

**HB**

**204**

<TARGET><BILL>HB 204</BILL><SUBJECT>HB  
204</SUBJECT><COMM>HSTA27</COMM></TARGET>



27th Legislature(2011-2011)

**Bill History/Action for 27th Legislature**

**BILL:** HB 204

**SHORT TITLE:** STATE PROCUREMENT CODE

**BILL VERSION:**

**CURRENT STATUS:** (H) STA

**STATUS DATE:** 03/23/11

THEN FIN

**SPONSOR(s):** REPRESENTATIVE(s) FAIRCLOUGH, Neuman

**HEARING:** (H) STA Mar 29 8:00 AM CAPITOL 106 TELECONFERENCE

**TITLE:** "An Act relating to the State Procurement Code, including the use of small procurement provisions for certain amounts of leased space, the requirement of Alaska business license proof for Alaska bidder and other procurement preferences, the registration of construction contract bidders and offerors, the establishment and maintenance of lists of persons who want to provide supplies or services to the state, state agencies, and state instrumentalities, electronic bids and proposals, small procurements, and writings; and providing for an effective date."

Bill Number:

Jrn-Date	Jrn-Page	Action
03/23/11	<a href="#">0552</a>	(H) READ THE FIRST TIME - REFERRALS
03/23/11	<a href="#">0552</a>	(H) STA, FIN
03/23/11	<a href="#">0552</a>	(H) REFERRED TO STATE AFFAIRS

Similar Subject Match or Exact Subject Match

- [BUSINESS](#)
- [COMMUNICATIONS](#)
- [CONSTRUCTION](#)
- [CONTRACTS](#)
- [DATA PROCESSING](#)
- [INTERNET](#)
- [LEASES](#)
- [LICENSING](#)
- [PROCUREMENTS](#)

*least controversial Bill*

*only affects small procurements*

*closed public testimony?*

Bill Number:

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**HOUSE BILL NO. 204**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVES FAIRCLOUGH, Neuman**

Introduced: 3/23/11

Referred: State Affairs, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the State Procurement Code, including the use of small procurement  
2 provisions for certain amounts of leased space, the requirement of Alaska business  
3 license proof for Alaska bidder and other procurement preferences, the registration of  
4 construction contract bidders and offerors, the establishment and maintenance of lists of  
5 persons who want to provide supplies or services to the state, state agencies, and state  
6 instrumentalities, electronic bids and proposals, small procurements, and writings; and  
7 providing for an effective date."

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

9 \* **Section 1.** AS 36.30.080(f) is amended to read:

10 (f) When the department is acquiring leased space of 7,000 [3,000] square feet  
11 or less, the department may procure the leased space using the procedures for small  
12 procurements under AS 36.30.320, providing public notice is given to prospective  
13 offerors in the market area.

1 \* **Sec. 2.** AS 36.30.110(b) is amended to read:

2 (b) The bidder shall [MUST] have a valid Alaska business license at the time  
 3 designated in the invitation to bid for bid opening to qualify as an Alaska bidder  
 4 under AS 36.30.170 and 36.30.175. If a bidder does not have a valid Alaska  
 5 business license at the time designated in the invitation to bid for bid opening, the  
 6 bidder shall provide proof that the bidder has a valid Alaska business license  
 7 before the contract may be awarded, but the bidder does not qualify as an Alaska  
 8 bidder under AS 36.30.170 and 36.30.175. A bidder for a construction contract shall  
 9 also submit proof [EVIDENCE] of the bidder's registration under AS 08.18 before  
 10 the contract may be awarded.

11 \* **Sec. 3.** AS 36.30.130(a) is amended to read:

12 (a) The procurement officer shall give adequate public notice of the invitation  
 13 to bid at least 21 days before the date for the opening of bids. If the procurement  
 14 officer determines in writing that a shorter notice period is advantageous for a  
 15 particular bid and adequate competition is anticipated, the 21-day period may be  
 16 shortened. Notice shall be posted on the Alaska Online Public Notice System  
 17 (AS 44.62.175). The time and manner of notice must be in accordance with  
 18 regulations adopted by the commissioner of administration. When practicable, notice  
 19 may include

20 (1) publication in a newspaper calculated to reach prospective bidders;

21 and

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

24 (3) NOTICES MAILED TO ALL ACTIVE PROSPECTIVE  
 25 CONTRACTORS ON THE APPROPRIATE LIST MAINTAINED UNDER  
 26 AS 36.30.050].

