

SB

315

9-LS1777C
Bannister
4/10/96

CS FOR SENATE BILL NO. 315(TRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATE TRANSPORTATION COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to procurement by the Alaska Railroad Corporation."**

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

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

4 (e) The board of directors of the Alaska Railroad Corporation and the board
5 of directors of the Alaska Aerospace Development Corporation shall adopt procedures
6 to govern the procurement of supplies, services, professional services, and construction.
7 The procedures must be substantially equivalent to the procedures prescribed in this
8 chapter and in regulations adopted under this chapter. However, when procuring
9 supplies, services, professional services, or construction contracts that are over
10 \$25,000 and that are related to construction work that the Department of
11 Transportation and Public Facilities authorizes the Alaska Railroad Corporation
12 to perform instead of the Department of Transportation and Public Facilities, the
13 Alaska Railroad Corporation shall use competitive sealed bidding or competitive
14 sealed proposals under AS 36.30.100 - 36.30.270.

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/20/96

FURTHER: Finance

Date of 5-Day Notice: 3/21/96
 (in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4/12/96

The Transportation Committee considered SENATE BILL NO. 315

Relating to procurement by the Alaska Railroad Corporation.

and recommends:

- be replaced with CS SR 315 (TRA)
- adopt previous CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:
- same title
 - new title
- House Bill:
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Miss L. Taylor</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
<i>Dylee Breek</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>			
CHAIR:		CHAIR: <i>Steve Thi</i>	<input checked="" type="checkbox"/>		

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
DOT/PF	3/26/96	<input checked="" type="checkbox"/>	
Alaska Railroad Corp	3/26/96	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No. 1

Bill Version: CS SB 315 (TRA)

(S) Publish Date: 4/12/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 3/26/96 Dept. Affected: DOT&PF
 Title: "An Act relating to procurement by the Alaska BRU: Engineering & Operations
Railroad Corporation." Component: Engineering & Operations
 Sponsor: Senate Transportation
 Requester: TRA, FIN COMPONENT SERIAL NO. #547

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1005 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

The Department is not opposed to competitively bid public projects. Cost-effective construction allows us to build more for our limited funds. We recognize, however, that in some circumstances, a utility such as the ARRC might wish to control and perform the work on their own facilities, which they must operate and maintain during and after construction. In that instance, if the work is not contracted out, payment is by strict force account. The current statutes recognize and allow this flexibility. It is in the best interest of both the DOT&PF and the ARRC to administer the work to obtain completed projects in a cost-effective manner.

Prepared by: Loren Rasmussen, P.E., Acting Director Phone: 465-2060
 Division: Engineering and Operations Date: 3/28/96
 Approved by: Joseph L. Perkins Date: 3/28/96
 Agency: Department of Transportation and Public Facilities

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

POSITION PAPER / Alaska Railroad Corporation

Position Paper

for

SB-315

SB-315 proposes that the Alaska Railroad Corporation Board of Directors adopt procedures to govern the procurement of certain supplies, services, professional services, and construction.

Specifically, the proposed legislation provides that when procuring supplies, services, professional services, or construction contracts related to construction work that the Department of Transportation and Public Facilities authorizes the Alaska Railroad to perform, the Alaska Railroad Corporation must use competitive sealed bidding or proposals.

In 1988, pursuant to the legislative mandate contained in AS 36.30.015(e), the Alaska Railroad Corporation Board of Directors adopted a procurement policy that is substantially equivalent (in fact, virtually identical) to state procurement procedures, providing for competitive bidding on all its procurement. Whenever the Corporation procures such outside, third-party services, these competitive procedures are already applied. Procurement procedures do not apply, as a matter of course, to activities performed with the Corporation's own employees.

Because procedures virtually identical to the State procurement statutes already apply to ARRC procurement, this proposed legislation would not be required

Further, because of the liability which the railroad accepts through its normal operations, we are concerned about both the quality of the materials and the work that will be performed within our right-of-way.

Close coordination between train operations and construction activity is paramount for both safety and quality. Whether a third party or the Alaska Railroad performs the construction activity, Railroad Supervisory Personnel will be required.

297

Typical Projects Done By the ARRC for ADOT

1) **Crossing Signal Installation or Upgrade:** Install or upgrade an active highway crossing warning signal, including procurement, component assembly, field installation, and testing. Typical project is between \$50,000 and \$120,000. About 70% of the cost is for component acquisition. ARRC labor is used to assemble the components into a working signal, bond the rails together to form a track circuit, field install the case, arms, and lights, test the unit, and place it in service. This work is intimately involved with the track, workers must be licensed by the railroad. The signals must work properly or the public could be endangered.

2) **Crossing Surface Upgrade:** Remove existing highway crossing and install an upgraded crossing. Requires close coordination with trains as the track must be shut down for the work to be accomplished, generally an 8 hour shut down is allowed. Typical cost is about \$75,000, depending on the length of the crossing. This is usually a three day job, a day of preparation, the work itself, and a day of clean up and demobilization.

3) **Furnish Railroad Flag Protection:** An ARRC railroad flagman is stationed at a DOT job site to protect train traffic and the DOT contractor. The flagman is licensed with the ARRC and is in communication with both the trains and the contractor. The flagman controls train traffic through the work zone. An example of this is the new overpass just north of Wasilla. The ARRC provided flag protection while the contractor drove off highway equipment over the tracks and constructed the abutment walls and lifted the beams into place over the tracks.

4) **Railroad Relocation:** Relocate ARRC tracks as required by a DOT highway project. Typical costs are about \$150 per foot of track. This involves the procurement of track materials, construction of the track on the new grade, breaking the existing track and lining it over to the new track, ballasting, tamping, and aligning the new track, and removal of the old track. An example is the Bird to Girdwood highway project, about 10,000 feet of track were relocated in 1996 for about \$1,500,000.

CORNERSTONE CONSTRUCTION



OFFICE LOCATION
4141 D STREET, SUITE 203
TELEPHONE (907) 561-1993

ANCHORAGE, ALASKA

MAILING ADDRESS
P.O. BOX 241561 ZIP CODE 99524-1568
FACSIMILE (907) 561-7645

Senator Steve Rieger
State Capitol
Juneau, Alaska 99801

Re: Public bidding
Railroad

Dear Senator,

In the construction industry, we are accustomed to public funds being spent for construction projects after an advertising and public bidding process has occurred. A division of our company performs railroad work. When we learned that the State of Alaska Department of Transportation had plans to advertise work on the parks highway between Anchorage and Fairbanks and that work on ten (10) railroad crossings/overpasses would be involved, we were hopeful of being able to submit a subcontract quotation to general contractors that would submit bids on the highway work. When we discussed the work with the department of transportation, we learned that they have a practice of handing the work to the Alaska Railroad without a bid process. In our meetings with the Alaska Railroad engineering staff, we were told that they enjoyed the arrangement in that it is a financial benefit to them to be able to acquire work on a sole source arrangement with all budgets and costs proposals being prepared by them.

We are opposed to publicly funded projects, or portions of projects, being handed to a single entity that has not participated in a competitive bid process. If the street in front of my house was widened and my driveway was removed in the process, I would not expect to be handed a wad of money to perform my own reconstruction of the driveway and be able to dictate how much I was to be paid. I could expect that a replacement driveway be installed in accordance with certain standards. I believe that the situation is similar with relocation of railroad segments that are affected by highway construction.

We asked our attorney, Mr. Bruce Davison, to take the present statutes and codes that allow the department of transportation and the Alaska Railroad to award construction contracts in the manner I have described above and compose replacement paragraphs that would require public bidding processes for all railroad work that is to be paid for with tax (public funds) dollars. A copy of his work on this is enclosed for your review. If this subject is of some interest to you and you believe that legislation can be passed that would result in what we believe is a more appropriate, and probably more economical, spending of tax dollars, we would like to encourage you and discuss the matter with you.

I may be contacted by telephone at (907) 561-1993 or 561-1996. I encourage you to give this matter some thought and I look forward to learning of your thoughts on the subject discussed above.

Thank you,

C. John Eng



SHELBY L. NUENKE-DAVISON
BRUCE E. DAVISON¹, P.E.
ERLING T. JOHANSEN¹
TERRY J. KING¹

¹ MEMBER OF
ALASKA BAR AND
WASHINGTON STATE
BAR

¹ MEMBER OF
ALASKA BAR,
HAWAII BAR AND
WASHINGTON, D.C.
BAR

¹ MEMBER OF
ALASKA BAR
AND COLORADO BAR

January 26, 1996

Mr. John Eng
RAILROAD COMPANY
P.O. Box 241525
Anchorage, AK 99524

Dear Mr. Eng:

In response to your letter dated January 24, 1996, I have attached the proposed legislation which you may present to legislators who are willing to enact legislation so that a fair and economical competitive bid process will be available to the taxpayers of this State with regard to public construction of railroad projects.

Presently there are two ways in which the State of Alaska engages in railroad related work. First, under AS 36.30.015, a portion of the public procurement code, the Board of Directors of the Alaska Railroad Corporation, are required

to adopt procedures to govern the procurement of supplies, services, professional services, and construction. The procedures must be substantially equivalent to the procedures prescribed in this chapter and in regulations adopted under this chapter." Under this statutory provision, the Railroad is required to competitively bid in a manner 'substantially equivalent' to DOT/PF's requirements to engage in competitive bidding on public projects.

