

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 1985 8672
1450 SCOMM 54: SEN. SELECT INTERIM COMM. ON PROCUREMENT PRACTICES. 7.



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Thomas M. Butler
Signature of Camera Operator

3/17/92
Date

SB

341

SENATE JUDICIARY COMMITTEE SUBSTITUTE
SENATE BILL 341
SECTIONAL ANALYSIS

(Unless otherwise indicated, "commissioner" means commissioner of administration)

SECTION 1. The purposes of the act are outlined to include: simplification, clarification, modernization of the laws; consistency among the branches of government; increased public confidence; fair and equitable treatment of all vendors; increased economy in state procurement; broad-based competition; safeguards for the maintenance of a procurement system of quality and integrity; and elimination and prevention of discrimination in state contracting.

SECTION 2. A new chapter is added to AS 36 entitled "State Procurement Code."

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Sec. 36.30.190. Multi-step sealed bidding is allowed when it is considered impractical to initially prepare a definitive purchase description to support an award based on price. Unpriced technical offers are submitted, followed by an ITB limited to the bidders whose offers are determined to be technically qualified under the criteria established.

Article 3. Competitive Sealed Proposals.

Sec. 36.30.200. Contracts may be awarded by competitive sealed proposals when the chief procurement officer, or

the commissioner of transportation and public facilities for construction and state equipment fleet contracts, determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state.

Sec. 36.30.210. Request for proposals must contain the same information required for ITBs. The same notice provisions for ITBs apply for RFPs. An offeror must list the subcontractors within 48 hours after the date by which the proposals must be received. The same duties of bidders under ITBs apply to competitive sealed proposals.

Sec. 36.30.220. Standard overhead rate established by agencies and applicable to contracts for supplies and services, must be included in a RFP.

Sec. 36.30.230. Proposals are to be opened in a manner which avoids 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 and open for public inspection after the the notice of intent to award a contract is issued.

Sec. 36.30.240. Discussions with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, may be conducted for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and before the award for the purpose of obtaining best and final offers. These discussions are exempted from the Alaska Open Meetings law.

Sec. 36.30.250. A contract under competitive sealed proposals shall be awarded to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price, the evaluation factors set out in the RFP, and whether the offeror qualifies as an Alaskan Bidder or is offering the services of an employment program.

Sec. 36.30.260. A contract awarded under competitive sealed proposals must contain: the amount of the contract; the date for supplies to be delivered or the term for services to be performed; a description of the services or supplies contracted for; and a certification that sufficient funds are available for the amount of the contract.

Sec. 36.30.270. Special procedures apply to contracts awarded to architects, engineers, and land surveyors. These provisions only apply to contracts negotiated by the executive branch.

Article 4. Other Procurement Methods.

Sec. 36.30.300. Sole source procurements may only be awarded if it is determined in writing that there is only one source for the required supply, service or construction. A sole source procurement may not be approved if a reasonable alternative source exists.

Sec. 36.30.310. Emergency procurements may be authorized under emergency conditions when there exists a threat to public health, welfare, or safety, and procurement through competitive sealed bids or competitive sealed proposals is impracticable, or contrary to the public interest, or to protect public or private property. A written determination of the basis for the emergency and for the selection of the particular contractor must be provided.

Sec. 36.30.320. Small procurements which do not exceed an aggregate amount of \$5,000 shall be made with competition that is practicable under the circumstances. A contract for professional services that does not exceed \$25,000 may be made in accordance with regulations adopted by the commissioner. Notice of small procurements shall be provided to Alaskan bidders designated by the commissioner under section 36.30.050(d).

Article 5. Contract Formation and Modification.

Sec. 36.30.340. 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 approved by the department of law.

Sec. 36.30.350. Solicitations may be cancelled or any bids or proposals may be rejected, in whole or in part, or the date for opening bids or proposals may be delayed as may be specified in the solicitation, when it is in the best interest of the state. The reasons for cancellation, rejection, or delay in opening bids or proposals shall be made part of the contract file.

Sec. 36.30.360. A written determination of responsibility of a bidder or offeror shall be made by the procurement officer.

Sec. 36.30.362. The procurement officer must issue a written statement explaining the reasons a contract was awarded to a person who does not reside or maintain a place of business in Alaska, if the supplies, services, professional services or construction could have been obtained from in-state sources.

Sec. 36.30.365. At least 10 days before the formal award of a contract the procurement officer shall provide to each bidder or offeror notice of intent to award a contract.

Sec. 36.30.370. 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.

Sec. 36.30.380. Except with respect to contracts awarded through competitive sealed bidding or firm fixed-price contracts, a contract type may not be used unless it has been approved in writing by the procurement officer.

Sec. 36.30.390. Unless otherwise provided by law, multi-term contracts are permitted, but subject to availability and appropriation of funds. Written determination must support multi-term contracts.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal periods, 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 or services delivered under the contract that are not otherwise recoverable.

Sec. 36.30.400. Cost or pricing data must be submitted and certified by contractors. This does not apply when: the contract price is based on adequate price competition; the contract price is set by law or regulation; or it is determined in writing that the requirements of this section are waived and the reasons for waiver are stated in writing.

Sec. 36.30.410. The state has the right to inspect 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 the state.

Sec. 36.30.420. The state may audit books and records of a person who has submitted cost or pricing data or receives a contract.

Sec. 36.30.430. The commissioner shall adopt regulations permitting the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions, and appropriate remedies.

Sec. 36.30.460. Standard clauses in state contract may be modified if supported by a written determination that states the circumstances justifying the variation.

Sec. 36.30.470. 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 execute 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.

Sec. 36.30.480. Cost principle regulations shall be adopted.

Article 6. Procurement Records and Reports.

Sec. 36.30.500. Procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the state archivist.

Sec. 36.30.510. A contract file open for public inspection must 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.

Sec. 36.30.520. The commissioner shall maintain for at least 5 years a record listing all sole source and emergency procurement contracts. An agency which has delegated procurement authority shall by October 1, of each year, submit records of all sole source and emergency procurement contracts to the commissioner.

Sec. 35.30.530. Procurement information is public except as otherwise provided by law.

Sec. 36.30.540. The commissioner shall biennially report to the legislature concerning procurements by agencies.

Article 7. Legal and Contractual Remedies.

Sec. 36.30.560. An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for goods, services or construction. The protest shall be filed with the procurement officer of the contracting agency in writing and must contain specified items.

Sec. 36.30.565. Time deadlines for filing protests are specified.

Sec. 36.30.570. Notice of a protest shall immediately be given to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

Sec. 36.30.575. If a protest is filed before a contract is awarded, the award may be made unless the procurement officer of the contracting agency determines in writing that: a reasonable probability exists that the protest will be sustained; or stay of the award is not contrary to the best interests of the state.

Sec. 36.30.580. A written decision by the procurement officer of the contracting agency shall be issued within 14 days after a protest has been filed, unless the time is extended up to 26 days for good cause. Notice shall be sent to the protester. If a decision is not made by the due date, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

Sec. 36.30.585. If the procurement officer sustains a protest the procurement officer shall implement an appropriate remedy.

Sec. 36.30.590. An appeal from a decision of a procurement officer on a protest must be filed with the appropriate commissioner within 5 days after the decision is received by the protester.

Sec. 36.30.595. The procurement officer shall immediately give notice of an appeal to the contractor if a contract has been awarded, or, if no award has been made, to all interested parties.

Sec. 36.30.600. If a protest appeal is filed before a contract is awarded and the award was stayed, the filing of the appeal automatically continues the stay until the commissioner of administration or transportation and public facilities makes a written determination that the award of the contract is necessary to protect substantial interests of the state.

Sec. 36.30.605. The procurement officer of the contracting agency shall file a complete report on the protest and decision with the commissioner of administration or transportation and public facilities within 7 days after a protest appeal is filed. The protester and all interested parties that have requested a copy of the appeal shall be furnished one. The protester may file comments on the protest report within 7 days after the report is received. Extensions may be granted.

Sec. 36.30.610. The commissioner of administration or transportation and public facilities shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely. The appropriate commissioner may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.

Sec. 36.30.615. A hearing on a protest appeal shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.620. 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, issue a written decision no more than 90 days after receipt of all necessary information from the contractor, unless the due date is extended for good cause.

The decision shall be sent to the contractor. If a decision is not made by the due date, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor. If a controversy asserted by the state concerning a contract awarded cannot be resolved by agreement, the matter shall be immediately referred to the commissioner of administration or transportation and public facilities.