27 \* **Sec. 4.** AS 36.30.210(b) is amended to read:

28 (b) An offeror for a construction contract shall submit proof [EVIDENCE] of  
 29 the offeror's registration as a contractor under AS 08.18 before the contract may be  
 30 awarded. A request for sealed proposals for a construction contract, except a design-  
 31 build construction contract, must require the offeror, not [NO] later than five working

1 days after the proposal that is the most advantageous to the state is identified, to list  
 2 subcontractors the offeror proposes to use in the performance of the construction  
 3 contract. The list must include the information required under AS 36.30.115(a). The  
 4 provisions of AS 36.30.115(b) - (g) that apply to a construction contractor or an  
 5 apparent low bidder apply to offerors submitting competitive sealed proposals for  
 6 construction contracts, except design-build construction contracts.

7 \* **Sec. 5.** AS 36.30.210(e) is amended to read:

8 (e) The offeror **shall** [MUST] have a valid Alaska business license at the time  
 9 designated [,] in the request for proposals [,] for opening of the proposals **to qualify as**  
 10 **an Alaska bidder under AS 36.30.170 and 36.30.175. If an offeror does not have a**  
 11 **valid Alaska business license at the time designated in the request for proposals**  
 12 **for opening of the proposals, the offeror shall provide proof that the offeror has a**  
 13 **valid Alaska business license before the contract may be awarded, but does not**  
 14 **qualify as an Alaska bidder under AS 36.30.170 and 36.30.175.**

15 \* **Sec. 6.** AS 36.30 is amended by adding a new section to article 4 to read:

16 **Sec. 36.30.290. Electronic bids and proposals.** An agency may allow bids or  
 17 proposals to be submitted in electronic form under AS 09.80.010 - 09.80.195  
 18 (Uniform Electronic Transactions Act).

19 \* **Sec. 7.** AS 36.30.320(a) is amended to read:

20 *3/29/11 Gruenberg 917A* (a) A procurement for supplies, services, or professional services that does not  
 21 exceed an aggregate dollar amount of **\$100,000** [\$50,000], construction that does not  
 22 exceed an aggregate dollar amount of **\$200,000** [\$100,000], or lease of space that does  
 23 not exceed **7,000** [3,000] square feet **shall** [MAY] be made **under** [IN  
 24 ACCORDANCE WITH] regulations adopted by the commissioner for small  
 25 procurements.

26 \* **Sec. 8.** AS 36.30.655 is amended to read:

27 **Sec. 36.30.655. List of persons debarred or suspended; removal from**  
 28 **contractor lists.** The commissioner shall maintain a list of all persons debarred or  
 29 suspended from consideration for **the** award of contracts. [THE COMMISSIONER  
 30 SHALL REMOVE A PERSON DEBARRED OR SUSPENDED FROM THE LISTS  
 31 OF CONTRACTORS UNDER AS 36.30.050 FOR THE PERIOD OF DEBARMENT

1 OR SUSPENSION.]

2 \* **Sec. 9.** AS 36.30.990 is amended by adding new paragraphs to read:

3 (25) "in writing" has the meaning given to "written" in this section;

4 (26) "written" means the product of forming characters on paper, other  
5 materials, or viewable screens, that can be read, retrieved, and reproduced, including  
6 information that is electronically transmitted and stored.

7 \* **Sec. 10.** AS 36.30.050 is repealed.

8 \* **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to  
9 read:

10 TRANSITION: PENDING SOLICITATIONS FOR PROCUREMENTS AND  
11 CONTRACTS. (a) This Act does not apply to

12 (1) solicitations for procurement and the resulting contracts, if the solicitations  
13 are pending on the effective date of this Act and if the invitation to bid or other solicitation  
14 was issued before the effective date of this Act; and

15 (2) procurement contracts entered into before the effective date of this Act,  
16 including extensions or amendments of those contracts.

17 (b) Notwithstanding (a) of this section, this Act applies to procurements or contracts  
18 described in (a)(1) of this section if all parties to the procurement or contract agree in writing  
19 that the applicable provisions of this Act apply to the solicitation or contract.

20 \* **Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).

3/29/11  
Gruber  
9:28 am



# Alaska State Legislature

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## Representative Anna Fairclough – House District 17

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### Sponsor Statement

#### House Bill 204

"An Act relating to the State Procurement Code, including the use of small procurement provisions for certain amounts of leased space, the requirement of Alaska business license proof for Alaska bidder and other procurement preferences, the registration of construction contract bidders and offerors, the establishment and maintenance of lists of persons who want to provide supplies or services to the state, state agencies, and state instrumentalities, electronic bids and proposals, small procurements, signatures, and writings; and providing for an effective date."