Second, when DOT/PF engages in public works projects which affect the railroad right-of-way, DOT must contract directly with the Alaska Railroad. It is this latter administrative provision which has resulted in the DOT/PF and the Alaska Railroad side-stepping the public procurement requirements applicable to both entities. In an opinion we received from the DOT/PF, copy attached, DOT/PF took the following position:

Generally, in the State of Alaska, utilities that are permitted or have a Right-of-Way interest in the State Right-of-Way are eligible for reimbursement for relocation of their facilities in conjunction with a highway project. The Alaska Railroad Corporation (ARRC) is considered to be a utility for purpose of this project since the tracks are directly affected by the proposed work. Contracting of Railroad relocation is covered under the Alaska Administrative Code Section 17.

Mr. John Eng
Page Two
January 26, 1996

The Code reads as follows:

17 AAC 15.541 RAILROAD RELOCATION CONTRACTS.

(a) If a railroad is not adequately staffed or equipped to perform the relocation work with its own forces, the department will, in its discretion, authorize the railroad to contract the work of relocation in accordance with 17 AAC 15.411.

The DOT/PF has taken the position that the Railroad has discretion to decide whether the relocation work would be performed in-house or be contracted out. In my experience, the work is always performed in-house.

In reviewing the Alaska Railroad procurement rules adopted on April 15, 1993 pursuant to AS 36.30.015, the Alaska Railroad does not address competitive bidding of projects contracted from DOT/PF to ARRC. Under Section 1900.1 of its rules, ARRC does allow itself to enter into construction projects with other government agencies, but this section does not appear to be subject to the competitive bid requirements contained in other parts of the rules. The ARRC rules therefore appear to circumvent the public policy of competitive bidding in this respect.

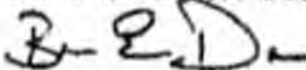
Therefore, the only legislation that needs to be clarified by amendment would be legislation relating to the statutory requirement that the Alaska Railroad engage in public procurement. The simplest and most straight forward way to accomplish this would be to amend AS 36.30.015(e) (see attached statute) by adding the following:

The procedures adopted to govern the procurement of supplies, services, professional services, and construction shall apply to construction work that is contracted from the Department to the Alaska Railroad Corporation.

I have also attached a copy of the back up statutes and related information for your use. Please contact me if you have any questions.

Very truly yours,

DAVISON & DAVISON, INC.



Bruce R. Davison
Attorney At Law

BED:jka.business0255
Enclosures
SENT BY FACSIMILE

DAVISON & DAVISON

**WEST'S ALASKA STATUTES
TITLE 36. PUBLIC CONTRACTS
CHAPTER 30. STATE PROCUREMENT CODE
ARTICLE 1. ORGANIZATION OF STATE PROCUREMENT
Current through 1995 1st Reg. Sess.**

Sec. 36.30.015. Executive branch agencies

(a) The commissioner of transportation and public facilities may delegate to another agency the authority to contract for construction. Before delegating authority to an agency under this subsection, the commissioner of transportation and public facilities shall make a written determination that the agency is capable of implementing the delegated authority. Notwithstanding delegation of authority under this subsection, contracts for construction are governed by this chapter and regulations adopted by the commissioner of administration under this chapter.

(b) The commissioner of administration may delegate to an agency the authority to contract for and manage services, professional services, and supplies. Notwithstanding delegation of authority under this subsection, an agency's exercise of the authority is governed by this chapter and regulations adopted by the commissioner under this chapter. Before delegating authority to an agency under this subsection, the commissioner shall make a written determination that the agency is capable of implementing the delegated authority.

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

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

(e) The board of directors of the Alaska Railroad Corporation and the board of directors of the Alaska Aerospace Development Corporation shall adopt procedures to govern the procurement of supplies, services, professional services, and construction. The procedures must be substantially equivalent to the procedures prescribed in this chapter and in regulations adopted under this chapter. [THE PROCEDURES ADOPTED TO GOVERN THE PROCUREMENT OF SUPPLIES, SERVICES, PROFESSIONAL SERVICES, AND CONSTRUCTION SHALL APPLY TO SUCH CONSTRUCTION THAT IS CONTRACTED TO THE ALASKA RAILROAD CORPORATION FROM THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES.]

(f) The board of directors of the Alaska Housing Finance Corporation, notwithstanding AS 18.58.088, shall adopt regulations under AS 44.62 (Administrative Procedure Act) and the board of trustees of the Alaska State Pension Investment Board shall adopt regulations under AS 37.10.240 to govern the procurement of supplies, services, professional services, and construction for the respective public corporation and board. The regulations must

*13149 (1) reflect competitive bidding principles and provide vendors reasonable and equitable opportunities to participate in the procurement process; and

(2) include procurement methods to meet emergency and extraordinary circumstances.

(g) The Department of Transportation and Public Facilities shall adopt regulations to manage the procurement of supplies, services, professional services, and construction for the repair, maintenance, and reconstruction of vessels, docking facilities, and passenger and vehicle transfer facilities of the Alaska marine highway system. The regulations must be based on principles of competitive procurement consistent with this chapter to satisfy the special requirements of the Alaska marine highway system as determined by the Department of Transportation and Public Facilities.

(h) The board of directors of the Alaska Seafood Marketing Institute shall adopt procedures to govern the procurement of supplies, services, and professional services. The procedures must be similar to the procedures prescribed in this chapter and in regulations adopted under this chapter.

Amended by Laws 1995, c. 102, Sec. 1, eff. Sept. 27, 1995.



ASSOCIATED GENERAL CONTRACTORS of ALASKA

400 B STREET • ANCHORAGE, ALASKA 99501
1000 W. 2nd St. • NOME, ALASKA 99574
1110 N. 10th St. • SITKA, ALASKA 99781

February 7, 1996

The Honorable Drue Pearce
President of the Senate
State Capitol Room 111
Juneau, Alaska 99801-1182

Subject: Competitive Bidding on Alaska Railroad items

Dear Senator Pearce: *Drue*

Some of our members have pointed out that the Department of Transportation and Public Facilities (DOT&PF) routinely transfers public funds to the Alaska Railroad (ARR) for capital work that is part of a DOT&PF Project.

Associated General Contractors of Alaska firmly believes that any public expenditures for Capital Works should go through an OPEN COMPETITIVE BIDDING process. Such a process assures the best cost/benefit ration to the owner and consumer alike.

I believe that this can be done under the present authority of DOT&PF. However, since the ARR is governed by a separate Board the legal aspects of compliance with the State Procurement Code are not entirely clear.

We would be very supportive to clarify this matter through legislative means. The Alaska Railroad should adhere to open competitive bidding for its construction work like any other public entity.

Any help on this matter is greatly appreciated. If you need any backup information or have any questions, please call me.

Sincerely,

ASSOCIATED GENERAL CONTRACTORS
OF ALASKA

Heinrich Springer
Executive Director

Copy to: Joseph L. Perkins, Commissioner, DOT&PF

department may not enter into an agreement under this subsection if the optional renewal period allowed under the agreement exceeds two years. In this subsection, "term" includes defined renewal options.

(d) When the department is evaluating proposals for a lease of space, the department shall consider, in addition to lease costs, the life cycle costs, function, indoor environment, public convenience, planning, design, appearance, and location of the proposed building.

(e) When the department is considering leasing space, the department should consider whether leasing is likely to be the least costly means to provide the space. (§ 2 ch 106 SLA 1986; am § 1 ch 58 SLA 1990; am §§ 8, 9 ch 181 SLA 1990; am §§ 2, 3 ch 73 SLA 1992)

Effect of amendments. — The first 1990 amendment, effective June 5, 1990, inserted "or renew" before "a lease" and before "an agreement" in the first and third sentences, respectively, and added the final sentence, in subsection (c).

The second 1990 amendment, effective July 1, 1990, rewrote subsection (b), and, in subsection (c), rewrote the first sentence and inserted "requiring notice" in the third sentence.

The 1992 amendment, effective September 14, 1992, in subsection (c), rewrote the first two sentences and added the last sentence; and added subsections (d) and (e).

Editor's notes. — Section 3, ch. 58, SLA 1990 provides that the 1990 amendment to AS 36.30.080(c) by § 1, ch. 58, SLA 1990 "applies to an agreement that is entered into on or after June 5, 1990, and does not apply to a lease or to the renewal of a lease if the lease is in existence on June 7, 1990."

Opinions of attorney general. — Equipment-lease financing is covered by the procurement code and the statutory requirement of legislative approval. Sept. 17, 1987 Op. Att'y Gen.

Not Covered 36.30.100 - .270

Sec. 36.30.090. Delivery of supplies. Supplies purchased under this chapter shall be delivered at a location within the state unless the department determines that a point of delivery outside the state would be in the best interest of the state. A bid or proposal involving the procurement of supplies shall specify the delivery location and shall state that the price is the delivered price at that location. (§ 1 ch 8 SLA 1989)

Sec. 36.30.095. Procurement of paper. Except as otherwise required under AS 36.15.050 or AS 36.30.322 — 36.30.338, when a state agency purchases paper, at least 15 percent of the quantity purchased must be recycled paper unless the commissioner of the department in which the agency is located makes a written finding that recycled paper is not available for the purchase or that, after application of the procurement preference under AS 36.30.339, the recycled paper is more expensive than the nonrecycled paper. If the agency is not located in a department, the procurement officer for the agency shall make the written finding. If the agency is located in the Office of the Governor, the governor shall make the written finding. (§ 1 ch 175 SLA 1990)

Delayed amendment. — Effective July 1, 1994, this section is amended by § 2, ch. 175, SLA 1990 to read: "Except as otherwise required under AS 36.15.050 or AS 36.30.322 — 36.30.338, when a state agency purchases paper, at least 25 percent of the quantity purchased must be recycled paper unless the commissioner of the department in which the agency is located makes a written finding that recycled paper is not available for the purchase or that, after application of the procurement preference under AS 36.30.339, the recycled paper is more expensive than

the nonrecycled paper. If the agency is not located in a department, the procurement officer for the agency shall make the written finding. If the agency is located in the Office of the Governor, the governor shall make the written finding."

