

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

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Chapter 25. Contractors' Bonds.

Sec. 36.25.020. Rights of persons furnishing labor or material.

NOTES TO DECISIONS

Recovery subject to AS 08.18.151. — Recovery under this section is subject to, and not independent of, the express penalty of AS 08.18.151, which prohibits those contractors who fail to duly register from suing on the contracts in which they are unlawfully engaged. State ex rel.

Smith v. Tyonek Timber, Inc., Sup. Ct. Op. No. 2813 (File Nos. 7170, 7256), 680 P.2d 1148 (1984).

Quoted in State ex rel. Smith v. Tyonek Timber, Inc., Sup. Ct. Op. No. 2813 (File Nos. 7170, 7256), 680 P.2d 1148 (1984).

Chapter 30. State Procurement Code.

Article

1. Organization of State Procurement (§§ 36.30.005 — 36.30.080)
2. Competitive Sealed Bidding (§§ 36.30.100 — 36.30.190)
3. Competitive Sealed Proposals (§§ 36.30.200 — 36.30.270)
4. Other Procurement Methods (§§ 36.30.300 — 36.30.320)
5. Preference for Alaska Products (§§ 36.30.322 — 36.30.338)
6. Contract Formation and Modification (§§ 36.30.340 — 36.30.480)
7. Procurement Records and Reports (§§ 36.30.500 — 36.30.540)
8. Legal and Contractual Remedies (§§ 36.30.560 — 36.30.699)
9. Intergovernmental Relations (§§ 36.30.700 — 36.30.790)
10. General Provisions (§§ 36.30.850 — 36.30.995)

Cross references. — For statement of legislative purpose in enacting this chapter, see sec. 1, ch. 106, SLA 1986, in the Temporary and Special Acts.

Editor's notes. — Section 65, ch. 106, SLA 1986, provides: "REPORT. By December 1, 1988, the commissioner of administration and the commissioner of transportation and public facilities shall report to the legislature concerning pro-

urement by state agencies during the fiscal year 1988. The report must include (1) the records prepared under AS 36.30.540;

(2) recommendations for changes in AS 36.30 or other laws based on implementation of AS 36.30 in those 12 months; and (3) a description of any matters that involved litigation concerning AS 36.30 during those 12 months."

Article 1. Organization of State Procurement.

Section

05. Centralization of procurement authority
10. Chief procurement officer
15. Executive branch agencies
20. Legislature
30. Court system

Section

40. Procurement regulations
50. Lists of contractors
60. Specifications
70. Supply management
80. Leases

Effective date of article. — Section 69, ch. 106, SLA 1986, makes this article effective July 1, 1987.

Sec. 36.30.005. Centralization of procurement authority [Effective July 1, 1987]. (a) Except as otherwise provided, all rights, powers, duties, and authority relating to the procurement of supplies, services, and professional services, and the control over supplies, services, and professional services vested in or exercised by an agency on July 1, 1987, are transferred to the commissioner of administration and to the chief procurement officer. Authority granted under this subsection shall be exercised in accordance with this chapter.

(b) Except as otherwise provided, all rights, powers, duties, and authority relating to the procurement of construction and procurements of equipment or services for the state equipment fleet and the control over construction of state facilities and the state equipment fleet vested in or exercised by an agency on July 1, 1987, are transferred to the commissioner of transportation and public facilities, subject to regulations adopted by the commissioner of administration. Notwithstanding AS 44.71.010, authority relating to disposals from the state equipment fleet is vested in the commissioner of transportation and public facilities, subject to regulations adopted by the commissioner of administration. Authority granted under this subsection shall be exercised in accordance with this chapter.

(c) Notwithstanding other provisions of law, all rights, powers, duties, and authority relating to the procurement of supplies, services, professional services, and construction and the disposal of supplies for the University of Alaska are transferred to the Board of Regents. To the maximum extent possible, authority granted under this subsection shall be exercised in accordance with this chapter. The Board of Regents shall adopt regulations under this subsection that are substantially equivalent to the regulations adopted by the commissioner of administration to implement this chapter. For the purposes of this subsection, unless the context otherwise requires, in this chapter

- (1) "agency" means a subunit of the University of Alaska;
- (2) "attorney general" means the president of the University of Alaska;
- (3) "chief procurement officer" means a person designated by the president of the University of Alaska whose qualifications are substantially equivalent to those provided in AS 36.30.010(a);
- (4) "commissioner," "commissioner of administration," or "commissioner of transportation and public facilities" means the Board of Regents or the president of the University of Alaska if so designated by the Board of Regents by regulations adopted under this subsection;

(5) "department" means the University of Alaska. (§ 2 ch 106 SLA 1986)

Revisor's notes. — "July 1, 1987" was substituted for "January 1, 1987" in sub-sections (a) and (b) to correct a manifest error.

Sec. 36.30.010. Chief procurement officer [Effective July 1, 1987]. (a) The commissioner shall appoint to the partially exempt service the chief procurement officer of the state. The chief procurement officer must have at least five years of prior experience in public procurement, including large scale procurement of supplies, services, or professional services, and must be a person with demonstrated executive and organizational ability. The chief procurement officer may be removed by the commissioner only for cause. The term of office of the chief procurement officer is four years.

(b) Except as otherwise specifically provided in this chapter, the chief procurement officer shall

(1) procure or supervise the procurement of all supplies, services, and professional services needed by an agency;

(2) exercise general supervision and control over all inventories of supplies belonging to an agency and prescribe the manner in which supplies shall be purchased, delivered, stored, and distributed;

(3) prescribe the time, manner, authentication, and form of making requisitions for supplies and services;

(4) sell, trade, transfer between agencies, or otherwise dispose of surplus, obsolete, or unused supplies and make proper adjustments in the accounts of agencies concerned;

(5) establish and maintain programs for the inspection, testing, and acceptance of supplies and services and the testing of samples submitted with bids;

(6) prescribe standard forms for bids and contracts; and

(7) provide for other matters that may be necessary to carry out the provisions of this chapter and the regulations adopted under this chapter. (§ 2 ch 106 SLA 1986)

Sec. 36.30.015. Executive branch agencies [Effective July 1, 1987]. (a) The commissioner of transportation and public facilities may delegate to another agency the authority to contract for construction. Before delegating authority to an agency under this subsection, the commissioner of transportation and public facilities shall make a written determination that the agency is capable of implementing the delegated authority. Notwithstanding delegation of authority under this subsection, contracts for construction are governed by this chapter and regulations adopted by the commissioner of administration under this chapter.

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

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

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

(e) The boards of directors of the Alaska Railroad Corporation and the Alaska State Building Authority shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the corporation. The procedures must be substantially equivalent to the procedures prescribed in this chapter and in regulations adopted under this chapter. (§ 2 ch 106 SLA 1986)

Sec. 36.30.020. Legislature [Effective July 1, 1987]. The Legislative Council shall adopt and publish procedures to govern the procurement of supplies, services, professional services, and construction by the legislative branch. The procedures must be based on the competitive principles consistent with this chapter and must be adapted to the special needs of the legislative branch as determined by the Legislative Council. (§ 2 ch 106 SLA 1986)

Sec. 36.30.030. Court system [Effective July 1, 1987]. The administrative director of courts shall adopt and publish procedures to govern the procurement of supplies, services, professional services, and construction by the judicial branch. The procedures must be based on the competitive principles consistent with this chapter and must be adapted to the special needs of the judicial branch as determined by the administrator of courts. (§ 2 ch 106 SLA 1986)

Sec. 36.30.040. Procurement regulations [Effective July 1, 1987]. (a) The commissioner shall adopt regulations governing the procurement, management, and control of supplies, services, professional services and construction by agencies. The commissioner may audit and monitor the implementation of the regulations and the requirements of this chapter with respect to using agencies.

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

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- (1) suspension, debarment, and reinstatement of prospective bidders and contractors;
- (2) bid protests;
- (3) conditions and procedures for the procurement of perishables and items for resale;
- (4) conditions and procedures for the use of source selection methods authorized by this chapter, including sole source procurements, emergency procurements, and small procurements;
- (5) the opening or rejection of bids and offers, and waiver of informalities in bids and offers;
- (6) confidentiality of technical data and trade secrets submitted by actual or prospective bidders or offerors;
- (7) partial, progressive, and multiple awards;
- (8) storerooms and inventories, including determination of appropriate stock levels and the management of agency supplies;
- (9) transfer, sale or other disposal of supplies;
- (10) definitions and classes of contractual services and procedures for acquiring them;
- (11) providing for conducting price analysis;
- (12) use of payment and performance bonds in connection with contracts for supplies, services, and construction;
- (13) guidelines for use of cost principles in negotiations, adjustments, and settlements;
- (14) conditions under which an agency may use the services of an employment program as defined under AS 36.30.100(c);
- (15) a bidder's or offeror's duties under AS 36.30.115 and 36.30.210; and
- (16) the elimination and prevention of discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, handicap, or political affiliation. (§ 2 ch 106 SLA 1986)

Editor's notes. — Section 66, ch. 106, SLA 1986, provides "REGULATIONS DEADLINE. The regulations required under AS 36.30 as added by sec. 2 of this Act, shall be adopted by July 1, 1987, and shall be effective on that date. Regulations accepted under laws repealed in sec. 67 of this Act become ineffective July 1, 1987."

Sec. 36.30.050. Lists of contractors [Effective July 1, 1987]. (a) The commissioner shall establish and maintain lists of persons who desire to provide supplies, services, professional services, or construction services to the state.

(b) A person who desires to be on a list shall submit to the commissioner evidence of a valid Alaska business license together with a biennial fee established by regulation in an amount reasonably calculated to pay the costs of administering this section. A construction

contractor shall also submit a valid certificate of registration issued under AS 08.18. The commissioner, by regulation, may require submission of additional information.

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

(d) The lists shall be used in providing notice of intent to make a small procurement to Alaska bidders as defined under AS 36.30.170(c). A procurement officer who intends to make a procurement under AS 36.30.320 shall request names from the appropriate list and the department shall furnish names of Alaska bidders on a rotating basis from the list in response to each request. (§ 2 ch 106 SLA 1986)

Sec. 36.30.060. Specifications [Effective July 1, 1987]. (a) The commissioner shall adopt regulations governing the preparation, revision, and content of specifications for supplies, services, professional services, and construction required by an agency. The commissioner shall monitor the use of these specifications.

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

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

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

Sec. 36.30.070. Supply management [Effective July 1, 1987]. The commissioner shall adopt regulations governing the

- (1) management of supplies during their entire life cycle;
- (2) sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method;

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- (3) purchase of surplus supplies by an employee of the using or disposing agency; and
- (4) transfer of excess supplies. (§ 2 ch 106 SLA 1986)

Sec. 36.30.080. Leases [Effective July 1, 1987]. (a) The department shall lease space for the use of the state or an agency wherever it is necessary and feasible, subject to compliance with the requirements of this chapter. A lease may not provide for a period of occupancy greater than 40 years. An agency requiring office, warehouse, or other space shall lease the space through the department.