Sec. 36.30.625. 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 transportation and public facilities. The appeal shall be filed within 14 days after the decision is received by the contractor.

Sec. 36.30.630. A hearing on a contract controversy appealed to the commissioner or referred to the commissioner shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.632. The commissioners of administration and transportation and public facilities may delegate responsibilities under Sec. 36.30.590 and Sec. 36.30.630 to the head of the contracting agency.

Sec. 36.30.635. The commissioners of administration and transportation and public facilities may debar or suspend a person from consideration for award of contracts. Notice and opportunity for a hearing are specified.

Sec. 36.30.640. Causes for debarment or suspension are enumerated.

Sec. 36.30.645. The commissioners of administration and transportation and public facilities shall issue a written decision to debar or suspend.

Sec. 36.30.650. A person suspended is entitled to a hearing if the person files a written request for a hearing within 7 days after receipt of the notice of suspension.

Sec. 36.30.655. The commissioner shall maintain a list of all persons debarred or suspended from consideration for award of contracts.

Sec. 36.30.660. The commissioner of administration or the commissioner of transportation and public facilities may, at any time after a final decision to debar a person, reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

A debarred person may request reinstatement. A hearing may be held on a reinstatement petition. A decision on reinstatement shall be made in writing within 7 days after a reinstatement petition is submitted. A decision under this section is not subject to judicial appeal.

Sec. 36.30.665. The commissioner of administration or transportation and public facilities may permit a debarred person to participate in a contract on a limited basis during the debarment period.

Sec. 36.30.670. The commissioner of administration or transportation and public facilities shall act as a hearing officer or appoint a hearing officer for a hearing conducted under this chapter. The provisions of the Administrative Procedure Act do not apply to a hearing conducted under this chapter. The authority of a hearing officer is outlined.

Sec. 36.30.675. If the commissioner of administration or transportation and public facilities is not acting as hearing officer, the hearing officer shall recommend a decision to the appropriate commissioner based on the evidence presented. The recommendation shall include findings of fact and conclusions of law. The appropriate commissioner may affirm, modify or reject the hearing

officer's recommendation or take any other appropriate action.

Sec. 36.30.680. A decision by the commissioner of administration is final, and shall be sent within 20 days after a hearing to all parties. A decision by the commissioner of transportation and public facilities involving procurement of construction shall be sent within 90 days after the hearing.

Sec. 36.30.685. A final decision of the commissioner of administration or transportation and public facilities may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure.

Sec. 36.30.687. Civil and criminal sanctions are outlined for misrepresentations and fraudulent claims.

Sec. 36.30.690. This chapter and the regulations adopted under it are the exclusive procedures for asserting a claim against the state or an agency arising in relation to a procurement conducted under this chapter.

Sec. 36.30.695. The commissioner of administration may adopt by regulation additional rules of procedure.

Sec. 36.30.699. The definition of interested party is given.

Article 8. Intergovernmental Relations.

Sec. 36.30.700. Cooperative purchasing is authorized between public procurement units or external procurement activities in accordance with an agreement entered into between the participants.

Sec. 36.30.710. Sale, acquisition, or use of supplies among public procurement units or with external procurement activity may be done independent of certain requirements of this chapter.

Sec. 36.30.720. Joint use of facilities is allowable.

Sec. 36.30.730. A public procurement unit may provide personnel, information and technical services to a requesting public procurement unit or external procurement activity.

Sec. 36.30.735. Current Alaska law on restrictions of contracting with or employing experts on radiation hazards is retained.

Sec. 36.30.740. The commissioner may collect information concerning supplies, services or construction being procured or used by state public procurement units.

Sec. 36.30.750. 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 this chapter.

Sec. 36.30.790. Definitions for this article are provided.

Article 9. General Provisions.

Sec. 36.30.850. This chapter applies to contracts solicited or entered into after January 1, 1987, unless the parties agree to its application to a contract solicited or entered into before that date. This chapter applies to the disposal of state supplies and every expenditure of public funds irrespective of their sources, except as specified in AS 36.30.915.

This chapter does not apply to: grants; contracts for professional witnesses; contracts of the University of Alaska where the work is to be performed substantially by enrolled students; contracts for medical doctors and dentists; contracts for the purchase of residential child care services under AS 47.40; disposals of land or interest in land; disposals under AS 38.05; contracts for the preparation of ballots under AS 15.15.030; acquisitions or disposals of property and other contracts relating to airports; acquisitions of real property or disposals of obsolete property under AS 19.05.060, 19.05.100, 19.05.110 or 19.05.120; disposals of obsolete material or equipment under AS 35.20.060; leases of ferry terminal facilities under AS 19.60.010; or contracts of the department of fish and game for non-point-to-point flights requiring specialized flying and piloting skills.

Except for AS 36.30.700-36.30.895, this chapter does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other governments.

Sec. 36.30.860. Unless displaced by the particular provision of this chapter, all other principles of law and equity shall supplement the provisions of this chapter.

Sec. 36.30.870. Regulations under this chapter shall be adopted in accordance with the Administrative Procedure Act. Regulations 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.

Sec. 36.30.880. This chapter requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

Sec. 36.30.890. 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, the federal statute or regulation shall prevail.

Sec. 36.30.900. This chapter does not modify, amend, or alter laws regarding preference for Alaska forest products or preference to producers or dealers in Alaska, except as provided in AS 36.30.170(b) and (c).

Sec. 36.30.910. This chapter does not prevent purchasing through the general services administration as provided by law.

Sec. 36.30.920. Suspected anticompetitive practices are to be reported to the attorney general.

Sec. 36.30.930. In addition to penalties prescribed for unethical conduct, civil and criminal penalties are provided for violations of this chapter.

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

Sec. 36.30.990. Definitions.

Sec. 36.30.995. This chapter may be cited as the State Procurement Code.

SECTION 3 through SECTION 66 amend other Alaska statutes to reflect the provisions of this chapter.

SECTION 67. The commissioner must report to the legislature by December 1, 1987, concerning procurements by state agencies during the first 6 months of 1987.

SECTION 68. The commissioner of administration shall adopt the regulations required under this chapter by January 1, 1987.

SECTION 69. This is the repealer section.

SECTION 70. Section 68 of this Act takes effect immediately.

SECTION 71. Except as provided in sec. 70, this Act takes effect January 1, 1987.

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Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on bid mistakes shall be permitted in accordance with regulations and supported by written justification.

Sec. 36.30.170. Awards to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the ITB shall be promptly made. The Alaska bidder preference is expanded to apply to all construction contracts. The lowest responsible and responsive Alaskan bidder with a bid not more than 10% higher than the lowest bid of a nonresident shall be awarded the contract. An Alaskan bidder who qualifies as an "employment program" shall be given preference also.

Sec. 36.30.190. Multi-step sealed bidding is allowed when it is considered impractical to initially prepare a definitive purchase description to support an award based on price. Unpriced technical offers are submitted, followed by an ITB limited to the bidders whose offers are determined to be technically qualified under the criteria established.

Article 3. Competitive Sealed Proposals.

Sec. 36.30.200. Contracts may be awarded by competitive sealed proposals when the chief procurement officer, or

the commissioner of transportation and public facilities for construction and state equipment fleet contracts, determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state.

Sec. 36.30.210. Request for proposals must contain the same information required for ITBs. The same notice provisions for ITBs apply for RFPs. An offeror must list the subcontractors within 48 hours after the date by which the proposals must be received. The same duties of bidders under ITBs apply to competitive sealed proposals.

Sec. 36.30.220. Standard overhead rate established by agencies and applicable to contracts for supplies and services, must be included in a RFP.

Sec. 36.30.230. Proposals are to be opened in a manner which avoids 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 and open for public inspection after the the notice of intent to award a contract is issued.

Sec. 36.30.240. Discussions with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, may be conducted for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and before the award for the purpose of obtaining best and final offers. These discussions are exempted from the Alaska Open Meetings law.

Sec. 36.30.250. A contract under competitive sealed proposals shall be awarded to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price, the evaluation factors set out in the RFP, and whether the offeror qualifies as an Alaskan Bidder or is offering the services of an employment program.

Sec. 36.30.260. A contract awarded under competitive sealed proposals must contain: the amount of the contract; the date for supplies to be delivered or the term for services to be performed; a description of the services or supplies contracted for; and a certification that sufficient funds are available for the amount of the contract.

Sec. 36.30.270. Special procedures apply to contracts awarded to architects, engineers, and land surveyors. These provisions only apply to contracts negotiated by the executive branch.