Editor's notes. — Section 9, ch. 175, SLA 1990 provides that this section applies to procurements that begin on or after September 10, 1990. Section 10, ch. 175, SLA 1990 provides that the amendments to this section that are effective July 1, 1994, apply to procurements that begin on or after July 1, 1994.

Article 2. Competitive Sealed Bidding.

- Section 100. General policy
- 110. Invitation to bid
- 115. Subcontractors
- 120. Bid security
- 130. Public notice of invitation to bid
- 140. Bid opening

- Section 150. Bid acceptance and bid evaluation
- 160. Late bids; correction or withdrawal of bids; cancellation of awards
- 170. Contract award after bids
- 180. Purpose
- 190. Multi-step sealed bidding

Collateral references. — Right of municipal corporation to recover back from contractor payments made under contract

violating competitive bidding statute. 33 ALR3d 397.

Sec. 36.30.100. General policy. (a) Except as otherwise provided in this chapter, or unless specifically exempted by law, an agency contract shall be awarded by competitive sealed bidding.

(b) Competitive sealed bidding is not required

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

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

(3) for the purchase of products or services provided by the correctional industries program established under AS 33.32.

(c) [Repealed, § 20 ch 102 SLA 1989.] (§ 2 ch 106 SLA 1986; am § 20 ch 102 SLA 1989; am § 7 ch 2 FSSLA 1992)

Effect of amendments. — The 1989 amendment, effective September 10, 1990, repealed subsection (c).

The 1992 amendment, effective July 1, 1992, rewrote subsection (b).

Collateral references. — Requirement that public contract be awarded on competitive bidding as applicable to contract for public utility. 81 ALR3d 973.

Sec. 36.30.110. Invitation to bid. (a) When competitive sealed bidding is used, the procurement officer shall issue an invitation to bid. It must include a time, place, and date by which the bid must be received, purchase description, and a description of all contractual terms and conditions applicable to the procurement.

(b) The bidder must have a valid Alaska business license at the time designated in the invitation to bid for bid opening. A bidder for a construction contract shall also submit evidence of the bidder's registration under AS 08.18.

(c) If the commissioner of transportation and public facilities makes a written finding that the release of the estimated cost of a construction contract would adversely affect the state's ability to obtain the best competitive bid, the estimated cost is confidential information and may not be released to the public before bid opening. (§ 2 ch 106 SLA 1986; am §§ 2, 3 ch 102 SLA 1989)

Effect of amendments. — The 1989 amendment, effective September 10, 1989, rewrote the present first sentence in subsection (b) and added subsection (c).

Sec. 36.30.115. Subcontractors. (a) Within five working days after the identification of the apparent low bidder, the apparent low bidder shall submit a list of the subcontractors the bidder proposes to use in the performance of the contract. The list must include the name and location of the place of business for each subcontractor and evidence of the subcontractor's valid Alaska business license. A bidder for a construction contract shall also submit evidence of each subcontractor's registration under AS 08.18. If a subcontractor on the list did not have a valid Alaska business license and a valid certificate of registration under AS 08.18 at the time the bid was opened, the bidder may not use the subcontractor in the performance of the contract, and shall replace the subcontractor with a subcontractor who had a valid Alaska business license and a valid certificate of registration under AS 08.18 at the time the bid was opened.

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

- (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;
- (5) fails to obtain insurance acceptable to the state;
- (6) fails to perform the contract with the bidder involving work for which the subcontractor was listed;
- (7) must be substituted in order for the prime contractor to satisfy required state and federal affirmative action requirements;
- (8) refuses to agree or abide with the bidder's labor agreement; or

(9) is determined by the procurement officer not to be a responsible subcontractor.

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

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

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

- (1) cancel the contract; or
- (2) after notice and a hearing, assess a penalty on the bidder in an amount that does not exceed 10 percent of the value of the subcontract at issue. (§ 2 ch 106 SLA 1986; am §§ 4, 5 ch 65 SLA 1987; am § 2 ch 163 SLA 1988; am § 4 ch 102 SLA 1989)

Effect of amendments. — The 1988 amendment added the last sentence in subsection (a). The 1989 amendment, effective September 10, 1989, substituted "subcontractor" for "bidder" at the end of paragraph (b)(9).

Sec. 36.30.120. Bid security. (a) Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the procurement officer to exceed an amount established by regulation of the commissioner. Bid security on construction contracts under the amount by the commissioner may be required when the circumstances warrant. Bid security may be required for competitive sealed bidding for contracts for supplies, services, or professional services in accordance with regulations of the commissioner when needed for the protection of the state.

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

(c) When the invitation to bid requires security, the procurement officer shall reject a bid that does not comply with the bid security requirement unless, in accordance with regulations, the officer determines that the bid fails to comply in a nonsubstantial manner with the security requirements. (§ 2 ch 106 SLA 1986; am § 5 ch 102 SLA 1989)

Effect of amendments. — The 1989 amendment rewrote the second sentence of subsection (b), effective September 10, 1989.

Sec. 36.30.130. Public notice of invitation to bid. (a) The procurement officer shall give adequate public notice of the invitation to bid at least 21 days before the date for the opening of bids. If a determination is made in writing that a shorter notice period is necessary for a particular bid, the 21-day period may be shortened. The determination shall be made by the chief procurement officer for bids for supplies, services, or professional services. The determination shall be made by the commissioner of transportation and public facilities for bids for construction or acquisition of property for the state equipment fleet. Notice shall be published in the Alaska Administrative Journal. The time and manner of notice must be in accordance with regulations adopted by the commissioner of administration. When practicable, notice may include

- (1) publication in a newspaper calculated to reach prospective bidders;
- (2) notices posted in public places within the area where the work is to be performed or the material furnished; and
- (3) notices mailed to all active prospective contractors on the appropriate list maintained under AS 36.30.050.

(b) Failure to comply with the notice requirements of this section does not invalidate a bid or the award of a contract. If the state fails to substantially comply with the requirements of (a) of this section, the state is liable for damages caused by that failure. (§ 2 ch 106 SLA 1986)

Collateral references. — Sufficiency of notice to public works contractor on United States project under Miller Act 140 175425 § 270(b)(1) 98 ALR Fed 778

Sec. 36.30.140. Bid opening. (a) The procurement officer shall open bids at the time and place designated in the invitation to bid. All bid openings are open to the public. The amount of each bid and other relevant information that is specified by regulation of the commissioner, together with the name of each bidder, shall be recorded.

(b) The information recorded under (a) of this section is open to public inspection as soon as practicable before the notice of intent to award a contract is given under AS 36.30.365. The bids are not open for public inspection until after the notice of intent to award a contract is given. To the extent the bidder designates and the procurement officer concurs, trade secrets and other proprietary data contained in a bid document are confidential. (§ 2 ch 106 SLA 1986; am § 6 ch 65 SLA 1987)

Sec. 36.30.160. Bid acceptance and bid evaluation. (a) Bids shall be unconditionally accepted without alteration or correction, except as authorized in AS 36.30.160. The procurement officer shall evaluate bids based on the requirements set out in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, delivery, and suitability for a particular purpose. The criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation to bid must set out the evaluation criteria to be used. Criteria may not be used in bid evaluation if they are not set out in the invitation to bid.

(b) A contract based on total or life cycle costs may be awarded only when the chief procurement officer or, for construction contracts or procurements for the state equipment fleet, the commissioner of transportation and public facilities, determines in writing at the time of contract solicitation that the contract promotes overall economy for the purposes intended, encourages competition, is not unduly restrictive, and is in the best interests of the state. (§ 2 ch 106 SLA 1986)

Sec. 36.30.160. Late bids; correction or withdrawal of bids; cancellation of awards. (a) Bids received after the bid due date and time indicated on the invitation to bid may not be accepted unless the delay was due to an error of the contracting agency.

(b) Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on bid mistakes may be permitted in accordance with regulations adopted by the commissioner. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may not be permitted. Except as otherwise provided by regulation, a decision to permit the correction or withdrawal of a bid, or to cancel an award or contract based on bid mistake, shall be supported by a written determination made by the procurement officer. If a bidder is permitted to withdraw a bid before award, an action may not be maintained against the bidder or the bid security. (§ 2 ch 106 SLA 1986)

Collateral references. — Right of bidder for state or municipal contract to rescind bid on ground that bid was based upon his own mistake or that of his employee. 2 ALR4th 991

Application, to determination of govern-

ment's liability under public contract, of doctrine of "constructive" invocation of clause authorizing termination for convenience of government — modern cases 104 ALR Fed 661

In Supplemental

In Supplemental

Sec. 36.30.170. Contract award after bids. (a) Except as provided in (b) — (h) 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, an Alaska products preference as described in AS 36.30.322 — 36.30.338, and a recycled products preference under AS 36.30.339 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, in 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) Except as otherwise provided under (e) or (f) of this section, 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 15 percent higher than the lowest bid, the procurement officer shall award the contract to that bidder. This subsection does not give a bidder who would otherwise qualify for a preference under this subsection a preference over another bidder who would otherwise qualify for a preference under this subsection.

(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.

(e) If a bidder qualifies under (b) of this section as an Alaska bidder, is a sole proprietorship owned by an individual who is a person with a disability, and is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid, the procurement officer shall award the contract to that bidder. This subsection does not give a bidder who would otherwise qualify for a preference under this subsection a preference over another bidder who

would otherwise qualify for a preference under this subsection or (f) of this section.