(b) The department may enter into lease-financing agreements, including lease-purchase agreements and agreements related to the issuance of certificates of participation. A lease-financing agreement must provide that lease payments are subject to annual appropriation.

(c) If the department intends to enter into a lease or lease-financing agreement with an annual rent to the state anticipated to exceed \$1,000,000, the department shall provide notice to the legislature. The notice must include the anticipated annual lease obligation amount and the anticipated total construction, acquisition, or other costs of the project. The department may not enter into an agreement under this subsection unless the project has been approved by the legislature by law. An appropriation for the project does not constitute approval of the project for purposes of this subsection. (§ 2 ch 106 SLA 1986)

Article 2. Competitive Sealed Bidding.

Section	Section
100. General policy	150. Bid acceptance and bid evaluation
110. Invitation to bid	160. Late bids; Correction or withdrawal of bids; Cancellation of awards
115. Subcontractors	170. Contract award after bids
120. Bid security	190. Multi-step sealed bidding
130. Public notice of invitation to bid	
140. Bid opening	

Effective date of article. — Section 69, ch. 106, SLA 1986, makes this article effective July 1, 1987.

Sec. 36.30.100. General policy [Effective July 1, 1987]. (a) Except as otherwise provided in this chapter, or unless specifically exempted by law, an agency contract shall be awarded by competitive sealed bidding.

- (b) Competitive sealed bidding is not required
 - (1) when the commissioner determines in writing that food, clothing, or medical supplies, or materials for use in laboratory or medical studies may be purchased otherwise to the best advantage of the state;

- (2) when rates are fixed by law or ordinance;
 - (3) for the purchase of products or services manufactured or provided by an employment program;
 - (4) for the purchase of products or services provided by the correctional industries program established under AS 33.32;
 - (5) for professional services; or
 - (6) for concessions operated on state property.
- (c) In this section "employment program" means a nonprofit program to increase employment opportunities for individuals with physical or mental disabilities that constitute substantial handicaps to employment. (§ 2 ch 106 SLA 1986)

Sec. 36.30.110. Invitation to bid [Effective July 1, 1987]. (a) When competitive sealed bidding is used, the procurement officer shall issue an invitation to bid. It must include a time, place and date by which the bid must be received, purchase description, and a description of all contractual terms and conditions applicable to the procurement.

(b) When responding to the invitation to bid, the bidder shall supply evidence of the bidder's valid Alaska business license. A bidder for a construction contract shall also submit evidence of the bidder's registration under AS 08.18. (§ 2 ch 106 SLA 1986)

Sec. 36.30.115. Subcontractors [Effective July 1, 1987]. (a) Within 24 hours after opening of bids, the two apparent low bidders shall submit a list of the subcontractors the bidders propose to use in the performance of the contract. The list shall include the name and location of the place of business for each subcontractor and evidence of the subcontractor's valid Alaska business license. A bidder for a construction contract shall also submit evidence of each subcontractor's registration under AS 08.18.

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

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

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

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

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

Sec. 36.30.120. Bid security [Effective July 1, 1987]. (a) Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the procurement officer to exceed an amount established by regulation of the commissioner. Bid security on construction contracts under the amount set by the commissioner may be required when the circumstances warrant. Bid security may be required for competitive sealed bidding for contracts for supplies, services, or professional services in accordance with regulations of the commissioner when needed for the protection of the state.

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

- (1) 10 percent of the amount of the bid if the bid does not exceed \$100,000; or
- (2) 10 percent of the first \$100,000 and 5 percent of the amount of the bid over \$100,000 if the bid exceeds \$100,000 up to a maximum of \$200,000 in security.

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

Sec. 36.30.130. Public notice of invitation to bid [Effective July 1, 1987]. (a) The procurement officer shall give adequate public notice of the invitation to bid at least 21 days before the date for the opening of bids. If a determination is made in writing that a shorter notice period is necessary for a particular bid, the 21-day period may be shortened. The determination shall be made by the chief procurement officer for bids for supplies, services, or professional services. The determination shall be made by the commissioner of transportation and public facilities for bids for construction or acquisition of property for the state equipment fleet. Notice shall be published in the Alaska Administrative Journal. The time and manner of notice must be in accordance with regulations adopted by the commissioner of administration. When practicable, notice may include

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

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

Sec. 36.30.140. Bid opening [Effective July 1, 1987]. (a) The procurement officer shall open bids publicly in the presence of one or more witnesses at the time and place designated in the invitation to bid. The amount of each bid and other relevant information that is specified by regulation of the commissioner, together with the name of each bidder, shall be recorded.

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

Sec. 36.30.150. Bid acceptance and bid evaluation [Effective July 1, 1987]. (a) Bids shall be unconditionally accepted without alteration or correction, except as authorized in AS 36.30.160. The procurement officer shall evaluate bids based on the requirements set out in the invitation to bid, which may include criteria to determine ac-

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ceptability such as inspection, testing, quality, delivery, and suitability for a particular purpose. The criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation to bid must set out the evaluation criteria to be used. Criteria may not be used in bid evaluation if they are not set out in the invitation to bid.

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

Sec. 36.30.160. Late bids; Correction or withdrawal of bids; Cancellation of awards [Effective July 1, 1987]. (a) Bids received after the bid due date and time indicated on the invitation to bid may not be accepted unless the delay was due to an error of the contracting agency.

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

Sec. 36.30.170. Contract award after bids [Effective July 1, 1987]. (a) Except as provided in (b) of this section, the procurement officer shall award a contract based on the solicited bids with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid.

(b) Notwithstanding an Alaska product preference under AS 36.30.322 — 36.30.338, the procurement officer shall award a contract based on solicited bids to the lowest responsible and responsive Alaska bidder if the bid is not more than five percent higher than the lowest nonresident bidder's. In this subsection, "Alaska bidder" means a person who

- (1) holds a current Alaska business license;
- (2) submits a bid for goods, services, or construction under the name as appearing on the person's current Alaska business license;
- (3) has maintained a place of business within the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid;
- (4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship, and the proprietor is a resident of the state or is a partnership, and all partners are residents of the state; and
- (5) if a joint venture, is composed entirely of ventures that qualify under (1) — (4) of this subsection.

(c) If a bidder qualifies under (b) of this section as an Alaska bidder, is offering services through an employment program as defined under AS 36.30.100(c), and is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid of a nonresident, the procurement officer shall award the contract to that bidder. (§ 2 ch 106 SLA 1986)

Sec. 36.30.190. Multi-step sealed bidding [Effective July 1, 1987]. When it is considered impractical to initially prepare a definitive purchase description to support an award based on price, the procurement officer may issue an invitation to bid requesting the submission of unpriced technical offers to be followed by an invitation to bid limited to the bidders whose offers are determined to be technically qualified under the criteria set out in the first solicitation. (§ 2 ch 106 SLA 1986)

Article 3. Competitive Sealed Proposals.

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

Effective date of article. — Section 69, ch. 106, SLA 1986, makes this article effective July 1, 1987.

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Sec. 36.30.200. Conditions for use [Effective July 1, 1987]. (a) Except as otherwise provided in this chapter, or unless specifically exempted by law, an agency contract shall be awarded by competitive sealed proposals if it is not awarded by competitive sealed bidding. Construction may only be procured by competitive sealed proposals if the conditions under (c) of this section are met.

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

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

Sec. 36.30.210. Request for proposals [Effective July 1, 1987].

(a) A request for competitive sealed proposals must contain the date, time and place for delivering proposals, a specific description of the supplies, construction, services, or professional services to be provided under the contract, and the terms under which the supplies, construction, services, or professional services are to be provided. The request shall require the offeror to submit evidence of the offeror's valid Alaska business license and, no later than the date by which proposals must be received, to list subcontractors the offeror proposes to use in the performance of the contract. The list shall include the name and location of the place of business for each subcontractor and evidence of the subcontractor's valid Alaska business license. An offeror for a construction contract shall also submit evidence of the offeror's registration under AS 08.18 and evidence of registration for each listed subcontractor.

(b) A request for proposals must contain that information necessary for an offeror to submit a proposal or contain references to any information that cannot reasonably be included with the request. The re-

quest must provide a description of the factors that will be considered by the procurement officer when evaluating the proposals received, including the relative importance of price and other evaluation factors.

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

(d) The provisions of AS 36.30.115(b) — (e) apply to competitive sealed proposals. (§ 2 ch 106 SLA 1986)

Sec. 36.30.220. Standard overhead rate [Effective July 1, 1987]. (a) An agency that provides services to another agency under a contract covered by this chapter shall establish a standard overhead rate. If an agency submits a proposal in response to a request for competitive sealed proposals, the agency must include its standard overhead rate within its proposal.

(b) In this section, "standard overhead rate" means a charge established for services and professional services from an agency that is designed to compensate the agency for administration and support services incidentally provided with the services contractor for. (§ 2 ch 106 SLA 1986)

Sec. 36.30.230. Treatment of proposals [Effective July 1, 1987]. The procurement officer shall open proposals so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals containing the name and address of each offeror shall be prepared in accordance with regulations adopted by the commissioner. The register and the proposals are open for public inspection after the notice of intent to award a contract is issued under AS 36.30.365. To the extent that the offeror designates and the procurement officer concurs, trade secrets and other proprietary data contained in the proposal documents are confidential. (§ 2 ch 106 SLA 1986)

Sec. 36.30.240. Discussion with responsible offerors and revisions to proposals [Effective July 1, 1987]. As provided in the request for proposals, and under regulations adopted by the commissioner, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors reasonably susceptible of being selected for award shall be ac-

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corded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and before the award of the contract for the purpose of obtaining best and final offers. In conducting discussions, the procurement officer may not disclose information derived from proposals submitted by competing offerors. AS 44.62.310 does not apply to meetings with offerors under this section. (§ 2 ch 106 SLA 1986)

Sec. 36.30.250. Award of contract [Effective July 1, 1987]. (a) The procurement officer shall award a contract under competitive sealed proposals to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price and the evaluation factors set out in the request for proposals. Other factors and criteria may not be used in the evaluation. The contract file must contain the basis on which the award is made.

