

LEG. FINANCE - BILLS 1985 - 1986 2237

CSSB 341 cont. 2237

1 procedures for acquiring them;

2 (11) providing for conducting price analysis;

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

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

7 (14) conditions under which an agency may use the services  
8 of an employment program as defined under AS 36.30.100(c);

9 (15) a bidder's or offeror's duties under AS 36.30.115 and  
10 36.30.210; and

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

15 Sec. 36.30.050. LISTS OF CONTRACTORS. (a) The commissioner  
16 shall establish and maintain lists of persons who desire to provide  
17 supplies, services, professional services, or construction services to  
18 the state.

19 (b) A person who desires to be on a list shall submit to the  
20 commissioner evidence of a valid Alaska business license together with  
21 a biennial fee established by regulation in an amount reasonably  
22 calculated to pay the costs of administering this section. A con-  
23 struction contractor shall also submit a valid certificate of regis-  
24 tration issued under AS 08.18. The commissioner, by regulation, may  
25 require submission of additional information.

26 (c) The lists may be used by the chief procurement officer or an  
27 agency when issuing invitations to bid or requests for proposals under  
28 this chapter. The lists may be used by the Legislative Council, the  
29 court system, the Alaska State Housing Authority, and the Alaska

1 Railroad Corporation.

2 (d) The lists shall be used in providing notice of intent to  
3 make a small procurement to Alaska bidders as defined under AS 36.30.-  
4 170(c). A procurement officer who intends to make a procurement under  
5 AS 36.30.320 shall request names from the appropriate list and the  
6 department shall furnish names of Alaska bidders on a rotating basis  
7 from the list in response to each request.

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

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

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

24 (d) In this section, "specification" means a description of the  
25 physical or functional characteristics, or of the nature of a supply,  
26 service, professional service, or construction project; it may include  
27 requirements for licensing, inspecting, testing, and delivery.

28 Sec. 36.30.070. SUPPLY MANAGEMENT. The commissioner shall adopt  
29 regulations governing the

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

7 Sec. 36.30.080. LEASES. (a) The department shall lease space  
8 for the use of the state or an agency wherever it is necessary and  
9 feasible, subject to compliance with the requirements of this chapter.  
10 A lease may not provide for a period of occupancy greater than 40  
11 years. An agency requiring office, warehouse, or other space shall  
12 lease the space through the department.

13 (b) The department may enter into lease-financing agreements,  
14 including lease-purchase agreements and agreements related to the  
15 issuance of certificates of participation. A lease-financing agree-  
16 ment must provide that lease payments are subject to annual appropria-  
17 tion.

18 (c) If the department intends to enter into a lease or lease-  
19 financing agreement with an annual rent to the state anticipated to  
20 exceed \$1,000,000, the department shall provide notice to the legisla-  
21 ture. The notice must include the anticipated annual lease obligation  
22 amount and the anticipated total construction, acquisition, or other  
23 costs of the project. The department may not enter into an agreement  
24 under this subsection unless the project has been approved by the  
25 legislature by law. An appropriation for the project does not consti-  
26 tute approval of the project for purposes of this subsection.

27 ARTICLE 2. COMPETITIVE SEALED BIDDING.

28 Sec. 36.30.100. GENERAL POLICY. (a) Except as otherwise pro-  
29 vided in this chapter, or unless specifically exempted by law, an

1 agency contract shall be awarded by competitive sealed bidding.

2 (b) Competitive sealed bidding is not required

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

7 (2) when rates are fixed by law or ordinance and no  
8 competitive alternative exists;

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

11 (4) for the purchase of products or services provided by  
12 the correctional industries program established under AS 33.32;

13 (5) for professional services; or

14 (6) for concessions operated on state property.

15 (c) In this section "employment program" means a nonprofit  
16 program to increase employment opportunities for individuals with  
17 physical or mental disabilities that constitute substantial handicaps  
18 to employment.

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

24 (b) When responding to the invitation to bid, the bidder shall  
25 supply evidence of the bidder's valid Alaska business license. A  
26 bidder for a construction contract shall also submit evidence of the  
27 bidder's registration under AS 08.18.

28 Sec. 36.30.115. SUBCONTRACTORS. (a) Within 24 hours after  
29 opening of bids, the two apparent low bidders shall submit a list of

1 the subcontractors the bidders propose to use in the performance of  
2 the contract. The list shall include the name and location of the  
3 place of business for each subcontractor and evidence of the subcon-  
4 tractor's valid Alaska business license. A bidder for a construction  
5 contract shall also submit evidence of each subcontractor's registra-  
6 tion under AS 08.18.

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

- 9 (1) fails to comply with AS 08.18;
- 10 (2) files for bankruptcy or becomes insolvent;
- 11 (3) fails to execute a contract with the bidder involving  
12 performance of the work for which the subcontractor was listed;
- 13 (4) fails to obtain bonding;
- 14 (5) fails to obtain insurance acceptable to the state;
- 15 (6) fails to perform the contract with the bidder involving  
16 work for which the subcontractor was listed;
- 17 (7) must be substituted in order for the prime contractor  
18 to satisfy required federal affirmative action requirements;
- 19 (8) refuses to agree or abide with the bidder's labor  
20 agreement; or
- 21 (9) is determined by the procurement officer not to be a  
22 responsible bidder.

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

29 (d) A bidder who attempts to circumvent the requirements of this

1 section by listing as a subcontractor another contractor who, in turn,  
2 sublets the majority of the work required under the contract violates  
3 this section.

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

6 (1) cancel the contract; or

7 (2) after notice and a hearing, assess a penalty on the  
8 bidder in an amount that does not exceed 10 percent of the value of  
9 the subcontract at issue.

10 Sec. 36.30.120. BID SECURITY. (a) Bid security shall be re-  
11 quired for all competitive sealed bidding for construction contracts  
12 when the price is estimated by the procurement officer to exceed an  
13 amount established by regulation of the commissioner. Bid security on  
14 construction contracts under the amount set by the commissioner may be  
15 required when the circumstances warrant. Bid security may be required  
16 for competitive sealed bidding for contracts for supplies, services,  
17 or professional services in accordance with regulations of the commis-  
18 sioner when needed for the protection of the state.

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

23 (1) 10 percent of the amount of the bid if the bid does not  
24 exceed \$100,000; or

25 (2) 10 percent of the first \$100,000 and five percent of  
26 the amount of the bid over \$100,000 if the bid exceeds \$100,000 up to  
27 a maximum of \$200,000 in security.

28 (c) When the invitation to bid requires security, the procure-  
29 ment officer shall reject a bid that does not comply with the bid

1 security requirement unless, in accordance with regulations, the  
2 officer determines that the bid fails to comply in a nonsubstantial  
3 manner with the security requirements.

4 Sec. 36.30.130. PUBLIC NOTICE OF INVITATION TO BID. (a) The  
5 procurement officer shall give adequate public notice of the invita-  
6 tion to bid at least 21 days before the date for the opening of bids.  
7 If a determination is made in writing that a shorter notice period is  
8 necessary for a particular bid, the 21-day period may be shortened.  
9 The determination shall be made by the chief procurement officer for  
10 bids for supplies, services, or professional services. The determina-  
11 tion shall be made by the commissioner of transportation and public  
12 facilities for bids for construction or acquisition of property for  
13 the state equipment fleet. Notice shall be published in the Alaska  
14 Administrative Journal. The time and manner of notice must be in  
15 accordance with regulations adopted by the commissioner of adminis-  
16 tration. When practicable, notice may include

17 (1) publication in a newspaper calculated to reach prospec-  
18 tive bidders;

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

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

23 (b) Failure to comply with the notice requirements of this  
24 section does not invalidate a bid or the award of a contract. If the  
25 state fails to substantially comply with the requirements of (a) of  
26 this section, the state is liable for damages caused by that failure.

27 Sec. 36.30.140. BID OPENING. (a) The procurement officer shall  
28 open bids publicly in the presence of one or more witnesses at the  
29 time and place designated in the invitation to bid. The amount of

1 each bid and other relevant information that is specified by regula-  
2 tion of the commissioner, together with the name of each bidder, shall  
3 be recorded.

4 (b) The information recorded under (a) of this section is open  
5 to public inspection as soon as practicable before the notice of  
6 intent to award a contract is given under AS 36.30.365. The bids are  
7 not open for public inspection until ~~later~~ the notice of intent to  
8 award a contract is given. To the extent the bidder designates and  
9 the procurement officer concurs, trade secrets and other proprietary  
10 data contained in a bid document are confidential.

11 Sec. 36.30.150. BID ACCEPTANCE AND BID EVALUATION. (a) Bids  
12 shall be unconditionally accepted without alteration or correction,  
13 except as authorized in AS 36.30.160. The procurement officer shall  
14 evaluate bids based on the requirements set out in the invitation to  
15 bid, which may include criteria to determine acceptability such as  
16 inspection, testing, quality, delivery, and suitability for a parti-  
17 cular purpose. The criteria that will affect the bid price and be  
18 considered in evaluation for award must be objectively measurable,  
19 such as discounts, transportation costs, and total or life cycle  
20 costs. The invitation to bid must set out the evaluation criteria to  
21 be used. Criteria may not be used in bid evaluation if they are not  
22 set out in the invitation to bid.

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

1           Sec. 36.30.160. LATE BIDS; CORRECTION OR WITHDRAWAL OF BIDS;  
2 CANCELLATION OF AWARDS. (a) Bids received after the bid due date and  
3 time indicated on the invitation to bid may not be accepted unless the  
4 delay was due to an error of the contracting agency.

5           (b) Correction or withdrawal of inadvertently erroneous bids  
6 before or after bid opening, or cancellation of awards or contracts  
7 based on bid mistakes may be permitted in accordance with regulations  
8 adopted by the commissioner. After bid opening, changes in bid prices  
9 or other provisions of bids prejudicial to the interest of the state  
10 or fair competition may not be permitted. Except as otherwise provid-  
11 ed by regulation, a decision to permit the correction or withdrawal of  
12 a bid, or to cancel an award or contract based on a bid mistake, shall  
13 be supported by a written determination made by the procurement offi-  
14 cer. If a bidder is permitted to withdraw a bid before award, an  
15 action may not be maintained against the bidder or the bid security.

16           Sec. 36.30.170. CONTRACT AWARD AFTER BIDS. (a) Except as  
17 provided in (b) of this section, the procurement officer shall award a  
18 contract based on the solicited bids with reasonable promptness by  
19 written notice to the lowest responsible and responsive bidder whose  
20 bid conforms in all material respects to the requirements and criteria  
21 set out in the invitation to bid.

22           (b) The procurement officer shall award a contract based on  
23 solicited bids to the lowest responsible and responsive Alaska bidder  
24 if the bid is not more than five percent higher than the lowest non-  
25 resident bidder's. In this subsection, "Alaska bidder" means a person  
26 who

27           (1) holds a current Alaska business license;

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

1 license;

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

5 (4) is incorporated or qualified to do business under the  
6 laws of the state, is a sole proprietorship, and the proprietor is a  
7 resident of the state or is a partnership, and all partners are resi-  
8 dents of the state; and

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

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

17 Sec. 36.30.190. MULTI-STEP SEALED BIDDING. When it is con-  
18 sidered impractical to initially prepare a definitive purchase de-  
19 scription to support an award based on price, the procurement officer  
20 may issue an invitation to bid requesting the submission of unpriced  
21 technical offers to be followed by an invitation to bid limited to the  
22 bidders whose offers are determined to be technically qualified under  
23 the criteria set out in the first solicitation.

24 ARTICLE 3. COMPETITIVE SEALED PROPOSALS.

25 Sec. 36.30.200. CONDITIONS FOR USE. (a) Except as otherwise  
26 provided in this chapter, or unless specifically exempted by law, an  
27 agency contract shall be awarded by competitive sealed proposals if it  
28 is not awarded by competitive sealed bidding. Construction may only  
29 be procured by competitive sealed proposals if the conditions under

1 (c) of this section are met.

2 (b) The commissioner may provide by regulation that it is either  
3 not practicable or not advantageous to the state to procure specified  
4 types of supplies, services, or construction by competitive sealed  
5 bidding that would otherwise be procured by that method. When the  
6 chief procurement officer, or for construction contracts or procure-  
7 ments for the state equipment fleet, the commissioner of transporta-  
8 tion and public facilities, determines in writing that the use of  
9 competitive sealed bidding is either not practicable or not advanta-  
10 geous to the state, a contract may be entered into by competitive  
11 sealed proposals in accordance with the regulations. When it is  
12 determined that it is practicable but not advantageous to use competi-  
13 tive sealed bidding, the chief procurement officer or commissioner of  
14 transportation and public facilities shall specify with particularity  
15 the basis for the determination.

16 (c) When the chief procurement officer determines that it is  
17 advantageous to the state, a procurement officer may issue a request  
18 for proposals requesting the submission of offers to provide con-  
19 struction in accordance with a design provided by the offeror. The  
20 request for proposals shall require that each proposal submitted  
21 contain a single price that includes the design/build.

22 Sec. 36.30.210. REQUEST FOR PROPOSALS. (a) A request for  
23 competitive sealed proposals must contain the date, time and place for  
24 delivering proposals, a specific description of the supplies, con-  
25 struction, services, or professional services to be provided under the  
26 contract, and the terms under which the supplies, construction, ser-  
27 vices, or professional services are to be provided. The request shall  
28 require the offeror to submit evidence of the offeror's valid Alaska  
29 business license and, no later than the date by which proposals must

1 be received, to list subcontractors the offeror proposes to use in the  
2 performance of the contract. The list shall include the name and  
3 location of the place of business for each subcontractor and evidence  
4 of the subcontractor's valid Alaska business license. An offeror for  
5 a construction contract shall also submit evidence of the offeror's  
6 registration under AS 08.18 and evidence of registration for each  
7 listed subcontractor.

8 (b) A request for proposals must contain that information neces-  
9 sary for an offeror to submit a proposal or contain references to any  
10 information that cannot reasonably be included with the request. The  
11 request must provide a description of the factors that will be con-  
12 sidered by the procurement officer when evaluating the proposals  
13 received, including the relative importance of price and other evalu-  
14 ation factors.

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

20 (d) The provisions of AS 36.30.115(b) - (e) apply to competitive  
21 sealed proposals.

22 Sec. 36.30.220. STANDARD OVERHEAD RATE. (a) An agency that  
23 provides services to another agency under a contract covered by this  
24 chapter shall establish a standard overhead rate. If an agency sub-  
25 mits a proposal in response to a request for competitive sealed pro-  
26 posals, the agency must include its standard overhead rate within its  
27 proposal.

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

1 is designed to compensate the agency for administration and support  
2 services incidentally provided with the services contracted for.

3 Sec. 36.30.230. TREATMENT OF PROPOSALS. The procurement officer  
4 shall open proposals so as to avoid disclosure of contents to compet-  
5 ing offerors during the process of negotiation. A register of pro-  
6 posals containing the name and address of each offeror shall be pre-  
7 pared in accordance with regulations adopted by the commissioner. The  
8 register and the proposals are open for public inspection after the  
9 notice of intent to award a contract is issued under AS 36.30.365. To  
10 the extent that the offeror designates and the procurement officer  
11 concurs, trade secrets and other proprietary data contained in the  
12 proposal documents are confidential.

13 Sec. 36.30.240. DISCUSSION WITH RESPONSIBLE OFFERORS AND REVI-  
14 SIONS TO PROPOSALS. As provided in the request for proposals, and  
15 under regulations adopted by the commissioner, discussions may be  
16 conducted with responsible offerors who submit proposals determined to  
17 be reasonably susceptible of being selected for award for the purpose  
18 of clarification to assure full understanding of, and responsiveness  
19 to, the solicitation requirements. Offerors reasonably susceptible of  
20 being selected for award shall be accorded fair and equal treatment  
21 with respect to any opportunity for discussion and revision of pro-  
22 posals, and revisions may be permitted after submissions and before  
23 the award of the contract for the purpose of obtaining best and final  
24 offers. In conducting discussions, the procurement officer may not  
25 disclose information derived from proposals submitted by competing  
26 offerors. AS 44.62.310 does not apply to meetings with offerors under  
27 this section.