(f) If a bidder qualifies under (b) of this section as an Alaska bidder, if 50 percent or more of the bidder's employees at the time the bid is submitted are persons with a disability, and if the bidder is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid, the procurement officer shall award the contract to that bidder. The contract must contain a promise by the bidder that the percentage of the bidder's employees who are persons with a disability will remain at 50 percent or more during the contract term. This subsection does not give a bidder who would otherwise qualify for a preference under this subsection a preference over another bidder who would otherwise qualify for a preference under this subsection or (e) of this section.

(g) The division of vocational rehabilitation in the Department of Education shall add to its current list of qualified employment programs a list of individuals who qualify as persons with a disability under (e) of this section and of persons who qualify under (f) of this section as employers with 50 percent or more of their employees being persons with disabilities. A person must be on this list at the time the bid is opened in order to qualify for a preference under (e) or (f) of this section.

(h) A preference under (c), (e), or (f) of this section is in addition to any other preference for which the bidder qualifies, including the preference under (b) of this section; however, a bidder may not receive a preference under both (e) and (f) of this subsection for the same contract.

(i) This section applies to all insurance contracts involving state money. In this subsection, "state money" includes state grants and reimbursement to municipalities, school districts, and other entities.

(j) In this section, "person with a disability" means an individual

(1) who has a severe physical or mental disability that seriously limits one or more functional capacities in terms of employability; in this paragraph, "functional capacities" means mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills;

(2) whose physical or mental disability

(A) results from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders, paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, or end stage renal disease; in this subparagraph, "neurological disorders" include stroke and epilepsy; or

In Supplemental

~~(B) is a disability or combination of disabilities that are not identified in (A) of this paragraph and that are determined on the basis of an evaluation of rehabilitation potential to cause substantial functional limitation comparable to a disability identified in (A) of this paragraph; and~~

~~(3) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time. (§ 2 ch 106 SLA 1986; am §§ 7 — 9 ch 65 SLA 1987; am §§ 6, 18 ch 102 SLA 1989; am § 3 ch 175 SLA 1990; am §§ 1 — 3 ch 114 SLA 1992)~~

Revisor's notes. — Subsection (i) was formerly AS 36.30.850(a) Renumbered in 1992. Subsection (j) enacted as (i) Relettered in 1992.

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); and divided subsection (i) (formerly AS 36.30.850(a)) into two sentences, substituting "In this subsection, 'state money' includes" for "Including" at the beginning of the present second sentence.

The 1992 amendment, in subsection (h), inserted "and a recycled products preference under AS 36.30.339" in the first sentence in the introductory paragraph and

made a series of minor stylistic changes throughout the subsection.

The 1992 amendment, effective June 23, 1992, made a subsection reference substitution in subsection (a); rewrote subsection (c); and added subsections (e) (i).

Editor's notes. — Section 6, ch 114, SLA 1992 provides that the 1992 amendments to this section apply "to procurements that begin on or after June 23, 1992."

Opinions of attorney general. — An agent will be considered the bidder only if the agent is in fact a principal with the power to convey a leasehold interest in its own right. Otherwise, he is not entitled to the bidder preference. July 1, 1989 Op. Atty Gen.

NOTES TO DECISIONS

Quoted in *State v. Johnson*, 779 P.2d 778 (Alaska 1989)

Collateral references. — Validity, construction, and effect of requirement under state statute or local ordinance giving local or locally qualified contractors a percentage preference in determining lowest bid. 89 ALR4th 587.

Sec. 36.30.180. Purpose. The legislature finds that there exists in the state continuing high unemployment, underutilization of resident construction and supply firms, and high costs unfavorable to the welfare of Alaskans and to the economic health of the state. The purpose of bidder preference for resident firms when the state acts as a market participant is to encourage local industry, strengthen and stabilize the economy, decrease unemployment, and strengthen the tax and revenue base of the state. (§ 1 ch 70 SLA 1985)

Revisor's notes. — Formerly AS 37.05.225. Renumbered in 1988.

Sec. 36.30.190. Multi-step sealed bidding. When it is considered impractical to initially prepare a definitive purchase description to support an award based on price, the procurement officer may issue an invitation to bid requesting the submission of unpriced technical offers to be followed by an invitation to bid limited to the bidders whose offers are determined to be technically qualified under the criteria set out in the first solicitation. (§ 2 ch 106 SLA 1986)

Article 3. Competitive Sealed Proposals.

Section	Section
200. Conditions for use	250. Award of contract
210. Request for proposals	260. Contract execution
220. Standard overhead rate	265. Multi-step sealed proposals
230. Disclosure of proposals	270. Architectural, engineering, and land surveying contracts
240. Discussion with responsible offerors and revisions to proposals	

Sec. 36.30.200. Conditions for use. (a) Except as otherwise provided in this chapter, or unless specifically exempted by law, an agency contract shall be awarded by competitive sealed proposals if it is not awarded by competitive sealed bidding. Construction may only be procured by competitive sealed proposals if the conditions under (c) of this section are met.

(b) The commissioner may provide by regulation that it is either not practicable or not advantageous to the state to procure specified types of supplies, services, or construction by competitive sealed bidding that would otherwise be procured by that method. When the chief procurement officer, or for construction contracts or procurements for the state equipment fleet, the commissioner of transportation and public facilities, determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals in accordance with the regulations. When it is determined that it is practicable but not advantageous to use competitive sealed bidding, the chief procurement officer or commissioner of transportation and public facilities shall specify with particularity the basis for the determination.

(c) When the chief procurement officer determines that it is advantageous to the state, a procurement officer may issue a request for proposals requesting the submission of offers to provide construction in accordance with a design provided by the offeror. The request for proposals shall require that each proposal submitted contain a single price that includes the design/build. (§ 2 ch 106 SLA 1986)

Sec. 36.30.210. Request for proposals. (a) A request for competitive sealed proposals must contain the date, time, and place for delivering proposals, a specific description of the supplies, construction, services, or professional services to be provided under the contract, and the terms under which the supplies, construction, services, or professional services are to be provided. The request must require the offeror, no later than five working days after the proposal that is the most advantageous to the state is identified, to list subcontractors the offeror proposes to use in the performance of the contract. The list must include the name and location of the place of business for each subcontractor, the work to be subcontracted to each subcontractor, and evidence of the subcontractor's valid Alaska business license. An offeror for a construction contract shall also submit evidence of the offeror's registration under AS 08.18 and evidence of registration for each listed subcontractor.

(b) A request for proposals must contain that information necessary for an offeror to submit a proposal or contain references to any information that cannot reasonably be included with the request. The request must provide a description of the factors that will be considered by the procurement officer when evaluating the proposals received, including the relative importance of price and other evaluation factors.

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

(d) The provisions of AS 36.30.115(b) — (c) apply to competitive sealed proposals.

(e) The offeror must have a valid Alaska business license at the time designated, in the request for proposals, for opening of the proposals (§ 2 ch 106 SLA 1986; am § 10 ch 65 SLA 1987; am §§ 7, 8 ch 102 SLA 1989)

Effect of amendments. — The 1989 amendment, effective September 10, 1989, in subsection (a), rewrote the second sentence and, in the third sentence, substituted "must" for "shall" and inserted "the work to be subcontracted to each subcontractor"; and added subsection (e).

Sec. 36.30.220. Standard overhead rate. (a) An agency that provides services to another agency under a contract covered by this chapter shall establish a standard overhead rate. If an agency submits a proposal in response to a request for competitive sealed proposals, the agency must include its standard overhead rate within its proposal.

(b) In this section, "standard overhead rate" means a charge established for services and professional services from an agency that is

designed to compensate the agency for administration and support services incidentally provided with the services contracted for. (§ 2 ch 106 SLA 1986)

Sec. 36.30.230. Disclosure of proposals. The procurement officer shall open proposals so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals containing the name and address of each offeror shall be prepared in accordance with regulations adopted by the commissioner. The register and the proposals are open for public inspection after the notice of intent to award a contract is issued under AS 36.30.365. To the extent that the offeror designates and the procurement officer concurs, trade secrets and other proprietary data contained in the proposal documents are confidential. (§ 2 ch 106 SLA 1986)

Sec. 36.30.240. Discussion with responsible offerors and revisions to proposals. As provided in the request for proposals, and under regulations adopted by the commissioner, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors reasonably susceptible of being selected for award shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and before the award of the contract for the purpose of obtaining best and final offers. In conducting discussions, the procurement officer may not disclose information derived from proposals submitted by competing offerors. AS 44.62.310 does not apply to meetings with offerors under this section. (§ 2 ch 106 SLA 1986)

Sec. 36.30.250. Award of contract. (a) The procurement officer shall award a contract under competitive sealed proposals to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price and the evaluation factors set out in the request for proposals. Other factors and criteria may not be used in the evaluation. The contract file must contain the basis on which the award is made.

(b) In determining whether a proposal is advantageous to the state, the procurement officer shall take into account, in accordance with regulations of the commissioner, whether the offeror qualifies as an Alaska bidder under AS 36.30.170(b), is offering the service of an employment program, or qualifies for a preference under AS 36.30.170(e) or (f). (§ 2 ch 106 SLA 1986; am § 9 ch 102 SLA 1989; am § 4 ch 114 SLA 1992)

Effect of amendments. — The 1989 amendment, effective September 10, 1989, deleted "as defined in AS 36.30.100(e)" at the end of subsection (b).
The 1992 amendment, effective June

23, 1992, in subsection (b), added ", or qualifies for a preference under AS 36.30.170(e) or (f)" to the end and made a related stylistic change.