Article 4. Other Procurement Methods.

Sec. 36.30.300. Sole source procurements may only be awarded if it is determined in writing that there is only one source for the required supply, service or construction. A sole source procurement may not be approved if a reasonable alternative source exists.

Sec. 36.30.310. Emergency procurements may be authorized under emergency conditions when there exists a threat to public health, welfare, or safety, and procurement through competitive sealed bids or competitive sealed proposals is impracticable, or contrary to the public interest, or to protect public or private property. A written determination of the basis for the emergency and for the selection of the particular contractor must be provided.

Sec. 36.30.320. Small procurements which do not exceed an aggregate amount of \$5,000 shall be made with competition that is practicable under the circumstances. A contract for professional services that does not exceed \$25,000 may be made in accordance with regulations adopted by the commissioner. Notice of small procurements shall be provided to Alaskan bidders designated by the commissioner under section 36.30.050(d).

Article 5. Contract Formation and Modification.

Sec. 36.30.340. 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 approved by the department of law.

Sec. 36.30.350. Solicitations may be cancelled or any bids or proposals may be rejected, in whole or in part, or the date for opening bids or proposals may be delayed as may be specified in the solicitation, when it is in the best interest of the state. The reasons for cancellation, rejection, or delay in opening bids or proposals shall be made part of the contract file.

Sec. 36.30.360. A written determination of responsibility of a bidder or offeror shall be made by the procurement officer.

Sec. 36.30.362. The procurement officer must issue a written statement explaining the reasons a contract was awarded to a person who does not reside or maintain a place of business in Alaska, if the supplies, services, professional services or construction could have been obtained from in-state sources.

Sec. 36.30.365. At least 10 days before the formal award of a contract the procurement officer shall provide to each bidder or offeror notice of intent to award a contract.

Sec. 36.30.370. 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.

Sec. 36.30.380. Except with respect to contracts awarded through competitive sealed bidding or firm fixed-price contracts, a contract type may not be used unless it has been approved in writing by the procurement officer.

Sec. 36.30.390. Unless otherwise provided by law, multi-term contracts are permitted, but subject to availability and appropriation of funds. Written determination must support multi-term contracts.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal periods, 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 or services delivered under the contract that are not otherwise recoverable.

Sec. 36.30.400. Cost or pricing data must be submitted and certified by contractors. This does not apply when: the contract price is based on adequate price competition; the contract price is set by law or regulation; or it is determined in writing that the requirements of this section are waived and the reasons for waiver are stated in writing.

Sec. 36.30.410. The state has the right to inspect 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 the state.

Sec. 36.30.420. The state may audit books and records of a person who has submitted cost or pricing data or receives a contract.

Sec. 36.30.430. The commissioner shall adopt regulations permitting the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions, and appropriate remedies.

Sec. 36.30.460. Standard clauses in state contract may be modified if supported by a written determination that states the circumstances justifying the variation.

Sec. 36.30.470. 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 execute 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.

Sec. 36.30.480. Cost principle regulations shall be adopted.

Article 6. Procurement Records and Reports.

Sec. 36.30.500. Procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the state archivist.

Sec. 36.30.510. A contract file open for public inspection must 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.

Sec. 36.30.520. The commissioner shall maintain for at least 5 years a record listing all sole source and emergency procurement contracts. An agency which has delegated procurement authority shall by October 1, of each year, submit records of all sole source and emergency procurement contracts to the commissioner.

Sec. 35.30.530. Procurement information is public except as otherwise provided by law.

Sec. 36.30.540. The commissioner shall biennially report to the legislature concerning procurements by agencies.

Article 7. Legal and Contractual Remedies.

Sec. 36.30.560. An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for goods, services or construction. The protest shall be filed with the procurement officer of the contracting agency in writing and must contain specified items.

Sec. 36.30.565. Time deadlines for filing protests are specified.

Sec. 36.30.570. Notice of a protest shall immediately be given to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

Sec. 36.30.575. If a protest is filed before a contract is awarded, the award may be made unless the procurement officer of the contracting agency determines in writing that: a reasonable probability exists that the protest will be sustained; or stay of the award is not contrary to the best interests of the state.

Sec. 36.30.580. A written decision by the procurement officer of the contracting agency shall be issued within 14 days after a protest has been filed, unless the time is extended up to 26 days for good cause. Notice shall be sent to the protester. If a decision is not made by the due date, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

Sec. 36.30.585. If the procurement officer sustains a protest the procurement officer shall implement an appropriate remedy.

Sec. 36.30.590. An appeal from a decision of a procurement officer on a protest must be filed with the appropriate commissioner within 5 days after the decision is received by the protester.

Sec. 36.30.595. The procurement officer shall immediately give notice of an appeal to the contractor if a contract has been awarded, or, if no award has been made, to all interested parties.

Sec. 36.30.600. If a protest appeal is filed before a contract is awarded and the award was stayed, the filing of the appeal automatically continues the stay until the commissioner of administration or transportation and public facilities makes a written determination that the award of the contract is necessary to protect substantial interests of the state.

Sec. 36.30.605. The procurement officer of the contracting agency shall file a complete report on the protest and decision with the commissioner of administration or transportation and public facilities within 7 days after a protest appeal is filed. The protester and all interested parties that have requested a copy of the appeal shall be furnished one. The protester may file comments on the protest report within 7 days after the report is received. Extensions may be granted.

Sec. 36.30.610. The commissioner of administration or transportation and public facilities shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely. The appropriate commissioner may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.

Sec. 36.30.615. A hearing on a protest appeal shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.620. 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, issue a written decision no more than 90 days after receipt of all necessary information from the contractor, unless the due date is extended for good cause.

The decision shall be sent to the contractor. If a decision is not made by the due date, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor. If a controversy asserted by the state concerning a contract awarded cannot be resolved by agreement, the matter shall be immediately referred to the commissioner of administration or transportation and public facilities.

Sec. 36.30.625. 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 transportation and public facilities. The appeal shall be filed within 14 days after the decision is received by the contractor.

Sec. 36.30.630. A hearing on a contract controversy appealed to the commissioner or referred to the commissioner shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.632. The commissioners of administration and transportation and public facilities may delegate responsibilities under Sec. 36.30.590 and Sec. 36.30.630 to the head of the contracting agency.

Sec. 36.30.635. The commissioners of administration and transportation and public facilities may debar or suspend a person from consideration for award of contracts. Notice and opportunity for a hearing are specified.

Sec. 36.30.640. Causes for debarment or suspension are enumerated.

Sec. 36.30.645. The commissioners of administration and transportation and public facilities shall issue a written decision to debar or suspend.

Sec. 36.30.650. A person suspended is entitled to a hearing if the person files a written request for a hearing within 7 days after receipt of the notice of suspension.

Sec. 36.30.655. The commissioner shall maintain a list of all persons debarred or suspended from consideration for award of contracts.

Sec. 36.30.660. The commissioner of administration or the commissioner of transportation and public facilities may, at any time after a final decision to debar a person, reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

A debarred person may request reinstatement. A hearing may be held on a reinstatement petition. A decision on reinstatement shall be made in writing within 7 days after a reinstatement petition is submitted. A decision under this section is not subject to judicial appeal.

Sec. 36.30.665. The commissioner of administration or transportation and public facilities may permit a debarred person to participate in a contract on a limited basis during the debarment period.

Sec. 36.30.670. The commissioner of administration or transportation and public facilities shall act as a hearing officer or appoint a hearing officer for a hearing conducted under this chapter. The provisions of the Administrative Procedure Act do not apply to a hearing conducted under this chapter. The authority of a hearing officer is outlined.

Sec. 36.30.675. If the commissioner of administration or transportation and public facilities is not acting as hearing officer, the hearing officer shall recommend a decision to the appropriate commissioner based on the evidence presented. The recommendation shall include findings of fact and conclusions of law. The appropriate commissioner may affirm, modify or reject the hearing

officer's recommendation or take any other appropriate action.

Sec. 36.30.680. A decision by the commissioner of administration is final, and shall be sent within 20 days after a hearing to all parties. A decision by the commissioner of transportation and public facilities involving procurement of construction shall be sent within 90 days after the hearing.

Sec. 36.30.685. A final decision of the commissioner of administration or transportation and public facilities may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure.

Sec. 36.30.687. Civil and criminal sanctions are outlined for misrepresentations and fraudulent claims.