28 Sec. 36.30.250. AWARD OF CONTRACT. (a) The procurement officer  
29 shall award a contract under competitive sealed proposals to the

1 responsible and responsive offeror whose proposal is determined in  
2 writing to be the most advantageous to the state taking into consid-  
3 eration price and the evaluation factors set out in the request for  
4 proposals. Other factors and criteria may not be used in the evalu-  
5 ation. The contract file must contain the basis on which the award is  
6 made.

7 (b) In determining whether a proposal is advantageous to the  
8 state, the procurement officer shall take into account, in accordance  
9 with regulations of the commissioner, whether the offeror qualifies as  
10 an Alaskan bidder under AS 36.30.170(b) or is offering the services of  
11 an employment program as defined in AS 36.30.100(c).

12 Sec. 36.30.260. CONTRACT EXECUTION. A contract awarded under  
13 competitive sealed proposals must contain

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

15 (2) the date for the supplies to be delivered or the dates  
16 for construction, services, or professional services to begin and be  
17 completed;

18 (3) a description of the supplies, construction, services,  
19 or professional services to be provided; and

20 (4) certification by the project director for the contract-  
21 ing agency, the head of the contracting agency, or a designee that  
22 sufficient funds are available in an appropriation to be encumbered  
23 for the amount of the contract.

24 Sec. 36.30.270. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING  
25 CONTRACTS. (a) Notwithstanding conflicting provisions of AS 36.30.-  
26 100 - 36.30.260, a procurement officer shall negotiate a contract for  
27 an agency with the most qualified and suitable firm or person of  
28 demonstrated competence for architectural, engineering, or land  
29 surveying services. The procurement officer shall award a contract

1 for those services at fair and reasonable compensation as determined  
2 by the procurement officer, after consideration of the estimated value  
3 of the services to be rendered, and the scope, complexity, and  
4 professional nature of the services. When determining the most  
5 qualified and suitable firm or person, the procurement officer shall  
6 consider the

7 (1) proximity to the project site of the office of the firm  
8 or person unless federal law prohibits this factor from being  
9 considered in the awarding of the contract; and

10 (2) employment practices of the firm or person with regard  
11 to women and minorities.

12 (b) If negotiations with the most qualified and suitable firm or  
13 person under (a) of this section are not successful, the procurement  
14 officer shall negotiate a contract with other qualified firms or  
15 persons of demonstrated competence, in order of public ranking. The  
16 procurement officer may reject all or part of a proposal.

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

20 (d) Notwithstanding the other provisions of this section, a  
21 procurement officer may include price as an added factor in selecting  
22 architectural, engineering, and land surveying services when, in the  
23 judgment of the procurement officer, the services required are repeti-  
24 tious in nature, and the scope, nature, and amount of services re-  
25 quired are thoroughly defined by measurable and objective standards to  
26 reasonably enable firms or persons making proposals to compete with a  
27 clear understanding and interpretation of the services required. In  
28 order to include price as a factor in selection, a majority of the  
29 persons involved by the procurement officer in evaluation of the

1 proposals must be registered in the state to perform architectural,  
2 engineering, or land surveying services.

3 (e) This section does not apply to a contract that incorporates  
4 both design services and construction.

5 ARTICLE 4. OTHER PROCUREMENT METHODS.

6 Sec. 36.30.300. SOLE SOURCE PROCUREMENTS. (a) A contract may  
7 be awarded for supplies, services, professional services, or construc-  
8 tion without competitive sealed bidding, competitive sealed proposals,  
9 or other competition in accordance with regulations adopted by the  
10 commissioner of administration. A contract may be awarded under this  
11 section only when the chief procurement officer or, for construction  
12 contracts or procurements for the state equipment fleet, the commis-  
13 sioner of transportation and public facilities determines in writing  
14 that there is only one source for the required procurement or con-  
15 struction. A sole source procurement may not be awarded if a rea-  
16 sonable alternative source exists. The written determination must  
17 include findings of fact that support by clear and convincing evidence  
18 the determination that only one source exists. The authority to make  
19 the determination required by this subsection may not be delegated.

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

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

28 (d) Procurement requirements may not be artificially divided,  
29 fragmented, aggregated or structured so as to constitute a purchase

1 under this section or to circumvent the source selection procedures  
2 required by AS 36.30.100 - 36.30.270.

3 Sec. 36.30.310. EMERGENCY PROCUREMENTS. Procurements may be  
4 made under emergency conditions as defined in regulations adopted by  
5 the commissioner when there exists a threat to public health, welfare,  
6 or safety, when a situation exists that makes a procurement through  
7 competitive sealed bidding or competitive sealed proposals impracti-  
8 cable or contrary to the public interest, or to protect public or  
9 private property. An emergency procurement need not be made through  
10 competitive sealed bidding or competitive sealed proposals but shall  
11 be made with competition that is practicable under the circumstances.  
12 A written determination by the procurement officer of the basis for  
13 the emergency and for the selection of the particular contractor shall  
14 be included in the contract file. The written determination must  
15 include findings of fact that support the determination.

16 Sec. 36.30.320. SMALL PROCUREMENTS. (a) A procurement for  
17 supplies, services, or construction that does not exceed an aggregate  
18 dollar amount of \$5,000 may be made in accordance with regulations  
19 adopted by the commissioner for small procurements.

20 (b) A contract for professional services that does not exceed  
21 \$25,000 may be made under regulations adopted by the commissioner for  
22 small procurements, except that an agency may not contract for the  
23 services of legal counsel without the approval of the attorney  
24 general.

25 (c) Small procurements need not be made through competitive  
26 sealed bidding or competitive sealed proposals but shall be made with  
27 competition that is practicable under the circumstances.

28 (d) Procurement requirements may not be artificially divided or  
29 fragmented so as to constitute a purchase under this section or to

1 circumvent the source selection procedures required by AS 36.30.100 -  
2 36.30.270.

3 (e) The procurement officer shall give adequate public notice of  
4 intent to make a procurement under this section in accordance with  
5 regulations adopted by the commissioner. Notices shall also be pro-  
6 vided to those Alaska bidders designated by the commissioner under  
7 AS 36.30.050(d).

8 ARTICLE 5. CONTRACT FORMATION AND MODIFICATION.

9 Sec. 36.30.340. REVIEW AND APPROVAL BY THE ATTORNEY GENERAL.

10 If a contract contains a term that is in conflict with a state  
11 standard form contract term or if a standard term is deleted or  
12 modified by a term that is not standard, the contract must be reviewed  
13 by the Attorney General and approved as to form.

14 Sec. 36.30.350. BID CANCELLATION, REJECTION. An invitation to  
15 bid, a request for proposals, or other solicitation may be cancelled  
16 or any or all bids or proposals may be rejected in whole or in part or  
17 the date for opening bids or proposals may be delayed when it is in  
18 the best interests of the state in accordance with regulations adopted  
19 by the commissioner. The reasons for cancellation, rejection, or  
20 delay in opening bids or proposals shall be made part of the contract  
21 file.

22 Sec. 36.30.360. DETERMINATION OF RESPONSIBILITY. (a) A written  
23 determination of responsibility of a bidder or offeror shall be made  
24 by the procurement officer in accordance with regulations adopted by  
25 the commissioner. The unreasonable failure of a bidder or offeror to  
26 promptly supply information in connection with an inquiry with respect  
27 to responsibility is grounds for a determination of nonresponsibility  
28 with respect to the bidder or offeror.

29 (b) Information furnished by a bidder or offeror under (a) of

1 this section is confidential and may not be disclosed without prior  
2 written consent by the bidder or offeror.

3 Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESI-  
4 DENT. If the procurement officer awards a contract to a person who  
5 does not reside or maintain a place of business in the state and if  
6 the supplies, services, professional services, or construction that is  
7 the subject of the contract could have been obtained from sources in  
8 the state, the procurement officer shall issue a written statement  
9 explaining the basis of the award. The statement required under this  
10 section shall be kept in the contract file.

11 Sec. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT. At least  
12 10 days before the formal award of a contract under this chapter the  
13 procurement officer shall provide to each bidder or offeror notice of  
14 intent to award a contract. The notice shall conform to regulations  
15 adopted by the commissioner.

16 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of  
17 this section, any type of contract that will promote the best inter-  
18 ests of the state may be used, except that the use of a cost-plus-  
19 a-percentage-of-cost contract is prohibited. A cost-reimbursement  
20 contract may be used only when a determination is made in writing by  
21 the procurement officer that a cost-reimbursement contract is likely  
22 to be less costly to the state than any other type or that it is  
23 impracticable to obtain the supplies, services, professional services,  
24 or construction required except under a cost-reimbursement contract.

25 Sec. 36.30.380. APPROVAL OF ACCOUNTING SYSTEM. Except for a  
26 contract awarded through competitive sealed bidding or a firm fixed-  
27 price contract, a contract type may not be used unless it has been  
28 determined in writing by the procurement officer that the proposed  
29 contractor's accounting system

1 (1) will permit timely development of all necessary cost  
2 data in the form required by the specific contract type contemplated;  
3 and

4 (2) is adequate to allocate costs in accordance with gen-  
5 erally accepted accounting principles.

6 Sec. 36.30.390. MULTI-TERM CONTRACTS. (a) Unless otherwise  
7 provided by law, a contract for supplies, services, or professional  
8 services may be entered into for any period of time considered to be  
9 in the best interests of the state provided the term of the contract  
10 and conditions of renewal or extension, if any, are included in the  
11 solicitation and funds are available for the first fiscal period at  
12 the time of contracting. Payment and performance obligations for  
13 succeeding fiscal periods shall be subject to the availability and  
14 appropriation of funds for them.

15 (b) Before using a multi-term contract, the procurement officer  
16 shall determine in writing that

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

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

22 (c) When funds are not appropriated or otherwise made available  
23 to support continuation of performance in a subsequent fiscal period,  
24 the contract shall be cancelled. The contractor may only be reim-  
25 bursed for the reasonable value of any nonrecurring costs incurred but  
26 not amortized in the price of the supplies, services, or professional  
27 services delivered under the contract that are not otherwise recover-  
28 able. The cost of cancellation may be paid from any appropriations  
29 available for these purposes.

1           Sec. 36.30.400. COST OR PRICING DATA. (a) Before an award of a  
2 contract or a change order or contract modification, the contractor or  
3 prospective contractor shall submit cost and pricing data. The con-  
4 tractor or prospective contractor shall certify that, to the best of  
5 the contractor's or prospective contractor's knowledge and belief, the  
6 data submitted is accurate, complete, and current as of a mutually  
7 determined specified date and will continue to be accurate and com-  
8 plete during the performance of the contract.

9           (b) When a contractor becomes aware of a situation that may form  
10 the basis of a claim for compensation that exceeds the amount desig-  
11 nated as the base amount of the contract and before performing addi-  
12 tional work or supplying additional materials, the contractor shall  
13 submit cost and pricing data on the additional work or materials. The  
14 contractor shall certify that, to the best of the contractor's knowl-  
15 edge and belief, the data submitted is accurate, complete, and current  
16 and is the actual cost to the contractor of performing the additional  
17 work or supplying the additional materials.

18           (c) A contract, change order, or contract modification under  
19 which a certificate is required under (a) or (b) of this section must  
20 contain a provision that the price to the state, including the con-  
21 tractor's profit or fee, will be adjusted to exclude any significant  
22 sums by which the state finds that the price is increased because the  
23 cost or pricing data furnished by the contractor or prospective con-  
24 tractor is inaccurate, incomplete, or not current as of the date  
25 agreed upon by the parties.

26           (d) The requirements of (a) of this section do not apply when  
27           (1) the contract price is based on adequate price competi-  
28 tion;

29           (2) the contract price is set by law or regulation; or

1 (3) it is determined by the procurement officer in writing  
2 and in accordance with regulations adopted by the commissioner that  
3 the requirements of (a) of this section may be waived, and the reasons  
4 for waiver are stated.

5 Sec. 36.30.410. RIGHT TO INSPECT PLANT. The state may, at  
6 reasonable times, inspect the part of the plant or place of business  
7 of a contractor or subcontractor that is related to the performance of  
8 a contract awarded or to be awarded by an agency.

9 Sec. 36.30.420. RIGHT TO AUDIT RECORDS. (a) The state may, at  
10 reasonable times and places, audit the books and records of a person  
11 who has submitted cost or pricing data under AS 36.30.400 to the extent  
12 that the books and records relate to the cost or pricing data. A person  
13 who receives a contract, change order, or contract modification for  
14 which cost or pricing data is required, shall maintain books and  
15 records that relate to the cost or pricing data for three years  
16 after the date of final payment under the contract, unless a shorter  
17 period is authorized in writing by the commissioner.

18 (b) The state may audit the books and records of a contractor or  
19 subcontractor to the extent that the books and records relate to the  
20 performance of the contract or subcontract. Books and records shall  
21 be maintained by the contractor for a period of three years after the  
22 date of final payment under the prime contract and by the subcontractor  
23 for a period of three years after the date of final payment under  
24 the subcontract, unless a shorter period is authorized in writing by  
25 the commissioner.

26 Sec. 36.30.430. STANDARD MODIFICATION CLAUSES FOR CONTRACTS  
27 (a) The commissioner shall adopt regulations permitting the inclusion  
28 of clauses providing for adjustments in prices, time of performance,  
29 or other contract provisions as appropriate.

1 (b) The commissioner shall adopt regulations permitting or  
2 requiring the inclusion in state contracts of clauses providing for  
3 appropriate remedies and covering the following subjects:

- 4 (1) liquidated damages;  
5 (2) specified excuses for delay or nonperformance;  
6 (3) termination of the contract for default; and  
7 (4) termination of the contract in whole or in part for the  
8 convenience of the state.

9 Sec. 36.30.460. MODIFICATION OF STANDARD CLAUSES. The procure-  
10 ment officer or the head of a contracting agency may vary the clauses  
11 adopted under AS 36.30.430 for inclusion in a particular state con-  
12 tract if the

13 (1) variations are supported by a written determination  
14 that states the circumstances justifying the variation; and

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

16 Sec. 36.30.470. FISCAL RESPONSIBILITY. A contract modification,  
17 change order, or contract price adjustment under a construction con-  
18 tract in excess of an amount established by regulation of the commis-  
19 sioner is subject to prior written certification by the fiscal officer  
20 of the agency responsible for funding the project or the contract, or  
21 other official responsible for monitoring and reporting upon the  
22 status of the costs of the total project budget or contract budget, as  
23 to the effect of the contract modification, change order, or adjust-  
24 ment in contract price on the total project budget or the total con-  
25 tract budget. If the certification of the fiscal officer or other  
26 responsible official discloses a resulting increase in the total  
27 project budget or the total contract budget, the procurement officer  
28 may not approve the contract modification, change order, or adjustment  
29 in contract price unless sufficient funds are available, or the scope

1 of the project or contract is adjusted to permit the degree of com-  
2 pletion that is feasible within the total project budget or total  
3 contract budget as it existed before the contract modification, change  
4 order, or adjustment in contract price under consideration. A con-  
5 tract modification change order, or adjustment in contract that is  
6 signed by both parties and has been reasonably relied on by a contrac-  
7 tor, is presumed to be valid even if the provisions of this section  
8 have not been met.