House Bill 204 makes changes to the state's procurement code. Collectively, these changes streamline the procurement code to ensure consistent application of the law, and results in a more understandable, efficient procurement process. These changes are needed to prevent failed procurements and provide modern procurement tools and techniques to the State's workforce.

This legislation would clarify Alaska business license requirements for competitive sealed bids and proposals and qualification for the Alaska bidder preference, which should reduce the number of bids and proposals the state currently disqualifies on technical grounds.

The dollar threshold for informal or small procurements is increased, which will simplify many purchases that are now procured via time consuming and more complex formal procurement rules.

HB 204 updates our Procurement Code and provides tools and techniques to our employees. The bill allows for electronic receipt of bids and signatures. The bill also eliminates the requirement to maintain outdated vendor lists in a time when commerce is moving online.

It has been many years since our procurement code has been modernized. These changes will position us to become more efficient and effective in our purchasing and contracting.

I appreciate your support and consideration of this legislation.

**HOUSE BILL NO. 204**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE FAIRCLOUGH

Introduced: 3/23/11

Referred:

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20 \* **Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).



# Alaska State Legislature

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## Representative Anna Fairclough — House District 17

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### HB 204 - Sectional Analysis

**\* Section 1:** Amends AS 36.30.080(f)

Increases the threshold limit for small procurements of leased space from 3,000 square feet to 7,000 square feet, consistent with section 7.

**\* Section 2:** Amends AS 36.30.110(b)

Clarifies Alaska business license requirements for competitive sealed bids and qualification for the Alaska bidder preference. Change would require bidders to show proof of their Alaska Business License prior to award, but would require the license at the time of bid submission in order to qualify for the Alaska bidder preference.

**\* Section 3:** Amends AS 36.30.130(a)

Eliminates reference to a procurement officer's use of vendor lists, reflecting the repeal of the statute establishing the vendor lists, consistent with section 9.

**\* Section 4:** Amends AS 36.30.210(b)

Clarifies construction contractor registration requirements, now explicitly requiring registration before award of a contract.

**\* Section 5:** Amends AS 36.30.210(e)

Clarifies Alaska business license requirements for competitive sealed proposals and qualification for the Alaska bidder preference using language consistent with that used in section 2.

**\* Section 6:** Amends AS 36.30 by adding a new section 36.30.290

Adds a new section allowing an agency to accept electronic bids and proposals.

\* **Section 7:** Amends AS 36.30.320(a)

Increases the threshold under which a state agency may use informal procurement process to \$100,000 for goods and professional services, to \$200,000 for construction, and 7,000 square feet for lease of space.

\* **Section 8:** Amends AS 36.30.655

Eliminates reference to the removal of debarred or suspended persons from vendor lists, reflecting the repeal of a law establishing the vendor lists, consistent with section 9.

\* **Section 9:** Amends AS 36.30.990

Adds new definitions for “in writing” and “written.”

\* **Section 10:** Repeals statute establishing the vendor list.

\* **Section 11:** Amends the uncodified law of the State of Alaska

Clarifies the application of the procurement act to pending solicitations during transition period.

\* **Section 12:** Effective Date

Language making the procurement act effective immediately.

HB 204

without procuring a contractor construction services necessary 20; am § 11 ch 168 SLA 1990; ch 94 SLA 1992; am § 111 ch 137 SLA 1996; am §§ 1, 2 LA 2004; am § 1 ch 177 SLA

amendment, effective October 24, section (j).  
amendment, effective July 1, 2005, sentence to subsection (d).  
amendment, effective July 28, 2005, in substituted "Alaska Retirement Man- r "Alaska State Pension Investment t and last sentences.  
3. — Under § 146, ch. 9, FSSLA amendment of subsection (f) of this h. 9, FSSLA 2005, is retroactive to

ices of counsel outside of the De- v. State v. Breeze, 873 P.2d 627 (1994).