Sec. 36.30.690. This chapter and the regulations adopted under it are the exclusive procedures for asserting a claim against the state or an agency arising in relation to a procurement conducted under this chapter.

Sec. 36.30.695. The commissioner of administration may adopt by regulation additional rules of procedure.

Sec. 36.30.699. The definition of interested party is given.

Article 8. Intergovernmental Relations.

Sec. 36.30.700. Cooperative purchasing is authorized between public procurement units or external procurement activities in accordance with an agreement entered into between the participants.

Sec. 36.30.710. Sale, acquisition, or use of supplies among public procurement units or with external procurement activity may be done independent of certain requirements of this chapter.

Sec. 36.30.720. Joint use of facilities is allowable.

Sec. 36.30.730. A public procurement unit may provide personnel, information and technical services to a requesting public procurement unit or external procurement activity.

Sec. 36.30.735. Current Alaska law on restrictions of contracting with or employing experts on radiation hazards is retained.

Sec. 36.30.740. The commissioner may collect information concerning supplies, services or construction being procured or used by state public procurement units.

Sec. 36.30.750. 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 this chapter.

Sec. 36.30.790. Definitions for this article are provided.

Article 9. General Provisions.

Sec. 36.30.850. This chapter applies to contracts solicited or entered into after January 1, 1987, unless the parties agree to its application to a contract solicited or entered into before that date. This chapter applies to the disposal of state supplies and every expenditure of public funds irrespective of their sources, except as specified in AS 36.30.915.

This chapter does not apply to: grants; contracts for professional witnesses; contracts of the University of Alaska where the work is to be performed substantially by enrolled students; contracts for medical doctors and dentists; contracts for the purchase of residential child care services under AS 47.40; disposals of land or interest in land; disposals under AS 38.05; contracts for the preparation of ballots under AS 15.15.030; acquisitions or disposals of property and other contracts relating to airports; acquisitions of real property or disposals of obsolete property under AS 19.05.060, 19.05.100, 19.05.110 or 19.05.120; disposals of obsolete material or equipment under AS 35.20.060; leases of ferry terminal facilities under AS 19.60.010; or contracts of the department of fish and game for non-point-to-point flights requiring specialized flying and piloting skills.

Except for AS 36.30.700-36.30.895, this chapter does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other governments.

Sec. 36.30.860. Unless displaced by the particular provision of this chapter, all other principles of law and equity shall supplement the provisions of this chapter.

Sec. 36.30.870. Regulations under this chapter shall be adopted in accordance with the Administrative Procedure Act. Regulations 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.

Sec. 36.30.880. This chapter requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

Sec. 36.30.890. 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, the federal statute or regulation shall prevail.

Sec. 36.30.900. This chapter does not modify, amend, or alter laws regarding preference for Alaska forest products or preference to producers or dealers in Alaska, except as provided in AS 36.30.170(b) and (c).

Sec. 36.30.910. This chapter does not prevent purchasing through the general services administration as provided by law.

Sec. 36.30.920. Suspected anticompetitive practices are to be reported to the attorney general.

Sec. 36.30.930. In addition to penalties prescribed for unethical conduct, civil and criminal penalties are provided for violations of this chapter.

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

Sec. 36.30.990. Definitions.

Sec. 36.30.995. This chapter may be cited as the State Procurement Code.

SECTION 3 through SECTION 66 amend other Alaska statutes to reflect the provisions of this chapter.

SECTION 67. The commissioner must report to the legislature by December 1, 1987, concerning procurements by state agencies during the first 6 months of 1987.

SECTION 68. The commissioner of administration shall adopt the regulations required under this chapter by January 1, 1987.

SECTION 69. This is the repealer section.

SECTION 70. Section 68 of this Act takes effect immediately.

SECTION 71. Except as provided in sec. 70, this Act takes effect January 1, 1987.

**SENATE BILL 341
STATE PROCUREMENT CODE**

Origin: Pursuant to Senate Resolution #6, a Senate Select Interim Committee on Procurement Practices and Procedures was appointed. After months of work and eight public hearings, a state procurement code was developed and introduced as SB 341.

Basis of SB 341: The Model Procurement Code, which has been adopted in 11 other states was used as a guide. Utilizing the expertise of a task force composed of state procurement personnel the Model Code was adapted to Alaska's needs.

Structure of SB 341: Preferred method is competitive sealed bids. Competitive sealed proposals are subject to detailed procedures. Sole source and emergency contracts may be awarded only if supported by substantial written justification. A remedy section includes a detailed procedure for the protest of solicitations and awards of contracts.

Major Modifications in CS SB 341 (Jud):

1. University of Alaska is subject to the code, but will adopt its own procedures rather than use DOA's regulations.
2. The administrative director of the Court System will adopt procedures based upon competitive principles established under the code, but may be adapted to the special needs of the judicial branch.
3. Contractors must list subcontractors two working days after bids are opened.
4. Contracts based on total or life cycle costs may be awarded only when it is determined in writing that the contract promotes overall economy, encourages competition, is not unduly restrictive, and is in the best interest of the state.
5. Alaska Bidder preference is increased to 10% and applies to all construction contracts.
6. Special contracting provisions apply to architects, engineers and land surveyors. This is modeled after SB 204.

AMENDMENTS

AMENDMENT #1 by Senate Finance

ASHA has urged the Senate to exempt them from the code. The code provides substantial safeguards that assure continuation of federal funds.

Page 53: Sec. 36.30.890 Federal Assistance, provides that conflicts between federal and state law will be resolved in favor of the federal law.

Page 62: Section 10 provides that conflicts between AS 18.55.110 (ASHA) and the code will be resolved in favor of AS 18.55.110 (ASHA).

The federal government has used the model procurement code as a guide when reviewing procurement practices adopted by ASHA and other state housing authorities. (Attachment O to ASHA's procurement regulations).

AMENDMENT #2 by Senate Finance

The time for submitting subcontractors was extended to 2 working days after the bids are open, this applies to the apparent two lowest bidders.

Two additional reasons are added for the substitution of subcontractors: failure to comply with federal affirmative action requirements and labor agreements.

AMENDMENT #3 by Senator Rodey

The time for submitting subcontractors should be immediately upon bid opening by the successful bidder.

ANTICIPATED AMENDMENT by Senator Ferguson

Senator Ferguson may move to amend the definition of GRANT or CONTRACT so that it is clear that Maniilaq is not subject to the code.



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

SENATE SELECT INTERIM COMMITTEE ON PROCUREMENT PRACTICES AND PROCEDURES

January 13, 1986

Senator Don Bennett, President
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Pursuant to Senate Resolution Number 6, a Senate Select Interim Committee on Procurement Practices and Procedures was appointed. The Committee was composed of the following Senators: Jan Faiks, Chairman, Jalmar Kerttula, Vice-Chairman, Rick Halford, Joe Josephson, Edna DeVries and Fred Zharoff. Attorney General Hal Brown participated as an ex-officio member.

The Committee has completed its duties, which included reviewing and investigating the Grand Jury recommendations concerning the Alaska statutes governing state procurement and a code of ethics for the executive branch. In addition, the Committee held eight public hearings based in Anchorage, Fairbanks and Barrow, at which numerous witnesses participated and presented additional information regarding state procurement and ethics. Four of the public hearings were teleconferenced statewide. A mailing list of over 300 interested people was compiled, with updated information relayed periodically.

A task force composed of state procurement personnel worked at length and presented recommendations to the Committee. Five formal task force meetings were held and many administrative briefings, directed by the Department of Administration, reached personnel throughout the executive branch. The Committee greatly appreciated the efforts of Attorney General Hal Brown, Assistant Attorney General Jim Baldwin, Deputy Commissioner Marsha Hubbard, and Bob Link, Director of General Services and Supplies, who worked diligently to make this effort a success.

The following findings and recommendations are based on consistent testimony presented to the Committee during its review.

PROCUREMENT

FINDING #1: Existing procurement statutes and regulations are inconsistent, inadequate, outdated and sporadically scattered throughout our laws. An overabundance of the rules pertaining to state purchasing are contained in internal agency policy and procedure manuals, which are not readily available to the public. These factors have caused confusion among those who contract or wish to contract with the state. According to the Department of Law, there has been a dramatic increase in litigation concerning contract disputes because of the fact that the state does not have a comprehensive procurement law.

RECOMMENDATION: Based on these factors, the Committee believes that comprehensive procurement laws and regulations should be enacted.