9 Sec. 36.30.480. COST PRINCIPLE REGULATIONS. The commissioner  
10 shall adopt regulations setting out cost principles that shall be used  
11 to determine the allowability of incurred costs for the purpose of  
12 reimbursing costs under contract provisions that provide for the  
13 reimbursement of costs. If a written determination is approved at a  
14 level above the procurement officer, the cost principles may be modi-  
15 fied by contract.

16 ARTICLE 6. PROCUREMENT RECORDS AND REPORTS.

17 Sec. 36.30.500. RETENTION OF PROCUREMENT RECORDS. Procurement  
18 records shall be retained and disposed of in accordance with records  
19 retention guidelines and schedules approved by the state archivist.  
20 Retained documents shall be made available to the attorney general or  
21 a designee upon request and proper receipt.

22 Sec. 36.30.510. RECORDS OF CONTRACTS AWARDED UNDER COMPETITIVE  
23 SEALED PROPOSALS. A contract file open for public inspection shall be  
24 kept by the commissioner and the contracting agency for each contract  
25 awarded under competitive sealed proposals. The file kept by the  
26 commissioner shall contain a summary of the information in the file of  
27 the contracting agency. The file kept by the contracting agency must  
28 contain

29 (1) a copy of the contract;

1 (2) the register of proposals prepared under AS 36.30.230  
2 and a copy of each proposal submitted; and

3 (3) the written determination to award the contract pre-  
4 pared under AS 36.30.250.

5 Sec. 36.30.520. RECORDS OF SOLE SOURCE AND EMERGENCY PROCURE-  
6 MENTS. (a) The commissioner shall maintain for a minimum of five  
7 years a record listing all sole source procurement contracts made  
8 under AS 36.30.300 and emergency procurements made under AS 36.30.310.

9 The record must contain

10 (1) each contractor's name;

11 (2) the amount and type of each contract; and

12 (3) a listing of the supplies, services, professional  
13 services, or construction procured under each contract.

14 (b) The Department of Transportation and Public Facilities and  
15 any agency to whom the commissioner of administration or the commis-  
16 sioner of transportation and public facilities has delegated procure-  
17 ment authority under AS 36.30.015 shall, by October 1 of each year,  
18 submit to the commissioner of administration records of the type  
19 specified in (a) of this section. The commissioner of administration  
20 shall maintain these records as required by (a) of this section.

21 Sec. 36.30.530. PUBLIC ACCESS TO PROCUREMENT INFORMATION.  
22 Procurement information is public except as otherwise provided by law.

23 Sec. 36.30.540. REPORT TO LEGISLATURE. Beginning with Decem-  
24 ber 1, 1989, the commissioner shall biennially report to the legisla-  
25 ture concerning procurements by agencies. The report must include

26 (1) the records maintained by the commissioner under  
27 AS 36.30.510 and the records maintained under AS 36.30.520(a) for the  
28 previous two fiscal years;

29 (2) recommendations for changes in this chapter or other

1 laws based on implementation of this chapter in the previous two  
2 fiscal years;

3 (3) a description of any matters that involved litigation  
4 concerning this chapter in the previous two fiscal years;

5 (4) a list of procurements made under this chapter from  
6 out-of-state sources during the previous two fiscal years together  
7 with the total number of procurement contracts entered into during  
8 that period with out-of-state contractors and the total value of these  
9 contracts; this paragraph does not apply to procurements made under  
10 AS 36.30.320; and

11 (5) a list of procurements made under this chapter from  
12 state sources during the previous two fiscal years together with the  
13 total number of procurement contracts entered into during that period  
14 with state contractors and the total value of these contracts; this  
15 paragraph does not apply to procurements made under AS 36.30.320.

16 ARTICLE 7. LEGAL AND CONTRACTUAL REMEDIES.

17 Sec. 36.30.560. FILING OF A PROTEST. An interested party may  
18 protest the award of a contract, the proposed award of a contract, or  
19 a solicitation for supplies, services, professional services, or  
20 construction by an agency. The protest shall be filed with the pro-  
21 curement officer of the contracting agency in writing and include the  
22 following information:

23 (1) the name, address, and telephone number of the pro-  
24 tester;

25 (2) the signature of the protester or the protester's  
26 representative;

27 (3) identification of the contracting agency and the solici-  
28 tation or contract at issue;

29 (4) a detailed statement of the legal and factual grounds

1 of the protest, including copies of relevant documents; and

2 (5) the form of relief requested.

3 Sec. 36.30.565. TIME FOR FILING A PROTEST. (a) A protest based  
4 upon alleged improprieties in a solicitation involving competitive  
5 sealed bidding that are apparent before the bid opening shall be filed  
6 before the bid opening. A protest based on alleged improprieties in a  
7 solicitation involving competitive sealed proposals that are apparent

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

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

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

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

19 Sec. 36.30.570. NOTICE OF A PROTEST. The procurement officer  
20 shall immediately give notice of a protest filed under AS 36.30.565 to  
21 the contractor if a contract has been awarded or, if no award has been  
22 made, to all interested parties.

23 Sec. 36.30.575. STAY OF AWARD. If a protest is filed the award  
24 may be made unless the procurement officer of the contracting agency  
25 determines in writing that a

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

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

1           Sec. 36.30.580. DECISION BY THE PROCUREMENT OFFICER. (a) The  
2 procurement officer of the contracting agency shall issue a written  
3 decision containing the basis of the decision within 14 days after a  
4 protest has been filed. A copy of the decision shall be furnished to  
5 the protester by certified mail or other method that provides evidence  
6 of receipt.

7           (b) The time for a decision may be extended up to 26 days for  
8 good cause by the commissioner of administration, or for protests  
9 involving construction or procurements for the state equipment fleet,  
10 the commissioner of transportation and public facilities. If an  
11 extension is granted, the procurement officer shall notify the pro-  
12 tester in writing of the date the decision is due.

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

16           Sec. 36.30.585. PROTEST REMEDIES. (a) If the procurement  
17 officer sustains a protest in whole or in part, the procurement offi-  
18 cer shall implement an appropriate remedy.

19           (b) In determining an appropriate remedy, the procurement offi-  
20 cer shall consider the circumstances surrounding the solicitation or  
21 procurement including the seriousness of the procurement deficiencies,  
22 the degree of prejudice to other interested parties or to the integri-  
23 ty of the procurement system, the good faith of the parties, the  
24 extent the procurement has been accomplished, costs to the agency and  
25 other impacts on the agency of a proposed remedy, and the urgency of  
26 the procurement to the welfare of the state.

27           Sec. 36.30.590. APPEAL ON A PROTEST. (a) An appeal from a  
28 decision of a procurement officer on a protest may be filed by the  
29 protester with the commissioner of administration, or for protests

1 involving construction or procurements for the state equipment fleet,  
2 the commissioner of transportation and public facilities. An appeal  
3 shall be filed within five days after the decision is received by the  
4 protester. The protester shall file a copy of the appeal with the  
5 procurement officer.

6 (b) An appeal must contain the information required under  
7 AS 36.30.560. In addition, the appeal must include

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

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

11 Sec. 36.30.595. NOTICE OF A PROTEST APPEAL. (a) The procure-  
12 ment officer shall immediately give notice of an appeal filed under  
13 AS 36.30.590 to the contractor if a contract has been awarded or, if  
14 no award has been made, to all interested parties.

15 (b) The commissioner of administration or the commissioner of  
16 transportation and public facilities, as appropriate, shall, on re-  
17 quest, furnish a copy of the appeal to a person notified under (a) of  
18 this section, except that confidential material shall be deleted from  
19 the copy.

20 Sec. 36.30.600. STAY OF AWARD DURING PROTEST APPEAL. If a  
21 protest appeal is filed before a contract is awarded and the award was  
22 stayed under AS 36.30.575, the filing of the appeal automatically  
23 continues the stay until the commissioner of administration or the  
24 commissioner of transportation and public facilities, as appropriate,  
25 makes a written determination that the award of the contract without  
26 further delay is necessary to protect substantial interests of the  
27 state.

28 Sec. 36.30.605. PROTEST REPORT. (a) The procurement officer of  
29 the contracting agency shall file a complete report on the protest and

1 decision with the commissioner of administration or the commissioner  
2 of transportation and public facilities, as appropriate, within seven  
3 days after a protest appeal is filed. The procurement officer shall  
4 furnish a copy of the report to the protester and to interested par-  
5 ties that have requested a copy of the appeal under AS 36.30.595(b).

6 (b) The procurement officer may request an extension of time to  
7 prepare the protest report. The request must be in writing listing  
8 the reasons for the request. The commissioner of administration or  
9 the commissioner of transportation and public facilities, as appropri-  
10 ate, shall respond to the request in writing. If an extension is  
11 granted, the commissioner shall list the reasons for granting the  
12 extension and indicate the date the protest report is due. The com-  
13 missioner shall notify the protester in writing that the time for  
14 submission of the report has been extended and the date the report is  
15 due.

16 (c) The protester may file comments on the protest report with  
17 the commissioner of administration or the commissioner of transporta-  
18 tion and public facilities, as appropriate, within seven days after  
19 the report is received. The protester shall provide copies of the  
20 comments to the procurement officer and to interested parties that  
21 have requested a copy of the appeal under AS 36.30.595(b).

22 (d) The protester may request an extension of time to prepare  
23 the comments on the protest report. The request must be in writing  
24 listing the reasons for the request. The commissioner of administra-  
25 tion or the commissioner of transportation and public facilities, as  
26 appropriate, shall respond to the request in writing. If an extension  
27 is granted, the commissioner shall list the reasons for granting the  
28 extension and indicate the date the comments are due. The commission-  
29 er shall notify the procurement officer in writing that the time for

1 submission of the comments has been extended and the date the comments  
2 are due.

3 Sec. 36.30.610. DECISION WITHOUT HEARING. (a) The commissioner  
4 of administration or the commissioner of transportation and public  
5 facilities, as appropriate, shall dismiss a protest appeal before a  
6 hearing is held if it is determined in writing that the appeal is  
7 untimely under AS 36.30.590(a).

8 (b) The commissioner of administration or the commissioner of  
9 transportation and public facilities, as appropriate, may issue a  
10 decision on an appeal without a hearing if the appeal involves ques-  
11 tions of law without genuine issues of fact.

12 Sec. 36.30.615. HEARING ON PROTEST APPEAL. A hearing on a  
13 protest appeal shall be conducted in accordance with AS 36.30.670 and  
14 regulations adopted by the commissioner.

15 Sec. 36.30.620. CONTRACT CONTROVERSIES. (a) A contractor shall  
16 file a claim concerning a contract awarded under this chapter with the  
17 procurement officer. The contractor shall certify that the claim is  
18 made in good faith, that the supporting data are accurate and complete  
19 to the best of the contractor's knowledge and belief, and that the  
20 amount requested accurately reflects the contract adjustment for which  
21 the contractor believes the state is liable.

22 (b) If a controversy asserted by a contractor concerning a  
23 contract awarded under this chapter cannot be resolved by agreement,  
24 the procurement officer shall, after receiving a written request by  
25 the contractor for a decision, issue a written decision. The decision  
26 shall be made no more than 90 days after receipt by the procurement  
27 officer of all necessary information from the contractor. Failure of  
28 the contractor to furnish necessary information to the procurement  
29 officer constitutes a waiver of the claim. Before issuing the

1 decision the procurement officer shall review ~~the~~ facts relating to  
2 the controversy and obtain necessary assistance from legal, fiscal,  
3 and other advisors.

4 (c) The time for issuing a decision under (b) of this section  
5 may be extended for good cause by the commissioner of administration,  
6 or for a controversy involving a construction contract or procurement  
7 for the state equipment fleet, the commissioner of transportation and  
8 public facilities, if the controversy concerns an amount in excess of  
9 \$50,000. The procurement officer shall notify the contractor in  
10 writing that the time for the issuance of a decision has been extended  
11 and of the date by which a decision shall be issued.

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

- 15 (1) description of the controversy;
- 16 (2) reference to the pertinent contract provisions;
- 17 (3) statement of the agreed upon and disputed facts;
- 18 (4) statement of reasons supporting the decision; and
- 19 (5) statement substantially as follows:

20 "This is the final decision of the procurement officer.

21 This decision may be appealed to the commissioner of  
22 (administration/transportation and public facilities).

23 If you appeal, you must file a written notice of appeal  
24 with the commissioner within 14 days after you receive  
25 this decision."

26 (e) If a decision is not made by the date is due, the con-  
27 tractor may proceed as if the procurement officer had issued a deci-  
28 sion adverse to the contractor.

29 (f) If a controversy asserted by the state concerning a contract

1 awarded under this chapter cannot be resolved by agreement the matter  
2 shall be immediately referred to the commissioner of administration or  
3 the commissioner of transportation and public facilities, as appro-  
4 priate.

5 Sec. 36.30.625. APPEAL ON A CONTRACT CONTROVERSY. (a) An  
6 appeal from a decision of the procurement officer on a contract con-  
7 troversy may be filed by the contractor with the commissioner of  
8 administration, or for a controversy involving a construction contract  
9 or procurement for the state equipment fleet, the commissioner of  
10 transportation and public facilities. The appeal shall be filed  
11 within 14 days after the decision is received by the contractor. The  
12 contractor shall file a copy of the appeal with the procurement offi-  
13 cer.

14 (b) An appeal shall contain a copy of the decision being ap-  
15 pealed and identification of the factual or legal errors in the deci-  
16 sion that form the basis for the appeal.

17 Sec. 36.30.630. HEARING ON A CONTRACT CONTROVERSY. (a) Except  
18 as provided in (b) of this section, a hearing shall be conducted  
19 according to AS 36.30.670 and regulations adopted by the commissioner  
20 of administration on a contract controversy appealed to the commis-  
21 sioner of administration or the commissioner of transportation and  
22 public facilities or referred to either commissioner under AS 36.30.-  
23 620(f).

24 (b) Within 15 days after receipt of an appeal on a contract  
25 controversy the commissioner of administration or the commissioner of  
26 transportation and public facilities, as appropriate, may adopt the  
27 decision of the procurement officer as the final decision without a  
28 hearing.

29 Sec. 36.30.632. DELEGATION. The commissioner of administration

1 and the commissioner of transportation and public facilities may  
2 delegate responsibilities under AS 36.30.590 and 36.30.630 to the head  
3 of the contracting agency.

4 Sec. 36.30.635. AUTHORITY TO DEBAR OR SUSPEND. (a) After  
5 consultation with the using agency and the attorney general and after  
6 a hearing conducted according to AS 36.30.670 and regulations adopted  
7 by the commissioner of administration, the commissioner of administra-  
8 tion or the commissioner of transportation and public facilities may  
9 debar a person for cause from consideration for award of contracts.  
10 Notice of a debarment hearing shall be provided in writing at least  
11 seven days before the hearing. The debarment may not be for a period  
12 of more than three years.

13 (b) The commissioner of administration or the commissioner of  
14 transportation and public facilities, after consultation with the  
15 using agency and the attorney general, may suspend a person from  
16 consideration for award of contracts if there is probable cause for  
17 debarment and compelling reasons require suspension to protect state  
18 interests. The suspension may not be for a period exceeding three  
19 months.

20 (c) The authority to debar or suspend shall be exercised in  
21 accordance with regulations adopted by the commissioner of adminis-  
22 tration.

23 Sec. 36.30.640. CAUSES FOR DEBARMENT OR SUSPENSION. The causes  
24 for debarment or suspension include the following:

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

29 (2) conviction under state or federal statutes of

1 embezzlement, theft, forgery, bribery, falsification or destruction of  
2 records, receiving stolen property, or other offense indicating a lack  
3 of business integrity or business honesty that currently and seriously  
4 affects responsibility as a state contractor;

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

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

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

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

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

20 (6) for a violation of this chapter punishable under  
21 AS 36.30.930(2); and

22 (7) any other cause listed in regulations of the commis-  
23 sioner determined to be so serious and compelling as to affect respon-  
24 sibility as a state contractor, including debarment by another govern-  
25 mental entity for a cause listed in the regulations.