Sec. 36.30.260. Contract execution. A contract awarded under competitive sealed proposals must contain

- (1) the amount of the contract stated on its first page;
- (2) the date for the supplies to be delivered or the dates for construction, services, or professional services to begin and be completed;
- (3) a description of the supplies, construction, services, or professional services to be provided; and
- (4) certification by the project director for the contracting agency, the head of the contracting agency, or a designee that sufficient funds are available in an appropriation to be encumbered for the amount of the contract. (§ 2 ch 106 SLA 1986)

Sec. 36.30.265. Multi-step sealed proposals. When it is considered impractical to initially prepare a definitive purchase description to support an award based on listed selection criteria, the procurement officer may issue an expression of interest requesting the submission of unpriced technical offers, and then later issue a request for proposals limited to the offerors whose offers are determined to be technically qualified under the criteria set out in the expression of interest. (§ 10 ch 102 SLA 1989)

Sec. 36.30.270. Architectural, engineering, and land surveying contracts. (a) Notwithstanding conflicting provisions of AS 36.30.100 — 36.30.260, a procurement officer shall negotiate a contract for an agency with the most qualified and suitable firm or person of demonstrated competence for architectural, engineering, or land surveying services. The procurement officer shall award a contract for those services at fair and reasonable compensation as determined by the procurement officer, after consideration of the estimated value of the services to be rendered, and the scope, complexity, and professional nature of the services. When determining the most qualified and suitable firm or person, the procurement officer shall consider the

- (1) proximity to the project site of the office of the firm or person unless federal law prohibits this factor from being considered in the awarding of the contract; and
- (2) employment practices of the firm or person with regard to women and minorities.

(b) If negotiations with the most qualified and suitable firm or person under (a) of this section are not successful, the procurement officer shall negotiate a contract with other qualified firms or persons of

demonstrated competence, in order of public ranking. The procurement officer may reject all or part of a proposal.

(c) This section does not apply to contracts awarded in a situation of public necessity if the procurement officer certifies in writing that a situation of public necessity exists.

(d) Notwithstanding the other provisions of this section, a procurement officer may include price as an added factor in selecting architectural, engineering, and land surveying services when, in the judgment of the procurement officer, the services required are repetitious in nature, and the scope, nature, and amount of services required are thoroughly defined by measurable and objective standards to reasonably enable firms or persons making proposals to compete with a clear understanding and interpretation of the services required. In order to include price as a factor in selection, a majority of the persons involved by the procurement officer in evaluation of the proposals must be registered in the state to perform architectural, engineering, or land surveying services.

(e) This section does not apply to a contract that incorporates both design services and construction. (§ 2 ch 106 SLA 1986) *

Cross references. — For professional registration requirements for contracts under this section, see AS 36.90.100.

Article 4. Other Procurement Methods.

Section 300. Sole source procurements	Section 310. Emergency procurements
305. Limited competition procurements	320. Small procurements

~~**Sec. 36.30.300. Sole source procurements.** (a) A contract may be awarded for supplies, services, professional services, or construction without competitive sealed bidding, competitive sealed proposals, or other competition in accordance with regulations adopted by the commissioner. A contract may be awarded under this section only when the chief procurement officer or, for construction contracts or procurements for the state equipment fleet, the commissioner of transportation and public facilities determines in writing that there is only one source for the required procurement or construction. A sole source procurement may not be awarded if a reasonable alternative source exists. The written determination must include findings of fact that support by clear and 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 authority to make the determination required by this subsection may not be delegated.~~

Not covered - 36.30.100 - .270

(g) In this section,

(1) "full term of the lease-purchase agreement" includes all renewal options that are defined within the lease-purchase agreement;

(2) "lease-purchase agreement" includes a lease-financing agreement. (§ 7 ch 75 SLA 1994; am §§ 2, 3 ch 36 SLA 1996)

Effect of amendments. — The 1995 amendment, effective May 25, 1996, inserted "or improve" in subsections (b) and (e) and "or improvement" in paragraphs (b)(1) and (b)(2).

Effective dates. — Section 13, ch. 75, SLA 1994 makes this section effective June 7, 1994, in accordance with AS 01.10.070(c).

Sec. 36.30.095. Procurement of paper. Except as otherwise required under AS 36.15.050 or AS 36.30.322 — 36.30.338, when a state agency purchases paper, at least 25 percent of the quantity purchased must be recycled paper unless the commissioner of the department in which the agency is located makes a written finding that recycled paper is not available for the purchase or that, after application of the procurement preference under AS 36.30.339, the recycled paper is more expensive than the nonrecycled paper. If the agency is not located in a department, the procurement officer for the agency shall make the written finding. If the agency is located in the Office of the Governor, the governor shall make the written finding. (§§ 1, 2 ch 175 SLA 1990)

Effect of amendments. — The 1990 amendment, effective July 1, 1994, substituted "25 percent" for "15 percent" in the first sentence.

Editor's notes. — Section 9, ch. 175, SLA 1990 provides that this section ap-

plies to procurements that begin on or after September 19, 1990. Section 10, ch. 175, SLA 1990 provides that the amendments to this section that are effective July 1, 1994, apply to procurements that begin on or after July 1, 1994.

Article 2. Competitive Sealed Bidding.

Section
130. Public notice of invitation to bid
150. Bid acceptance and bid evaluation

Section
170. Contract award after bids

Sec. 36.30.130. Public notice of invitation to bid. (a) [Effective until August 22, 1998.] The procurement officer shall give adequate public notice of the invitation to bid at least 21 days before the date for the opening of bids. If a determination is made in writing that a shorter notice period is necessary for a particular bid, the 21-day period may be shortened. The determination shall be made by the chief procurement officer for bids for supplies, services, or professional services. The determination shall be made by the commissioner of transportation and public facilities for bids for construction or acquisition of property for the state equipment fleet. Notice shall be published in the Alaska Administrative Journal. The time and manner of notice must

be in accordance with regulations adopted by the commissioner of administration. When practicable, notice may include —

(1) publication in a newspaper calculated to reach prospective bidders located in the state;

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

(3) notices mailed to all active prospective contractors on the appropriate list maintained under AS 36.30.050

(A) if the contractors are located in the state;

(B) upon request, if the contractors are not located in the state.

(b) Failure to comply with the notice requirements of this section does not invalidate a bid or the award of a contract. If the state fails to substantially comply with the requirements of (a) of this section, the state is liable for damages caused by that failure. (§ 2 ch 106 SLA 1986; am § 2 ch 59 SLA 1994)

Delayed amendment of subsection (a). — Under § 3, ch. 59, SLA 1994, effective August 22, 1998, subsection (a) of this section is repealed and reenacted. When that amendment takes effect, the subsection will read as it did before the amendment by § 2, ch. 59, SLA 1994.

Cross references. — For legislative findings, purpose, and intent in connection with the 1994 amendment of (a) of this section, see § 1, ch. 59, SLA 1994 in the Temporary and Special Acts.

tion with the 1994 amendment of (a) of this section, see § 1, ch. 59, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1994 amendment, effective August 22, 1994, in subsection (a), added "located in the state" at the end of paragraph (1), added subparagraphs (3)(A) and (3)(B), and made a related stylistic change.

Sec. 36.30.150. Bid acceptance and bid evaluation. (a) Bids shall be unconditionally accepted without alteration or correction, except as authorized in AS 36.30.160. The procurement officer shall evaluate bids based on the requirements set out in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, delivery, and suitability for a particular purpose. The criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation to bid must set out the evaluation criteria to be used. Criteria may not be used in bid evaluation if they are not set out in the invitation to bid.

(b) [Repealed, § 11 ch 37 SLA 1993.] (§ 2 ch 106 SLA 1986; am § 11 ch 37 SLA 1993)

Effect of amendments. — The 1993 amendment, effective August 25, 1993, repealed subsection (b).

Sec. 36.30.170. Contract award after bids. (n) Except as provided in (b) — (h) 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, an Alaska products preference as described in AS 36.30.322 — 36.30.338, and a recycled products preference under AS 36.30.339 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) Except as otherwise provided under (e) or (f) of this section, 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 15 percent higher than the lowest bid, the procurement officer shall award the contract to that bidder. This subsection does not give a bidder who would otherwise qualify for a preference under this subsection a preference over another bidder who would otherwise qualify for a preference under this subsection.

(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.

(e) If a bidder qualifies under (b) of this section as an Alaska bidder, is a sole proprietorship owned by an individual who is a person with a disability, and is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid, the procurement officer shall award the contract to that bidder. This subsection does not give a bidder who would otherwise qualify for a preference under this subsection a preference over another bidder who

would otherwise qualify for a preference under this subsection or (f) of this section.

(f) If a bidder qualifies under (b) of this section as an Alaska bidder, if 50 percent or more of the bidder's employees at the time the bid is submitted are persons with a disability, and if the bidder is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid, the procurement officer shall award the contract to that bidder. The contract must contain a promise by the bidder that the percentage of the bidder's employees who are persons with a disability will remain at 50 percent or more during the contract term. This subsection does not give a bidder who would otherwise qualify for a preference under this subsection a preference over another bidder who would otherwise qualify for a preference under this subsection or (e) of this section.

(g) The division of vocational rehabilitation in the Department of Education shall add to its current list of qualified employment programs a list of individuals who qualify as persons with a disability under (e) of this section and of persons who qualify under (f) of this section as employers with 50 percent or more of their employees being persons with disabilities. A person must be on this list at the time the bid is opened in order to qualify for a preference under (e) or (f) of this section.