FINDING #2: The Legislature, Court System, Executive Branch, University of Alaska, and Alaska Railroad Corporation operate differently and independently in the manner in which procurements are made. The Alaska Railroad Corporation has independent authority under AS 42.20.100 to ensure that the procurement procedures of the Corporation meet accepted railroad industry standards. The Executive Branch has moved away from centralized procurement practices and procedures. The Department of Administration has delegated purchasing authority to agencies which have been nonresponsive in enacting basic purchasing regulations. The lack of a uniform and centralized system has produced a system which is incoherent and confusing to the public.

RECOMMENDATION: All laws and regulations pertaining to procurement should be substantially equivalent, while maintaining the integrity of the separate branches of the government. Procurement within the Executive Branch should be more centralized. Any delegation of purchasing authority to an agency should be made only after written determination that the agency is capable of implementing the delegated authority.

FINDING #3: Bid specifications, solicitations and award criteria are not always clearly written or referenced in the information reviewed by potential bidders. The process by which the issuing agency evaluates and accepts or rejects bids is uncertain. This has created confusion and frustration for those who wish to contract with the state.

RECOMMENDATION: Evaluation procedures and performance criteria should be clearly described and identified in all solicitations.

FINDING #4: The use of noncompetitive procurement methods, such as sole source contracts, has not always been adequately justified, demonstrated or documented. This has caused the public to be skeptical of the state procurement system.

RECOMMENDATION: Noncompetitive procurement methods should be limited, and used only after written determination is made that clearly defined criteria for such methods have been met. The Legislature should receive reports of all sole source and emergency contract awards.

FINDING #5: The appeals process has been criticized because of the lack of information concerning the procedures. The time limits imposed for an appeal are too rigid to allow sufficient preparation by the protestor.

RECOMMENDATION: A clear, comprehensive and uniform appeals procedure, with adequate timelines, should be adopted.

FINDING #6: Persons who are not licensed to do business in the state have been awarded contracts. This has caused a great amount of frustration among those who are licensed, yet unsuccessful bidders.

RECOMMENDATION: All bidders should have an Alaska business license at the time of bid.

FINDING #7: Concern has been expressed that access to state contracting is complicated and difficult. The lack of information or understanding of the procedures is viewed as a barrier to doing business with the state.

RECOMMENDATION: The contractors' list should be utilized by all state agencies and branches of government. This list should be current and easily available for users.

FINDING #8: Public procurement is a highly technical process and involves millions of state dollars annually. Expertise is required to make the process work efficiently and effectively.

RECOMMENDATION: Procurement personnel should be adequately trained and supervised. The Chief Procurement Officer should have substantial experience in public procurement, and should be adequately insulated from political pressure.

Based on the recommendations of the Grand Jury, public testimony and state personnel, the Committee is forwarding the attached bill and sectional analysis relating to state procurement practices and procedures. This bill is based on the Model Procurement Code (MPC) which was adopted by the American Bar Association's House of Delegates. The Code represents over five years of intensive effort directed by a Coordinating Committee which is a joint committee of the

Section of Public Contract Law and the Section of Urban, State and Local Government Law.

The Model Procurement Code provides the framework for creating a complete purchasing system at any level of government. Specifically the Code contains: (1) the statutory principles and policy guidance for managing and controlling the procurement of supplies, services, and construction for public purposes; and (2) administrative and judicial remedies for the resolution of controversies relating to public contracts.

The following jurisdictions have adopted modified versions of the Code: Kentucky (1979), Arkansas (1979), Louisiana (1980), Utah (1980), Maryland (1981), South Carolina (1981), Colorado (1982), Indiana (1982), Virginia (1983), Territory of Guam (1983), New Mexico (1984), and Arizona (1984). Local governments or agencies have also adopted versions of the Code, including the Municipality of Anchorage.

The Committee believes that the proposed procurement code will provide a comprehensive law which addresses the deficiencies of the existing system, and therefore we recommend it to you for approval.

ETHICS

Senate Resolution 6 also directed the Committee to "review, investigate and render advice with respect to the Grand Jury recommendations concerning a code of ethics for the executive branch and employee awareness of ethical obligations".

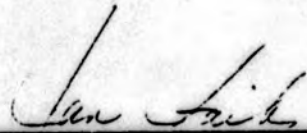
The Committee held two meetings in which it reviewed current statutes pertaining to conflict of interest and ethical behavior for state employees. The Committee also reviewed legislation introduced in the 13th Legislature that would have established an ethics code for the executive branch. Of particular interest was Senate Bill 501 that was introduced by the Governor in 1984 and extensively reviewed by the Senate State Affairs Committee. This bill became the basis from which the Committee began its deliberations.

During these deliberations, the Administration informed the Committee that they had already drafted and were nearing completion on an ethics bill to be introduced by the Governor. After some discussion and review of the draft legislation, it was felt no purpose would be served by the introduction of competing pieces of legislation on this important issue. Therefore, the Senate Select Interim Committee on Procurement Practices and Procedures agreed to defer to the Governor and not introduce an ethics bill.

The Committee would like to thank the Administration for all its invaluable assistance in working on an ethics code for

the executive branch. The Attorney General, Hal Brown, provided the Committee with the able assistance of his Special Assistant, Randall Burns and Assistant Attorney General, Susan Cox without whom our task would have been much more difficult.

Respectfully submitted,



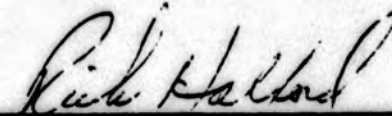
Senator Jan Faiks,
Chairman



Senator Jalmar Kettula
Vice-Chairman



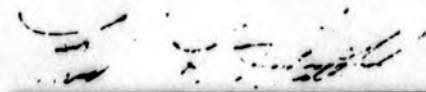
Senator Edna DeVries



Senator Rick Halford



Senator Joe Josephson



Senator Fred Zharoff

HOUSE CS FOR CS FOR SENATE BILL NO. 341 (Finance)
SECTIONAL ANALYSIS

(Unless otherwise indicated, "commissioner" means commissioner of administration)

SECTION 1. The purposes of the act are outlined to include: simplification, clarification, modernization of the laws; consistency among the branches of government; increased public confidence; fair and equitable treatment of all vendors; increased economy in state procurement; broad-based competition; safeguards for the maintenance of a procurement system of quality and integrity; and elimination and prevention of discrimination in state contracting.

SECTION 2. A new chapter is added to AS 36 entitled "State Procurement Code."

Article 1. Organization of State Procurement.

Sec. 36.30.005. Centralization of procurement of supplies and services for state agencies is under the authority of the commissioner of administration and the chief procurement officer. Procurement of construction and procurements to or disposals from the state equipment fleet and the control over construction and the state equipment fleet is under the commissioner of transportation and public facilities.

The University of Alaska is subject to the requirements of SB 341, but has independent administrative authority and the ability to issue its own regulations implementing the chapter in conformance with state APA requirements.

Sec. 36.30.010. The chief procurement officer is selected by the commissioner; is responsible for procurement of supplies and services for agencies in the executive branch; is a partially exempt employee; must have a minimum of 5 years in public procurement; and may be removed by the commissioner only for cause. The term of office of the Chief Procurement Officer is 4 years. Duties of the Chief Procurement Officer are enumerated.

Sec. 36.30.015. The commissioner of transportation and public facilities may delegate to another agency the authority to contract for construction, after written determination has been made that the agency is capable of implementing the delegated authority. The commissioner of administration may delegate to an agency the authority to contract for its own supplies and services after a written

exceed \$1,000,000, notice must be provided the legislature for approval.

Article 2. Competitive Sealed Bidding.

Sec. 36.30.100. Competitive sealed bidding is the preferred method of contracting. Competitive sealed bidding is not required for certain purchases, including professional services, which are itemized.

Sec. 36.30.110. When competitive sealed bidding is used, an invitation to bid is issued which must include the date by which the bid must be received, purchase description, and all contractual terms and conditions. Subcontractors must be listed. Evidence of a valid Alaska business license for all bidders and subcontractors must be submitted when responding to the ITR. A bidder for construction contracts must also submit evidence of the bidder's registration under AS 08.18 and evidence of registration for each listed subcontractor.

Sec. 36.30.115. Within 24 hours after the opening of bids, the two apparent low bidders shall submit a list of the subcontractors the bidder proposes to use in the performance of the contract. Conditions under which a bidder may substitute a subcontractor are listed. A bidder who violates this section may either have the contract cancelled, or after notice and a hearing, be assessed a penalty in an amount not exceeding 10% of the value of the subcontract at issue.