26 Sec. 36.30.645. WRITTEN DETERMINATIONS. (a) The commissioner  
27 of administration or the commissioner of transportation and public  
28 facilities shall issue a written decision to debar or suspend. The  
29 decision must

1 (1) state the reasons for the action taken; and  
2 (2) inform the debarred person of rights to judicial appeal  
3 or inform the suspended person of rights to administrative and judi-  
4 cial appeal.

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

8 Sec. 36.30.650. HEARING ON A SUSPENSION. (a) A person suspend-  
9 ed under AS 36.30.635 is entitled to a hearing conducted according to  
10 AS 36.30.670 and regulations adopted by the commissioner of adminis-  
11 tration if the person files a written request for a hearing with the  
12 commissioner of administration or the commissioner of transportation  
13 and public facilities, as appropriate, within seven days after receipt  
14 of the notice of suspension under AS 36.30.645.

15 (b) If a suspended person requests a hearing the commissioner of  
16 administration or the commissioner of transportation and public facil-  
17 ities, as appropriate, shall schedule a prompt hearing unless the  
18 attorney general determines that a hearing at the proposed time is  
19 likely to jeopardize an investigation. A hearing may not be delayed  
20 longer than six months after notice of the suspension is provided  
21 under AS 36.30.645.

22 Sec. 36.30.655. LIST OF PERSONS DEBARRED OR SUSPENDED. The  
23 commissioner shall maintain a list of all persons debarred or suspend-  
24 ed from consideration for award of contracts.

25 Sec. 36.30.660. REINSTATEMENT. (a) The commissioner of admin-  
26 istration or the commissioner of transportation and public facilities  
27 may at any time after a final decision to debar a person from consid-  
28 eration for award of contracts reinstate the person after determining  
29 that the cause for which the person was debarred no longer exists or

1 has been substantially mitigated.

2 (b) A debarred person may request reinstatement by submitting a  
3 petition to the commissioner of administration or the commissioner of  
4 transportation and public facilities supported by evidence showing  
5 that the cause for debarment no longer exists or has been substantial-  
6 ly mitigated.

7 (c) The commissioner of administration or the commissioner of  
8 transportation and public facilities may require a hearing on a rein-  
9 statement petition. A decision on reinstatement shall be made in  
10 writing within seven days after a reinstatement petition is submitted.  
11 The decision shall specify the factors on which it is based. A deci-  
12 sion under this section is not subject to judicial appeal.

13 Sec. 36.30.665. LIMITED PARTICIPATION. The commissioner of  
14 administration or the commissioner of transportation and public facil-  
15 ities may permit a debarred person to participate in a contract on a  
16 limited basis during the debarment period if the commissioner deter-  
17 mines in writing that the participation is advantageous to the state.  
18 The determination shall specify the factors on which it is based and  
19 the limits imposed on the debarred person.

20 Sec. 36.30.670. HEARING PROCEDURES. (a) The commissioner of  
21 administration or the commissioner of transportation and public facil-  
22 ities shall act as a hearing officer or appoint a hearing officer for  
23 a hearing conducted under this chapter. The hearing officer shall  
24 arrange for a prompt hearing and notify the parties in writing of the  
25 time and place of the hearing. The hearing shall be conducted in an  
26 informal manner. The provisions of AS 44.62 (Administrative Procedure  
27 Act) do not apply to a hearing conducted under this chapter.

28 (b) The hearing officer may

29 (1) hold prehearing conferences to settle, simplify, or

1 identify the issues in a proceeding, or to consider other matters that  
2 may aid in the expeditious disposition of the proceeding;

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

5 (3) require parties to produce for examination those rele-  
6 vant witnesses and documents under their control;

7 (4) rule on motions and other procedural matters;

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

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

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

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

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

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

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

24 (9) administer oaths or affirmations.

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

27 Sec. 36.30.675. RECOMMENDATION BY THE HEARING OFFICER. (a) If  
28 the commissioner of administration or the commissioner of transporta-  
29 tion and public facilities is not acting as hearing officer, the

1 hearing officer shall recommend a decision to the commissioner based  
2 on the evidence presented. The recommendation shall include findings  
3 of fact and conclusions of law.

4 (b) The commissioner of administration or the commissioner of  
5 transportation and public facilities may affirm, modify, or reject the  
6 hearing officer's recommendation in whole or in part, may remand the  
7 matter to the hearing officer with instructions, or take other appro-  
8 priate action.

9 Sec. 36.30.680. FINAL DECISION BY THE COMMISSIONER. A decision  
10 by the commissioner of administration or the commissioner of transpor-  
11 tation and public facilities after a hearing under this chapter is  
12 final. A decision shall be sent within 20 days after the hearing to  
13 all parties by personal service or certified mail, except that a  
14 decision by the commissioner of transportation and public facilities  
15 involving procurement of construction shall be sent within 90 days  
16 after the hearing to all parties by personal service or certified  
17 mail.

18 Sec. 36.30.685. JUDICIAL APPEAL. (a) A final decision of the  
19 commissioner of administration or the commissioner of transportation  
20 and public facilities under AS 36.30.610, 36.30.635(a), 36.30.650, or  
21 36.30.680 may be appealed to the superior court in accordance with the  
22 Alaska Rules of Appellate Procedure.

23 (b) A final decision of the commissioner of administration or  
24 the commissioner of transportation and public facilities under AS 36.-  
25 30.630(b) may be appealed to the superior court for a trial de novo.

26 Sec. 36.30.687. MISREPRESENTATIONS AND FRAUDULENT CLAIMS. (a)  
27 A person who makes or uses in support of a contract claim under this  
28 chapter, a misrepresentation, or who practices or attempts to practice  
29 a fraud, at any stage of proceedings relating to a procurement or

1 contract controversy under this chapter:

2 (1) forfeits all claims relating to that procurement or  
3 contract; and

4 (2) is liable to the state for reimbursement of all sums  
5 paid on the claim, for all costs attributable to review of the claim,  
6 and for a civil penalty equal to the amount by which the claim is  
7 misrepresented.

8 (b) The procurement officer, commissioner or court shall make  
9 specific findings of misrepresentation, attempted fraud or fraud  
10 before declaring a forfeiture under (a)(1) of this section.

11 (c) Suits to recover costs and penalties under (a)(2) of this  
12 section must be commenced within six years after the discovery of the  
13 misrepresentation, fraud, or attempted fraud.

14 (d) A person who in a matter relating to a procurement or a  
15 contract controversy or claim under this chapter makes a misrepresen-  
16 tation to the state through a trick, scheme, or device is guilty of a  
17 class C felony.

18 (e) In this section, "misrepresentation" means a false or mis-  
19 leading statement of material fact, or conduct intended to deceive or  
20 mislead concerning material fact, whether it succeeds in deceiving or  
21 misleading.

22 Sec. 36.30.690. EXCLUSIVE REMEDY. Notwithstanding AS 44.77 or  
23 other law to the contrary, AS 36.30.560 - 36.30.699 and regulations  
24 adopted under those sections provide the exclusive procedure for  
25 asserting a claim against an agency arising in relation to a procure-  
26 ment under this chapter.

27 Sec. 36.30.695. OTHER RULES OF PROCEDURE. The commissioner may  
28 adopt by regulation additional rules of procedure providing for the  
29 expeditious administrative review of all contract claims or

1 controversies, both before the contracting agency and through an  
2 appeal heard de novo.

3 Sec. 36.30.699. DEFINITION. In AS 36.30.560 - 36.30.695, "in-  
4 terested party" means an actual or prospective bidder or offeror whose  
5 economic interest may be affected substantially and directly by the  
6 issuance of a contract solicitation, the award of a contract, or the  
7 failure to award a contract; whether an actual or prospective bidder  
8 or offeror has an economic interest depends on the circumstances.

9 ARTICLE 8. INTERGOVERNMENTAL RELATIONS.

10 Sec. 36.30.700. COOPERATIVE PURCHASING AUTHORIZED. A public  
11 procurement unit may either participate in, sponsor, conduct, or  
12 administer a cooperative purchasing agreement for the procurement of  
13 supplies, services, professional services, or construction with one or  
14 more public procurement units or external procurement activities in  
15 accordance with an agreement entered into between the participants.  
16 Cooperative purchasing may include joint or multi-party contracts  
17 between public procurement units and open-ended state public procure-  
18 ment unit contracts that are made available to local public procure-  
19 ment units.

20 Sec. 36.30.710. SALE, ACQUISITION, OR USE OF SUPPLIES BY A  
21 PUBLIC PROCUREMENT UNIT. (a) A public procurement unit may sell to,  
22 acquire from, or use any supplies belonging to another public procure-  
23 ment unit or external procurement activity independent of the require-  
24 ments of AS 36.30.060 and 36.30.100 - 36.30.260.

25 (b) A public procurement unit may enter into an agreement,  
26 independent of the requirements of AS 36.30.060 and 36.30.100 - 36.-  
27 30.260, with another public procurement unit or external procurement  
28 activity for the cooperative use of supplies or services under the  
29 terms agreed upon between the parties.

1           Sec. 36.30.720. JOINT USE OF FACILITIES. A public procurement  
2 unit may enter into agreements for the common use or lease of ware-  
3 housing facilities, capital equipment, and other facilities with  
4 another public procurement unit or an external procurement activity  
5 under the terms agreed upon between the parties.

6           Sec. 36.30.730. SUPPLY OF PERSONNEL, INFORMATION, AND TECHNICAL  
7 SERVICES. (a) A public procurement unit may, upon written request  
8 from another public procurement unit or external procurement activity,  
9 provide personnel to the requesting public procurement unit or exter-  
10 nal procurement activity. The public procurement unit or external  
11 procurement activity making the request shall pay the public procure-  
12 ment unit providing the personnel the direct and indirect cost of  
13 furnishing the personnel, in accordance with an agreement between the  
14 parties.

15           (b) The informational, technical, and other services of a public  
16 procurement unit may be made available to another public procurement  
17 unit or external procurement activity except that the requirements of  
18 the public procurement unit tendering the services has precedence over  
19 the requesting public procurement unit or external procurement activi-  
20 ty. The requesting public procurement unit or external procurement  
21 activity shall pay for the expenses of the services so provided, in  
22 accordance with an agreement between the parties.

23           (c) Upon request, the commissioner may make available to public  
24 procurement units or external procurement activities the following  
25 services, among others:

- 26           (1) standard forms;  
27           (2) printed manuals;  
28           (3) product specifications and standards;  
29           (4) quality assurance testing services and methods;

- 1 (5) qualified products lists;  
2 (6) source information;  
3 (7) common use commodities listings;  
4 (8) supplier performance ratings;  
5 (9) lists of persons debarred or suspended from considera-  
6 tion for award of state contracts;  
7 (10) forms for invitations for bids, requests for proposals,  
8 instructions to bidders, general contract provisions, and other con-  
9 tract forms; and  
10 (11) contracts or published summaries of them, including  
11 price and time of delivery information.

12 (d) The commissioner may provide the following technical ser-  
13 vices, among others:

- 14 (1) development of product specifications;  
15 (2) development of quality assurance test methods, includ-  
16 ing receiving, inspection, and acceptance procedures;  
17 (3) use of product testing and inspection facilities; and  
18 (4) use of personnel training programs.

19 (e) The commissioner may enter into contractual arrangements and  
20 publish a schedule of fees for the services provided under (c) and (d)  
21 of this section.

22 Sec. 36.30.735. RESTRICTION ON CONTRACTING WITH OR EMPLOYING  
23 EXPERTS ON RADIATION HAZARDS. (a) Except for the Department of  
24 Health and Social Services, the Department of Labor, the Department of  
25 Environmental Conservation, and the Department of Military and Veter-  
26 ans' Affairs, a state agency may not

27 (1) contract, other than with the Department of Health and  
28 Social Services, to have services performed that require expertise in  
29 determining or reducing the hazards of radiation; or

1 (2) employ a person whose duties require expertise in  
2 determining or reducing the hazards of radiation.

3 (b) In this section, "state agency" means a state department or  
4 agency, whether in the legislative, judicial, or executive branch,  
5 including such entities as the Alaska State Housing Authority, but not  
6 including the University of Alaska, a municipality, or an agency of a  
7 municipality or the Alaska State Housing Authority.

8 (c) In this section, "radiation" does not include radiation  
9 emitted from a Federal Communications Commission licensed facility  
10 emitting radiation of a wave length longer than one centimeter and an  
11 average power output not exceeding two kilowatts.

12 Sec. 36.30.740. REVIEW OF PROCUREMENT REQUIREMENTS. To the  
13 extent possible, the commissioner may collect information concerning  
14 the type, cost, quality, and quantity of commonly used supplies,  
15 equipment for the state fleet, services, or construction being pro-  
16 cured or used by state public procurement units. The commissioner may  
17 also collect this information from local public procurement units.  
18 The commissioner may make this information available to a public  
19 procurement unit upon request.

20 Sec. 36.30.750. CONTRACT CONTROVERSIES. (a) Under a coopera-  
21 tive purchasing agreement, controversies arising between an adminis-  
22 tering public procurement unit and its bidders, offerors, or contrac-  
23 tors shall be resolved in accordance with AS 36.30.560 - 36.30.699.

24 (b) A local public procurement unit that is not subject to  
25 AS 36.30.560 - 36.30.699 may enter into an agreement with another  
26 local public procurement unit or external procurement activity to  
27 establish procedures or use that unit's or activity's existing proce-  
28 dures to resolve controversies with contractors, whether or not the  
29 controversy arose under a cooperative purchasing agreement.

1           Sec. 36.30.790. DEFINITIONS. In AS 36.30.700 - 36.30.790

2           (1) "cooperative purchasing" means procurement conducted  
3 by, or on behalf of, more than one public procurement unit, or by a  
4 public procurement unit with an external procurement activity;

5           (2) "external procurement activity" means a buying orga-  
6 nization not located in this state that, if located in this state,  
7 would qualify as a public procurement unit; an agency of the United  
8 States is an external procurement activity;

9           (3) "local public procurement unit" means a municipality or  
10 other subdivision of the state or other entity that expends public  
11 funds for the procurement of supplies, services, professional ser-  
12 vices, and construction, and any nonprofit corporation operating a  
13 charitable hospital;

14           (4) "public procurement unit" means either a local public  
15 procurement unit or a state public procurement unit;

16           (5) "state public procurement unit" means the Department of  
17 Administration and any other contracting agency of the state.

18           ARTICLE 9. GENERAL PROVISIONS.

19           Sec. 36.30.850. APPLICATION OF THIS CHAPTER. (a) This chapter  
20 applies only to contracts solicited or entered into after January 1,  
21 1987, unless the parties agree to its application to a contract solic-  
22 ited or entered into before that date.

23           (b) This chapter applies to every expenditure of state funds  
24 irrespective of their sources, including federal assistance except as  
25 otherwise specified in AS 36.30.890, by the state, acting through an  
26 agency, under a contract, except that this chapter does not apply to

27           (1) grants;

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

1 lawsuits in which the state is or may become a party;

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

4 (4) contracts for medical doctors and dentists;

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

7 (6) disposals under AS 38.05;

8 (7) contracts for the preparation of ballots under AS 15.-  
9 15.030;

10 (8) acquisitions or disposals of property and other con-  
11 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-  
12 091;

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

14 (10) disposals of obsolete material or equipment under  
15 AS 35.20.060;

16 (11) agreements with providers of services under AS 47.07;  
17 AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195, and 47.25.310;

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

21 (13) purchases of income-producing assets for the state  
22 treasury or a public corporation of the state.

23 (c) Except for AS 36.30.700 - 36.30.790, this chapter does not  
24 apply to contracts between two or more agencies, the state and its  
25 political subdivisions, or the state and other governments.