all adopt and publish proce- professional services, and con- be based on the competitive d to the special needs of the The procedures must contain as headquarters in a country port published by the United The procedures may contain onducts business in but does e most recent Trafficking in y of State under 22 U.S.C. rovisions of AS 36.30.080(c) f this section, the legislative comply with AS 36.30.170(b). 73 SLA 1992; am § 4 ch 75 6)

tor of courts shall adopt and vices, professional services, t be based on the competitive d to the special needs of the or of courts. The procedures a person that has headquar- afficking in Persons Report :2 U.S.C. 7107(b)(1)(C). The ement from a person that ountry listed in Tier 3 of the

most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). The procedures must be consistent with the provisions of AS 36.30.080(c) — (e) and 36.30.085. Notwithstanding the other provisions of this section, the judicial branch shall comply with AS 36.30.170(b). (§ 2 ch 106 SLA 1986; am § 7 ch 181 SLA 1990; am § 5 ch 75 SLA 1994; am § 6 ch 137 SLA 1996; am § 4 ch 72 SLA 2006)

**Effect of amendments.** — The 2006 amendment, effective July 1, 2006, inserted the third and fourth sentences.

**Sec. 36.30.040. Procurement regulations.** (a) The commissioner shall adopt reg- ulations governing the procurement, management, and control of supplies, services, professional services, and construction by agencies. The regulations must contain provisions for prohibiting procurement from a person that has headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). The regulations may contain provisions for restricting procurement from a person that conducts business in but does not have headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). The commissioner may audit and monitor the implementation of the regulations and the requirements of this chapter with respect to using agencies.

- (b) The commissioner shall adopt regulations pertaining to
  - (1) suspension, debarment, and reinstatement of prospective bidders and contractors;
  - (2) bid protests;
  - (3) conditions and procedures for the procurement of perishables and items for resale;
  - (4) conditions and procedures for the use of source selection methods authorized by this chapter, including single source procurements, emergency procurements, and small procurements;
  - (5) the opening or rejection of bids and offers, and waiver of informalities in bids and offers;
  - (6) confidentiality of technical data and trade secrets submitted by actual or prospec- tive bidders or offerors;
  - (7) partial, progressive, and multiple awards;
  - (8) storerooms and inventories, including determination of appropriate stock levels and the management of agency supplies;
  - (9) transfer, sale, or other disposal of supplies;
  - (10) definitions and classes of contractual services and procedures for acquiring them;
  - (11) providing for conducting price analysis;
  - (12) use of payment and performance bonds in connection with contracts for supplies, services, and construction;
  - (13) guidelines for use of cost principles in negotiations, adjustments, and settlements;
  - (14) conditions under which an agency may use the services of an employment program;
  - (15) a bidder's or offeror's duties under this chapter; and
  - (16) the elimination and prevention of discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation. (§ 2 ch 106 SLA 1986; am § 1 ch 102 SLA 1989; am §§ 7, ch 137 SLA 1996; am § 18 ch 25 SLA 2006; am § 5 ch 72 SLA 2006)

**Effect of amendments.** — The first 2006 amend- ment, effective May 10, 2006, substituted "disability" "handicap" in paragraph (b)(16).

The second 2006 amendment, effective July 1, 2006, inserted the second and third sentences of subsection (a).

**Sec. 36.30.050. Lists of contractors.** (a) Except for persons debarred or suspended

under AS 36.30.635 — 36.30.655, the commissioner shall establish and maintain current lists of persons who desire to provide supplies, services, professional services, and construction services to the state.

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

(c) The lists may be used by the chief procurement officer or an agency when issuing invitations to bid or requests for proposals under this chapter. The lists may be used by the legislative council, the court system, and the Alaska Railroad Corporation.

(d) [Repealed, § 24 ch 65 SLA 1987.] (§ 2 ch 106 SLA 1986; am §§ 3, 24 ch 65 SLA 1987; am § 112 ch 4 FSSLA 1992; am § 9 ch 137 SLA 1996; am § 36 ch 134 SLA 2003)

**Effect of amendments.** — The 2003 amendment, effective July 10, 2003, inserted “as a contractor” in the next-to-last sentence in subsection (b).

**Sec. 36.30.060. Specifications.** (a) The commissioner shall adopt regulations governing the preparation, revision, and content of specifications for supplies, services, professional services, and construction required by an agency. The commissioner shall monitor the use of these specifications.

(b) Specifications for construction of highways must conform as closely as practicable to those adopted by the American Association of State Highway and Transportation Officials.

(c) The commissioner may obtain expert advice and assistance from personnel of using agencies in the development of specifications. Specifications must promote overall economy for the purposes intended and encourage competition in satisfying the state's needs, and may not be unduly restrictive. The requirements of this subsection regarding the purposes and nonrestrictiveness of specifications apply to all specifications, including those prepared by architects, engineers, designers, and other professionals.