(h) A preference under (c), (e), or (f) of this section is in addition to any other preference for which the bidder qualifies, including the preference under (b) of this section; however, a bidder may not receive a preference under both (e) and (f) of this section for the same contract.

(i) This section applies to all insurance contracts involving state money. In this subsection, "state money" includes state grants and reimbursement to municipalities, school districts, and other entities.

(j) In this section, "person with a disability" means an individual (1) who has a severe physical or mental disability that seriously limits one or more functional capacities in terms of employability; in this paragraph, "functional capacities" means mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills;

(2) whose physical or mental disability

(A) results from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders, paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, or end stage renal disease; in this subparagraph, "neurological disorders" include stroke and epilepsy; or

(B) is a disability or combination of disabilities that are not identified in (A) of this paragraph and that are determined on the basis of

an evaluation of rehabilitation potential to cause substantial functional limitation comparable to a disability identified in (A) of this paragraph; and

(3) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time. (§ 2 ch 106 SLA 1986; am §§ 7 — 9 ch 65 SLA 1987; am §§ 6, 18 ch 102 SLA 1989; am § 3 ch 175 SLA 1990; am §§ 1 — 3 ch 114 SLA 1992)

Editor's notes. — This section is set out above to correct a minor error in subsection (h) in the main pamphlet.

Article 3. Competitive Sealed Proposals.

Sec. 36.30.250. Award of contract.

NOTES TO DECISIONS

Award upheld. — Provider of professional services failed to prove that Department of Corrections' procurement officer involved in assigning contract for the operation of an adult community residential

center to a competing lower bidder acted in bad faith, was biased, or lacked impartiality. *Kila, Inc. v. State*, 875 P 2d 1102 (Alaska 1994).

Article 4. Other Procurement Methods.

Section 300. Sole source procurements
305. Limited competition procurements
310. Emergency procurements

Section 315 Determinations by chief procurement officer; criminal penalty

Sec. 30.30.300. Sole source procurements. (a) A contract may be awarded for supplies, services, professional services, or construction without competitive sealed bidding, competitive sealed proposals, or other competition in accordance with regulations adopted by the commissioner. A contract may be awarded under this section only when the chief procurement officer or, for construction contracts or procurements for the state equipment fleet, the commissioner of transportation and public facilities determines in writing that there is only one source for the required procurement or construction. A sole source procurement may not be awarded if a reasonable alternative source exists. The written determination must include findings of fact that support by clear and convincing evidence the determination that only one source exists. Except for procurements of supplies, services, professional services, or construction that do not exceed the amount for small procurements under AS 36.30.320(a) or (b), as applicable, the authority to make the determination required by this subsection may not be delegated.

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

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

(d) Procurement requirements may not be artificially divided, fragmented, aggregated, or structured so as to constitute a purchase under this section or to circumvent the source selection procedures required by AS 36.30.100 — 36.30.270. (§ 2 ch 106 SLA 1986; am § 11 ch 102 SLA 1989; am § 4 ch 37 SLA 1993)

Cross references. — For applicability of the 1993 amendment to (a) of this section, see § 13(c), ch. 37, SLA 1993 in the Temporary and Special Acts
Effect of amendments. — The 1993

amendment, effective August 25, 1993, in the last sentence of subsection (a), inserted "professional services" and made a section reference substitution.

Sec. 36.30.305. Limited competition procurements. (a) A contract for supplies, services, professional services, or a construction contract under \$100,000, may be awarded without competitive sealed bidding or competitive sealed proposals, in accordance with regulations adopted by the commissioner. A contract may be awarded under this section only when the chief procurement officer, or, for construction contracts under \$100,000 or procurements for the state equipment fleet, the commissioner of transportation and public facilities, determines in writing that a situation exists that makes competitive sealed bidding or competitive sealed proposals impractical or contrary to the public interest. Procurements under this section shall all be made with competition that is practicable under the circumstance. Except for procurements of supplies, services, professional services, or construction that do not exceed the amount for small procurements under AS 36.30.320(a) or (b), as applicable, the authority to make a determination required by this section may not be delegated.

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

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

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

(e) Architectural, engineering, and land survey contracts under AS 36.30.270 may not be made under this section. (§ 11 ch 65 SLA 1987; am § 12 ch 102 SLA 1989; am § 6 ch 37 SLA 1993)

Not Covered 36.30.100 - .270

17 AAC 15.431. BILLING AND AUDIT. (a) Reimbursement for utility relocation work will be based upon the utility relocation agreement executed between the department and the utility described in 17 AAC 15.341.

(b) Reimbursement for railroad relocation work will be based upon the railroad relocation agreement executed between the department and the railroad as provided in 17 AAC 15.521.

(c) The utility shall furnish the department with its final and complete billing for all costs incurred in connection with the relocation of the facility within 120 days after the completion of the relocation work. The billing statement must disclose the cost of each item in the cost estimate that is attached to the utility relocation agreement described in 17 AAC 15.351(a).

(d) If the utility fails to submit a proper billing within the 120-day period specified in (c) of this section, the department will, in its discretion, audit the utility's records and make the final reimbursement payment to the utility based on the audit findings.

(e) Under a lump-sum agreement as provided by 17 AAC 15.341(c), a single and final billing must be submitted upon completion of the work. This billing must be for the amount that is stipulated in the agreement. Upon certification by the department that the work was completed in compliance with the agreement, the utility will be paid the lump-sum amount.

(f) All cost records and accounts of the utility are subject to audit by the department. Except where a lump-sum agreement is used under 17 AAC 15.341(c), final payment will, in the department's discretion, be based on audit determinations made by the department. The department will, in its discretion, withhold a retainage from any billing. (Eff. 5/23/82, Register 82)

Authority: AS 02.15.020 AS 19.30.051
AS 02.15.102 AS 19.30.121
AS 02.15.106 AS 19.40.065
AS 19.05.020 AS 35.05.020
AS 19.05.040 AS 35.10.210
AS 19.25.020 AS 35.10.230

17 AAC 15.441. UTILITY INSTALLATION AGREEMENTS. When it is in the public interest to use utility personnel and equipment to install new facilities to serve a department purpose or to install new utility distribution facilities to serve department installations, and when the utility will retain ownership of the facility, the utility and the department shall enter into a utility installation agreement. This agreement must include cost estimates, plans, and a scope-of-work statement as required by 17 AAC 15.351 — 17 AAC 15.371. The utility is eligible for reimbursement for the costs of installing the new facilities. (Eff. 5/23/82, Register 82)

Authority: AS 02.15.020 AS 19.30.121
AS 02.15.102 AS 19.40.065
AS 02.15.106 AS 35.05.020
AS 19.05.020 AS 35.10.210
AS 19.05.040 AS 35.10.230
AS 19.30.051

17 AAC 15.451. TERMINATION AGREEMENTS. When it is in the mutual interest of the department and the utility to terminate a previously executed utility agreement or utility permit, a utility termination agreement must be executed. (Eff. 5/23/82, Register 82)

Authority: AS 02.15.020 AS 19.30.121
AS 02.15.102 AS 19.40.065
AS 02.15.106 AS 35.05.020
AS 19.05.020 AS 35.10.210
AS 19.05.040 AS 35.10.230
AS 19.30.051

17 AAC 15.461. EMERGENCY RELOCATION. Where unforeseen circumstances arise during construction on a department right-of-way that require an immediate relocation of a utility facility, the department will, in its discretion, require the immediate relocation of the facility, notwithstanding the terms of any existing utility permit or relocation agreement. (Eff. 5/23/82, Register 82)

Authority: AS 02.15.020 AS 19.30.121
AS 02.15.102 AS 19.40.065
AS 02.15.106 AS 35.05.020
AS 19.05.020 AS 35.10.210
AS 19.05.040 AS 35.10.230
AS 19.30.051

Article 4. Railroads

Section	Section
471. Railroad permit	511. Railroad relocation
481. Railroad accommodation policy	521. Railroad relocation agreements
491. Maintenance and repairs	531. Engineering consultants
501. Eligibility for relocation reimbursement	541. Railroad relocation contracts
	551. Engineering standards

17 AAC 15.471. RAILROAD PERMITS. (a) Upon written application, the department will, in its discretion, issue a permit authorizing the applicant to construct or install railroad facilities within a department right-of-way.

(b) No permit is required for the reconstruction of existing crossings, structures, or other facilities or for the construction of additional crossings, structures, or other facilities in areas where a railroad holds a fee title or an easement for a railroad right-of-way.

(c) An application for a railroad permit must specifically describe the proposed facility and its proposed location within the department's

right-of-way. The application must include plans and specifications so that the department can evaluate the engineering design and proposed location.

(d) All railroad permits will be issued in accordance with this section and 17 AAC 15.011 — 17 AAC 15.111.

(e) Whether or not a railroad facility permit is required, the railroad shall notify the department in writing not less than 15 days before any construction or major maintenance activity in an area bordering on, adjacent to, or crossing a department right-of-way. (Eff. 5/23/82, Register 82)

Authority: AS 19.05.020	AS 19.25.010
AS 19.05.040	AS 19.25.200
AS 19.10.010	AS 19.30.051
AS 19.10.020	AS 19.30.121
AS 19.20.030	AS 19.40.066
AS 19.20.050	

17 AAC 15.481. RAILROAD ACCOMMODATION POLICY.

(a) Grade separation is required for all railroad crossings on controlled-access highways. At-grade railroad crossings on rural highways and roads, and urban highways and streets will normally be allowed. However, the department will, in its discretion, require grade separation where warranted by conditions of topography and traffic density.