26 (d) Nothing in this chapter or in regulations adopted under this  
27 chapter prevents an agency or political subdivision from complying  
28 with the terms and conditions of a grant, gift, bequest, cooperative  
29 agreement or federal assistance agreement.

1           Sec. 36.30.860. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLIC-  
2 ABLE. Unless displaced by the particular provisions of this chapter,  
3 the principles of law and equity, including the Uniform Commercial  
4 Code (AS 45.01 - AS 45.09), the law merchant, and law relative to  
5 capacity to contract, agency, fraud, misrepresentation, duress, coer-  
6 cion, mistake, or bankruptcy shall supplement the provisions of this  
7 chapter.

8           Sec. 36.30.870. ADOPTION OF REGULATIONS. (a) Regulations under  
9 this chapter shall be adopted in accordance with the Administrative  
10 Procedure Act (AS 44.62).

11           (b) Regulations under this chapter applicable to procurements of  
12 construction or procurements for or disposal of property of the state  
13 equipment fleet shall be adopted by the commissioner of administration  
14 only after consultation with the commissioner of transportation and  
15 public facilities

16           Sec. 36.30.880. REQUIREMENT OF GOOD FAITH. All parties involved  
17 in the negotiation, performance, or administration of state contracts  
18 shall act in good faith.

19           Sec. 36.30.890. FEDERAL ASSISTANCE. If a procurement involves  
20 the expenditure of federal funds or federal assistance and there is a  
21 conflict between a provision of this chapter or a regulation adopted  
22 under a provision of this chapter and a federal statute regulation,  
23 policy or requirement, the federal statute regulation, policy or  
24 requirement, shall prevail.

25           Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter  
26 does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding  
27 preference for Alaska forest products, or AS 36.20.010 regarding  
28 preference to producers or dealers in Alaska except as provided in  
29 AS 36.30.170(b) and (c).

1           Sec. 36.30.910. PURCHASES THROUGH GENERAL SERVICES ADMINISTRA-  
2 TION. This chapter does not prevent purchasing through the general  
3 services administration as provided by law.

4           Sec. 36.30.920. REPORTING OF ANTICOMPETITIVE PRACTICES. When  
5 for any reason collusion or other anticompetitive practices are sus-  
6 pected among bidders or offerors, a notice of the relevant facts shall  
7 be transmitted to the attorney general by the person who suspects the  
8 collusion or other anticompetitive practices.

9           Sec. 36.30.930. CIVIL AND CRIMINAL PENALTIES. The following  
10 penalties apply to violations of this chapter:

11           (1) a person who contracts for or purchases supplies,  
12 equipment for the state fleet, services, professional services, or  
13 construction in a manner the person knows to be contrary to the re-  
14 quirements of this chapter or the regulations adopted under this  
15 chapter is liable for all costs and damages to the state arising out  
16 of the violation;

17           (2) a person who intentionally or knowingly contracts for  
18 or purchases supplies, equipment for the state fleet, services, pro-  
19 fessional services, or construction under a scheme or artifice to  
20 avoid the requirements of this chapter is guilty of a class C felony.

21           Sec. 36.30.940. ENFORCEMENT. The attorney general on behalf of  
22 the state shall enforce the provisions of this chapter.

23           Sec. 36.30.950. SEVERABILITY. If any provision of this Act or  
24 any application of this Act to any person or circumstance is held  
25 invalid, the invalidity does not affect other provisions or  
26 applications of this Act that can be given effect without the invalid  
27 provision or application, and to this end the provisions of this Act  
28 are declared severable.

29           Sec. 36.30.990. DEFINITIONS. In this chapter, unless the

1 context in which a term is used clearly requires a different meaning  
2 or a different definition is prescribed for a particular provision,

3 (1) "agency" means a department, institution, board, com-  
4 mission, division, authority, public corporation, the Alaska Pioneers'  
5 Home, or other administrative unit of the executive branch of state  
6 government, except for the University of Alaska, the Alaska State  
7 Housing Authority and the Alaska Railroad Corporation; it does not  
8 include a regional Native housing authority created under AS 18.-  
9 55.996, or a regional electrical authority created under AS 18.57.020;

10 (2) "change order" means a written order signed by the  
11 procurement officer, directing the contractor to make changes that the  
12 changes clause of the contract authorizes the procurement officer to  
13 order without the consent of the contractor;

14 (3) "commissioner" means the commissioner of the Department  
15 of Administration;

16 (4) "competitive sealed bidding" means the procedure under  
17 AS 36.30.100 - 36.30.190;

18 (5) "competitive sealed proposals" means the procedure  
19 under AS 36.30.200 - 36.30.260;

20 (6) "construction" means the process of building, altering,  
21 repairing, maintaining, improving, or demolishing a public highway,  
22 structure, building, or other public improvement of any kind to real  
23 property other than privately owned real property leased for the use  
24 of agencies; it includes services and professional services relating  
25 to planning and design required for the construction; it does not  
26 include the routine operation of a public improvement to real property  
27 nor does it include the construction of public housing;

28 (7) "contract" means all types of state agreements, regard-  
29 less of what they may be called, for the procurement or disposal of

1 supplies, equipment for the state fleet, services, professional servi-  
2 ces, or construction;

3 (8) "contract modification" means a written alteration in  
4 specifications, delivery point, rate of delivery, period of perfor-  
5 mance, price, quantity, or other provisions of a contract accomplished  
6 by mutual action of the parties to the contract;

7 (9) "department" means the Department of Administration;

8 (10) "grant" means property furnished by the state, whether  
9 real or personal, designated by law, including an appropriation Act,  
10 as a grant;

11 (11) "person" means a business, individual, union, commit-  
12 tee, club, other organization, or group of individuals;

13 (12) "procurement" means buying, purchasing, renting, leas-  
14 ing, or otherwise acquiring supplies, equipment for the state fleet,  
15 services, or construction; it also includes functions that pertain to  
16 the obtaining of a supply, equipment for the state fleet, service or  
17 construction, including description of requirements, selection and  
18 solicitation of sources, preparation and award of contract, and all  
19 phases of contract administration;

20 (13) "procurement officer" means a person authorized to  
21 enter into and administer contracts for an agency and make written  
22 determinations with respect to them; it also includes an authorized  
23 representative of a procurement officer acting within the limits of  
24 authority;

25 (14) "professional services" means professional, technical,  
26 or consultant's services that are predominantly intellectual in char-  
27 acter, result in the production of a report or the completion of a  
28 task, and include analysis, evaluation, prediction, planning, or  
29 recommendation;

1 (15) "services" means the furnishing of labor, time, or  
2 effort by a contractor, not involving the delivery of a specific end  
3 product other than reports that are merely incidental to the required  
4 performance; it does not include employment agreements or collective  
5 bargaining agreements;

6 (16) "supplies" means all property of an agency, including  
7 equipment, materials, and insurance; it includes privately owned real  
8 property leased for the use of agencies, such as office space, but  
9 does not include the acquisition or disposition of other interests in  
10 land.

11 Sec. 36.30.995. SHORT TITLE. This chapter may be cited as the  
12 State Procurement Code.

13 \* Sec. 3. AS 03.22.030 is amended to read:

14 Sec. 03.22.030. CENTER SITE, BUILDINGS AND EQUIPMENT. The  
15 department shall obtain a site, either by donation, lease, or pur-  
16 chase, and erect suitable buildings on the site, if they are needed  
17 for the use of the plant materials center. The department shall also  
18 acquire the agricultural land, scientific instruments and equipment  
19 necessary to carry on the work of the center. Acquisition of scien-  
20 tific instruments and equipment under this section is governed by  
21 AS 36.30 (State Procurement Code).

22 \* Sec. 4. AS 05.20.040 is amended to read:

23 Sec. 05.20.040. PERSONNEL TO INSPECT DEVICES. The department  
24 shall designate a person qualified in experience and training as the  
25 inspector of devices. The department may employ additional employees  
26 as are necessary to administer this chapter. The inspector and the  
27 employees may be hired on a temporary basis or borrowed from other  
28 state departments or political subdivisions of the state, or the  
29 department may contract with individuals or firms for the inspecting

1 service on an independent basis. The department shall prescribe the  
2 salary or other remuneration for this service. Contracting under this  
3 section is governed by AS 36.30 (State Procurement Code).

4 \* Sec. 5. AS 09.50.250 is amended to read:

5 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person  
6 or corporation having a contract, quasi-contract, or tort claim  
7 against the state may bring an action against the state in the superi-  
8 or court. A person who may present the claim under AS 44.77 may not  
9 bring an action under this section except as set out in AS 44.77.-  
10 040(c). A person who may bring an action under AS 36.30.560 - 36.30.-  
11 695 may not bring an action under this section except as set out in  
12 AS 36.30.685. However, no action may be brought under this section if  
13 the claim

14 (1) is an action for tort, and is based upon an act or  
15 omission of an employee of the state, exercising due care, in the  
16 execution of a statute or regulation, whether or not the statute or  
17 regulation is valid; or is an action for tort, and based upon the  
18 exercise or performance or the failure to exercise or perform a dis-  
19 cretionary function or duty on the part of a state agency or an em-  
20 ployee of the state, whether or not the discretion involved is abused;

21 (2) is for damages caused by the imposition or establish-  
22 ment of a quarantine by the state;

23 (3) arises out of assault, battery, false imprisonment,  
24 false arrest, malicious prosecution, abuse of process, libel, slander,  
25 misrepresentation, deceit, or interference with contract rights.

26 \* Sec. 6. AS 14.08.101 is amended to read:

27 Sec. 14.08.101. POWERS A regional school board may

28 (1) sue and be sued;

29 (2) contract with the department, the Bureau of Indian

1 Affairs, or any other school district, agency, or regional board for  
2 the provision of services, facilities, supplies or utilities;

3 (3) determine its own fiscal procedures including but not  
4 limited to policies and procedures for the purchase of supplies and  
5 equipment; the regional school boards are exempt from the Fiscal  
6 Procedures Act (AS 37.05) and the State Procurement Code (AS 36.30);

7 (4) appoint, compensate and otherwise control all school  
8 employees in accordance with this title; these employees are not  
9 subject to the State Personnel Act (AS 39.25);

10 (5) adopt regulations governing organization, policies and  
11 procedures for the operation of the schools;

12 (6) establish, maintain, operate, discontinue and combine  
13 schools subject to the approval of the commissioner;

14 (7) recommend to the department projects for construction,  
15 rehabilitation, and improvement of schools and education-related  
16 facilities as specified in AS 14.11.010(a), and plan, design, and  
17 construct the project when the responsibility for it is assumed under  
18 AS 14.11.020;

19 (8) exercise those other functions that may be necessary  
20 for the proper performance of its responsibilities;

21 (9) by resolution adopted by a majority of all the members  
22 of the board and provided to the commissioner of the department,  
23 assume ownership of all land and buildings used in relation to the  
24 schools in the regional educational attendance area;

25 (10) provide housing for rental to teachers, by leasing  
26 existing housing from a local agency or individual, or by entering  
27 into contractual arrangements with a local agency or individual to  
28 lease housing that will be constructed by the local agency or indi-  
29 vidual for that purpose.

1 \* Sec. 7. AS 16.05.050 is amended to read:

2 Sec. 16.05.050. POWERS AND DUTIES OF COMMISSIONER. The commis-  
3 sioner has, but not by way of limitation, the following powers and  
4 duties:

5 (1) assist the United States Fish and Wildlife Service in  
6 the enforcement of federal laws and regulations pertaining to fish and  
7 game;

8 (2) through the appropriate state agency and under the  
9 provisions of AS 36.30 (State Procurement Code), acquire by gift,  
10 purchase, or lease, or other lawful means, land, buildings, water,  
11 rights-of-way, or other necessary or proper real or personal property  
12 when the acquisition is in the interest of furthering an objective or  
13 purpose of the department and the state;

14 (3) under the provisions of AS 36.30, design and construct  
15 hatcheries, pipelines, rearing ponds, fishways, and other projects  
16 beneficial for the fish and game resources of the state;

17 (4) accept money from any person under conditions requiring  
18 the use of the money for specific purposes in the furtherance of the  
19 protection, rehabilitation, propagation, preservation, or investiga-  
20 tion of the fish and game resources of the state or in settlement of  
21 claims for damages to fish or game resources;

22 (5) collect, classify, and disseminate statistics, data and  
23 information that, in the commissioner's discretion, will tend to  
24 promote the purposes of this title except AS 16.51 and AS 16.52;

25 (6) capture, propagate, transport, buy, sell, or exchange  
26 fish or game or eggs for propagating, scientific or stocking purposes;

27 (7) under the provisions of AS 36.30, provide public facil-  
28 ities where necessary or proper to facilitate the taking of fish or  
29 game, and enter into cooperative agreements with any person to effect

1           them;

2                   (8) exercise administrative, budgeting, and fiscal powers;

3                   (9) under the provisions of AS 36.30, construct, operate,  
4 supervise, and maintain vessels used by the Department of Fish and  
5 Game;

6                   (10) authorize the holder of an interim-use permit under  
7 AS 16.43 to engage on an experimental basis in commercial taking of a  
8 fishery resource with vessel, gear, and techniques not presently  
9 qualifying for licensing under this chapter in conformity with stand-  
10 ards established by the Alaska Commercial Fisheries Entry Commission;

11                   (11) not later than January 31 of each year, provide to the  
12 commissioner of revenue the names of those fish and shellfish species  
13 which the commissioner of fish and game designates as developing  
14 commercial fish species for that calendar year; a fish or shellfish  
15 species is a developing commercial fish species if, within a specified  
16 geographical region,

17                           (A) the optimum yield from the harvest of the species  
18 has not been reached;

19                           (B) a substantial portion of the allowable harvest of  
20 the species has been allocated to fishing vessels of a foreign  
21 nation; or

22                           (C) a commercial harvest of the fish species has  
23 recently developed;

24                   (12) initiate or conduct research necessary or advisable to  
25 carry out the purposes of this title except AS 16.51 and AS 16.52;

26                   (13) enter into cooperative agreements with agencies of the  
27 federal government, educational institutions, or other agencies or  
28 organizations, when in the public interest, to carry out the purposes  
29 of this title except AS 16.51 and AS 16.52.

1 \* Sec. 8. AS 16.05.826(c) is amended to read:

2 (c) The department may contract to others the performance of the  
3 department's responsibilities under this section. Contracting under  
4 this subsection is governed by AS 36.30 (State Procurement Code),  
5 except that a [A] contract may include provisions for advance payment  
6 or reimbursement for services performed under the contract. All costs  
7 incurred under this section may be paid from the fish and game fund.

8 \* Sec. 9. AS 18.15.120 is amended to read:

9 Sec. 18.15.120. TUBERCULOSIS CONTROL PROGRAM AUTHORIZED. The  
10 department may establish a comprehensive program for the control of  
11 tuberculosis in the state, and may

12 (1) arrange means by which persons in the state may be  
13 X-rayed to determine the presence of tuberculosis;

14 (2) establish necessary out-patient clinics for the care of  
15 tuberculosis;

16 (3) encourage and promote the establishment of adequate  
17 sanatorium facilities within the state to care for persons suffering  
18 from tuberculosis and allied conditions;

19 (4) under the provisions of AS 36.30 (State Procurement  
20 Code), obtain, by purchase or donation from surplus federal property  
21 or otherwise, medical supplies and equipment useful in carrying out  
22 this program and to allot or resell these supplies and equipment to  
23 private institutions engaged by the department to carry out this  
24 program;

25 (5) under the provisions of AS 36.30, contract with hos-  
26 pitals, associations, or sanatorium qualified and equipped to give  
27 adequate care inside or outside the state;

28 (6) employ necessary and trained personnel to carry out the  
29 purposes of AS 18.15.120 - 18.15.140;

1 (7) pay the costs of care and incidental expenses for  
2 residents of the state, in whole or in part, depending on the ability  
3 of each patient to pay, and the temporary costs of care and transpor-  
4 tation for nonresidents on the same basis until they can be trans-  
5 ferred to their residence;

6 (8) enlist the cooperation of state and federal agencies  
7 operating in the state for the furtherance of this program;

8 (9) establish standards in accordance with department  
9 procedure for the care of tuberculars receiving treatment under  
10 AS 18.15.120 - 18.15.140.