(d) In this section, “specification” means a description of the physical or functional characteristics, or of the nature of a supply, service, professional service, or construction project; it may include requirements for licensing, inspecting, testing, and delivery. (§ 2 ch 106 SLA 1986)

**Opinions of attorney general.** — While the Alaska Energy Authority may execute contracts for construction of power projects, it probably cannot execute a project labor agreement that prefers the hire of employees who are members of a labor union (based upon the equal protection concern of favoring one group of similarly situated workers over another). But see 1999 Op. Att’y Gen. No. 12, which, based upon

the decision in *Laborers Local # 942 v. Lampkin*, 956 P.2d 422 (Alaska 1998), rescinded the portion of this opinion which addressed the equal protection concerns raised by the use of project labor agreements. The portion of this opinion which addressed the possible illegality of project labor agreements under state procurement regulations remains in effect. Jan. 19, 1990 Op. Att’y Gen.

**Sec. 36.30.070. Supply management.** The commissioner shall adopt regulations governing the

- (1) management of supplies during their entire life cycle;
- (2) sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method;
- (3) purchase of surplus supplies by an employee of the using or disposing agency; and
- (4) transfer of excess supplies. (§ 2 ch 106 SLA 1986)

**Sec. 36.30.080. Leases.** (a) The department shall lease space for the use of the state or an agency wherever it is necessary and feasible, subject to compliance with the requirements of this chapter. A lease may not provide for a period of occupancy greater

than 40 years. An agency requires approval through the department.

(b) [Repealed, § 11 ch 75 SLA 1987.]

(c) If the department, the legislative council, or the supreme court requires an annual rent to the department that is anticipated to exceed \$2,500,000 for the full term of the lease, the department shall provide notice to the legislative council. The department, the Board of Management, may not enter into or renew

(1) requiring notice under this subsection if the lease has been approved by the department during the initial period of the lease approval of the proposed lease.

(2) under this subsection if the lease exceeds the original term of the lease options.

(d) When the department shall consider, in addition to the requirements of public convenience, planning and development.

(e) When the department shall determine whether leasing is likely to be in the best interests of the state.

(f) When the department shall determine if the department may procure the lease under AS 36.30.320, providing for the use of the area. (§ 2 ch 106 SLA 1986; §§ 2, 3 ch 73 SLA 1992; am § 36 ch 137 SLA 1996)

**Editor's notes.** — Section 3, ch 58, SLA 1990 provides that the 1990 amendment to § 1, ch. 58, SLA 1990 “applies to a lease entered into on or after June 5, 1990, and to the renewal of a lease entered into on or after June 5, 1990.”

**Lease-purchase agreement between Department of Natural Resources and System.** — This section (prior to 1995) was amended by § 12, ch. 75, SLA 1995. The Department of Natural Resources may enter into a lease-purchase agreement with the Court System for the purchase of the property in *Gottstein Properties v. State*, 899 P.2d 1000 (Alaska 1995).

**Sec. 36.30.083. Lease exemption.** The department shall determine if the department may procure the lease under AS 36.30.320, providing for the use of the area. (§ 2 ch 106 SLA 1986; §§ 2, 3 ch 73 SLA 1992; am § 36 ch 137 SLA 1996)

der” means a person who meets  
 is an Alaska domestic insurer  
 Alaska bidder, is a qualifying  
 er with a bid that is not more  
 erment officer shall award the  
 a bidder who would otherwise  
 ver another bidder who would  
 n or (f) of this section. In this

ility;  
 32.11 if each of the partners is  
 50 if each of the members is a  
 and each of the individuals is a

Alaska bidder, if 50 percent or  
 submitted are persons with a  
 sponsive bidder with a bid that  
 the procurement officer shall  
 in a promise by the bidder that  
 with a disability will remain at  
 ion does not give a bidder who  
 tion a preference over another  
 er this subsection or (e) of this

rtment of Labor and Workforce  
 nployment programs a list of  
 der (e) of this section and of  
 with 50 percent or more of their  
 be on this list at the time the  
 ) or (f) of this section.

dition to any other preference  
 ler (b) of this section; however,  
 (e), (c) and (f), or (e) and (f) of

volving state money. In this  
 bursement to municipalities,  
 ) of this section, a bidder must  
 and supervising the services  
 nature solicited to other state

individual  
 seriously limits one or more  
 graph, “functional capacities”  
 terpersonal skills, work toler-

burn injury, cancer, cerebral  
 ase, hemiplegia, hemophilia,  
 on, mental illness, multiple  
 neurological disorders, para-

plegia, 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; am § 14 ch 137 SLA 1996; am §§ 1, 2 ch 53 SLA 1997; am § 33 ch 58 SLA 1999; am §§ 1, 2 ch 71 SLA 2000; am § 43 ch 56 SLA 2005; am § 26 ch 12 SLA 2006; am § 1 ch 45 SLA 2010)