(b) A railroad crossing on a highway with defined shoulders may not be less than the full width of the highway including its defined shoulders. A railroad crossing on a rural highway with undefined shoulders must extend a minimum of five feet beyond the traveled portion of the highway. The surface of the highway must be in the same plane as the top of the rails for a distance of two feet outside of the rails for either multiple- or single-track crossings.

(c) The intersection of the highway alignment and the railroad track must be as nearly perpendicular as practicable.

(d) A railroad/highway crossing sign (crossbuck) must be installed on the right-hand side of the roadway on each approach to any crossing, except when, in the discretion of the department, it is determined that local conditions require an alternate location. Where railroad/highway crossing signals are used, the crossbuck must be an integral part of the signal assembly. A supplemental sign indicating the number of tracks must be used where there are two or more sets of tracks at the crossing.

(e) The department will, in its discretion, require railroad crossing signals which indicate the approach or presence of trains to be installed at those railroad crossings where there is a need for protection beyond that provided by signs. On multiple-lane highways, cantilever-mounted signals will, in the discretion of the department, be required.

For railroad crossings at highway intersections, additional signal-light units may be used to supplement the normal complement of lights. At crossings where multiple train movements may occur simultaneously or at crossings in congested urban areas, the use of gates will, in the discretion of the department, be required.

(f) Supports for post-mounted signal heads at the side of a street with curbs must have a horizontal clearance of not less than two feet from the face of the vertical curb. Where there is no curb, supports for post-mounted signal heads must have a horizontal clearance of not less than two feet from the edge of the shoulder, and must have a minimum clearance of six feet from the edge of the traveled way. Where there is no curb or shoulder, the minimum horizontal clearance must be six feet from the edge of the traveled way. All portions of signals and supports which extend over the roadway must have a vertical clearance of not less than 17 feet above the roadway surface.

(g) The department's chief bridge engineer is responsible for approving clearances proposed for new grade separation structures or for modifications of existing grade separation structures.

(h) All railroad signs and signals must conform to the requirements of the 1978 edition of the Alaska Traffic Manual or the special provisions of a railroad permit issued under 17 AAC 15.471 relating to vertical clearances of signs and signals over highways or other highway-related facilities such as bike paths, pathways, and sidewalks.

(i) Railroad communication, electric power, pipeline, and drainage facilities installed in the department rights-of-way must be installed in accordance with 17 AAC 15.120 — 17 AAC 15.301. (Eff. 5/23/82, Register 82)

Authority: AS 19.05.020	AS 19.25.010
AS 19.05.040	AS 19.25.200
AS 19.10.040	AS 19.30.051
AS 19.20.030	AS 19.30.121
AS 19.20.050	AS 19.40.066

17 AAC 15.491. MAINTENANCE AND REPAIRS. (a) Upon completion of a railroad crossing on a highway, the railroad is responsible for the maintenance and repair of all track bed and rail components and any state property located within the width of the railway ties occupying the crossing area. The department is responsible for the maintenance and repair of all state property located outside the area within the railway ties. Allocation of the costs of all maintenance and repairs must be included in the railroad permit issued under 17 AAC 15.471.

(b) The railroad must operate and maintain all railroad crossing signals or other protective devices.

(c) Unless otherwise specified in the railroad permit, upon completion of a grade-separation structure, the department is responsible for

the maintenance and repair of the structure and approaches and the railroad is responsible for the maintenance and repair of the track bed and rail components. (Eff. 5/23/82, Register 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.010 AS 19.40.065

17 AAC 15.501. ELIGIBILITY FOR RELOCATION REIMBURSEMENT. If railroad facilities are ordered by the department, under AS 02.15.104, AS 19.25.020, or AS 35.10.220 to be relocated in order to accommodate construction, a railroad that has railroad facilities occupying a department right-of-way is eligible for reimbursement for the cost of the relocation. (Eff. 5/23/82, Register 82; am 10/17/87, Register 104)

Authority: AS 02.15.104 AS 19.30.121
AS 19.05.020 AS 19.40.065
AS 19.05.040 AS 35.10.220
AS 19.25.020 AS 44.42.030
AS 19.30.061

17 AAC 15.511. RAILROAD RELOCATION. (a) The department will notify each railroad whose railroad facilities are known by the department to be affected by a proposed department project as soon as possible after the location and scope of the project are known.

(b) The department will furnish preliminary project plans and related right-of-way maps to each railroad within the proposed project limits. After receipt of these plans and maps, each railroad with railroad facilities located within the project limits shall notify the department in writing of the location of all those facilities.

(c) If there is a conflict between a proposed project and existing railroad facilities, the department will, in its discretion, require the railroad to relocate its railroad facilities. The department will authorize the railroad in writing to proceed with preliminary engineering for the required relocation of the facilities and will advise the railroad of its eligibility to be reimbursed for the cost of relocation. The railroad shall furnish the department with its proposal for accomplishing the relocation work. This proposal must include the estimated cost of the relocation work and working schedule the railroad intends to follow regarding the relocation work. The work described in the proposal must be the most economical method of accomplishing the relocation.

(d) The department will furnish the railroad with all necessary construction plans and relocation schedule forms so that the railroad can prepare and coordinate its relocation plans in accordance with 17 AAC 15.421.

(e) The department will furnish the railroad with field information necessary for the railroad to establish the location and grade for the relocation of its facilities. (Eff. 5/23/82, Register 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.010 AS 19.40.065
AS 19.25.020

17 AAC 15.521. RAILROAD RELOCATION AGREEMENTS. (a) When it is necessary to relocate railroad facilities because of a proposed project, the railroad shall enter into an agreement with the department setting out the terms of the relocation work along with the terms of the reimbursement for the costs of the relocation work. This agreement will, in the department's discretion, provide for a lump-sum payment.

(b) The agreement mentioned in (a) of this section must contain a cost estimate, plans, and a scope-of-work statement as provided in 17 AAC 15.351, 17 AAC 15.361, and 17 AAC 15.371, respectively.

(c) If railroad facilities located within a department right-of-way are required to be relocated due to highway or other construction, the department will modify the existing railroad permit or will issue a new railroad permit.

(d) Changes in the plans, specifications, or quantities of work for relocating railroad facilities must be authorized by a railroad change order issued under 17 AAC 15.581.

(e) The department will return an executed copy of the relocation agreement to the railroad along with a written authorization to proceed with the relocation work.

(f) Billing and audit of relocation costs must be in accordance with 17 AAC 15.431. (Eff. 5/23/82, Register 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.020 AS 19.40.065

17 AAC 15.531. ENGINEERING CONSULTANTS. (a) If a railroad is not adequately staffed to perform the engineering for the relocation of its railroad facilities, the department will, in its discretion, authorize the railroad to retain an engineering consultant to perform the required engineering. The engineering proposal made by an engineering consultant is subject to review and approval by the department.

(b) If a railroad has a continuing contract with a consultant for engineering services, and if the consultant regularly performs the railroad's engineering work at a reasonable cost, the railroad may request approval for the use of the consultant by submitting a copy of

the continuing contract to the department for review and approval. (Eff. 5/23/82, Register 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.020 AS 19.40.065

17 AAC 15.541. RAILROAD RELOCATION CONTRACTS.

(a) If a railroad is not adequately staffed or equipped to perform the relocation work with its own forces, the department will, in its discretion, authorize the railroad to contract the work of relocation in accordance with 17 AAC 15.411.

(b) Railroad relocation work may be performed under a construction contract or railroad relocation contract let by the department in accordance with 17 AAC 15.411.

(c) Construction of railroad facilities performed by the railroad or the railroad's contractor must be done in accordance with 17 AAC 15.421. (Eff. 5/23/82, Register 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.020 AS 19.40.065

17 AAC 15.551. ENGINEERING STANDARDS. Railroad facilities installed across or within a department right-of-way must comply with 17 AAC 15.301 and with the following codes and standards:

(1) the American Railway Engineering Association

(A) Manual for Railway Engineering (Fixed Properties), 1981 — 1982;

(B) Portfolio of Trackwork Plans, 1981 — 1982;

(2) the Signal Manual, 1980, of the Association of American Railroads, Communication and Signal Section;

(3) Manual on Uniform Traffic Control Devices, Part 8, American National Standards Institute, D6.1, 1978;

(4) Federal-Aid Highway Program Manual (for federal-aid highway projects)

(A) Railroad-highway Projects, Vol. 6, Ch. 8, Sec. 2, Subsec. 1, as revised through 1981;

(B) Railroad-highway Insurance Protection Required of Contractors, Vol. 6, Ch. 6, Sec. 2, Subsec. 2, as revised through 1981;

(C) Railroad-highway Grade Crossing Surfaces, Vol. 6, Ch. 6, Sec. 2, Subsec. 3, as revised through 1981. (Eff. 5/23/82, Register 82)

Authority: AS 19.05.020 AS 19.30.121
AS 19.05.040 AS 19.40.065
AS 19.30.051

Editor's notes. — Copies of the Manual of Railway Engineering (Fixed Properties) and Portfolio of Trackwork Plans may be obtained from the American Railway Engineering Association, 1920 "L" Street, N.W., Washington, DC 20036. Copies of the A.A.R. Signal Manual may be obtained from the Association of American Railroads, Communications and Signal Section 1920 "L" Street, N.W., Washington, DC 20036.

Copies of the Manual on Uniform Traf-

fic Control Devices (D6.1-1978) may be obtained from the American National Standards Institute, 1430 Broadway, New York, New York 10018.

