Corporation,
4 the Alaska Housing Finance Corporation, and the Alaska State Housing
5 Authority shall adopt procedures to govern the procurement of sup-
6 plies, services, professional services, and construction for [BY] the
7 respective public corporations [CORPORATION]. The procedures must

8 Am # 2 (Szymanski) (1) reflect competitive bidding principles and provide
9 vendors reasonable and equitable opportunities to participate in the
10 procurement process; and

11 (2) include procurement methods to meet emergency and
12 extraordinary circumstances [BE SUBSTANTIALLY EQUIVALENT TO THE PROCE-
13 DURES PRESCRIBED IN THIS CHAPTER AND IN REGULATIONS ADOPTED UNDER THIS
14 CHAPTER]. (3) - am # 1 (Falks)

15 * Sec. 9. AS 36.30.990(1) is amended to read:

16 (1) "agency"

17 (A) means a department, institution, board, commis-
18 sion, division, authority, public corporation, the Alaska Pio-
19 neers' Home, or other administrative unit of the executive branch
20 of state government;

21 - (B) does not include

22 (i) [, EXCEPT FOR] the University of Alaska;

23 (ii) [,] the Alaska State Housing Authority;

24 (iii) the [AND] Alaska Railroad Corporation;

25 (iv) the Alaska Housing Finance Corporation;

26 (v) [IT DOES NOT INCLUDE] a regional Native
27 housing authority created under AS 18.55.996, or a regional
28 electrical authority created under AS 18.57.020;

29 * Sec. 10. AS 37.07 is amended by adding a new section to read:

#1

A M E N D M E N T

OFFERED IN THE SENATE

BY SEN. FAIKS

TO: CSSB 427(Rules)

Page 7, line 10, after "process":

Delete "and"

Page 7, line 12, after "circumstances":

Insert "; and

(3) include preferences for Alaska bidders and products that are substantially equivalent to the preferences prescribed in AS 36.30.170(b), 36.30.250(b), and 36.30.322 - 36.30.338, except that the preferences are not applicable to procurements of railroad equipment, parts, and supplies that are produced or manufactured outside the state and are not Alaska products as defined in AS 36.30.338(1)"

preferable to RR because provides latitude ("substantially equivalent")
is an exemption for parts produced outside.

concern RR had last year — firms that carry on limited business enterprises exclusively for purpose of taking advantage of bidder's preference.

AG's language — "maintained substantial bona fide place of businesses w/in state" — defined: 6 mo. maintenance & repair, staffed by state residents 7/29/90

no motion by committee to adopt

RR - inventory \$50,000+

12

A M E N D M E N T

OFFERED IN THE SENATE

BY SEN. SZYMANSKI
SEN. PEARCE

TO: CSSB 427 (Rules)

Page 7, after line 4: 7?

Insert

"(1) comply with requirements of AS 36.30.170:"

Renumber the following paragraphs accordingly.

NOTE: The purpose of this amendment is to insure that the Alaska Bidder Preference of 5% and the Alaska Products Preference be applicable to the Alaska Railroad and AHFC.

lowest responsible & responsive bidder
 including AK bidder preference of 5%
 & AK products preference ^{→ 25% of value has been added in state}
 (AK timber only unless more than 7%
 more expensive than non-AK timber
 - whenever practicable by state agency
 - grant of preference (%))

From: Sen. Szpunar
re: SB 427

Effect of amendments. — The 1989 amendment effective September 10, 1989, rewrote the second sentence of subsection (b).

Sec. 36.30.170. Contract award after bids. (a) Except as provided in (b), (c), and (d) of this section, the procurement officer shall award a contract based on the solicited bids with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid.

(b) The procurement officer shall award a contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent and an Alaska products preference as described in AS 36.30.322 — 36.30.338 have been applied. In this subsection, "Alaska bidder" means a person who

- (1) holds a current Alaska business license;
- (2) submits a bid 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 bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid;
- (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) If a bidder qualifies under (b) of this section as an Alaska bidder, is offering services through an employment program, and is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid of a nonresident, the procurement officer shall award the contract to that bidder.

(d) The procurement officer shall award an insurance-related contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent. In this subsection, "Alaska bidder" means a person who meets the criteria set out in (b)(1) — (5) of this section and who is an Alaska domestic insurer. (§ 2 ch 106 SLA 1986; am §§ 7 — 9 ch 65 SLA 1987; am § 6 ch 102 SLA 1989)

Effect of amendments. — The 1989 amendment, effective September 10, 1989, deleted "as defined under AS 36.30.100(c)" following "employment program" in subsection (c).

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

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

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

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

(e) The procurement officer shall give adequate public notice of intent to make a procurement under this section in accordance with regulations adopted by the commissioner. (§ 2 ch 106 SLA 1986; am § 12 ch 65 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, deleted the former second sentence of subsection (e), which read "Notices shall also be provided to those Alaska bidders designated by the commissioner under AS 36.30.050(d)."

Article 5. Preference for Alaska Products.