**Revisor’s notes.** — Subsection (i) was formerly AS 36.30.850(e). Renumbered in 1992. Subsection (k) was enacted as (i); relettered in 1992 as (j) and relettered again in 1996. Subsection (j) was enacted as (k); relettered in 1996. In 1996, in subsection (b), “AS 36.30.337” was substituted for “AS 36.30.339” to reflect the 1996 renumbering of AS 36.30.339.

**Effect of amendments.** — The 2000 amendment, effective May 23, 2000, in paragraph (b)(4) inserted “is a limited liability company organized under AS 10.50 and all members are residents of the state.”; inserted “under AS 32.05 or AS 32.11” in paragraphs (b)(4) and (e)(2); and added present paragraph (e)(3) and made related stylistic changes.

The 2005 amendment, effective June 25, 2005, updated section references in paragraph (b)(4).

The 2006 amendment, effective April 4, 2006, substituted “former AS 32.05, AS 32.06” for “AS 23.05” in paragraph (2) of subsection (e).

The 2010 amendment, effective September 2, 2010, in (a), added “AS 36.30.175 and” following “Except as provided in”.

**Editor’s notes.** — AS 32.05, referred to in paragraphs (b)(4) and (e)(2), was repealed by § 8, ch. 115, SLA 2000. For present comparable provisions, see AS 32.06.

**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. Att’y Gen.

**NOTES TO DECISIONS**

Quoted in *State v. Johnson*, 779 P.2d 778 (Alaska 1989); *Lakloey, Inc. v. Univ. of Alaska*, 157 P.3d 1041 (Alaska 2007).

**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. 36.30.175. Alaska veterans’ preference.** (a) Notwithstanding a provision in AS 36.30.170 to the contrary, if a bidder qualifies under AS 36.30.170(b) as an Alaska bidder and is a qualifying entity, a five percent bid preference shall be applied to the bid price. The preference may not exceed \$5,000. In this subsection, “qualifying entity” means

- (1) sole proprietorship owned by an Alaska veteran;
  - (2) partnership under AS 32.06 or AS 32.11 if a majority of the partners are Alaska veterans;
  - (3) limited liability company organized under AS 10.50 if a majority of the members are Alaska veterans; or
  - (4) corporation that is wholly owned by individuals and a majority of the individuals are Alaska veterans.
- (b) A preference under this section is in addition to any other preference for which the bidder qualifies.
- (c) To qualify for a preference under this section, a bidder must add value by the bidder itself actually performing, controlling, managing, and supervising a significant part of

the services provided, or the bidder must have sold supplies of the general nature solicited to other state agencies, governments, or the general public.

(d) In this section, "Alaska veteran" means an individual who is a

- (1) resident of this state; and
- (2) veteran; in this paragraph, "veteran" means an individual who

(A) served in the

(i) armed forces of the United States, including a reserve unit of the United States armed forces; or

(ii) Alaska Territorial Guard, the Alaska Army National Guard, the Alaska Air National Guard, or the Alaska Naval Militia; and

(B) was separated from service under a condition that was not dishonorable. (§ 2 ch 45 SLA 2010)

**Effective dates.** — Section 2, ch. 45, SLA 2010, which enacted this section, took effect September 2, 2010.

**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**

- 200. Conditions for use
- 210. Request for proposals
- 220. Standard overhead rate
- 230. Disclosure of proposals; return of proposals
- 240. Discussion with responsible offerors and revisions to proposals

**Section**

- 250. Award of contract
- 260. Contract contents
- 265. Multi-step sealed proposals
- 270. Architectural, engineering, and land surveying contracts

**Administrative Code.** — For competitive sealed proposals, see 2 AAC 12, art. 4.  
For competitive sealed proposals for architect, engineer, or land surveying services, see 2 AAC 12, art. 5.

**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.

(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 procurement officer do competitive sealed proposal bidding, a contract may be

(c) When the commissioner advantageous to the state, requesting the submission provided by the offeror. They submitted contain a single p § 15 ch 137 SLA 1996)

Cited in Gunderson v. Univers P.2d 229 (Alaska 1996).

**Sec. 36.30.210. Request** als must contain the date, ti of the supplies, construction contract, and the terms und services are to be provided.