Copies of the Federal Highway Program Manual are available for inspection at the regional offices of the Department of Transportation and Public Facilities located in Juneau, Anchorage, and Fairbanks, Alaska.

Article 5. General Provisions

Section 901. Definitions

17 AAC 15.901. DEFINITIONS. In this chapter

(1) "at-grade railroad crossing" means the place where a railroad track and a department right-of-way intersect at the same elevation or grade;

(2) "betterment" means any upgrading of a utility facility that is made solely for the benefit of the utility and is not required by the department to be made in order to accommodate construction by the department;

(3) "boring" means the method of installing underground conduit or pipe under a structure or through an embankment by use of a drilling auger;

(4) "cantilever-mounted signals" means railroad crossing signals that are mounted on an arm or a truss beam which extends over the roadway and is attached to a post or tower placed at the side of the roadway;

(5) "casing" means any pipe that encloses a pipeline;

(6) "cathodic protection" means a process or system used to control electrochemical corrosion of an underground metallic structure (such as a pipeline) by the application of an electric current;

(7) "commissioner" means the commissioner of the Department of Transportation and Public Facilities or his designee;

(8) "coring" means the method of installing underground conduit or pipe through hard material like rock or concrete by using a hollow-tube drilling instrument with cutting teeth on the end;

(9) "controlled-access highway" means a highway upon which the rights to access, light, view, and air by owners or occupants of abutting land or other persons are controlled by the department so as to facilitate through traffic;

(10) "controlled-access limits" means the area of the highway right-of-way in which highway access is controlled;

(11) "cost of relocation" means the cost incurred by a railroad or utility that is properly attributed to the relocation of a utility or

railroad facility after the deduction of any increase in the value of the new facility and any salvage value attributable to the old facility;

(12) "depth of burial" means the depth to the top of the pipe, cable, or other underground structure as measured from the surface of a roadway, ditch, or natural ground;

(13) "department" means the Department of Transportation and Public Facilities;

(14) "double endend structure" means an overhead wire safety device designed to prevent an overhead wire from falling onto a roadway;

(15) "eligibility ratio" means that ratio between utility or railroad relocation costs that are eligible for reimbursement and the total cost of the entire utility or railroad relocation work;

(16) "encroachment" means any structure or object which is in, on, under, or over a portion of a department right-of-way;

(17) "expired service life credit" is equal to the original cost of the existing facility multiplied by the number of years the facility has been in service divided by total life expectancy of the facility in years;

(18) "facility" or "facilities" or "utility facility" includes, but is not limited to, poles, lines, trenches, bridges, utilidors, tunnels, pipelines, and any other system for furnishing, producing, generating, transmitting, or distributing power, electricity, communications, telecommunications, water, gas, oil, petroleum products, steam, heat, light, chemicals, air, sewage, drainage not connected with highway drainage, irrigation, or any other substance;

(19) "frontage road" means a local street or road auxiliary to and located on the side of an arterial highway and used for service to abutting property and adjacent areas and for control of access;

(20) "grade separation" means the vertical separation by the use of a suitable structure of the grades of two intersecting roadways or the grades of a roadway and an intersecting railroad track;

(21) "grade-separation structure" means a bridge, culvert, tunnel, viaduct, or other similar structure;

(22) "highway" means a road, roadway, street, trail, walk, bridge, tunnel, road drainage structure, or other road-related structure or facility, including the entire area within a highway right-of-way;

(23) "highway structure" includes bridges, buildings, culverts, pedestrian overcrossings, pedestrian tunnels, retaining walls, utilidors, and tunnels;

(24) "jacking" means the method of installing underground conduit or pipe under a roadway or other state property or through an embankment by pushing or packing a liner or heavy-gauge pipe beneath the facility;

(25) "joint-use agreement" means an agreement between a utility owning poles, trenches, or other facilities and other utilities which sets forth the terms and conditions by which the poles, trenches, or other facilities, owned by the first utility, can be used by other utilities;

(26) "joint-use facility" includes a pole line, trench, bridge, utilidor conduit, or tunnel which is used by two or more utilities;

(27) "longitudinal utility facility" means a utility facility that runs relatively parallel to a highway or airstrip;

(28) "median" means the portion of a divided highway that separates the traveled ways for traffic;

(29) "non-pipe push" means the method of installing non-pipe materials under a roadway or other state property or through an embankment by using a pushing force;

(30) "plowing" means the installation of underground cable for electricity, telephone, or cable television by use of a mounted plow-like instrument which digs and feeds out cable at the same time;

(31) "railroad" includes all rail carriers, whether publicly or privately owned, including steam, diesel, and electric railroads, interurban railways, interurban street railways, and every other type of street railway;

(32) "railroad crossing" includes the tracks, structures, crossing slabs, drainage structures, and crossing protection devices which are required to permit railroad trains to cross a department right-of-way either at-grade or by use of grade-separation structures;

(33) "railroad crossing signal" means a signal with flashing lights that is used to indicate the approach or presence of trains at railroad crossings;

(34) "railroad facility" means any structure or facility that is used for railroad purposes;

(35) "relocate" means adjust, change, remove, or reposition;

(36) "restoration" means replacing, repairing, or otherwise restoring a right-of-way or other area to the same condition that existed before any construction or relocation work took place;

(37) "right-of-way" and "department right-of-way" mean a highway easement, airport easement, section-line easement, any material or borrow pit leased or owned by the state, and any land leased or owned by the state and occupied by a public facility;

(38) "roadway" means that portion of the highway, including shoulders, intended for vehicular use;

(39) "roadway prism" means that portion of the highway right-of-way between the bottoms of the ditches on either side of the roadway, the toes of fills on either side of the roadway, or the backs of curbs on either side of the roadway, including the slope, shoulders, pavement, and median strips less than 60 feet wide;

(40) "routine maintenance" means the repair of any defective or damaged part of a facility or the replacement of that part at the same location by another part of the same type, capacity, or design, and includes the routine clearing of the area immediately adjacent to pedestals, vents, pipes, marker signs, or other similar objects to ensure their visibility to the public and other users of department rights-of-way;

(41) "rural highway or road" means a road or highway without access controls that is located outside of an urban area;

(42) "siphon" means a conduit, pipe, or tunnel that is used to conduct water from an open waterway to a lower elevation and then return it to another open waterway at the elevation of the original waterway;

(43) "specifications" means all directions and requirements pertaining to and governing the performance of work;

(44) "state" means the State of Alaska;

(45) "department contract" means a contract for construction of a project which is advertised, awarded, and administered by the department and which may contain items relating to utility or railroad facilities work;

(46) "surface-mounted facility" means any utility or railroad facility extending above the surface of the ground, including poles, posts, and hydrants;

(47) "telecommunications" or "communications" means the transmission and reception of messages, impressions, pictures, and signals by means of electromagnetic waves, force variations, impulses, or any other kind of energy, whether conveyed through cable or wire, or whether radiated through space or transmitted through any other medium;

(48) "toe of fill" means the point where the slope of the roadway building foundation fill, or airport runway fill intersects with the natural ground;

(49) "top of cut" means the point where the back slope of a roadway cut section intersects with the natural ground;

(50) "traveled way" means that portion of the roadway intended for the movement of vehicles, exclusive of shoulders and parking lanes;

(51) "undefined shoulder" means the area adjacent to a traveled way where the roadway surface is on the same level as the natural ground and there is no longitudinal drainage ditch or roadway fill or cut;

(52) "urban highway or street" means any roadway or highway without access controls that is located within a first or second class city, or is located within the municipal center of a unified municipality or within a developed area that has a commercial, industrial, or residential character;

(53) "utilidor" means a structure containing one or more channels, usually prefabricated in units, including units that are fitted with a removable cover that may also be used as a sidewalk or roadway surface;

(54) "utility" includes any corporation, company, individual, or association of individuals, or any lessee, trustee, or court-appointed receiver, that owns, operates, manages, or controls any line, plant, pipeline, or system for furnishing, producing, generating, transmitting, or distributing power, electricity, communications, telecommunications, water, gas, oil, petroleum products, steam, heat, light, chemicals, air, sewage, drainage not connected with highway drainage, irrigation, or similar products including publicly owned fire and police signal systems and street lighting systems which directly or indirectly serve the public or a segment of the public; "utility" also includes any corporation, company, individual, or association of individuals, or any lessee, trustee, or court-appointed receiver that owns, operates, manages, or controls any system for furnishing transportation of goods or persons by means of a railway, tramway, cableway, conveyer, flume, canal, tunnel, pipeline, or any other similar means;

(55) "utility locate service" means a service provided by a utility to locate its buried utility facilities;

(56) "utility service connection" means the cable, wire, or pipe that connects the utility distribution line to the premises served;

(57) "wet-boring" means the method or process of boring with the use of jets of water or liquid slurry;

(58) "airport" has the same meaning as in AS 02.15.260(5);

(59) "public facility" has the same meaning as in AS 35.25.020(7). (Eff. 5/23/82, Register 82; am 10/2/87, Register 103)

Authority:	AS 02.15.020	AS 19.30.051
	AS 02.15.102	AS 19.30.121
	AS 02.15.106	AS 19.40.065
	AS 19.05.020	AS 35.05.020
	AS 19.05.040	AS 35.10.230

CHAPTER 20. MAINTENANCE

Section	Section
10. Outdoor advertising	30. Transfer of excess equipment
20. Closure and restriction	40. General

17 AAC 20.010. OUTDOOR ADVERTISING. It shall be unlawful to place, erect, or maintain any outdoor advertising sign within the right-of-way of any highway or highway lands, nor shall any permit be issued for the placement or erection of the sign. (Eff. 6/25/69, Register 30)