(b) In determining whether a proposal is advantageous to the state, the procurement officer shall take into account, in accordance with regulations of the commissioner, whether the offeror qualifies as an Alaskan bidder under AS 36.30.170(b) or is offering the services of an employment program as defined in AS 36.30.100(c). (§ 2 ch 106 SLA 1986)

Sec. 36.30.260. Contract execution [Effective July 1, 1987]. A contract awarded under competitive sealed proposals must contain

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

Sec. 36.30.270. Architectural, engineering, and land surveying contracts [Effective July 1, 1987]. (a) Notwithstanding conflicting provisions of AS 36.30.100 — 36.30.260, a procurement officer shall negotiate a contract for an agency with the most qualified and suitable firm or person of demonstrated competence for architectural, engineering, or land surveying services. The procurement officer shall award a contract for those services at fair and reasonable compensation as determined by the procurement officer, after consideration of the estimated value of the services to be rendered, and the scope,

complexity, and professional nature of the services. When determining the most qualified and suitable firm or person, the procurement officer shall consider the

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

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

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

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

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

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

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

Article 4. Other Procurement Methods.

Section

300. Sole source procurements

310. Emergency procurements

Section

320. Small procurements

Effective date of article. — Section 69, ch. 106, SLA 1986, makes this article effective July 1, 1987.

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Sec. 36.30.300. Sole source procurements [Effective July 1, 1987]. (a) A contract may be awarded for supplies, services, professional services, or construction without competitive sealed bidding, competitive sealed proposals, or other competition in accordance with regulations adopted by the commissioner of administration. A contract may be awarded under this section only when the chief procurement officer or, for construction contracts or procurements for the state equipment fleet, the commissioner of transportation and public facilities determines in writing that there is only one source for the required procurement or construction. A sole source procurement may not be awarded if a reasonable alternative source exists. The written determination must include findings of fact that support by clear and convincing evidence the determination that only one source exists. The authority to make the determination required by this subsection may not be delegated.

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

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

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

Sec. 36.30.310. Emergency procurements [Effective July 1, 1987]. Procurements may be made under emergency conditions as defined in regulations adopted by the commissioner when there exists a threat to public health, welfare, or safety, when a situation exists that makes a procurement through competitive sealed bidding or competitive sealed proposals impracticable or contrary to the public interest, or to protect public or private property. An emergency procurement need not be made through competitive sealed bidding or competitive sealed proposals but shall be made with competition that is practicable under the circumstances. A written determination by the procurement officer of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The written determination must include findings of fact that support the determination. (§ 2 ch 106 SLA 1986)

Sec. 36.30.320. Small procurements [Effective July 1, 1987]. (a) A procurement for supplies, services, or construction that does not exceed an aggregate dollar amount of \$5,000 may be made in accordance with regulations adopted by the commissioner for small procurements.

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

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

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

(e) The procurement officer shall give adequate public notice of intent to make a procurement under this section in accordance with regulations adopted by the commissioner. Notices shall also be provided to those Alaska bidders designated by the commissioner under AS 36.30.050(d). (§ 2 ch 106 SLA 1986)

Article 5. Preference for Alaska Products.

Section

322. Use of local forest products
 324. Use of Alaska products
 326. Contract specifications
 328. Grant of preference
 330. Penalty for failing to use designated products

Section

332. Classification of Alaska products
 334. Identification of Alaska products
 336. Application
 338. Definitions

Cross references. — For similar provisions related to Alaska forest, agriculture, and fisheries products, see AS 36.15.

Effective date of article. — Section 69, ch. 106, SLA 1986, makes this article effective July 1, 1987.

Sec. 36.30.322. Use of local forest products [Effective July 1, 1987]. (a) Only timber, lumber, and manufactured lumber products originating in this state from local forests may be procured by an agency or used in construction projects of an agency unless the commissioner of commerce and economic development certifies that the manufacturers and suppliers who have notified the commissioner of commerce and economic development of their willingness to manufacture or supply Alaska forest products

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(1) have been given reasonable notice of the forest product needs of the procurement or project; and

(2) are unable to supply the products at a cost that is within seven percent of the price offered by a manufacturer or supplier of non-Alaska forest products.

(b) The provisions of AS 36.30.326 — 36.30.332 do not apply to procurements of timber, lumber, and manufactured lumber products or the use of those items in construction projects of an agency. (§ 2 ch 106 SLA 1986)

Sec. 36.30.324. Use of Alaska products [Effective July 1, 1987]. Alaska products shall be used whenever practicable in procurements for an agency. (§ 2 ch 106 SLA 1986)

Sec. 36.30.326. Contract specifications [Effective July 1, 1987]. Contract specifications for a procurement for an agency must include a provision that a bidder or offeror that designates in a bid or proposal the use of Alaska products identified in the specifications will receive the preference granted under AS 36.15.328 in the evaluation of the bid or proposal if the designated Alaska products meet the contract specifications. (§ 2 ch 106 SLA 1986)

Sec. 36.30.328. Grant of preference [Effective July 1, 1987]. In the evaluation of a bid or proposal for a procurement for an agency, a bid or offer that designates the use of Alaska products identified in the contract specifications and designated as Class I, Class II, or Class III state products under AS 36.30.332 is decreased by the percentage of the value of the designated Alaska products under AS 36.30.332. (§ 2 ch 106 SLA 1986)

Sec. 36.30.330. Penalty for failing to use designated products [Effective July 1, 1987]. (a) If a successful bidder or offeror who designates the use of an Alaska product in a bid or proposal for a procurement for an agency fails to use the designated product for a reason within the control of the successful bidder or offeror, each payment under the contract shall be reduced according to the following schedule:

- (1) for a Class I designated Alaska product - four percent;
- (2) for a Class II designated Alaska product - six percent;
- (3) for a Class III designated Alaska product - eight percent.

(b) A person is not a responsible bidder or offeror if, in the preceding three years, the person has twice designated the use of an Alaska product in a bid or proposal for a procurement for an agency and has each time failed to use the designated Alaska product for reasons within the control of the bidder or offeror.

(c) The procurement officer shall report to the commissioner of commerce and economic development each contractor penalized under (a) of this section. The commissioner of commerce and economic development shall maintain a list of contractors determined not to be responsible bidders under (b) of this section. (§ 2 ch 106 SLA 1986)

Sec. 36.30.332. Classification of Alaska products [Effective July 1, 1987]. (a) The commissioner of commerce and economic development shall adopt regulations establishing the value added in the state for materials and supplies produced or manufactured in the state that are used in a state procurement and shall publish a list of the products annually. A supplier may request inclusion of its product on the appropriate list.

(b) Materials and supplies with value added in the state that are

- (1) more than 25 percent and less than 50 percent of the manufacturer's quoted price is a Class I product;
- (2) 50 percent or more and less than 75 percent of the manufacturer's quoted price is a Class II product; and
- (3) 75 percent or more of a manufacturer's quoted price is a Class III product.

(c) In a bid or proposal evaluation a

- (1) Class I product is given a three percent preference;
- (2) Class II product is given a five percent preference; and
- (3) Class III product is given a seven percent preference. (§ 2 ch 106 SLA 1986)

Sec. 36.30.334. Identification of Alaska products [Effective July 1, 1987]. An agency may identify specific Alaska products for use in making a procurement. (§ 2 ch 106 SLA 1986)

Sec. 36.30.336. Application [Effective July 1, 1987]. Notwithstanding other provisions of this chapter, AS 36.30.322 — 36.30.338 apply to all procurements subject to AS 36.30, except as provided in AS 36.30.170(b) and 36.30.322(b). (§ 2 ch 106 SLA 1986)

Sec. 36.30.338. Definitions [Effective July 1, 1987]. In AS 36.30.322 — 36.30.338

(1) "Alaska product" means a product produced or manufactured in the state if the value added in the state is not less than 25 percent of the quoted price of the manufacturer;

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

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(3) "product" means materials or supplies but does not include gravel and asphalt. (§ 2 ch 106 SLA 1986)

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

Article 6. Contract Formation and Modification.

Section	Section
340. Review and approval by the Attorney General	390. Multi-term contracts
350. Bid cancellation, rejection	400. Cost or pricing data
360. Determination of responsibility	410. Right to inspect plant
362. Determination to award a contract to a nonresident	420. Right to audit records
365. Notice of intent to award a contract	430. Standard modification clauses for contracts
370. Types of contracts	460. Modification of standard clauses
380. Approval of accounting system	470. Fiscal responsibility
	480. Cost principal regulations

Effective date of article. — Section 69, ch. 106, SLA 1986, makes this article effective July 1, 1987.

Sec. 36.30.340. Review and approval by the Attorney General [Effective July 1, 1987]. If a contract contains a term that is in conflict with a state standard form contract term or if a standard term is deleted or modified by a term that is not standard, the contract must be reviewed by the Attorney General and approved as to form. (§ 2 ch 106 SLA 1986)

Sec. 36.30.350. Bid cancellation, rejection [Effective July 1, 1987]. An invitation to bid, a request for proposals, or other solicitation may be cancelled or any or all bids or proposals may be rejected in whole or in part or the date for opening bids or proposals may be delayed when it is in the best interests of the state in accordance with regulations adopted by the commissioner. The reasons for cancellation, rejection, or delay in opening bids or proposals shall be made part of the contract file. (§ 2 ch 106 SLA 1986)

Sec. 36.30.360. Determination of responsibility [Effective July 1, 1987]. (a) A written determination of responsibility of a bidder or offeror shall be made by the procurement officer in accordance with regulations adopted by the commissioner. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination of nonresponsibility with respect to the bidder or offeror.

(b) Information furnished by a bidder or offeror under (a) of this section is confidential and may not be disclosed without prior written consent by the bidder or offeror. (§ 2 ch 106 SLA 1986)

Sec. 36.30.362. Determination to award a contract to a non-resident [Effective July 1, 1987]. If the procurement officer awards a contract to a person who does not reside or maintain a place of business in the state and if the supplies, services, professional services, or construction that is the subject of the contract could have been obtained from sources in the state, the procurement officer shall issue a written statement explaining the basis of the award. The statement required under this section shall be kept in the contract file. (§ 2 ch 106 SLA 1986)

Sec. 36.30.365. Notice of intent to award a contract [Effective July 1, 1987]. At least 10 days before the formal award of a contract under this chapter the procurement officer shall provide to each bidder or offeror notice of intent to award a contract. The notice shall conform to regulations adopted by the commissioner. (§ 2 ch 106 SLA 1986)

Sec. 36.30.370. Types of contracts [Effective July 1, 1987]. Subject to limitations of this section, any type of contract that will promote the best interests of the state may be used, except that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing by the procurement officer that a cost-reimbursement contract is likely to be less costly to the state than any other type or that it is impracticable to obtain the supplies, services, professional services, or construction required except under a cost-reimbursement contract. (§ 2 ch 106 SLA 1986)

Sec. 36.30.380. Approval of accounting system [Effective July 1, 1987]. Except for a contract awarded through competitive sealed bidding or a firm fixed-price contract, a contract type may not be used unless it has been determined in writing by the procurement officer that the proposed contractor's accounting system

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

(2) is adequate to allocate costs in accordance with generally accepted accounting principles. (§ 2 ch 106 SLA 1986)

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Sec. 36.30.390. Multi-term contracts [Effective July 1, 1987].