11 \* Sec. 10. AS 19.05.020 is amended to read:

12 Sec. 19.05.020. REGULATIONS. The department shall adopt regu-  
13 lations necessary to carry out the purpose of AS 19.05 - AS 19.25.  
14 The regulations may not conflict with AS 36.30 (State Procurement  
15 Code) or regulations adopted by the Department of Administration to  
16 implement that chapter.

17 \* Sec. 11. AS 19.05.080 is amended to read:

18 Sec. 19.05.080. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-  
19 RIALS BY PURCHASE OR EMINENT DOMAIN. The department on behalf of the  
20 state and as part of the cost of constructing or maintaining a highway  
21 may purchase in the open market, acquire, take over, or condemn under  
22 the right and power of eminent domain land in fee simple or easements  
23 which it considers necessary for present public use, either temporary  
24 or permanent, or which it considers necessary and reasonable for the  
25 public use. By the same means, the department may obtain material,  
26 including clay, gravel, sand, or rock, or the land necessary to obtain  
27 material, including access to it. The department may acquire the land  
28 or materials notwithstanding the fact that title to it is vested in  
29 the state or a department, agency, commission or institution of the

1 state. Acquisition of materials by purchase in the open market under  
2 this section is governed by AS 36.30 (State Procurement Code).

3 \* Sec. 12. AS 19.10.160 is amended to read:

4 Sec. 19.10.160. STANDARD PLANS AND SPECIFICATIONS. The depart-  
5 ment shall prepare and adopt uniform standard plans and specifications  
6 for the establishment, construction and maintenance of highways in the  
7 state. The department may amend the plans and specifications as it  
8 considers advisable. The standards shall conform as closely as prac-  
9 ticable to those adopted by the American Association of State Highway  
10 and Transportation Officials.

11 \* Sec. 13. AS 19.10.170(a) is amended to read:

12 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is  
13 [SHALL BE] the general policy of the state [DEPARTMENT] to require the  
14 construction of all highways under bid contract in accordance with  
15 AS 36.30 (State Procurement Code). However, subject to the provisions  
16 of (b) of this section, when the estimated cost of a construction  
17 project is less than \$100,000 or when it appears to be in the best  
18 interests of the state, the department may perform the work notwith-  
19 standing any other provisions of law.

20 \* Sec. 14. AS 19.10.180 is repealed and reenacted to read:

21 Sec. 19.10.180. REQUEST FOR PUBLIC BIDS. Requests for public  
22 bids are governed by AS 36.30 (State Procurement Code). The request  
23 for public bids may require the contractor to furnish equipment,  
24 labor, materials, and supplies for the project, or it may state that  
25 the department will furnish the materials and supplies. If the de-  
26 partment elects to provide materials and supplies for a project, it  
27 shall do so at the time it adopts the construction program. The  
28 department shall acquire these materials and supplies under AS 36.30  
29 by requesting bids for them according to the class, type, and nature

1 of the materials and supplies. The contract for materials and sup-  
2 plies may be awarded either upon the basis of delivery to the con-  
3 struction project directly or to a central storehouse or storehouses  
4 maintained by the department. Those materials and supplies so pur-  
5 chased by the department may be delivered to the project site without  
6 expense to the contractor, or it may sell them to the contractor at  
7 cost and make the materials and supplies a part of the construction  
8 cost.

9 \* Sec. 15. AS 19.10.200 is repealed and reenacted to read:

10 Sec. 19.10.200. PROCEDURES FOR THE AWARD OF CONTRACTS. The  
11 award of a contract for highway construction work is governed by  
12 AS 36.30 (State Procurement Code), AS 19.05 - AS 19.25, and regula-  
13 tions adopted under those laws.

14 \* Sec. 16. AS 19.30.070 is amended to read:

15 Sec. 19.30.070. CONTRACTS FOR CONSTRUCTION OF ROADS. The  
16 director of the division of lands may contract with private persons  
17 for the construction of roads to and on state lands programmed for  
18 surface disposal which are not more than six miles from existing roads  
19 or highways. Contracts under this section are governed by AS 36.30  
20 (State Procurement Code).

21 \* Sec. 17. AS 19.30.080 is amended to read:

22 Sec. 19.30.080. CONSTRUCTION STANDARDS AND MAINTENANCE. An  
23 access road constructed under AS 19.30.060 - 19.30.100 shall be of low  
24 standard, not necessarily suitable for all weather use. The state is  
25 not under obligation to maintain an access road constructed under AS  
26 19.30.060 - 19.30.100. If an access road is constructed outside a  
27 municipality that has zoning ordinances, the right-of-way width for  
28 the road shall be determined by the division of lands and the Depart-  
29 ment of Transportation and Public Facilities. If an access road is

1 constructed within the boundaries of a municipality that has zoning  
2 ordinances, the right-of-way width shall conform to the subdivision  
3 control ordinances of the municipality. Contracts for the work on an  
4 access road are governed by AS 36.30 (State Procurement Code) [SHALL  
5 BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER QUALIFIED TO CONTRACT WITH  
6 THE STATE].

7 \* Sec. 18. AS 19.40.020(a) is amended to read:

8 (a) Subject to (b) of this section, the department may contract  
9 in accordance with AS 36.30 for the construction of a secondary high-  
10 way from the Yukon River to the Arctic Ocean. [THE DEPARTMENT MAY  
11 REQUEST BIDS AND AWARD CONTRACTS FOR THE CONSTRUCTION OF THE HIGHWAY,  
12 OR IT MAY ELECT TO DIRECTLY NEGOTIATE CONTRACTS FOR THE CONSTRUCTION  
13 OF THE HIGHWAY IF IT APPEARS TO BE IN THE BEST INTERESTS OF THE  
14 STATE.] The provisions of AS 36.10 govern in employment practices on  
15 all work authorized by this chapter.

16 \* Sec. 19. AS 19.60.010 is amended to read:

17 Sec. 19.60.010. ACQUISITION AND MAINTENANCE OF FERRY TERMINAL  
18 FACILITIES. The department shall construct, purchase or lease ferry  
19 terminal facilities at locations it selects for the loading and un-  
20 loading of passengers and vehicles under their own power, on and off  
21 ferries. The department shall repair and maintain these facilities.  
22 Construction and purchasing under this section are governed by AS 36.-  
23 30 (State Procurement Code).

24 -\* Sec. 20. AS 23.15.611(a) is amended to read:

25 (a) The department may [IS AUTHORIZED TO] participate in pro-  
26 grams of manpower training if it finds they are necessary to meet the  
27 occupational needs of the state. This au~~thor~~ization includes authori-  
28 ty to execute on behalf of the state agreements or contracts which may  
29 be necessary or desirable to enable the state to participate in a

1 program, to receive and expend all appropriate funds made available  
2 for programs by the state or from other sources, to supervise the  
3 expenditure of the funds and conduct of the programs by other public  
4 and private agencies of the state, and to make the reports and certifi-  
5 cates which are called for, and in cooperative arrangements with the  
6 Department of Education. Contracts with private entities under this  
7 subsection are governed by AS 36.30 (State Procurement Code).

8 \* Sec. 21. AS 23.20.075(a) is amended to read:

9 (a) The department may acquire in the name of the state by term  
10 purchase agreements based on competitive bids in accordance with  
11 AS 36.30 (State Procurement Code) land and buildings upon terms and  
12 conditions that [WHICH] are approved by the Bureau of Employment  
13 Security of the United States, or its successor, for the purpose of  
14 providing office space for the department at a place which the depart-  
15 ment finds necessary and suitable.

16 \* Sec. 22. AS 23.35.110 is amended to read:

17 Sec. 23.35.110. CONTRACTS FOR CARE. In carrying out this  
18 chapter, the department may enter into contracts or other arrangements  
19 with hospitals and doctors in the state for furnishing care on an  
20 annual basis to persons entitled to benefits. Contracting under this  
21 section is governed by AS 36.30 (State Procurement Code).

22 \* Sec. 23. AS 24.55.275 is amended to read:

23 Sec. 24.55.275. CONTRACT PROCEDURES. The ombudsman shall adopt  
24 by regulation procedures consistent with AS 36.30 [AS 24.23] to be  
25 followed by the office of the ombudsman in contracting for services.  
26 However, the procedure for requests for proposals does not apply to  
27 contracts for investigations under AS 24.55.100.

28 \* Sec. 24. AS 24.60.040(a) is amended to read:

29 (a) A person to whom this chapter applies may not be a party to

1 or have an interest in a state contract or lease unless the contract  
2 or lease is let through competitive sealed bidding under AS 36.30  
3 (State Procurement Code) [AS 37.05.230] or the total annual amount of  
4 the state contract or lease is \$1,000 or less, or is a standardized  
5 contract or lease which was developed under publicly established  
6 guidelines and is generally available to the public at large, members  
7 of a profession, occupation or group. A person has an interest in a  
8 state contract or lease under this section if the person receives  
9 direct or indirect financial benefits.

10 \* Sec. 25. AS 26.05.230(a) is amended to read:

11 (a) Buildings and sites for armory purposes may be leased or  
12 constructed, based upon location and size of units to be organized,  
13 and shall be financed through state and federal appropriations or  
14 both. These facilities may be made available by local communities or  
15 by the cooperative arrangement between the state and the federal  
16 government and any local community. Leasing and construction under  
17 this subsection are governed by AS 36.30 (State Procurement Code).

18 \* Sec. 26. AS 26.05.280 is amended to read:

19 Sec. 26.05.280. TRANSPORTATION, SUBSISTENCE, AND SUPPLIES.  
20 There shall be provided by the state, transportation and subsistence  
21 for all officers and enlisted persons who are ordered into active  
22 service by the state for encampment, field duty, or other duty. Neces-  
23 sary transportation, stores and subsistence for troops when ordered on  
24 duty shall be contracted by the proper officers and paid for as other  
25 military bills. Contracting under this section is governed by AS 36.-  
26 30 (State Procurement Code).

27 \* Sec. 27. AS 27.21.030 is amended to read:

28 Sec. 27.21.030. GENERAL POWERS. To accomplish the purposes of  
29 this chapter, the commissioner may

1 (1) in accordance with the Administrative Procedure Act  
2 (AS 44.62) adopt, amend, and enforce regulations pertaining to surface  
3 coal mining and reclamation operations;

4 (2) issue permits;

5 (3) conduct hearings and conferences;

6 (4) issue orders requiring an operator to take the actions  
7 necessary to comply with this chapter and the regulations adopted  
8 under this chapter;

9 (5) issue orders modifying previous orders;

10 (6) after opportunity for a due process hearing, issue a  
11 final order revoking the permit of an operator who has failed to  
12 comply with an order of the commissioner to take action required by  
13 this chapter or regulations adopted under this chapter;

14 (7) order the immediate cessation of all or part of a  
15 surface coal mining and reclamation operation if the commissioner  
16 finds that the operation or part of the operation creates an imminent  
17 danger to the health or safety of the public or is causing or can  
18 reasonably be expected to cause significant imminent harm to land,  
19 air, or water resources, and, to the extent reasonably necessary to  
20 eliminate or alleviate those conditions, take other action or make  
21 changes in a permit, as provided in this chapter;

22 (8) hire and authorize the hiring of employees and private  
23 contractors, subject to the conflict of interest provisions of this  
24 chapter and subject to AS 36.30 (State Procurement Code), to assist in  
25 carrying out the requirements of this chapter;

26 (9) enter and inspect a surface coal mining operation that  
27 is subject to the provisions of this chapter to assure that the opera-  
28 tion is in compliance with this chapter;

29 (10) conduct, encourage, request, and participate in

1 studies, surveys, investigations, research, experiments, training, and  
2 demonstrations;

3 (11) prepare reports and require permittees to prepare  
4 reports;

5 (12) accept, receive, and administer grants, gifts, or other  
6 money made available for the purposes of this chapter regardless of  
7 the source of the grants, gifts, or money;

8 (13) take the steps necessary to allow the state to partici-  
9 pate to the fullest extent practicable in the abandoned mine land  
10 program provided in Title IV of the Surface Mining Control and Recla-  
11 mation Act of 1977, including engaged in any work and adopting, amend-  
12 ing and enforcing regulations;

13 (14) take the actions necessary to establish and maintain  
14 exclusive jurisdiction over surface coal mining and reclamation opera-  
15 tions in the state under the provisions of the Surface Mining Control  
16 and Reclamation Act of 1977, including making recommendations for  
17 legislation to clarify or amend this chapter to conform with the terms  
18 of the Surface Mining Control and Reclamation Act of 1977;

19 (15) contract with state agencies to obtain the professional  
20 and technical services necessary to carry out the provisions of this  
21 chapter;

22 (16) coordinate the review of applications and issuance of  
23 permits for surface coal mining and reclamation operations with other  
24 federal or state permit processes applicable to those operations;

25 (17) enter into cooperative agreements with the Secretary of  
26 the United States Department of the Interior for the regulation of  
27 surface coal mining operations on federal land in accordance with the  
28 Surface Mining Control and Reclamation Act of 1977; and

29 (18) perform other duties required by this chapter.

1 \* Sec. 28. AS 33.30.050 is amended to read:

2       Sec. 33.30.050. COMMISSIONER TO PROVIDE MEDICAL SERVICES. The  
3 commissioner shall detail physicians, nurses, and psychiatrists, or  
4 their aides, and laboratory technicians, employed by the department to  
5 any prison facility where state prisoners are detained or confined,  
6 for the purpose of furnishing necessary medical services, including  
7 examinations for communicable and infectious diseases. However, if  
8 medical services cannot be furnished by physicians, nurses, psychia-  
9 trists, or their aides, and laboratory technicians, regularly employed  
10 by the department, the commissioner may contract with private practi-  
11 tioners located in the area of a prison facility to furnish these  
12 services. The cost of contracted services shall be paid out of appro-  
13 priations made to the department. Contracting for services under this  
14 section is governed by AS 36.30 (State Procurement Code).

15 \* Sec. 29. AS 33.30.062(a) is amended to read:

16       (a) The commissioner may enter into an agreement with a private-  
17 ly operated correctional facility, but only if the facility is located  
18 in the state and if the purpose of the agreement is to involve prison-  
19 ers in a work or rehabilitation furlough program established under  
20 this chapter, to provide necessary facilities under AS 33.30.282 -  
21 33.30.288, or to confine prisoners convicted of a misdemeanor. An  
22 [NOTWITHSTANDING AS 37.05.230(1)(B), AN] agreement awarded under this  
23 subsection is governed by AS 36.30 (State Procurement Code) [SHALL BE  
24 BASED ON COMPETITIVE BIDS].

25 \* Sec. 30. AS 33.32.015(b) is amended to read:

26       (b) The commissioner of corrections may  
27           (1) subject to AS 36.30 (State Procurement Code) [THE  
28 FISCAL PROCEDURES ACT (AS 37.05)], use, purchase, lease, equip, and  
29 maintain buildings, machinery, and other equipment, and may purchase

1 materials and enter into contracts, which may be necessary for the  
2 correctional industries program;

3 (2) provide for prisoners to be employed in rendering  
4 services and producing articles, materials, and supplies needed by a  
5 state agency, a political subdivision of the state, an agency of the  
6 federal government, other states or their political subdivisions, or  
7 for use by nonprofit organizations;

8 (3) if the Correctional Industries Commission established  
9 in AS 33.32.070 approves, employ prisoners to provide services or  
10 products as needed by private industry if the services or products  
11 have potential for contributing to the economy of the state and will  
12 have minimal negative impact on an existing private industry or labor  
13 force in the state.