Sec. 36.30.120. Bid security shall be required for all competitive sealed bidding for construction contracts which exceed an amount established by regulation. Bid security may be required for other types of supplies and services.

Sec. 36.30.130. Public notice of the ITR must be provided 21 days before the date for the opening of the bid, unless otherwise determined in writing by the chief procurement officer, or the commissioner of transportation and public facilities for construction or state equipment bids. Notice of solicitations must be published in the Alaska Administrative Journal. The state is liable for failing to substantially comply with the notice requirements of this section.

Sec. 36.30.140. Bid opening must be public, in the presence of witnesses, and relevant information must be recorded, which is open to public inspection. The bids are not open for public inspection until after a notice of intent to award a contract has been issued.

Sec. 36.30.210. Request for proposals must contain the same information required for ITBs. The same notice provisions for ITBs apply for RFPs. An offeror must list the subcontractors within 48 hours after the date by which the proposals must be received. The same duties of bidders under ITBs apply to competitive sealed proposals.

Sec. 36.30.220. Standard overhead rate established by agencies and applicable to contracts for supplies and services, must be included in a RFP.

Sec. 36.30.230. Proposals are to be opened in a manner which avoids 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 and open for public inspection after the the notice of intent to award a contract is issued.

Sec. 36.30.240. Discussions with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, may be conducted for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and before the award for the purpose of obtaining best and final offers. These discussions are exempted from the Alaska Open Meetings law.

Sec. 36.30.250. A contract under competitive sealed proposals shall be awarded to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price, the evaluation factors set out in the RFP, and whether the offeror qualifies as an Alaskan Bidder or is offering the services of an employment program.

Sec. 36.30.260. A contract awarded under competitive sealed proposals must contain: the amount of the contract; the date for supplies to be delivered or the term for services to be performed; a description of the services or supplies contracted for; and a certification that sufficient funds are available for the amount of the contract.

Sec. 36.30.270. Special procedures apply to contracts awarded to architects, engineers, and land surveyors.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

HOUSE CS FOR CS FOR SENATE BILL NO. 341 (Finance)
SECTIONAL ANALYSIS

(Unless otherwise indicated, "commissioner" means commissioner of administration)

SECTION 1. The purposes of the act are outlined to include: simplification, clarification, modernization of the laws; consistency among the branches of government; increased public confidence; fair and equitable treatment of all vendors; increased economy in state procurement; broad-based competition; safeguards for the maintenance of a procurement system of quality and integrity; and elimination and prevention of discrimination in state contracting.

SECTION 2. A new chapter is added to AS 36 entitled "State Procurement Code."

Article 1. Organization of State Procurement.

Sec. 36.30.005. Centralization of procurement of supplies and services for state agencies is under the authority of the commissioner of administration and the chief procurement officer. Procurement of construction and procurements to or disposals from the state equipment fleet and the control over construction and the state equipment fleet is under the commissioner of transportation and public facilities.

The University of Alaska is subject to the requirements of SB 341, but has independent administrative authority and the ability to issue its own regulations implementing the chapter in conformance with state APA requirements.

Sec. 36.30.010. The chief procurement officer is selected by the commissioner; is responsible for procurement of supplies and services for agencies in the executive branch; is a partially exempt employee; must have a minimum of 5 years in public procurement; and may be removed by the commissioner only for cause. The term of office of the Chief Procurement Officer is 4 years. Duties of the Chief Procurement Officer are enumerated.

Sec. 36.30.015. The commissioner of transportation and public facilities may delegate to another agency the authority to contract for construction, after written determination has been made that the agency is capable of implementing the delegated authority. The commissioner of administration may delegate to an agency the authority to contract for its own supplies and services after a written

determination has been made that the agency is capable of implementing the delegated authority.

The authority to adopt regulations or dispose of surplus supplies may not be delegated. Agency contracts for the services of legal counsel must be approved by the department of law.

The Board of Directors of the Alaska Railroad Corporation and the Alaska State Housing Authority must adopt procedures substantially equivalent to the procurement code and regulations adopted by the commissioner.

Sec. 36.30.020. Legislative Council must adopt procedures which are based on the competitive principles consistent with this chapter.

Sec. 36.30.030. The administrative director of the court system must adopt procedures which are based on the competitive principles consistent with this chapter.

Sec. 36.30.040. Procurement regulations must be adopted by the commissioner.

Sec. 36.30.050. A list of persons who desire to provide supplies, services or construction items to the state will be established and maintained by the commissioner. Evidence of a valid Alaska business license and a statement of the contractor's qualifications must be submitted to be included on the list. Construction contractors must also submit a valid certificate of registration. A biennial fee will be charged to offset the cost of administering the list. The list may be used by the state agencies in providing notice of intent to make small purchases.

Sec. 36.30.060. Specification regulations must be adopted by the commissioner. Specifications must promote overall economy for the purposes intended, encourage competition in satisfying the state's needs, and may not be unduly restrictive.

Sec. 36.30.070. Supply management is under the authority of the commissioner and regulations must be adopted which govern management of supplies, surplus supplies and transfer of excess supplies.

Sec. 36.30.080. The department shall lease necessary space, and contract for the lease of space for the use of the state or an agency. A lease or contract for a lease may not be for a period of occupancy greater than 40 years. The department may enter into lease-financing agreements, which are subject to annual appropriation. If the department intends to enter into a lease or lease financing agreement with an annual rent anticipated to

exceed \$1,000,000, notice must be provided the legislature for approval.

Article 2. Competitive Sealed Bidding.

Sec. 36.30.100. Competitive sealed bidding is the preferred method of contracting. Competitive sealed bidding is not required for certain purchases, including professional services, which are itemized.

Sec. 36.30.110. When competitive sealed bidding is used, an invitation to bid is issued which must include the date by which the bid must be received, purchase description, and all contractual terms and conditions. Subcontractors must be listed. Evidence of a valid Alaska business license for all bidders and subcontractors must be submitted when responding to the ITB. A bidder for construction contracts must also submit evidence of the bidder's registration under AS 08.18 and evidence of registration for each listed subcontractor.

Sec. 36.30.115. Within 24 hours after the opening of bids, the two apparent low bidders shall submit a list of the subcontractors the bidder proposes to use in the performance of the contract. Conditions under which a bidder may substitute a subcontractor are listed. A bidder who violates this section may either have the contract cancelled, or after notice and a hearing, be assessed a penalty in an amount not exceeding 10% of the value of the subcontract at issue.

Sec. 36.30.120. Bid security shall be required for all competitive sealed bidding for construction contracts which exceed an amount established by regulation. Bid security may be required for other types of supplies and services.

Sec. 36.30.130. Public notice of the ITB must be provided 21 days before the date for the opening of the bid, unless otherwise determined in writing by the chief procurement officer, or the commissioner of transportation and public facilities for construction or state equipment bids. Notice of solicitations must be published in the Alaska Administrative Journal. The state is liable for failing to substantially comply with the notice requirements of this section.

Sec. 36.30.140. Bid opening must be public, in the presence of witnesses, and relevant information must be recorded, which is open to public inspection. The bids are not open for public inspection until after a notice of intent to award a contract has been issued.

Sec. 36.30.150. The procurement officer must evaluate bids based on the requirements set out in the ITB. The criteria used for the evaluation of an award must be objectively measurable. Criteria may not be used in bid evaluation if they are not set out in the ITB.

A contract based on total or life cycle costs may be awarded only when the chief procurement officer or the commissioner of transportation and public facilities determines in writing that the contract promotes overall economy for the purposes intended, encourages competition, is not unduly restrictive, and is in the best interest of the state.

Sec. 36.30.160. Bids received after the bid due date indicated on the ITB may not be accepted unless the delay was due to an error of the contracting agency.

Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on bid mistakes shall be permitted in accordance with regulations and supported by written justification.

Sec. 36.30.170. Awards to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the ITB shall be promptly made. The Alaska bidder preference is expanded to apply to all construction contracts. The lowest responsible and responsive Alaskan bidder with a bid not more than 5% higher than the lowest bid of a nonresident shall be awarded the contract. An Alaskan bidder who qualifies as an "employment program" shall be given a 10% preference.

Sec. 36.30.190. Multi-step sealed bidding is allowed when it is considered impractical to initially prepare a definitive purchase description to support an award based on price. Unpriced technical offers are submitted, followed by an ITB limited to the bidders whose offers are determined to be technically qualified under the criteria established.