(a) Unless otherwise provided by law, a contract for supplies, services, or professional services may be entered into for any period of time considered to be in the best interests of the state provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds for them.

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

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

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

(c) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled. The contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies, services, or professional services delivered under the contract that are not otherwise recoverable. The cost of cancellation may be paid from any appropriations available for these purposes. (§ 2 ch 106 SLA 1986)

Sec. 36.30.400. Cost or pricing data [Effective July 1, 1987].

(a) Before an award of a contract or a change order or contract modification, the contractor or prospective contractor shall submit cost and pricing data. The contractor or prospective contractor shall certify that, to the best of the contractor's or prospective contractor's knowledge and belief, the data submitted is accurate, complete, and current as of a mutually determined specified date and will continue to be accurate and complete during the performance of the contract.

(b) When a contractor becomes aware of a situation that may form the basis of a claim for compensation that exceeds the amount designated as the base amount of the contract and before performing additional work or supplying additional materials, the contractor shall submit cost and pricing data on the additional work or materials. The contractor shall certify that, to the best of the contractor's knowledge and belief, the data submitted is accurate, complete, and current and is the actual cost to the contractor of performing the additional work or supplying the additional materials.

(c) A contract, change order, or contract modification under which a certificate is required under (a) or (b) of this section must contain a provision that the price to the state, including the contractor's profit

or fee, will be adjusted to exclude any significant sums by which the state finds that the price is increased because the cost or pricing data furnished by the contractor or prospective contractor is inaccurate, incomplete, or not current as of the date agreed upon by the parties.

(d) The requirements of (a) of this section do not apply when

(1) the contract price is based on adequate price competition;

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

(3) it is determined by the procurement officer in writing and in accordance with regulations adopted by the commissioner that the requirements of (a) of this section may be waived, and the reasons for waiver are stated. (§ 2 ch 106 SLA 1986)

Sec. 36.30.410. Right to inspect plant [Effective July 1, 1987]. The state may, at reasonable times, inspect the part of the plant or place of business of a contractor or subcontractor that is related to the performance of a contract awarded or to be awarded by an agency. (§ 2 ch 106 SLA 1986)

Sec. 36.30.420. Right to audit records [Effective July 1, 1987]. (a) The state may, at reasonable times and places, audit the books and records of a person who has submitted cost or pricing data under AS 36.30.400 to the extent that the books and records relate to the cost or pricing data. A person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain books and records that relate to the cost or pricing data for three years after the date of final payment under the contract, unless a shorter period is authorized in writing by the commissioner.

(b) The state may audit the books and records of a contractor or a subcontractor to the extent that the books and records relate to the performance of the contract or subcontract. Books and records shall be maintained by the contractor for a period of three years after the date of final payment under the prime contract and by the subcontractor for a period of three years after the date of final payment under the subcontract, unless a shorter period is authorized in writing by the commissioner. (§ 2 ch 106 SLA 1986)

Sec. 36.30.430. Standard modification clauses for contracts [Effective July 1, 1987]. (a) The commissioner shall adopt regulations permitting the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions as appropriate.

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

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- (1) liquidated damages;
- (2) specified excuses for delay or nonperformance;
- (3) termination of the contract for default; and
- (4) termination of the contract in whole or in part for the convenience of the state. (§ 2 ch 106 SLA 1986)

Sec. 36.30.460. Modification of standard clauses [Effective July 1, 1987]. The procurement officer or the head of a contracting agency may vary the clauses adopted under AS 36.30.430 for inclusion in a particular state contract if the

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

(2) approval required by AS 36.30.340 is obtained. (§ 2 ch 106 SLA 1986)

Sec. 36.30.470. Fiscal responsibility [Effective July 1, 1987]. A contract modification, change order, or contract price adjustment under a construction contract in excess of an amount established by regulation of the commissioner is subject to prior written certification by the fiscal officer of the agency responsible for funding the project or the contract, or other official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. If the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget or the total contract budget, the procurement officer may not approve the contract modification, change order, or adjustment in contract price unless sufficient funds are available, or the scope of the project or contract is adjusted to permit the degree of completion that is feasible within the total project budget or total contract budget as it existed before the contract modification, change order, or adjustment in contract price under consideration. A contract modification change order, or adjustment in contract that is signed by both parties and has been reasonably relied on by a contractor, is presumed to be valid even if the provisions of this section have not been met. (§ 2 ch 106 SLA 1986)

Sec. 36.30.480. Cost principle regulations [Effective July 1, 1987]. The commissioner shall adopt regulations setting out cost principles that shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs. If a written determination is approved at a level above the procurement officer, the cost principles may be modified by contract. (§ 2 ch 106 SLA 1986)

Article 7. Procurement Records and Reports.

Section	Section
500. Retention of procurement records	530. Public access to procurement information
510. Records of contracts awarded under competitive sealed proposals	540. Report to legislature
520. Records of sole source and emergency procurements	

Effective date of article. — Section 69, ch. 106, SLA 1986, makes this article effective July 1, 1987.

Sec. 36.30.500. Retention of procurement records [Effective July 1, 1987]. Procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the state archivist. Retained documents shall be made available to the attorney general or a designee upon request and proper receipt. (§ 2 ch 106 SLA 1986)

Sec. 36.30.510. Records of contracts awarded under competitive sealed proposals [Effective July 1, 1987]. A contract file open for public inspection shall be kept by the commissioner and the contracting agency for each contract awarded under competitive sealed proposals. The file kept by the commissioner shall contain a summary of the information in the file of the contracting agency. The file kept by the contracting agency must contain

- (1) a copy of the contract;
- (2) the register of proposals prepared under AS 36.30.230 and a copy of each proposal submitted; and
- (3) the written determination to award the contract prepared under AS 36.30.250. (§ 2 ch 106 SLA 1986)

Sec. 36.30.520. Records of sole source and emergency procurements [Effective July 1, 1987]. (a) The commissioner shall maintain for a minimum of five years a record listing all sole source procurement contracts made under AS 36.30.300 and emergency procurements made under AS 36.30.310. The record must contain

- (1) each contractor's name;
- (2) the amount and type of each contract; and
- (3) a listing of the supplies, services, professional services, or construction procured under each contract.

(b) The Department of Transportation and Public Facilities and any agency to whom the commissioner of administration or the commissioner of transportation and public facilities has delegated procure-

ment authority under AS 36.30.015 shall, by October 1 of each year, submit to the commissioner of administration records of the type specified in (a) of this section. The commissioner of administration shall maintain these records as required by (a) of this section. (§ 2 ch 106 SLA 1986)

Sec. 36.30.530. Public access to procurement information [Effective July 1, 1987]. Procurement information is public except as otherwise provided by law. (§ 2 ch 106 SLA 1986)

Sec. 36.30.540. Report to legislature [Effective July 1, 1987]. Beginning with December 1, 1989, the commissioner shall biennially report to the legislature concerning procurements by agencies. The report must include

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

(2) recommendations for changes in this chapter or other laws based on implementation of this chapter in the previous two fiscal years;

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

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

(5) a list of procurements made under this chapter from state sources during the previous two fiscal years together with the total number of procurement contracts entered into during that period with state contractors and the total value of these contracts; this paragraph does not apply to procurements made under AS 36.30.320. (§ 2 ch 106 SLA 1986)

Article 8. Legal and Contractual Remedies.

Section

560. Filing of a protest
565. Time for filing a protest
570. Notice of a protest
575. Stay of award
580. Decision by the procurement officer
585. Protest remedies
590. Appeal on a protest
595. Notice of a protest appeal
600. Stay of award during protest appeal

Section

605. Protest report
610. Decision without hearing
615. Hearing on protest appeal
620. Contract controversies
625. Appeal on a contract controversy
630. Hearing on a contract controversy
632. Delegation
635. Authority to debar or suspend
640. Causes for debarment or suspension

Section	Section
645. Written determinations	680. Final decision by the commissioner
650. Hearing on a suspension	685. Judicial appeal
655. List of persons debarred or suspended	687. Misrepresentations and fraudulent claims
660. Reinstatement	690. Exclusive remedy
665. Limited participation	695. Other rules of procedure
670. Hearing procedures	699. Definition
675. Recommendation by the hearing officer	

Effective date of article. — Section 69, ch. 106, SLA 1986, makes this article effective July 1, 1987.

Sec. 36.30.560. Filing of a protest [Effective July 1, 1987]. An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction by an agency. The protest shall be filed with the procurement officer of the contracting agency in writing and include the following information:

- (1) the name, address, and telephone number of the protester;
- (2) the signature of the protester or the protester's representative;
- (3) identification of the contracting agency and the solicitation or contract at issue;
- (4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
- (5) the form of relief requested. (§ 2 ch 106 SLA 1986)

Sec. 36.30.565. Time for filing a protest [Effective July 1, 1987]. (a) A protest based upon alleged improprieties in a solicitation involving competitive sealed bidding that are apparent before the bid opening shall be filed before the bid opening. A protest based on alleged improprieties in a solicitation involving competitive sealed proposals that are apparent

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

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

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

(c) If the protester shows good cause, the procurement officer of the contracting agency may consider a filed protest that is not timely. (§ 2 ch 106 SLA 1986)

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Sec. 36.30.570. Notice of a protest [Effective July 1, 1987]. The procurement officer shall immediately give notice of a protest filed under AS 36.30.565 to the contractor if a contract has been awarded or, if no award has been made, to all interested parties. (§ 2 ch 106 SLA 1986)

Sec. 36.30.575. Stay of award [Effective July 1, 1987]. If a protest is filed the award may be made unless the procurement officer of the contracting agency determines in writing that a

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

(2) stay of the award is not contrary to the best interests of the state. (§ 2 ch 106 SLA 1986)

Sec. 36.30.580. Decision by the procurement officer [Effective July 1, 1987]. (a) The procurement officer of the contracting agency shall issue a written decision containing the basis of the decision within 14 days after a protest has been filed. A copy of the decision shall be furnished to the protester by certified mail or other method that provides evidence of receipt.

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

(c) If a decision is not made by the date it is due, the protester may proceed as if the procurement officer had issued a decision adverse to the protester. (§ 2 ch 106 SLA 1986)

Sec. 36.30.585. Protest remedies [Effective July 1, 1987]. (a) If the procurement officer sustains a protest in whole or in part, the procurement officer shall implement an appropriate remedy.