(b) An offeror for a con registration as a contract construction contract, exce offeror, no later than five w to the state is identified, performance of the construc under AS 36.30.115(a). Th construction contractor or a tive sealed proposals for cc tracts.

(c) A request for proposa submit a proposal or conta included with the request. T be considered by the proc including the relative impor

(d) Notice of a request f under AS 36.30.130. The appropriate to notify prosp competitive sealed proposal

(e) The offeror must have request for proposals, for o

(f) In this section, "const (§ 2 ch 106 SLA 1986; am § ch 137 SLA 1996; am §§ 3,

**Effect of amendments.** — The effective July 10, 2003, inserted " the first sentence in subsection (b)

Cited in Gunderson v. Univers P.2d 229 (Alaska 1996).

**Sec. 36.30.220. Standa** another agency under a c

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; return of proposals.** (a) The procurement officer shall open proposals so as to avoid disclosure of contents to competing offerors before notice of intent to award a contract is issued. 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.

(b) If a solicitation is cancelled under AS 36.30.350 after proposals are received but before a notice of intent to award a contract has been issued under AS 36.30.365, a protest of the solicitation or of the cancellation of the solicitation has not been filed by an interested party under AS 36.30.560, and the time specified in AS 36.30.565(a) for filing such a protest has expired, the procurement officer may return a proposal to the offeror that made the proposal. The procurement officer shall keep a list of returned proposals in the file for the solicitation. (§ 2 ch 106 SLA 1986; am §§ 17, 18 ch 137 SLA 1996)

**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) or 36.30.175. (§ 2 ch 106 SLA 1986; am § 9 ch 102 SLA 1989; am § 4 ch 114 SLA 1992; am § 3 ch 45 SLA 2010)

**Effect of amendments.** — The 2010 amendment, effective September 2, 2010, in (b), added "or 36.30.175" at the end of the subsection.

**Award upheld.** — Provider of p failed to prove that Department c curement officer involved in assigni operation of an adult community re a competing lower bidder acted i biased, or lacked impartiality. KI Dep't of Admin., 876 P.2d 1102 (Ala) **Qualified immunity.** — State

**Sec. 36.30.260. Contract proposals must contain**

- (1) a statement of the amo
- (2) the date for the supplie
- (3) a description of the sup provided; and
- (4) certification by the proj contracting agency, or a design be encumbered for the amount 1996)

**Sec. 36.30.265. Multi-step** initially prepare a definitive p selection criteria, the procurem. the submission of unpriced tech limited to the offerors whose off criteria set out in the expressio

**Sec. 36.30.270. Architectur**

- (a) Notwithstanding conflicting officer shall negotiate a contract or person of demonstrated comp services. The procurement office reasonable compensation as deter the estimated value of the serv professional nature of the service firm or person, the procurement (
- (1) proximity to the project site prohibits this factor from being cc
  - (2) employment practices of the
  - (b) If negotiations with the mos section are not successful, the pro qualified firms or persons of demo procurement officer may reject all
  - (c) This section does not apply t if the procurement officer certifies
  - (d) Notwithstanding the other p include price as an added factor surveying services when, in the required are repetitious in nature, a are thoroughly defined by measurab or persons making proposals to comp the services required. In order to in

## 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, Dep't of Admin.*, 876 P.2d 1102 (Alaska 1994).

**Qualified immunity.** — State procurement offi-

cial was entitled only to qualified, not absolute, immunity with regard to a tort claim arising from bid evaluation; their limited discretion under this section, and the rarity of such lawsuits tipped the balance in favor of qualified immunity, although the availability of adequate remedies under AS 36.30.585 in the bid protest process weighed in favor of absolute immunity. *Weed v. Bachner Co.*, 230 P.3d 697 (Alaska 2010).

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

- (1) a statement of the amount of the contract;
- (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 money is available in an appropriation to be encumbered for the amount of the contract. (§ 2 ch 106 SLA 1986; am § 19 ch 137 SLA 1996)

**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

e to a request for competitive head rate within its proposal. large established for services to compensate the agency for with the services contracted

**proposals.** (a) The procure- ure of contents to competing sued. A register of proposals prepared in accordance with d the proposals are open for contract is issued under AS : procurement officer concurs, the proposal documents are

er proposals are received but under AS 36.30.365, a protest on has not been filed by an l in AS 36.30.565(a) for filing turn a proposal to the offeror a list of returned proposals in 7, 18 ch 137 SLA 1996)