14 \* Sec. 31. AS 35.05.010 is amended to read:

15 Sec. 35.05.010. PLANNING AND CONSTRUCTION. The department is  
16 responsible for the planning and construction of public works except  
17 as provided for court facilities in AS 22.05.025. Contracts for  
18 planning and construction of public works are governed by AS 36.30  
19 (State Procurement Code).

20 \* Sec. 32. AS 35.05.020 is amended to read:

21 Sec. 35.05.020. RULES AND REGULATIONS. The department shall  
22 adopt [RULES AND] regulations that [WHICH] it considers necessary to  
23 carry out the purpose of this title. The regulations may not conflict  
24 with AS 36.30 (State Procurement Code) or the regulations adopted by  
25 the Department of Administration under that chapter.

26 \* Sec. 33. AS 35 is amended by adding a new section to read:

27 Sec. 35.10.195. CONFORMANCE WITH AS 36.30. The contractual  
28 techniques for the procurement of labor, materials, and contractual  
29 services under the policies developed under this chapter must conform

1 to the requirements of AS 36.30 (State Procurement Code).

2 \* Sec. 34. AS 35.15.010(a) is amended to read:

3 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is  
4 [SHALL BE] the general policy of the state [DEPARTMENT] to require the  
5 construction of all public works under bid contract in accordance with  
6 AS 36.30 (State Procurement Code). However, when the estimated cost  
7 of a construction project is less than \$100,000, or when it appears to  
8 be in the best interests of the state, the department may perform the  
9 work, notwithstanding any other provisions of law. A complete record  
10 shall be kept by the commissioner or the commissioner's designee of  
11 all transactions entered into under this section including names of  
12 employees involved in the transactions.

13 \* Sec. 35. AS 35.15.020 is repealed and reenacted to read:

14 Sec. 35.15.020. REQUEST FOR PUBLIC BIDS. The solicitation of  
15 bids for construction of public works is governed by AS 36.30 (State  
16 Procurement Code). The request for bids may require the contractor to  
17 furnish equipment, labor, materials, and supplies for the project, or  
18 it may state that the department will furnish the materials and sup-  
19 plies. If the department elects to provide materials and supplies for  
20 a project, it shall make the election at the time it adopts the con-  
21 struction program. The department shall acquire these materials and  
22 supplies under AS 36.30 by requesting bids for them according to the  
23 class, type, and nature of the materials and supplies. The contract  
24 may be awarded either upon the basis of delivery to the construction  
25 project directly or to a central storehouse or storehouses maintained  
26 by the department. Those materials and supplies so purchased by the  
27 department may be delivered to the project site without expense to the  
28 contractor, or it may sell them to the contractor at cost and make the  
29 materials and supplies a part of the construction cost.

1 \* Sec. 36. AS 35.15.040 is repealed and reenacted to read:

2       Sec. 35.15.040. PROCEDURES FOR THE AWARD OF CONTRACTS. Award of  
3 a contract for the construction of a public work shall comply with  
4 this title, AS 36.30 (State Procurement Code), and the regulations  
5 adopted under those laws.

6 \* Sec. 37. AS 35.20.010 is amended to read:

7       Sec. 35.20.010. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-  
8 RIALS BY PURCHASE OR EMINENT DOMAIN. The department, on behalf of the  
9 state and as part of the cost of constructing or maintaining a public  
10 work, may purchase in the open market, acquire, take over, or condemn  
11 under the right and power of eminent domain land in fee simple or  
12 easements which it considers necessary for present public use, either  
13 temporary or permanent, or which it considers necessary and reasonable  
14 for the public use. By the same means, the department may obtain  
15 material including clay, gravel, sand, or rock, or the land necessary  
16 to obtain the material, and the necessary land or easements to provide  
17 access to it. The department may acquire the land or material not-  
18 withstanding the fact that the title to it is in the state or a  
19 department, agency, commission or institution of the state. Acquisi-  
20 tion of material in the open market under this section is governed by  
21 AS 36.30 (State Procurement Code).

22 \* Sec. 38. AS 37.05 is amended by adding a new section to read:

23       Sec. 37.05.232. PETTY CASH ACCOUNTS. The department shall  
24 determine the amount of the petty cash accounts needed by each state  
25 agency and inspect the petty cash accounts at least once each year to  
26 determine that the total plus amounts of receipts for unreplenished  
27 disbursements is equal to the fixed sum of cash set aside. Shortages  
28 in petty cash accounts are a personal liability of the responsible  
29 head of the agency to whom the account is set aside. The department

1 shall adopt necessary regulations governing use and replenishment of  
2 petty cash funds.

3 \* Sec. 39. AS 37.05.316 is amended to read:

4 Sec. 37.05.316. GRANTS TO NAMED RECIPIENTS. When an amount is  
5 appropriated or allocated to a department as a grant for a named  
6 recipient that [WHICH] is not a municipality, the department to which  
7 the appropriation or allocation is made shall promptly notify the  
8 named recipient of the availability of the grant and request the named  
9 recipient to submit a proposal to provide the goods or services speci-  
10 fied in the appropriation act [, OR BOTH,] for which the appropriation  
11 or allocation is made. At the same time, the department may issue a  
12 request for proposals from other qualified persons to provide the same  
13 goods or services [, OR BOTH,] in the same area. The department shall  
14 award the grant to [CONTRACT WITH] the named recipient unless the  
15 Office of the Governor, with due regard for the [ANY] local expertise  
16 or experience of [AMONG] those making proposals, determines that an  
17 award [OF THE CONTRACT] to a different party would better serve the  
18 public interest. If the grant [CONTRACT] is awarded to a [ANOTHER]  
19 party other than that named by the legislature, the basis of that  
20 action shall be stated in writing at the time the grant is issued and  
21 a copy of the written statement shall be sent to the Legislative  
22 Budget and Audit Committee. A grant agreement must [CONTRACT SHALL]  
23 be executed within 60 days after the effective date of the appro-  
24 priation or allocation. [THE PURCHASE OF THE GOODS OR SERVICES, OR  
25 BOTH, SHALL BE IN ACCORDANCE WITH AS 37.05.230(1)(B).]

26 \* Sec. 40. AS 41.21.020(a) is amended to read:

27 (a) The Department of Natural Resources shall

28 (1) develop a continuing plan for the conservation and  
29 maximum use in the public interest of the scenic, historic,

1 archaeologic, scientific, biological, and recreational resources of  
2 the state;

3 (2) plan for and develop a system of state parks and recre-  
4 ational facilities, to be established as the legislature authorizes  
5 and directs;

6 (3) acquire by gift, purchase, or transfer from state or  
7 federal agencies, or from individuals, corporations, partnerships or  
8 associations, land necessary, suitable and proper for roadside, pic-  
9 nic, recreational or park purposes;

10 (4) control, develop and maintain state parks and recrea-  
11 tional areas;

12 (5) provide for the acquisition, care, control, supervi-  
13 sion, improvement, development, extension and maintenance of public  
14 recreational land, and make necessary arrangements, contracts or  
15 commitments for the improvement and development of land acquired under  
16 AS 41.21.010 - 41.21.040; contracting for improvement and development  
17 under this paragraph is governed by AS 36.30 (State Procurement Code);

18 (6) adopt, in accordance with this section and the Adminis-  
19 trative Procedure Act (AS 44.62), regulations governing the use and  
20 designating incompatible uses within the boundaries of state park and  
21 recreational areas to protect the property and to preserve the peace;

22 (7) cooperate with the United States and its agencies and  
23 local subdivisions of the state to secure the effective supervision,  
24 improvement, development, extension, and maintenance of state parks,  
25 state monuments, state historical areas, and state recreational areas,  
26 and secure agreements or contracts for the purpose of AS 41.21.010 -  
27 41.21.040;

28 (8) encourage the organization of state public park and  
29 recreational activities in the local political subdivisions of the

1 state;

2 (9) provide for consulting service designed to develop  
3 local park and recreation facilities and programs;

4 (10) provide clearing-house services for other state agen-  
5 cies concerned with park and recreation matters; and

6 (11) perform other duties as are prescribed by executive  
7 order or by law;

8 (12) maintain memorials to Alaska veterans located in state  
9 parks;

10 (13) adopt, in accordance with the Administrative Procedure  
11 Act (AS 44.52), regulations governing the use of the Chena River State  
12 Recreation Area and designating incompatible uses within the bound-  
13 aries of the Chena River State Recreation Area in accordance with  
14 AS 41.21.490.

15 \* Sec. 41. AS 42.40.920(b) is amended to read:

16 (b) Unless specifically provided otherwise in this chapter, the  
17 following laws do not apply to the operations of the corporation:

18 (1) AS 19;

19 (2) AS 30.15;

20 (3) AS 35;

21 (4) AS 36.30, except as specifically provided in AS 36.30

22 (State Procurement Code);

23 (5) AS 37.05;

24 (6) [(5)] AS 37.07;

25 (7) [(6)] AS 37.10.010 - 37.10.060;

26 (8) [(7)] AS 37.10.085;

27 (9) [(8)] AS 37.20;

28 (10) [(9)] AS 37.25;

29 (11) [(10)] AS 38;

1                   (12) [(11)] AS 44.62.040 - 44.62.320.

2 \* Sec. 42. AS 44.21.310(a) is amended to read:

3           (a) The telecommunications divisions, as directed by the deputy  
4 commissioner, shall

5                   (1) advise the governor on matters of policy and comprehen-  
6 sive state planning for telecommunications services;

7                   (2) make an annual report to the governor and to the legis-  
8 lature on the activities of the telecommunications divisions;

9                   (3) coordinate, manage, and supervise state programs in  
10 telecommunications, including the management of those telecommunica-  
11 tion services for the state obtained from common carriers and from the  
12 communications industry;

13                   (4) when requested, provide technical and consulting assis-  
14 tance to the executive, judicial, and legislative branches of state  
15 government, to the University of Alaska, and to private noncommercial  
16 entities which request that assistance in facility procurement and  
17 leasing and in identifying long-range goals and objectives for the  
18 state and its political subdivisions in all aspects of telecommunica-  
19 tions, including public, educational, and instructional telecommunica-  
20 tions;

21                   (5) prepare and maintain a state comprehensive telecommu-  
22 nications development plan to further state telecommunications devel-  
23 opment and to meet state telecommunications needs and prepare and  
24 maintain a comprehensive inventory of all state communications facil-  
25 ities;

26                   (6) whenever feasible, procure services from private enter-  
27 prise or certified and franchised utilities and contract for the  
28 construction, management, operation and maintenance of telecommunica-  
29 tions systems, and develop a procurement policy consistent with

1 AS 36.30 (State Procurement Code) [UNDER AS 37.05.010 - 37.05.410];  
2 the procurement policy must seek to achieve the maximum benefit to the  
3 public, and methods of procurement, including lease, purchase, rental,  
4 or combinations of lease, purchase, and rental, must be selected on  
5 the basis of factors such as the ratio of long-range costs versus  
6 benefits, life cycle costing, and the costs to the communications  
7 industry to the extent that these costs may affect local and long  
8 distance basic telephone rates; procurement, contracting, construc-  
9 tion, and maintenance under this paragraph is governed by AS 36.30;

10 (7) provide information and assistance to state agencies to  
11 promote governmental coordination and unity in the preparation of  
12 agency plans and programs involving the use of telecommunications;

13 (8) apply for and accept federal and private money, proper-  
14 ty, or assistance, that may be appropriated, granted, or otherwise  
15 made available to the telecommunications divisions and use and dis-  
16 burse money and property for purposes consistent with AS 44.21.300 -  
17 44.21.330 and AS 44.21.256 - 44.21.290, subject to reasonable limita-  
18 tions imposed by the grantor;

19 (9) participate with other governmental units in planning,  
20 and assist local governments and governmental conferences and councils  
21 in the state in planning and coordinating their activities relating to  
22 telecommunications;

23 (10) provide for the orderly transition to new telecommu-  
24 nications services and systems by state agencies;

25 (11) serve as a clearinghouse for information, data, and  
26 other materials which may be necessary or helpful to federal, state,  
27 or local governmental agencies in the development of telecommunication  
28 systems;

29 (12) coordinate their services and activities with those of

1 other state departments and agencies to the fullest extent possible to  
2 avoid unnecessary duplication; and

3 (13) provide that all activities of the telecommunications  
4 divisions are responsive to state statutes and regulations, and to the  
5 regulations and rulings of the Federal Communications Commission.

6 \* Sec. 43. AS 44.19.144(b) is amended to read:

7 (b) The director may

8 (1) with the written concurrence of the governor, enter  
9 into contracts and subcontracts on behalf of the state to carry out  
10 the provisions of AS 44.19.141 - 44.19.152; contracting under this  
11 paragraph is governed by AS 36.30 (State Procurement Code);

12 (2) act for the state in the initiation, investigation,  
13 evaluation of or participation in any program relative to the stated  
14 purpose of AS 44.19.141 - 44.19.152 which may involve more than one  
15 government or governmental unit;

16 (3) on behalf of the state, accept and expend any gifts or  
17 grants made to the state with the approval of the governor where such  
18 gifts or grants were made for the purposes of furthering the objec-  
19 tives of the office.

20 \* Sec. 44. AS 44.33.300 is amended to read:

21 Sec. 44.33.300. WAIVER OF CERTAIN PROVISIONS. When the gover-  
22 nor has by proclamation declared an area impacted by an economic  
23 disaster, the following provisions regarding public contracts may be  
24 waived to the extent specified in the proclamation:

25 (1) the requirement of a contractor's bond as prescribed in  
26 AS 36.25.010 may be waived if the contract amount does not exceed  
27 \$100,000;

28 (2) the public bid requirements as contained in AS 19.10.-  
29 170, AS [19.10.190,] 19.30.191(b), AS 35.15.010 - 35.15.020, and

1        AS 36.30 (State Procurement Code) [AND AS 35.15.010 - 35.15.030] may  
2 be waived if the contract is to be performed by a contractor whose  
3 principal office is in the designated area and the contract amount  
4 does not exceed \$50,000;

5                (3) the general policy to require all construction to be  
6 under bid contract as contained in AS 19.10.170, AS 35.15.010, and  
7 AS 36.30 (State Procurement Code) may be waived if the contract is to  
8 be performed by the state, another governmental entity, or a nonprofit  
9 entity.

10 \* Sec. 45. AS 44.47.250 is amended by adding a new subsection to read:

11                (c) Contracts with persons or nongovernmental entities under  
12 this section are governed by AS 36.30.

13 \* Sec. 46. AS 44.47.490(a) is amended to read:

14                (a) The director may establish field offices under this chapter,  
15 may hire one or more lending officers, and, under AS 36.30 (State  
16 Procurement Code), may contract for the services of

17                        (1) real property appraisers who are familiar with rural  
18 construction; and

19                        (2) engineers who are familiar with engineering problems in  
20 arctic and subarctic regions.

21 \* Sec. 47. AS 44.47.730(a) is amended to read:

22                (a) The commissioner shall contract for a study of the feasibil-  
23 ity of establishing a borough in the unorganized borough by following  
24 the procedures under AS 36.30 (State Procurement Code) [SET OUT IN  
25 AS 36.98]. The commissioner shall include terms in the contract that  
26 provide for

27                        (1) public participation in the preparation of the study;

28                        (2) completion of the study not later than June 30 of the  
29 third year after the year the contract is executed.