(b) In determining an appropriate remedy, the procurement officer shall consider the circumstances surrounding the solicitation or procurement including the seriousness of the procurement deficiencies, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to the agency and other impacts on the agency of a proposed remedy, and the urgency of the procurement to the welfare of the state. (§ 2 ch 106 SLA 1986)

Sec. 36.30.590. Appeal on a protest [Effective July 1, 1987]. (a) An appeal from a decision of a procurement officer on a protest may be filed by the protester with the commissioner of administration, or for protests involving construction or procurements for the state equipment fleet, the commissioner of transportation and public facilities. An appeal shall be filed within five days after the decision is received by the protester. The protester shall file a copy of the appeal with the procurement officer.

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

- (1) a copy of the decision being appealed; and
- (2) identification of the factual or legal errors in the decision that form the basis for the appeal. (§ 2 ch 106 SLA 1986)

Sec. 36.30.595. Notice of a protest appeal [Effective July 1, 1987]. (a) The procurement officer shall immediately give notice of an appeal filed under AS 36.30.590 to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

(b) The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, shall, on request, furnish a copy of the appeal to a person notified under (a) of this section, except that confidential material shall be deleted from the copy. (§ 2 ch 106 SLA 1986)

Sec. 36.30.600. Stay of award during protest appeal [Effective July 1, 1987]. If a protest appeal is filed before a contract is awarded and the award was stayed under AS 36.30.575, the filing of the appeal automatically continues the stay until the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, makes a written determination that the award of the contract without further delay is necessary to protect substantial interests of the state. (§ 2 ch 106 SLA 1986)

Sec. 36.30.605. Protest report [Effective July 1, 1987]. (a) The procurement officer of the contracting agency shall file a complete report on the protest and decision with the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, within seven days after a protest appeal is filed. The procurement officer shall furnish a copy of the report to the protester and to interested parties that have requested a copy of the appeal under AS 36.30.595(b).

(b) The procurement officer may request an extension of time to prepare the protest report. The request must be in writing listing the reasons for the request. The commissioner of administration or the commissioner of transportation and public facilities, as appropriate,

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shall respond to the request in writing. If an extension is granted, the commissioner shall list the reasons for granting the extension and indicate the date the protest report is due. The commissioner shall notify the protester in writing that the time for submission of the report has been extended and the date the report is due.

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

(d) The protester may request an extension of time to prepare the comments on the protest report. The request must be in writing listing the reasons for the request. The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, shall respond to the request in writing. If an extension is granted, the commissioner shall list the reasons for granting the extension and indicate the date the comments are due. The commissioner shall notify the procurement officer in writing that the time for submission of the comments has been extended and the date the comments are due. (§ 2 ch 106 SLA 1986)

Sec. 36.30.610. Decision without hearing [Effective July 1, 1987]. (a) The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely under AS 36.30.590(a).

(b) The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact. (§ 2 ch 106 SLA 1986)

Sec. 36.30.615. Hearing on protest appeal [Effective July 1, 1987]. A hearing on a protest appeal shall be conducted in accordance with AS 36.30.670 and regulations adopted by the commissioner. (§ 2 ch 106 SLA 1986)

Sec. 36.30.620. Contract controversies [Effective July 1, 1987]. (a) A contractor shall file a claim concerning a contract awarded under this chapter with the procurement officer. The contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of the contractor's knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the state is liable.

(b) If a controversy asserted by a contractor concerning a contract awarded under this chapter cannot be resolved by agreement, the procurement officer shall, after receiving a written request by the contractor for a decision, issue a written decision. The decision shall be made no more than 90 days after receipt by the procurement officer of all necessary information from the contractor. Failure of the contractor to furnish necessary information to the procurement officer constitutes a waiver of the claim. Before issuing the decision the procurement officer shall review the facts relating to the controversy and obtain necessary assistance from legal, fiscal, and other advisors.

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

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

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

"This is the final decision of the procurement officer. This decision may be appealed to the commissioner of (administration/transportation and public facilities). If you appeal, you must file a written notice of appeal with the commissioner within 14 days after you receive this decision."

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

(f) If a controversy asserted by the state concerning a contract awarded under this chapter cannot be resolved by agreement the matter shall be immediately referred to the commissioner of administration or the commissioner of transportation and public facilities, as appropriate. (§ 2 ch 106 SLA 1986)

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Sec. 36.30.625. Appeal on a contract controversy [Effective July 1, 1987]. (a) An appeal from a decision of the procurement officer on a contract controversy may be filed by the contractor with the commissioner of administration, or for a controversy involving a construction contract or procurement for the state equipment fleet, the commissioner of transportation and public facilities. The appeal shall be filed within 14 days after the decision is received by the contractor. The contractor shall file a copy of the appeal with the procurement officer.

(b) An appeal shall contain a copy of the decision being appealed and identification of the factual or legal errors in the decision that form the basis for the appeal. (§ 2 ch 106 SLA 1986)

Sec. 36.30.630. Hearing on a contract controversy [Effective July 1, 1987]. (a) Except as provided in (b) of this section, a hearing shall be conducted according to AS 36.30.670 and regulations adopted by the commissioner of administration on a contract controversy appealed to the commissioner of administration or the commissioner of transportation and public facilities or referred to either commissioner under AS 36.30.620(f).

(b) Within 15 days after receipt of an appeal on a contract controversy the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, may adopt the decision of the procurement officer as the final decision without a hearing. (§ 2 ch 106 SLA 1986)

Sec. 36.30.632. Delegation [Effective July 1, 1987]. The commissioner of administration and the commissioner of transportation and public facilities may delegate responsibilities under AS 36.30.590 and 36.30.630 to the head of the contracting agency. (§ 2 ch 106 SLA 1986)

Sec. 36.30.635. Authority to debar or suspend [Effective July 1, 1987]. (a) After consultation with the using agency and the attorney general and after a hearing conducted according to AS 36.30.670 and regulations adopted by the commissioner of administration, the commissioner of administration or the commissioner of transportation and public facilities may debar a person for cause from consideration for award of contracts. Notice of a debarment hearing shall be provided in writing at least seven days before the hearing. The debarment may not be for a period of more than three years.

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

(c) The authority to debar or suspend shall be exercised in accordance with regulations adopted by the commissioner of administration. (§ 2 ch 106 SLA 1986)

Sec. 36.30.640. Causes for debarment or suspension [Effective July 1, 1987]. The causes for debarment or suspension include the following:

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

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

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

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

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

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

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

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

(7) any other cause listed in regulations of the commissioner determined to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity for a cause listed in the regulations. (§ 2 ch 106 SLA 1986)

Sec. 36.30.645. Written determinations [Effective July 1, 1987]. (a) The commissioner of administration or the commissioner of transportation and public facilities shall issue a written decision to debar or suspend. The decision must

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

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

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(b) A copy of the decision under (a) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other intervening party. (§ 2 ch 106 SLA 1986)

Sec. 36.30.650. Hearing on a suspension [Effective July 1, 1987]. (a) A person suspended under AS 36.30.635 is entitled to a hearing conducted according to AS 36.30.670 and regulations adopted by the commissioner of administration if the person files a written request for a hearing with the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, within seven days after receipt of the notice of suspension under AS 36.30.645.

(b) If a suspended person requests a hearing the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, shall schedule a prompt hearing unless the attorney general determines that a hearing at the proposed time is likely to jeopardize an investigation. A hearing may not be delayed longer than six months after notice of the suspension is provided under AS 36.30.645. (§ 2 ch 106 SLA 1986)

Sec. 36.30.655. List of persons debarred or suspended [Effective July 1, 1987]. The commissioner shall maintain a list of all persons debarred or suspended from consideration for award of contracts. (§ 2 ch 106 SLA 1986)

Sec. 36.30.660. Reinstatement [Effective July 1, 1987]. (a) The commissioner of administration or the commissioner of transportation and public facilities may at any time after a final decision to debar a person from consideration for award of contracts reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

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

(c) The commissioner of administration or the commissioner of transportation and public facilities may require a hearing on a reinstatement petition. A decision on reinstatement shall be made in writing within seven days after a reinstatement petition is submitted. The decision shall specify the factors on which it is based. A decision under this section is not subject to judicial appeal. (§ 2 ch 106 SLA 1986)

Sec. 36.30.665. Limited participation [Effective July 1, 1987]. The commissioner of administration or the commissioner of transportation and public facilities may permit a debarred person to participate in a contract on a limited basis during the debarment period if the commissioner determines in writing that the participation is advantageous to the state. The determination shall specify the factors on which it is based and the limits imposed on the debarred person. (§ 2 ch 106 SLA 1986)

Sec. 36.30.670. Hearing procedures [Effective July 1, 1987]. (a) The commissioner of administration or the commissioner of transportation and public facilities shall act as a hearing officer or appoint a hearing officer for a hearing conducted under this chapter. The hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing. The hearing shall be conducted in an informal manner. The provisions of AS 44.62 (Administrative Procedure Act) do not apply to a hearing conducted under this chapter.

(b) The hearing officer may

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

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

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

(4) rule on motions and other procedural matters;

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

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

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

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

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

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

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

(9) administer oaths or affirmations.

(c) A transcribed record of the hearing shall be made available at cost to a party that requests it. (§ 2 ch 106 SLA 1986)

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Sec. 36.30.675. Recommendation by the hearing officer [Effective July 1, 1987]. (a) If the commissioner of administration or the commissioner of transportation and public facilities is not acting as hearing officer, the hearing officer shall recommend a decision to the commissioner based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.

(b) The commissioner of administration or the commissioner of transportation and public facilities may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or take other appropriate action. (§ 2 ch 106 SLA 1986)

Sec. 36.30.680. Final decision by the commissioner [Effective July 1, 1987]. A decision by the commissioner of administration or the commissioner of transportation and public facilities after a hearing under this chapter is final. A decision shall be sent within 20 days after the hearing to all parties by personal service or certified mail, except that a decision by the commissioner of transportation and public facilities involving procurement of construction shall be sent within 90 days after the hearing to all parties by personal service or certified mail. (§ 2 ch 106 SLA 1986)

Sec. 36.30.685. Judicial appeal [Effective July 1, 1987]. (a) A final decision of the commissioner of administration or the commissioner of transportation and public facilities under AS 36.30.610, 36.30.635(a), 36.30.650, or 36.30.680 may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure.

(b) A final decision of the commissioner of administration or the commissioner of transportation and public facilities under AS 36.30.630(b) may be appealed to the superior court for a trial de novo. (§ 2 ch 106 SLA 1986)

Sec. 36.30.687. Misrepresentations and fraudulent claims [Effective July 1, 1987]. (a) A person who makes or uses in support of a contract claim under this chapter, a misrepresentation, or who practices or attempts to practice a fraud, at any stage of proceedings relating to a procurement or contract controversy under this chapter:

- (1) forfeits all claims relating to that procurement or contract; and
- (2) is liable to the state for reimbursement of all sums paid on the claim, for all costs attributable to review of the claim, and for a civil penalty equal to the amount by which the claim is misrepresented.