Article 3. Competitive Sealed Proposals.

Sec. 36.30.200. Contracts may be awarded by competitive sealed proposals when the chief procurement officer, or the commissioner of transportation and public facilities for construction and state equipment fleet contracts, determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state.

Sec. 36.30.210. Request for proposals must contain the same information required for ITBs. The same notice provisions for ITBs apply for RFPs. An offeror must list the subcontractors within 48 hours after the date by which the proposals must be received. The same duties of bidders under ITBs apply to competitive sealed proposals.

Sec. 36.30.220. Standard overhead rate established by agencies and applicable to contracts for supplies and services, must be included in a RFP.

Sec. 36.30.230. Proposals are to be opened in a manner which avoids 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 and open for public inspection after the the notice of intent to award a contract is issued.

Sec. 36.30.240. Discussions with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, may be conducted for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and before the award for the purpose of obtaining best and final offers. These discussions are exempted from the Alaska Open Meetings law.

Sec. 36.30.250. A contract under competitive sealed proposals shall be awarded to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price, the evaluation factors set out in the RFP, and whether the offeror qualifies as an Alaskan Bidder or is offering the services of an employment program.

Sec. 36.30.260. A contract awarded under competitive sealed proposals must contain: the amount of the contract; the date for supplies to be delivered or the term for services to be performed; a description of the services or supplies contracted for; and a certification that sufficient funds are available for the amount of the contract.

Sec. 36.30.270. Special procedures apply to contracts awarded to architects, engineers, and land surveyors.

Article 4. Other Procurement Methods.

Sec. 36.30.300. Sole source procurements may only be awarded if it is determined in writing that there is only one source for the required supply, service or construction. A sole source procurement may not be approved if a reasonable alternative source exists.

Sec. 36.30.310. Emergency procurements may be authorized under emergency conditions when there exists a threat to public health, welfare, or safety, and procurement through competitive sealed bids or competitive sealed proposals is impracticable, or contrary to the public interest, or to protect public or private property. A written determination of the basis for the emergency and for the selection of the particular contractor must be provided.

Sec. 36.30.320. Small procurements which do not exceed an aggregate amount of \$5,000 shall be made with competition that is practicable under the circumstances. A contract for professional services that does not exceed \$25,000 may be made in accordance with regulations adopted by the commissioner. Notice of small procurements shall be provided to Alaskan bidders designated by the commissioner under section 36.30.050(d).

Article 5. Preference for Alaska Products.

Sec. 36.30.322. 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 unless manufacturers/suppliers are unable to supply the products at a cost that is within seven percent of the price offered by a manufacturer/supplier of non-Alaska forest products.

Sec. 36.30.324. Alaska products shall be used whenever practicable in procurements for an agency.

Sec. 36.30.326. Contract specifications 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 products meet the contract specifications.

Sec. 36.30.328. In evaluation of a bid or proposal that designates the use of Alaska products is decreased by the percentage of the value of the designated Alaska products under AS 36.30.332.

Sec. 36.30.330. Failure to use the designated Alaska product for a reason within the control of the successful bidder or offeror will result in a penalty according to the schedule under this section.

Sec. 36.30.332. A classification system for Alaska products which is based on the manufacturer's quoted price, is contained in this section. A preference schedule is outlined.

Sec. 36.30.334. An agency may identify specific Alaska Products for use in making a procurement.

Sec. 36.30.336. Notwithstanding other provisions of this chapter, AS 36.30.322-36.30.338 apply to all procurements subject to this chapter, except as provided in AS 36.30.170(b) and 36.30.322(b).

Sec. 36.30.338. Definitions for this article.

Article 6. Contract Formation and Modification.

Sec. 36.30.340. 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 approved by the Attorney General.

Sec. 36.30.350. Solicitations may be cancelled or any bids or proposals may be rejected, in whole or in part, or the date for opening bids or proposals may be delayed as may be specified in the solicitation, when it is in the best interest of the state. The reasons for cancellation, rejection, or delay in opening bids or proposals shall be made part of the contract file.

Sec. 36.30.360. A written determination of responsibility of a bidder or offeror shall be made by the procurement officer.

Sec. 36.30.362. The procurement officer must issue a written statement explaining the reasons a contract was awarded to a person who does not reside or maintain a place of business in Alaska, if the supplies, services, professional services or construction could have been obtained from in-state sources.

Sec. 36.30.365. At least 10 days before the formal award of a contract the procurement officer shall provide to each bidder or offeror notice of intent to award a contract.

Sec. 36.30.370. 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.

Sec. 36.30.380. Except with respect to contracts awarded through competitive sealed bidding or firm fixed-price

contracts, a contract type may not be used unless it has been approved in writing by the procurement officer.

Sec. 36.30.390. Unless otherwise provided by law, multi-term contracts are permitted, but subject to availability and appropriation of funds. Written determination must support multi-term contracts.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal periods, 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 or services delivered under the contract that are not otherwise recoverable.

Sec. 36.30.400. Cost or pricing data must be submitted and certified by contractors. This does not apply when: the contract price is based on adequate price competition; the contract price is set by law or regulation; or it is determined in writing that the requirements of this section are waived and the reasons for waiver are stated in writing.

Sec. 36.30.410. The state has the right to inspect 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 the state.

Sec. 36.30.420. The state may audit books and records of a person who has submitted cost or pricing data or receives a contract.

Sec. 36.30.430. The commissioner shall adopt regulations permitting the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions, and appropriate remedies.

Sec. 36.30.460. Standard clauses in state contract may be modified if supported by a written determination that states the circumstances justifying the variation.

Sec. 36.30.470. 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 execute 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.

Sec. 36.30.480. Cost principle regulations shall be adopted.

Article 7. Procurement Records and Reports.

Sec. 36.30.500. Procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the state archivist.

Sec. 36.30.510. A contract file open for public inspection must 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.

Sec. 36.30.520. The commissioner shall maintain for at least 5 years a record listing all sole source and emergency procurement contracts. An agency which has delegated procurement authority shall by October 1, of each year, submit records of all sole source and emergency procurement contracts to the commissioner.

Sec. 35.30.530. Procurement information is public except as otherwise provided by law.

Sec. 36.30.540. The commissioner shall biennially report to the legislature concerning procurements by agencies.

Article 8. Legal and Contractual Remedies.

Sec. 36.30.560. An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for goods, services or construction. The protest shall be filed with the procurement officer of the contracting agency in writing and must contain specified items.

Sec. 36.30.565. Time deadlines for filing protests are specified.

Sec. 36.30.570. Notice of a protest shall immediately be given to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

Sec. 36.30.575. If a protest is filed before a contract is awarded, the award may be made unless the procurement officer of the contracting agency determines in writing that: a reasonable probability exists that the protest will be sustained; or stay of the award is not contrary to the best interests of the state.

Sec. 36.30.580. A written decision by the procurement officer of the contracting agency shall be issued within 14 days after a protest has been filed, unless the time is extended up to 26 days for good cause. Notice shall be sent to the protester. If a decision is not made by the due date, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

Sec. 36.30.585. If the procurement officer sustains a protest the procurement officer shall implement an appropriate remedy.

Sec. 36.30.590. An appeal from a decision of a procurement officer on a protest must be filed with the appropriate commissioner within 5 days after the decision is received by the protester.

Sec. 36.30.595. The procurement officer shall immediately give notice of an appeal to the contractor if a contract has been awarded, or, if no award has been made, to all interested parties.

Sec. 36.30.600. If a protest appeal is filed before a contract is awarded and the award was stayed, the filing of the appeal automatically continues the stay until the commissioner of administration or transportation and public facilities makes a written determination that the award of the contract is necessary to protect substantial interests of the state.

Sec. 36.30.605. The procurement officer of the contracting agency shall file a complete report on the protest and decision with the commissioner of administration or transportation and public facilities within 7 days after a protest appeal is filed. The protester and all interested parties that have requested a copy of the appeal shall be furnished one. The protester may file comments on the protest report within 7 days after the report is received. Extensions may be granted.

Sec. 36.30.610. The commissioner of administration or transportation and public facilities shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely. The appropriate commissioner may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.

Sec. 36.30.615. A hearing on a protest appeal shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.620. 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, issue a written decision no more than 90 days after receipt of all necessary information from the contractor, unless the due date is extended for good cause. 0

The decision shall be sent to the contractor. If a decision is not made by the due date, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor. If a controversy asserted by the state concerning a contract awarded cannot be resolved by agreement, the matter shall be immediately referred to the commissioner of administration or transportation and public facilities.