1 \* Sec. 48. AS 44.62.175(a) is amended to read:

2 (a) The lieutenant governor shall publish or contract for the  
3 publication of the Alaska Administrative Journal. The journal shall  
4 be published weekly. The journal must include

5 (1) notices of proposed actions given under AS 44.62.-  
6 190(a);

7 (2) notices of state agency meetings required under AS 44.-  
8 62.310(e), even if the meeting has been held;

9 (3) notices of solicitations to bid issued under AS 36.30.-  
10 130 [AS 37.05.230];

11 (4) notices of state agency requests for proposals issued  
12 under AS 18.55.255, 18.55.320; [AS 19.10.190; AS 19.40.020; AS 35.15.-  
13 030; AS 36.98.030; AS 37.05.230,] AS 37.05.315(d); AS 38.05.120; and  
14 AS 43.40.010;

15 (5) executive orders and administrative orders issued by  
16 the governor;

17 (6) written delegations of authority made by the governor  
18 or the head of a principal department under AS 44.17.010;

19 (7) the text or a summary of the text of a regulation or  
20 order of repeal of a regulation for which notice is given under AS  
21 44.62.190(a), including an emergency regulation or repeal whether or  
22 not it has taken effect;

23 (8) a summary of the text of recently issued formal opin-  
24 ions and memoranda of advice of the attorney general; and

25 (9) a list of vacancies on boards, commissions, and other  
26 bodies whose members are appointed by the governor.

27 \* Sec. 49. AS 44.71.010 is amended to read:

28 Sec. 44.71.010. DISPOSITION OF OBSOLETE OR SURPLUS STATE PROP-  
29 ERTY. The Department of Administration shall take possession of

1 obsolete or surplus property of the state for which there is no imme-  
2 diate or prospective use, except abandoned or obsolete school build-  
3 ings and other school property. It shall also take possession of  
4 property remaining in the control of a commission or board of the  
5 state government after the commission or board stops functioning. The  
6 Department of Administration shall sell, lease, license, or dispose of  
7 the property on the terms it considers for the best interests of the  
8 state in conformance with regulations adopted under AS 36.30 (State  
9 Procurement Code).

10 \* Sec. 50. AS 44.77.010(a) is amended to read:

11 (a) Except as provided in (d) of this section, every [EVERY]  
12 claim for reimbursement for money expended, or for compensation for  
13 labor, materials, or supplies furnished, or services given to or for  
14 the state, whether based on a contract or on a ratification, shall be  
15 promptly presented to the appropriate administrative or executive  
16 officer for approval and payment.

17 \* Sec. 51. AS 44.77.010 is amended by adding a new subsection to read:

18 (d) A claim that is governed by AS 36.30.560 - 36.30.699 is not  
19 governed by this chapter.

20 \* Sec. 52. AS 44.85.120 is amended to read:

21 Sec. 44.85.120. CARE AND CUSTODY OF BONDS. The bond bank  
22 authority, in accordance with AS 36.30 (State Procurement Code), may  
23 enter into agreements or contracts with a bank, trust company, banking  
24 or financial institution inside or outside the state as may be neces-  
25 sary, desirable or convenient, in the opinion of the bond bank author-  
26 ity, for rendering services in connection with the care, custody or  
27 safekeeping of municipal bonds or other investments held or owned by  
28 the bond bank authority, for rendering services in connection with the  
29 payment or collection of amounts payable as to principal or interest,

1 and for rendering services in connection with the delivery to the bond  
2 bank authority of municipal bonds or other investments purchased by it  
3 or sold by it, and to pay the cost of those services. The bond bank  
4 authority may also, in connection with any of the services to be  
5 rendered by a bank, trust company or banking or financial institution  
6 as to the custody and safekeeping of its municipal bonds or invest-  
7 ments, require security in the form of collateral bonds, surety agree-  
8 ments or security agreements in such form and amount as, in the opin-  
9 ion of the bond bank authority, is necessary or desirable.

10 \* Sec. 53. AS 44.99.001 is amended to read:

11       Sec. 44.99.001. ADMINISTRATION OF HIGHWAY SAFETY PROGRAM. The  
12 governor may contract and do all other things necessary on behalf of  
13 this state under 23 U.S.C. 401-404 (Highway Safety Act of 1966), and  
14 may cooperate with interested persons and agencies to effectuate the  
15 purposes of that Act. Contracting under this section is governed by  
16 AS 36.30 (State Procurement Code). The governor may designate a  
17 person to serve as the governor's highway safety representative;  
18 however, the governor is the official in this state having the ulti-  
19 mate responsibility for dealing with the federal government with  
20 respect to programs and activities under the Federal Highway Safety  
21 Act of 1966. The governor shall coordinate the activities relating to  
22 highway safety of state departments, agencies and subdivisions and of  
23 the Governor's Commission on Transportation Safety established in  
24 AS 44.19.190.

25 \* Sec. 54. AS 46.04.090(a) is amended to read:

26       (a) The department, when feasible, shall enter into contracts  
27 with persons or private organizations to provide the personnel, equip-  
28 ment, or other services or supplies which may be required to carry out  
29 this chapter. Contracts under this section are governed by AS 36.30

1           (State Procurement Code). When private contracting is not feasible,  
2           the department may establish and maintain at ports, harbors, or other  
3           locations in the state, the cleanup personnel, equipment, and supplies  
4           which, in its judgment, are necessary to carry out this chapter.

5           \* Sec. 55. AS 46.07.040(a) is amended to read:

6           (a) The commissioner shall provide for the construction of  
7           facilities under this chapter, and is authorized to provide for the  
8           construction by contract or through grants to public agencies or  
9           private nonprofit organizations, or otherwise. A [NO] contribution  
10          toward the cost of the construction of a facility may not be required  
11          from its users. Construction under this section by contract is gov-  
12          erned by AS 36.30 (State Procurement Code).

13          \* Sec. 56. AS 46.15.020(a) is amended to read:

14          (a) The commissioner shall exercise all those powers and do all  
15          those acts necessary to carry out the provisions and objectives of  
16          this chapter. The commissioner may

17                  (1) subject to AS 36.30 (State Procurement Code), enter  
18          into contractual agreements necessary to carry out the provisions of  
19          this chapter including agreements with federal, state and local agen-  
20          cies;

21                  (2) apply for, accept, administer and expend grants, gifts,  
22          and loans from the federal government and any other public or private  
23          sources for the purposes of this chapter, and adopt procedures and do  
24          acts not otherwise restricted by law which are necessary to qualify  
25          the state to receive grants, gifts and loans;

26                  (3) establish a division of water in the Department of  
27          Natural Resources and assign to that division the responsibility for  
28          carrying out the provisions of this chapter.

29          \* Sec. 57. AS 47.05.015(c) is amended to read:

1 (c) A contract authorized under this section is exempt from the  
2 competitive bid requirements of AS 36.30 (State Procurement Code)  
3 [AS 37.05.230]. In awarding a contract under this section the depart-  
4 ment shall [PUBLISH A] request [FOR] proposals in accordance with  
5 regulations of the Department of Administration under AS 36.30 (State  
6 Procurement Code) [DEPARTMENT].

7 \* Sec. 58. AS 47.30.350(a) is amended to read:

8 (a) The department shall

9 (1) develop and submit to the Surgeon General of the United  
10 States Public Health Service a comprehensive program for the con-  
11 structing and equipping of hospitals and other facilities for the  
12 examination, observation, care, and treatment of the mentally ill;

13 (2) develop and submit to the Surgeon General plans and  
14 specifications for the constructing and equipping of the hospitals and  
15 other facilities;

16 (3) construct and equip the hospitals and other facilities  
17 in accordance with the program, plans, and specifications approved by  
18 the Surgeon General; construction and equipping under this paragraph  
19 is governed by AS 36.30 (State Procurement Code);

20 (4) cooperate, coordinate, and contract, wherever indicated  
21 and desirable, with other state boards, departments and agencies, and  
22 agencies of the United States in the construction program, and hire  
23 necessary personnel and enter into contracts with private individuals  
24 and companies, to the end that the hospitals and other facilities are  
25 constructed in the most economical and expeditious manner; contracting  
26 and construction under this section are governed by AS 36.30 (State  
27 Procurement Code).

28 \* Sec. 59. AS 47.30.660 is amended to read:

29 Sec. 47.30.660. POWERS AND DUTIES OF DEPARTMENT. The

1 department is the mental health authority of the state and shall

2 (1) administer a comprehensive program for the prevention  
3 of mental illness and the care and treatment of the mentally ill,  
4 including inpatient and outpatient care and treatment and the procure-  
5 ment of services of specialists or other persons on a contractual or  
6 other basis;

7 (2) take the actions and undertake the obligations which  
8 are necessary to participate in federal grants-in-aid programs and  
9 accept federal or other financial aid from whatever sources for the  
10 study, examination, care, and treatment of the mentally ill;

11 (3) administer AS 47.30.660 - 47.30.915;

12 (4) designate, operate, and maintain treatment facilities  
13 equipped and qualified to provide inpatient and outpatient care and  
14 treatment for the mentally ill;

15 (5) provide for the placement of mentally ill patients in  
16 designated treatment facilities;

17 (6) enter into arrangements with governmental agencies for  
18 the care or treatment of the mentally ill in facilities of the govern-  
19 mental agencies in the state or in another state;

20 (7) enter into contracts with treatment facilities for the  
21 custody and care or treatment of the mentally ill; contracts under  
22 this paragraph are governed by AS 36.30 (State Procurement Code);

23 (8) enter into contracts which incorporate safeguards  
24 consistent with AS 47.30.660 - 47.30.915 and the preservation of the  
25 civil rights of the patients with another state for the custody and  
26 care or treatment of patients previously committed from this state  
27 under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd  
28 Session, 70 Stat. 709;

29 (9) prescribe the form of applications, records, reports,

1 requests for release, and consents to medical or psychological treat-  
2 ment required by AS 47.30.660 - 47.30.915;

3 (10) require reports from the head of a treatment facility  
4 concerning the care of patients;

5 (11) visit each treatment facility at least annually to  
6 review methods of care or treatment for patients;

7 (12) investigate complaints made by a patient or an inter-  
8 ested party on behalf of a patient;

9 (13) delegate upon mutual agreement to another officer or  
10 agency of it, or a political subdivision of the state, or a treatment  
11 facility designated, any of the duties and powers imposed upon it by  
12 AS 47.30.660 - 47.30.915; and

13 (14) adopt regulations to implement the provisions of  
14 AS 47.30.660 - 47.30.915.

15 \* Sec. 60. AS 47.35.010(a) is amended to read:

16 (a) The department may

17 (1) license and supervise boarding homes, foster homes,  
18 group homes, nurseries, institutions caring for children and foster  
19 homes, group homes and institutions caring for dependent adults;

20 (2) investigate and supervise licensees;

21 (3) enforce the standards established by it;

22 (4) contract with private or municipal agencies to investi-  
23 gate and make recommendations to the department for the licensing and  
24 supervision of boarding homes, foster homes, group homes, nurseries,  
25 institutions caring for children and foster homes, group homes and  
26 institutions caring for dependent adults under procedures and stan-  
27 dards of operation established by the department; contracts with  
28 private agencies under this paragraph are governed by AS 36.30 (State  
29 Procurement Code).

1 \* Sec. 61. AS 47.37.030 is amended to read:

2 Sec. 47.37.030. POWERS OF OFFICE. The office may

3 (1) plan, establish, and maintain treatment programs as  
4 appropriate;

5 (2) make contracts and award grants necessary or incidental  
6 to the performance of its duties and the execution of its powers,  
7 including contracts with and grants to public and private agencies,  
8 organizations, and individuals, to pay them for services rendered or  
9 furnished to alcoholics or intoxicated persons; to the maximum extent  
10 possible, contracts and grants shall be for a period of two years;  
11 contracts under this paragraph are governed by AS 36.30 (State Pro-  
12 curement Code);

13 (3) solicit and accept for use a gift of money or property  
14 or a grant of money, services, or property from the federal govern-  
15 ment, the state, or a political subdivision of it or a private source,  
16 and do all things necessary to cooperate with the federal government  
17 or any of its agencies in making an application for a grant;

18 (4) administer or supervise the administration of the  
19 provisions relating to alcoholics and intoxicated persons of any state  
20 plan submitted for federal funding under federal health, welfare, or  
21 treatment legislation;

22 (5) coordinate its activities and cooperate with alcoholism  
23 programs in this and other states, and make contracts and other joint  
24 or cooperative arrangements with state, local, or private agencies for  
25 the treatment of alcoholics and intoxicated persons and for the common  
26 advancement of alcoholism programs in this and other states;

27 (6) keep records and engage in research and the gathering  
28 of relevant statistics;

29 (7) do other acts necessary to implement the authority

1 expressly granted to it;

2 (8) acquire, hold, or dispose of real property or any  
3 interest in it, and construct, lease, or otherwise provide treatment  
4 facilities for alcoholics and intoxicated persons; however, the office  
5 shall encourage local initiative, involvement and financial participa-  
6 tion under grants-in-aid whenever possible in preference to the con-  
7 struction or operation of facilities directly by the office; contract-  
8 ing and construction under this paragraph are governed by AS 36.30  
9 (State Procurement Code).

10 \* Sec. 62. AS 47.37.130(g) is amended to read:

11 (g) The office may contract for the use of any facility as an  
12 approved public treatment facility if the coordinator, subject to the  
13 regulations of the department, considers this an effective and econom-  
14 ical course to follow. Contracting under this subsection is governed  
15 by AS 36.30 (State Procurement Code).

16 \* Sec. 63. AS 47.40.041(b) is amended to read:

17 (b) Notices published by the department concerning the opening  
18 of the application process for a grant award shall specify the geo-  
19 graphical area in which services are needed, the type of services, the  
20 number of beds anticipated to be needed, the maximum number of days of  
21 care, and any other requirements established by the department.  
22 Grants authorized under this section are exempt from AS 36.30 (State  
23 Procurement Code) [THE COMPETITIVE BID REQUIREMENTS OF AS 37.05.230].

24 -\* Sec. 64. AS 47.90.010(a) is amended to read:

25 (a) The commissioner, in consultation with state and local  
26 government agencies, community groups, and groups concerned with  
27 displaced homemakers, may

28 (1) contract with eligible private profit and nonprofit  
29 corporations for multipurpose service centers for displaced

1 homemakers; contracting under this paragraph is governed by AS 36.30  
2 (State Procurement Code); and

3 (2) coordinate existing state programs for displaced home-  
4 makers.

5 \* Sec. 65. REPORT. By December 1, 1988, the commissicner of adminis-  
6 tration and the commissioner of transportation and public facilities shall  
7 report to the legislature concerning procurements by state agencies during  
8 fiscal year 1987. The report must include

9 (1) the records prepared under AS 36.30.510(4);

10 (2) recommendations for changes in AS 36.30 or other laws based  
11 on implementation of AS 36.30 in those 12 months; and

12 (3) a description of any matters that involved litigation con-  
13 cerning AS 36.30 during those 12 months.

14 \* Sec. 66. REGULATIONS DEADLINE. The regulations required under  
15 AS 36.30 as added by sec. 2 of this Act, shall be adopted by July 1, 1987  
16 and shall be effective on that date. Regulations adopted under laws  
17 repealed in sec. 67 of this Act become ineffective July 1, 1987.

18 \* Sec. 67. REPEALER. The following laws are repealed: AS 14.40.340;  
19 AS 19.10.190, 19.10.210; AS 24.23; AS 35.15.030, 35.15.050; AS 36.98;  
20 AS 37.05.220, 37.05.230, 37.05.231, 37.05.240, 37.05.250, 37.05.260, 37.-  
21 05.270, 37.05.280, 37.05.290, 37.05.400(2) and (3); AS 44.65; AS 44.77.-  
22 010(c); and AS 47.90.010(c).

23 \* Sec. 68. Section 66 of this Act takes effect immediately in accor-  
24 dance with AS 01.10.070(c).

25 \* Sec. 69. Except as provided in sec. 68, this Act takes effect July 1,  
26 1987.