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

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

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

(e) In this section, "misrepresentation" means a false or misleading statement of material fact, or conduct intended to deceive or mislead concerning material fact, whether it succeeds in deceiving or misleading. (§ 2 ch 106 SLA 1986)

Sec. 36.30.690. Exclusive remedy [Effective July 1, 1987]. Notwithstanding AS 44.77 or other law to the contrary, AS 36.30.560 — 36.30.699 and regulations adopted under those sections provide the exclusive procedure for asserting a claim against an agency arising in relation to a procurement under this chapter. (§ 2 ch 106 SLA 1986)

Sec. 36.30.695. Other rules of procedure [Effective July 1, 1987]. The commissioner may adopt by regulation additional rules of procedure providing for the expeditious administrative review of all contract claims or controversies, both before the contracting agency and through an appeal heard de novo. (§ 2 ch 106 SLA 1986)

Sec. 36.30.699. Definition [Effective July 1, 1987]. In AS 36.30.560 — 36.30.695, "interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract; whether an actual or prospective bidder or offeror has an economic interest depends on the circumstances. (§ 2 ch 106 SLA 1986)

Article 9. Intergovernmental Relations.

Section

700. Cooperative purchasing authorized
 710. Sale, acquisition, or use of supplies
 by a public procurement unit
 720. Joint use of facilities
 730. Supply of personnel, information,
 and technical services
 735. Restriction on contracting with or

Section

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 740. Review of procurement require-
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Effective date of article. — Section
69, ch. 106, SLA 1986, makes this article
effective July 1, 1987.

Sec. 36.30.700. Cooperative purchasing authorized [Effective July 1, 1987]. A public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of supplies, services, professional services, or construction with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. Cooperative purchasing may include joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts that are made available to local public procurement units. (§ 2 ch 106 SLA 1986)

Sec. 36.30.710. Sale, acquisition, or use of supplies by a public procurement unit [Effective July 1, 1987]. (a) A public procurement unit may sell to, acquire from, or use any supplies belonging to another public procurement unit or external procurement activity independent of the requirements of AS 36.30.060 and 36.30.100 — 36.30.260.

(b) A public procurement unit may enter into an agreement, independent of the requirements of AS 36.30.060 and 36.30.100 — 36.30.260, with another public procurement unit or external procurement activity for the cooperative use of supplies or services under the terms agreed upon between the parties. (§ 2 ch 106 SLA 1986)

Sec. 36.30.720. Joint use of facilities [Effective July 1, 1987]. A public procurement unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit or an external procurement activity under the terms agreed upon between the parties. (§ 2 ch 106 SLA 1986)

Sec. 36.30.730. Supply of personnel, information, and technical services [Effective July 1, 1987]. (a) A public procurement unit may, upon written request from another public procurement unit or external procurement activity, provide personnel to the requesting public procurement unit or external procurement activity. The public procurement unit or external procurement activity making the request shall pay the public procurement unit providing the personnel the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties.

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

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

- (1) standard forms;
- (2) printed manuals;
- (3) product specifications and standards;
- (4) quality assurance testing services and methods;
- (5) qualified products lists;
- (6) source information;
- (7) common use commodities listings;
- (8) supplier performance ratings;
- (9) lists of persons debarred or suspended from consideration for award of state contracts;
- (10) forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms; and
- (11) contracts or published summaries of them, including price and time of delivery information.

(d) The commissioner may provide the following technical services, among others:

- (1) development of product specifications;
- (2) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;
- (3) use of product testing and inspection facilities; and
- (4) use of personnel training programs.

(e) The commissioner may enter into contractual arrangements and publish a schedule of fees for the services provided under (c) and (d) of this section. (§ 2 ch 106 SLA 1986)

Sec. 36.30.735. Restriction on contracting with or employing experts on radiation hazards [Effective July 1, 1987]. (a) Except for the Department of Health and Social Services, the Department of Labor, the Department of Environmental Conservation, and the Department of Military and Veterans' Affairs, a state agency may not

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

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

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

(c) In this section, "radiation" does not include radiation emitted from a Federal Communications Commission licensed facility emitting radiation of a wave length longer than one centimeter and an average power output not exceeding two kilowatts. (§ 2 ch 106 SLA 1986)

Sec. 36.30.740. Review of procurement requirements [Effective July 1, 1987]. To the extent possible, the commissioner may collect information concerning the type, cost, quality, and quantity of commonly used supplies, equipment for the state fleet, services, or construction being procured or used by state public procurement units. The commissioner may also collect this information from local public procurement units. The commissioner may make this information available to a public procurement unit upon request. (§ 2 ch 106 SLA 1986)

Sec. 36.30.750. Contract controversies [Effective July 1, 1987]. (a) Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with AS 36.30.560 — 36.30.699.

(b) A local public procurement unit that is not subject to AS 36.30.560 — 36.30.699 may enter into an agreement with another local public procurement unit or external procurement activity to establish procedures or use that unit's or activity's existing procedures to resolve controversies with contractors, whether or not the controversy arose under a cooperative purchasing agreement. (§ 2 ch 106 SLA 1986)

Sec. 36.30.790. Definitions [Effective July 1, 1987]. In AS 36.30.700 — 36.30.790

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

(2) "external procurement activity" means a buying organization not located in this state that, if located in this state, would qualify as a public procurement unit; an agency of the United States is an external procurement activity;

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

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

(5) "state public procurement unit" means the Department of Administration and any other contracting agency of the state. (§ 2 ch 106 SLA 1986)

Article 10. General Provisions.

Section	Section
850. Application of this chapter	920. Reporting of anticompetitive practices
360. Supplementary general principles of law applicable	930. Civil and criminal penalties
870. Adoption of regulations	940. Enforcement
880. Requirement of good faith	950. Severability
890. Federal assistance	990. Definitions
900. Preference for Alaska products	995. Short title
910. Purchases through general services administration	

Effective date of article. — Section 69, ch. 106, SLA 1986, makes this article effective July 1, 1987.

Sec. 36.30.850. Application of this chapter [Effective July 1, 1987]. (a) This chapter applies only to contracts solicited or entered into after July 1, 1987, unless the parties agree to its application to a contract solicited or entered into before that date.

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

(1) grants;

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

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

(4) contracts for medical doctors and dentists;

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

(6) disposals under AS 38.05;

(7) contracts for the preparation of ballots under AS 15.15.030;

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(8) acquisitions or disposals of property and other contracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.091;

(9) disposals of obsolete property under AS 19.05.060;

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

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

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

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

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

(d) Nothing in this chapter or in regulations adopted under this chapter prevents an agency or political subdivision from complying with the terms and conditions of a grant, gift, bequest, cooperative agreement or federal assistance agreement. (§ 2 ch 106 SLA 1986)

Revisor's notes. — "July 1, 1987" was substituted for "January 1, 1987" in subsection (a) to correct a manifest error.

Sec. 36.30.860. Supplementary general principles of law applicable [Effective July 1, 1987]. Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the Uniform Commercial Code (AS 45.01 — AS 45.09), the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this chapter. (§ 2 ch 106 SLA 1986)

Sec. 36.30.870. Adoption of regulations [Effective July 1, 1987]. (a) Regulations under this chapter shall be adopted in accordance with the Administrative Procedure Act (AS 44.62).

(b) Regulations under this chapter applicable to procurements of construction or procurements for or disposal of property of the state equipment fleet shall be adopted by the commissioner of administration only after consultation with the commissioner of transportation and public facilities. (§ 2 ch 106 SLA 1986)

Sec. 36.30.880. Requirement of good faith [Effective July 1, 1987]. All parties involved in the negotiation, performance, or administration of state contracts shall act in good faith. (§ 2 ch 106 SLA 1986)

Sec. 36.30.890. Federal assistance [Effective July 1, 1987]. If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a regulation adopted under a provision of this chapter and a federal statute regulation, policy or requirement, the federal statute regulation, policy or requirement, shall prevail. (§ 2 ch 106 SLA 1986)

Sec. 36.30.900. Preference for Alaska products [Effective July 1, 1987]. This chapter does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding preference for Alaska forest products, or AS 36.20.010 regarding preference to producers or dealers in Alaska except as provided in AS 36.30.170(b) and (c). (§ 2 ch 106 SLA 1986)

Sec. 36.30.910. Purchases through general services administration [Effective July 1, 1987]. This chapter does not prevent purchasing through the general services administration as provided by law. (§ 2 ch 106 SLA 1986)

Sec. 36.30.920. Reporting of anticompetitive practices [Effective July 1, 1987]. When for any reason collusion or other anticompetitive practices are suspected among bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general by the person who suspects the collusion or other anticompetitive practices. (§ 2 ch 106 SLA 1986)

Sec. 36.30.930. Civil and criminal penalties [Effective July 1, 1987]. The following penalties apply to violations of this chapter:

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

(2) a person who intentionally or knowingly contracts for or purchases supplies, equipment for the state fleet, services, professional services, or construction under a scheme or artifice to avoid the requirements of this chapter is guilty of a class C felony. (§ 2 ch 106 SLA 1986)

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Sec. 36.30.940. Enforcement [Effective July 1, 1987]. The attorney general on behalf of the state shall enforce the provisions of this chapter. (§ 2 ch 106 SLA 1986)

Sec. 36.30.950. Severability [Effective July 1, 1987]. If any provision of this chapter or any application of this chapter to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared severable. (§ 2 ch 106 SLA 1986)

Sec. 36.30.990. Definitions [Effective July 1, 1987]. In this chapter, unless the context in which a term is used clearly requires a different meaning or a different definition is prescribed for a particular provision,

(1) "agency" means a department, institution, board, commission, division, authority, public corporation, the Alaska Pioneers' Home, or other administrative unit of the executive branch of state government, except for the University of Alaska, the Alaska State Building Authority and the Alaska Railroad Corporation; it does not include a regional Native housing authority created under AS 18.55.996, or a regional electrical authority created under AS 18.57.020;

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

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

(4) "competitive sealed bidding" means the procedure under AS 36.30.100 — 36.30.190;

(5) "competitive sealed proposals" means the procedure under AS 36.30.200 — 36.30.260;

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

(7) "contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies, equipment for the state fleet, services, professional services, or construction;

(8) "contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract;

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

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

(11) "person" means a business, individual, union, committee, club, other organization, or group of individuals;

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

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

(14) "professional services" means professional, technical, or consultant's services that are predominantly intellectual in character, result in the production of a report or the completion of a task, and include analysis, evaluation, prediction, planning, or recommendation;

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

(16) "supplies" means all property of an agency, including equipment, materials, and insurance; it includes privately owned real property leased for the use of agencies, such as office space, but does not include the acquisition or disposition of other interests in land. (§ 2 ch 106 SLA 1986)

Sec. 36.30.995. Short title [Effective July 1, 1987]. This chapter may be cited as the State Procurement Code. (§ 2 ch 106 SLA 1986)

Chapter 90. Miscellaneous Provisions.