Section
 322. Use of local forest products
 324. Use of Alaska products
 326. Contract specifications
 328. Grant of preference
 330. Penalty for failing to use designated products

Section
 332. Classification of Alaska products
 334. Identification of Alaska products
 336. Application
 338. Definitions

Cross references. — For similar provisions applicable to procurements using state money of forest, agricultural, and fisheries products see AS 36.15

Effective date of article. — Section 69, ch 106, SLA 1986, as amended by § 27, ch 65, SLA 1987, provides that this article takes effect January 1, 1988

Sec. 36.30.322. Use of local forest products. (a) Only timber, lumber, and manufactured lumber products originating in this state from Alaska forests may be procured by an agency or used in construction projects of an agency unless the manufacturers and suppliers who have notified the commissioner of commerce and economic development of their willingness to manufacture or supply Alaska forest products

ment for sup-
aggregate dol-
n regulations

ceed \$25,000
missioner for
tract for the
rney general.

competitive
be made with
s.

y divided or
ection or to
AS 36.30.100

notice of in-
ordance with
LA 1986; am

va bidders desig-
ner under AS

ts.

Alaska products
Alaska products

tele. — Section
is amended by
provides that this
ory 1, 1988

Only timber,
in this state
in construc-
suppliers who
mic develop-
a forest prod-

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

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

(b) The provisions of AS 36.30.326 — 36.30.332 do not apply to procurements of timber, lumber, and manufactured lumber products or the use of those items in construction projects of an agency.

(c) During the period of performance of a state contract, the contractor shall maintain records showing efforts made in using Alaska forest products or evidence of Alaska forest products not being available or reasonably competitive. The contractor shall provide the records to the procurement officer on a periodic basis, as required by regulations adopted by the commissioner of commerce and economic development. (§ 2 ch 106 SLA 1986; am §§ 13, 14 ch 65 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, in the introductory language of subsection (a) substituted "Alaska" for "local" preceding "forest" and deleted "the commissioner of commerce and economic development certifies that" following "agency unless" and added subsection (c).

Supplement

Sec. 36.30.324. Use of Alaska products. Alaska products shall be used whenever practicable in procurements for an agency. (§ 2 ch 106 SLA 1986)

Sec. 36.30.326. Contract specifications. Contract specifications for a procurement for an agency must include a provision that a bidder or offeror that designates in a bid or proposal the use of Alaska products identified in the specifications will receive the preference granted under AS 36.30.328 in the evaluation of the bid or proposal if the designated Alaska products meet the contract specifications. (§ 2 ch 106 SLA 1986)

Sec. 36.30.328. Grant of preference. In the evaluation of a bid or proposal for a procurement for an agency, a bid or offer that designates the use of Alaska products identified in the contract specifications and designated as Class I, Class II, or Class III state products under AS 36.30.332 is decreased by the percentage of the value of the designated Alaska products under AS 36.30.332. (§ 2 ch 106 SLA 1986)

Sec. 36.30.330. Penalty for failing to use designated products.
(a) If a successful bidder or offeror who designates the use of an Alaska product in a bid or proposal for a procurement for an agency fails to use the designated product for a reason within the control of the successful bidder or offeror, each payment under the contract shall be reduced according to the following schedule:

Sec. 36.30.336. Application. Notwithstanding other provisions of this chapter, AS 36.30.322 — 36.30.338 apply to all procurements subject to this chapter, except as provided in AS 36.15.050 and AS 36.30.322(b). (§ 2 ch 106 SLA 1986; am § 3 ch 62 SLA 1987; am § 16 ch 65 SLA 1987)

Effect of amendments. — The first 1987 amendment, effective January 1, 1988, substituted "this chapter" for "AS 36.30" and "AS 36.15.050" for "AS 36.30.170(b) and 36.30.322(b)."

The second 1987 amendment, effective January 1, 1988, substituted "this chapter" for "AS 36.30" and "AS 36.30.322(b)" for "AS 36.30.170(b) and 36.30.322(b)."

Sec. 36.30.338. Definitions. In AS 36.30.322 — 36.30.338

(1) "Alaska product" means a product of which not less than 25 percent of the value, as determined in accordance with regulations adopted under AS 36.30.332(a), has been added by manufacturing or production in the state;

(2) "produced or manufactured" means processing, developing, or making an item into a new item with a distinct character and use through the application within the state of materials, labor, skill, or other services;

(3) "product" means materials or supplies but does not include gravel and asphalt. (§ 2 ch 106 SLA 1986; am § 17 ch 65 SLA 1987)

Revisor's notes. — Reorganized in 1986 to alphabetize the defined terms.

Effect of amendments. — The 1987 amendment, effective January 1, 1988, in paragraph (1) substituted the language

beginning "of which not less than 25 percent" for "produced or manufactured in the state if the value added in the state is not less than 25 percent of the quoted price of the manufacturer."

Article 6. Contract Formation and Modification.

Section

- 340. Review and approval by the Attorney General
- 350. Bid cancellation, rejection
- 360. Determination of responsibility
- 362. Determination to award a contract to a nonresident
- 365. Notice of intent to award a contract
- 370. Types of contracts
- 390. Multi-term contracts

Section

- 400. Cost or pricing data
- 410. Right to inspect plant
- 420. Right to audit records
- 430. Standard modification clauses for contracts
- 460. Modification of standard clauses
- 470. Fiscal responsibility
- 480. Cost principle regulations

Effective date of article. — Section 69, ch. 106, SLA 1986, as amended by § 27, ch. 65, SLA 1987, provides that this article takes effect January 1, 1988.

Collateral references. — Effect of stipulation, in public building or construction contract, that alterations or extras

must be ordered in writing 1 ALR3d 1273.

Validity and construction of "no damage" clause with respect to delay in building or construction contract 74 ALR3d 167.

Construction contract provision excus-