**s and revisions to propos-** regulations adopted by the nsible offerors who submit g selected for award for the and responsiveness to, the of being selected for award ny opportunity for discussion after submissions and before nd final offers. In conducting ation derived from proposals oly to meetings with offerors

ment officer shall award a sible and responsive offeror ntageous to the state taking in the request for proposals- tion. The contract file must

o the state, the procurement ations of the commissioner, 36.30.170(b), is offering the ace under AS 36.30.170(e) or 89; am § 4 ch 114 SLA 1992;

designated Alaska product of commerce, community, (a) of this section. The ment shall maintain a list (b) of this section. (§ 2 ch

this section, "commissioner of omic development" was changed commerce, community, and eco- in accordance with § 3, ch. 47,

l under this chapter shall at determines that a point e state. A bid or proposal y location and must state 137 SLA 1996)

The commissioner of com- gulations establishing the manufactured in the state r a product qualifies as a of the products annually. iate list.

at are d or manufactured in the

manufactured in the state te are Class III products.

2 ch 106 SLA 1986; am

this section, "commissioner of mic development" was changed ommerce, community, and eco- in accordance with § 3, ch. 47,

wise required under AS 38, when a state agency l must be recycled paper s, after application of the r is more expensive than

ncy may identify specific SLA 1986)

**Sec. 36.30.335. Relationship to other product preferences.** This chapter does not modify AS 36.15.010 and 36.15.020 regarding preference for Alaska forest products, or AS 36.15.050 and 36.15.060 regarding preference for Alaska agricultural and fisheries products, except as provided in AS 36.30.170(b), (c), (e) — (h), 36.30.175, and 36.30.337. (§ 29 ch 137 SLA 1996; am § 4 ch 45 SLA 2010)

**Revisor's notes.** — In 1998, "AS 36.30.337" was substituted for "AS 36.30.339" in this section to reflect the 1996 renumbering of AS 36.30.339.

**Effect of amendments.** — The 2010 amendment, effective September 2, 2010, added "36.30.175," preceding "or 36.30.337".

**Sec. 36.30.336. Application.** Notwithstanding other provisions of this chapter, AS 36.30.322 — 36.30.338 apply to all procurements subject to this chapter, except as provided in AS 36.15.050 and AS 36.30.322(b). (§ 2 ch 106 SLA 1986; am § 3 ch 62 SLA 1987; am § 16 ch 65 SLA 1987)

**Sec. 36.30.337. Procurement preference for recycled products.** (a) In the evaluation of a bid or proposal for an agency procurement of products, the agency shall decrease the bid or proposal by five percent if the bid or proposal indicates that the products being purchased will be recycled products.

(b) A decrease made under (a) of this section is in addition to other preferences allowed for the procurement.

(c) The department shall establish the minimum percentage of recycled content that will qualify a product as a recycled product under (a) of this section. (§ 4 ch 175 SLA 1990)

**Revisor's notes.** — Formerly AS 36.30.339. Renumbered in 1996 under § 49, ch. 137, SLA 1996.

**Sec. 36.30.338. Definitions.** In AS 36.30.322 — 36.30.338,

(1) "Alaska product" means a product of which not less than 25 percent of the value, as determined in accordance with regulations adopted under AS 36.30.332(a), has been added by manufacturing or production in the state;

(2) "produced or manufactured" means processing, developing, or making an item into a new item with a distinct character and use through the application within the state of materials, labor, skill, or other services;

(3) "product" means materials or supplies but does not include gravel and asphalt;

(4) "recycled Alaska product" means an Alaska product of which not less than 50 percent of the value of the product consists of a product that was previously used in another product, if the recycling process is done in the state. (§ 2 ch 106 SLA 1986; am § 17 ch 65 SLA 1987; am § 6 ch 63 SLA 1988)

**Revisor's notes.** — Reorganized in 1986 to alphabetize the defined terms.

*Sec. 36.30.339. [Renumbered as AS 36.30.337.]*

### Article 6. Contract Formation and Modification.

**Section**

- 340. Review and approval by the Attorney General
- 350. Solicitation cancellation, bid and proposal rejection, and delay of opening bid or proposal
- 360. Determination of nonresponsibility
- 362. Award of a contract to a nonresident
- 365. Notice of intent to award a contract
- 370. Permissible types of contracts
- 380. Contract term and cancellation

**Section**

- 400. Required cost and pricing data and contract provisions
- 410. Right to inspect plant
- 420. Right to audit records
- 430. Contract clauses
- 460. Modification of standard clauses
- 470. Fiscal effects of construction contract modifications