<p>Section 01. [Renumbered] 10. Public construction contract payments</p>	<p>Section 50. Maintenance of state marine vessels 100. Compliance of contracts with professional registration requirements</p>
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Sec. 36.90.001. [Renumbered as AS 36.90.010.]

Sec. 36.90.010. Public construction contract payments. (a) The state shall initiate procedures to pay the contractor under a public construction or public work contract within 15 days after the contractor submits to the state a bill for materials provided or services performed and a sworn statement that all employees employed on the project by the contractor and all subcontractors have been paid not less than the established prevailing rate of pay as determined and published by the Department of Labor.

(b) If the state fails to make a payment due the contractor under this section within 30 days after receiving a contractor's billing, the state shall pay interest to the contractor under AS 45.45.010(a) on the amount due.

(c) The state or a political subdivision of the state is liable to a contractor registered under AS 08.18 for interest at the rate provided in AS 45.45.010(a) on retainage on a contract for public works or public construction. Interest on retainage accrues from the date of approval of a pay estimate until the date of payment to the contractor. A contract provision purporting to waive the interest provisions of this subsection is void as contrary to public policy.

(d) A political subdivision that has a population of 500 or less is exempt from the payment of interest provided in (c) of this section.

(e) A political subdivision that receives a state grant for a public construction or public works project may use money from the state grant to pay the interest on retainage under contracts for the project as required by (c) of this section. (§ 1 ch 85 SLA 1982)

Revisor's notes. — Formerly AS 36.90.001. Renumbered in 1986.

Sec. 36.90.050. Maintenance of state marine vessels [Repealed effective August 30, 1992]. (a) A marine vessel owned by the state may not be transported outside of the state for the purpose of maintenance or repair unless the commissioner of transportation and public facilities determines that there is no facility in the state able to perform the maintenance at a price that is in the state's best interests. In making this determination, the commissioner shall consider, and document through written findings

(1) the amount of money the state has granted to, or otherwise invested in, marine vessel maintenance facilities in the state;

(2) the amortization, overhead, and start-up costs of the facilities in the state; and

(3) the direct and indirect benefits to the economy and labor force of the state that may be obtained by contracting with a facility in the state.

(b) AS 37.05.230 and the competitive bidding provisions of any other law do not apply to a contract for the maintenance or repair of a marine vessel owned by the state if the contract is awarded to a facility in the state. (§ 1 ch 57 SLA 1986; r § 2 ch 57 SLA 1986)

Repeal of section. — Section 2, ch. 57, SLA 1986 provides: "AS 36.90.050 is repealed August 30, 1992."

Revisor's notes. — Enacted as AS 36.20.020. Renumbered in 1986.

Editor's notes. — AS 37.05.230, referred to in subsection (b) is repealed by § 67, ch. 106, SLA 1986, effective July 1, 1987.

Sec. 36.90.100. Compliance of contracts with professional registration requirements. The state or a municipality may not award a contract for architectural, engineering, or land surveying services to

(1) an individual who is not registered under AS 08.48 to perform the architectural, engineering, or land surveying services required by the contract;

(2) a partnership that is not qualified under AS 08.48.251 to provide the architectural, engineering, or land surveying services required by the contract; or

(3) a corporation that is not authorized under AS 08.48.241 to offer the architectural, engineering, or land surveying services required by the contract. (§ 1 ch 54 SLA 1986)

Effective dates. — Section 5, ch. 54, May 30, 1986, in accordance with AS SLA 1986 makes this section effective 01.10.070(c).

Chapter 95. General Provisions.

Section

10. Definitions

Sec. 36.95.010. Definitions. In this title unless the context requires otherwise

(1) "contractor" means the contractor including subcontractors performing work necessary to facilitate public construction;

(2) "laborer, mechanic, or field surveyor" means a person who engages in work which is basically physical or unskilled in nature; or who engages in work, requiring the use of tools or machines, which

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PUBLIC CONTRACTS

§ 36.95.010

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basically consists of the shaping and working of materials into some type of structure, machine or other object; or who engages in outdoor tasks related to the operation of findings and delineating contour, dimensions, position, topography, as of any part of the earth's surface, by preparation of measured plan or description of any area or other portion of country or of road or line through any area or other portion of country;

(3) "public construction" or "public works" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board;

(4) "resident" means a person who establishes residency under AS 01.10.055;

(5) "retainage" means money withheld from a contractor until completion of a contract or satisfaction of other contingency as evidenced by approval of the applicable pay estimate;

(6) "state or a political subdivision of the state" means any state department, state agency, state university, borough, city, village, school district or other state subdivision;

(7) "wages" includes fringe benefits. (§ 16 ch 142 SLA 1972; am § 3 ch 89 SLA 1976; am § 16 ch 147 SLA 1978; am § 2 ch 85 SLA 1982; am § 92 ch 6 SLA 1984; am §§ 6, 11 ch 33 SLA 1986)

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

Effect of amendments. — The 1984 amendment deleted "with respect to an educational facility under AS 14.08.161" at the end of paragraph (3).

The 1986 amendment, effective May 25, 1986, deleted former paragraphs (4) and (5), which defined "qualified" and "resident" respectively, and added present paragraph (4).

Chapter 98. Professional Services Contracts.

Section

10. Application of chapter

20 — 40. [Repealed]

43. Architectural, engineering, and land surveying contracts

Section

45 — 60. [Repealed]

70. Regulations governing contract procedures

80. [Repealed]

Repeal of chapter. — Section 67, ch. 106, SLA 1986 repeals this chapter, effective July 1, 1987.

Sec. 36.98.010. Application of chapter [Repealed effective July 1, 1987]. Except as otherwise provided in AS 36.98.043, this chapter applies to contracts for professional services provided to a state agency unless

- (1) the total amount of the contract does not exceed \$25,000;
- (2) the contract is an employment contract for services to be performed under direct supervision regardless of the existence of an employer-employee relationship and a written justification signed by the person responsible for awarding the contract is filed with the commissioner;
- (3) the contract is awarded based on competitive bids obtained under the procedure provided in AS 37.05.230. (§ 5 ch 144 SLA 1982; am § 2 ch 54 SLA 1986; r § 67 ch 106 SLA 1986)

Cross references. — For provisions concerning legislative contract procedure, see AS 24.23.010 — 24.23.070.

Effect of amendments. — The 1986

amendment, effective May 30, 1986, substituted "Except as otherwise provided in AS 36.98.043, this" for "This" at the beginning of the section.

Sec. 36.98.020. Professional services contractors register. [Repealed, § 67 ch 106 SLA 1986, effective July 1, 1987.]

Sec. 36.98.030. Solicitation of proposals. [Repealed, § 67 ch 106 SLA 1986, effective July 1, 1987.]

Sec. 36.98.035. Standard overhead rate. [Repealed, § 67 ch 106 SLA 1986, effective July 1, 1987.]

Sec. 36.98.040. Evaluation of proposals and award of contract. [Repealed, § 67 ch 106 SLA 1986, effective July 1, 1987.]

NOTES TO DECISIONS

Unexcused violation of this section. Sup. Ct. Op. No. 3005 (File No. S-720), — See State, Dep't of Educ. v. Nickerson, 711 P.2d 1165 (1985).

Sec. 36.98.043. Architectural, engineering, and land surveying contracts [Repealed effective July 1, 1987]. (a) Notwithstanding the provisions of AS 36.98.010(3) and 36.98.040, a state agency shall negotiate a contract with the most qualified and suitable firm or person of demonstrated competence for architectural, engineering, or land surveying services. The state agency shall award a contract for those services at fair and reasonable compensation as determined by the state agency, after consideration of the estimated value of the services to be rendered, and the scope, complexity, and professional nature of the services. When determining the most qualified and suitable firm or person, the state agency shall consider the

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

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

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

(c) This section does not apply to contracts awarded in a situation of public necessity if the person responsible for execution of the contract on behalf of the state agency certifies in writing that a situation of public necessity exists.

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

(e) This section does not apply to a contract that incorporates both design services and construction. (§ 3 ch 54 SLA 1986; r § 67 ch 106 SLA 1986)

Cross references. — For corresponding provisions after the July 1, 1987, repeal of this section, see AS 36.30.270. Effective dates. — Section 5, ch. 54, SLA 1986, makes this section effective May 30, 1986, in accordance with AS 01.0070(c).

Editor's notes. — Section 4, ch. 54, SLA 1986 provides that this section "applies to requests for bids or proposals for architectural, engineering, and land surveying services issued after May 30, 1986."

Sec. 36.98.045. Review and approval by Department of Law. [Repealed, § 67 ch 106 SLA 1986, effective July 1, 1987.]

Sec. 36.98.050. Contract administration. [Repealed, § 67 ch 106 SLA 1986, effective July 1, 1987.]

Sec. 36.98.060. Filing of proposal and contract. [Repealed, § 67 ch 106 SLA 1986, effective July 1, 1987.]

Sec. 36.98.070. Regulations governing contract procedures [Repealed effective July 1, 1987]. The commissioner shall, by regulation adopted in accordance with the Administrative Procedure Act (AS 44.62), establish the manner and form by which state professional services contracts shall be prepared and processed, including, but not limited to, a review process for persons aggrieved under this chapter. (§ 5 ch 144 SLA 1982; r § 67 ch 106 SLA 1986)

Sec. 36.98.080. Definitions. [Repealed, § 67 ch 106 SLA 1986, effective July 1, 1987.]

Original sponsors: Donley and Grussendorf

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

CS FOR HOUSE BILL NO. 45 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to an Alaska business bidder prefer-
7 ence; and providing for an effective date."

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

9 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that due
10 to the state's noncontiguous geographic location and unique climate, busi-
11 ness dealings with non-Alaskan firms produce administrative expenses not
12 commonly incurred in business dealings with resident businesses.

13 (b) The purpose of the Alaska business bidder preference when the
14 state acts as a market participant is to reduce state administrative costs,
15 strengthen the state's tax and revenue base, encourage local industry,
16 reduce unemployment and the social ills it creates, and to strengthen and
17 stabilize the state's economy.

18 * Sec. 2. AS 36.30.170(a) is amended to read:

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

24 * Sec. 3. AS 36.30.170(b) is repealed and reenacted to read:

25 (b) The procurement officer shall award a contract based on
26 solicited bids to the lowest responsible and responsive Alaska bidder
27 if the bid, after receiving a preference applicable to the bid under
28 AS 36.30.322 - 36.30.338, is not more than

29 (1) five percent higher than the lowest nonresident

1 bidder's and the contract is \$500,000 or more;

2 (2) 10 percent higher than the lowest nonresident bidder's
3 and the contract is more than \$100,000 and less than \$500,000;

4 (3) 15 percent higher than the lowest nonresident bidder's
5 and the contract is more than \$25,000 and \$100,000 or less; or

6 (4) 20 percent higher than the lowest nonresident bidder's
7 and the contract is \$25,000 or less.

8 * Sec. 4. AS 36.30.170(c) is amended to read:

9 (c) Notwithstanding (b)(1) of this section, if [IF] a bidder
10 qualifies under (d) [(b)] of this section as an Alaska bidder, is
11 offering services through an employment program as defined under
12 AS 36.30.100(c), [AND] is the lowest responsible and responsive bidder
13 with a bid that is not more than 10 percent higher than the lowest bid
14 of a nonresident, and the contract is \$500,000 or more, the procure-
15 ment officer shall award the contract to that bidder. If the contract
16 is less than \$500,000, the provisions of (b)(2) - (4) of this section
17 apply to the contract.

18 * Sec. 5. AS 36.30.170 is amended by adding a new subsection to read:

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

20 (1) holds a current Alaska business license;

21 (2) does more than \$1,000,000 worth of annual business in
22 the state or performs more than 50 percent of the person's annual
23 business in the state, whichever is less;

24 (3) has maintained a permanent place of business in the
25 state staffed by the bidder or an employee of the bidder for a period
26 of six months immediately preceding the date of the bid;

27 (4) submits a bid for goods or services under the name that
28 appears on the person's current Alaska business license;

29 (5) is incorporated or qualified to do business under the

1 laws of the state, is a sole proprietorship and the proprietor is a
2 resident of the state, or is a partnership and all partners are resi-
3 dents of the state; and

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

6 * Sec. 6. AS 36.30.336 is amended to read:

7 Sec. 36.30.336. APPLICATION. Notwithstanding other provisions
8 of this chapter, AS 36.30.322 - 36.30.338 apply to all procurements
9 subject to AS 36.30, except as provided in AS 36.30.322(b) [AS 36.30.-
10 170(b) AND 36.30.322(b)].

11 * Sec. 7. AS 36.30.900 is amended to read:

12 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
13 does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding
14 preference for Alaska forest products, or AS 36.20.010 regarding
15 preference to producers or dealers in Alaska [EXCEPT AS PROVIDED IN
16 AS 36.30.170(b) AND (c)].

17 * Sec. 8. This Act takes effect July 1, 1987.

Original sponsors: Donley and Grussendorf

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

CS FOR HOUSE BILL NO. 45 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to an Alaska business bidder prefer-
7 ence; and providing for an effective date."

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

9 * Section 1. FINDINGS AND PURPOSE. (r) The legislature finds that due
10 to the state's noncontiguous geographic location and unique climate, busi-
11 ness dealings with non-Alaskan firms produce administrative expenses not
12 commonly incurred in business dealings with resident businesses.

13 (b) The purpose of the Alaska business bidder preference when the
14 state acts as a market participant is to reduce state administrative costs,
15 strengthen the state's tax and revenue base, encourage local industry,
16 reduce unemployment and the social ills it creates, and to strengthen and
17 stabilize the state's economy.

18 * Sec. 2. AS 36.30.170(a) is amended to read:

19 (a) Except as provided in (b) and (c) of this section, the
20 procurement officer shall award a contract based on the solicited bid's
21 with reasonable promptness by written notice to the lowest responsible
22 and responsive bidder whose bid conforms in all material respects to
23 the requirements and criteria set out in the invitation to bid.

24 * Sec. 3. AS 36.30.170(b) is repealed and reenacted to read:

25 (b) The procurement officer shall award a contract based on
26 solicited bids to the lowest responsible and responsive Alaska bidder
27 if the bid, after receiving a preference applicable to the bid under
28 AS 36.30.322 - 36.30.338, is not more than

29 (1) five percent higher than the lowest nonresident

1 bidder's and the contract is \$500,000 or more;

2 (2) 10 percent higher than the lowest nonresident bidder's
3 and the contract is more than \$100,000 and less than \$500,000;

4 (3) 15 percent higher than the lowest nonresident bidder's
5 and the contract is more than \$25,000 and \$100,000 or less; or

6 (4) 20 percent higher than the lowest nonresident bidder's
7 and the contract is \$25,000 or less.

8 * Sec. 4. AS 36.30.170(c) is amended to read:

9 (c) Notwithstanding (b)(1) of this section, if [IF] a bidder
10 qualifies under (d) [(b)] of this section as an Alaska bidder, is
11 offering services through an employment program as defined under
12 AS 36.30.100(c), [AND] is the lowest responsible and responsive bidder
13 with a bid that is not more than 10 percent higher than the lowest bid
14 of a nonresident, and the contract is \$500,000 or more, the procure-
15 ment officer shall award the contract to that bidder. If the contract
16 is less than \$500,000, the provisions of (b)(2) - (4) of this section
17 apply to the contract.

18 * Sec. 5. AS 36.30.170 is amended by adding a new subsection to read:

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

20 (1) holds a current Alaska business license;

21 (2) does more than \$1,000,000 worth of annual business in
22 the state or performs more than 50 percent of the person's annual
23 business in the state, whichever is less;

24 (3) has maintained a permanent place of business in the
25 state staffed by the bidder or an employee of the bidder for a period
26 of six months immediately preceding the date of the bid;

27 (4) submits a bid for goods or services under the name that
28 appears on the person's current Alaska business license;

29 (5) is incorporated or qualified to do business under the

1 laws of the state, is a sole proprietorship and the proprietor is a
2 resident of the state, or is a partnership and all partners are resi-
3 dents of the state; and

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

6 * Sec. 6. AS 36.30.336 is amended to read:

7 Sec. 36.30.336. APPLICATION. Notwithstanding other provisions
8 of this chapter, AS 36.30.322 - 36.30.338 apply to all procurements
9 subject to AS 36.30, except as provided in AS 36.30.322(b) [AS 36.30.-
10 170(b) AND 36.30.322(b)].

11 * Sec. 7. AS 36.30.900 is amended to read:

12 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
13 does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding
14 preference for Alaska forest products, or AS 36.20.010 regarding
15 preference to producers or dealers in Alaska [EXCEPT AS PROVIDED IN
16 AS 36.30.170(b) AND (c)].

17 * Sec. 8. This Act takes effect July 1, 1987.

Introduced: 1/19/87
 Referred: Labor & Commerce
 and Finance

1 IN THE HOUSE

BY DONLEY AND GRUSSENDORF

2

HOUSE BILL NO. 45

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to an Alaska business bidder prefer-
 7 ence; and providing for an effective date."

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

9 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that due
 10 to the state's noncontiguous geographic location and unique climate, busi-
 11 ness dealings with non-Alaskan firms produce administrative expenses not
 12 commonly incurred in business dealings with resident businesses.

13 (b) The purpose of the Alaska business bidder preference when the
 14 state acts as a market participant is to reduce state administrative costs,
 15 strengthen the state's tax and revenue base, encourage local industry,
 16 reduce unemployment and the social ills it creates, and to strengthen and
 17 stabilize the state's economy.

18 * Sec. 2. AS 36.30.170(b) is repealed and reenacted to read:

19 (b) Notwithstanding an Alaska product preference under AS 36.-
 20 30.322 - 36.30.338, the procurement officer shall award a contract
 21 based on solicited bids to the lowest responsible and responsive
 22 Alaska bidder if the bid is not more than

23 (1) five percent higher than the lowest nonresident bid-
 24 der's and the contract is \$500,000 or more;

25 (2) 10 percent higher than the lowest nonresident bidder's
 26 and the contract is more than \$100,000 and less than \$500,000;

27 (3) 15 percent higher than the lowest nonresident bidder's
 28 and the contract is more than \$25,000 and \$100,000 or less; or

29 (4) 20 percent higher than the lowest nonresident bidder's

1 and the contract is \$25,000 or less.

2 * Sec. 3. AS 36.30.170 is amended by adding a new subsection to read:

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

4 (1) holds a current Alaska business license;

5 (2) does more than \$1,000,000 worth of annual business in
6 the state or performs more than 20 percent of the person's annual
7 business in the state, whichever is less;

8 (3) certifies under penalty of perjury that the bidder will
9 employ Alaska residents in the performance of the contract unless
10 resident laborers are unqualified or unavailable;

11 (4) has maintained a permanent place of business in the
12 state for a period of six months immediately preceding the date of the
13 bid; and

14 (5) submits a bid for goods or services under the name that
15 appears on the person's current Alaska business license.

16 * Sec. 4. This Act takes effect July 1, 1987.

1 IN THE HOUSE BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 192

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act postponing the effective date of the State
7 Procurement Code; and providing for an effective
8 date."

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

10 * Section 1. AS 36.30.005(a) is amended to read:

11 (a) Except as otherwise provided, all rights, powers, duties,
12 and authority relating to the procurement of supplies, services, and
13 professional services, and the control over supplies, services, and
14 professional services vested in or exercised by an agency on July 1,
15 1989 [1987], are transferred to the commissioner of administration and
16 to the chief procurement officer. Authority granted under this sub-
17 section shall be exercised in accordance with this chapter.

18 * Sec. 2. AS 36.30.005(b) is amended to read:

19 (b) Except as otherwise provided, all rights, powers, duties,
20 and authority relating to the procurement of construction and procure-
21 ments of equipment or services for the state equipment fleet and the
22 control over construction of state facilities and the state equipment
23 fleet vested in or exercised by an agency on July 1, 1989 [1987], are
24 transferred to the commissioner of transportation and public facil-
25 ities, subject to regulations adopted by the commissioner of adminis-
26 tration. Notwithstanding AS 44.71.010, authority relating to dis-
27 posals from the state equipment fleet is vested in the commissioner of
28 transportation and public facilities, subject to regulations adopted
29 by the commissioner of administration. Authority granted under this

1 Sec. 65. REPORT. By December 1, 1990 [1988], the commissioner
2 of administration and the commissioner of transportation and public
3 facilities shall report to the legislature concerning procurements by
4 state agencies during fiscal year 1989 [1987]. The report must in-
5 clude

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

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

9 (3) a description of any matters that involved litigation
10 concerning AS 36.30 during those 12 months.

11 * Sec. 6. Section 66, ch. 106, SLA 1986 is amended to read:

12 Sec. 66. REGULATIONS DEADLINE. The regulations required under
13 AS 36.30 as added by sec. 2 of this Act, shall be adopted by July 1,
14 1989 [1987] and shall be effective on that date. Regulations adopted
15 under laws repealed in sec. 67 of this Act become ineffective July 1,
16 1989 [1987].

17 * Sec. 7. Section 69, ch. 106, SLA 1986 is amended to read:

18 Sec. 69. Except as provided in sec. 68, this Act takes effect
19 July 1, 1989 [1987].

20 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).