Sec. 36.30.625. 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 transportation and public facilities. The appeal shall be filed within 14 days after the decision is received by the contractor.

Sec. 36.30.630. A hearing on a contract controversy appealed to the commissioner or referred to the commissioner shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.632. The commissioners of administration and transportation and public facilities may delegate responsibilities under Sec. 36.30.590 and Sec. 36.30.630 to the head of the contracting agency.

Sec. 36.30.635. The commissioners of administration and transportation and public facilities may debar or suspend a person from consideration for award of contracts. Notice and opportunity for a hearing are specified.

Sec. 36.30.640. Causes for debarment or suspension are enumerated.

Sec. 36.30.645. The commissioners of administration and transportation and public facilities shall issue a written decision to debar or suspend.

Sec. 36.30.650. A person suspended is entitled to a hearing if the person files a written request for a hearing within 7 days after receipt of the notice of suspension.

Sec. 36.30.655. The commissioner shall maintain a list of all persons debarred or suspended from consideration for award of contracts.

Sec. 36.30.660. The commissioner of administration or the commissioner of transportation and public facilities may, at any time after a final decision to debar a person, reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

A debarred person may request reinstatement. A hearing may be held on a reinstatement petition. A decision on reinstatement shall be made in writing within 7 days after a reinstatement petition is submitted. A decision under this section is not subject to judicial appeal.

Sec. 36.30.665. The commissioner of administration or transportation and public facilities may permit a debarred person to participate in a contract on a limited basis during the debarment period.

Sec. 36.30.670. The commissioner of administration or transportation and public facilities shall act as a hearing officer or appoint a hearing officer for a hearing conducted under this chapter. The provisions of the Administrative Procedure Act do not apply to a hearing conducted under this chapter. The authority of a hearing officer is outlined.

Sec. 36.30.675. If the commissioner of administration or transportation and public facilities is not acting as hearing officer, the hearing officer shall recommend a decision to the appropriate commissioner based on the evidence presented. The recommendation shall include findings of fact and conclusions of law. The appropriate commissioner may affirm, modify or reject the hearing officer's recommendation or take any other appropriate action.

Sec. 36.30.680. A decision by the commissioner of administration is final, and shall be sent within 20 days after a hearing to all parties. A decision by the commissioner of transportation and public facilities involving procurement of construction shall be sent within 90 days after the hearing.

Sec. 36.30.685. A final decision of the commissioner of administration or transportation and public facilities may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure.

Sec. 36.30.687. Civil and criminal sanctions are outlined for misrepresentations and fraudulent claims.

Sec. 36.30.690. This chapter and the regulations adopted under it are the exclusive procedures for asserting a claim against the state or an agency arising in relation to a procurement conducted under this chapter.

Sec. 36.30.695. The commissioner of administration may adopt by regulation additional rules of procedure.

Sec. 36.30.699. The definition of interested party is given.

Article 9. Intergovernmental Relations.

Sec. 36.30.700. Cooperative purchasing is authorized between public procurement units or external procurement activities in accordance with an agreement entered into between the participants.

Sec. 36.30.710. Sale, acquisition, or use of supplies among public procurement units or with external procurement activity may be done independent of certain requirements of this chapter.

Sec. 36.30.720. Joint use of facilities is allowable.

Sec. 36.30.730. A public procurement unit may provide personnel, information and technical services to a requesting public procurement unit or external procurement activity.

Sec. 36.30.735. Current Alaska law on restrictions of contracting with or employing experts on radiation hazards is retained.

Sec. 36.30.740. The commissioner may collect information concerning supplies, services or construction being procured or used by state public procurement units.

Sec. 36.30.750. 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 this chapter.

Sec. 36.30.790. Definitions for this article are provided.

Article 10. General Provisions.

Sec. 36.30.850. This chapter applies to contracts solicited or entered into after January 1, 1987, unless the parties agree to its application to a contract solicited or entered into before that date. This chapter applies to the disposal of state supplies and every expenditure of public funds irrespective of their sources, except as specified in AS 36.30.915.

This chapter does not apply to: grants; contracts for professional witnesses; contracts of the University of Alaska where the work is to be performed substantially by enrolled students; contracts for medical doctors and dentists; contracts for the purchase of residential child care services under AS 47.40; disposals of land or interest in land; disposals under AS 38.05; contracts for the preparation of ballots under AS 15.15.030; acquisitions or disposals of property and other contracts relating to airports; acquisitions of real property or disposals of obsolete property under AS 19.05.060, 19.05.100, 19.05.110 or 19.05.120; disposals of obsolete material or equipment under AS 35.20.060; leases of ferry terminal facilities under AS 19.60.010; contracts of the department of fish and game for non-point-to-point flights requiring specialized flying and piloting skills; or purchases of income-producing assets for the state treasury or a public corporation of the state.

Except for AS 36.30.700-36.30.895, this chapter does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other governments.

Sec. 36.30.860. Unless displaced by the particular provision of this chapter, all other principles of law and equity shall supplement the provisions of this chapter.

Sec. 36.30.870. Regulations under this chapter shall be adopted in accordance with the Administrative Procedure Act. Regulations 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.

Sec. 36.30.880. This chapter requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

Sec. 36.30.890. 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, the federal statute or regulation shall prevail.

Sec. 36.30.900. This chapter does not modify, amend, or alter laws regarding preference for Alaska forest products or preference to producers or dealers in Alaska, except as provided in AS 36.30.170(b) and (c).

Sec. 36.30.910. This chapter does not prevent purchasing through the general services administration as provided by law.

Sec. 36.30.920. Suspected anticompetitive practices are to be reported to the attorney general.

Sec. 36.30.930. In addition to penalties prescribed for unethical conduct, civil and criminal penalties are provided for violations of this chapter.

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

Sec. 36.30.950. Severability clause is included.

Sec. 36.30.990. Definitions.

Sec. 36.30.995. This chapter may be cited as the State Procurement Code.

SECTION 3 through SECTION 64 amend other Alaska statutes to reflect the provisions of this chapter.

SECTION 65. The commissioner must report to the legislature by December 1, 1988, concerning procurements by state agencies during the fiscal year 1987.

SECTION 66. The commissioner of administration shall adopt the regulations required under this chapter by July 1, 1987.

SECTION 67. This is the repealer section.

SECTION 68. Section 66 of this Act takes effect immediately.

SECTION 69. Except as provided in sec. 68, this Act takes effect July 1, 1987.

ALASKA STATE AFL-CIO

2501 Commercial Dr.
Anchorage, Alaska 99501
(907) 338-6284



819 1st Ave.
Fairbanks, Alaska 99701
(907) 456-2030

MANO FREY
Executive President

April 1, 1986

TESTIMONY ON CS SB 341 (STATE PROCUREMENT PRACTICES AND PROCEDURES)

To the Co-Chair, members of the Committee:

My name is Dixie Hudish and I am here representing the Alaska State AFL-CIO.

I wish to address several concerns in this proposed bill we have before us. On page 3, lines 3,4,5 & 6 we see language that allows for the Univ. of Alaska Board of Regents to adopt regulations that are substantially equivalent to the regulations adopted by the Commissioner of Administration to implement this chapter.

In providing for this provision our question of concern is who will be monitoring the procurement practices of the Board of Regents to insure that their regulations are substantially equivalent? The public? If one looks at the structure of the Board of Regents one realizes that they are not directly answerable to the legislature, that in fact their terms are for 6 years and can only be moved by formal impeachment procedures.

On page 5, lines 9 -13 provisions are also made for the Alaska Railroad as we have for the University of Alaska. Our question is how can we, the public, be insure that if this procurement bill is adopted that the Alaska Railroad Board will in fact change their

Testimony CS SB 341
Dixie Hudish/ AFL-CIO

existing policies in procurement to meet the regulations adopted under this bill? Clearly language needs to be written to insure the above.

We feel what was intended to be an all encompassing bill for procurement for this state, has instead, been "watered down" to only provide for changes in procurement by the Dept. of Transportation and the Dept. of Administration.

As it appears to us, if we have another serious procurement problem such as the procurement situation the state found itself involved in last summer in Fairbanks, it will be because we have not provided for a consistent unified code on procurement for all state agencies.

On page 5, line 19 under Sec. 36.30.030, the new language provided for the court system now allows for the Administrative Director of the Court System to adopt procedures that are based on the competitive principles established under this chapter and the procedures must be adopted to the Special needs of the judicial branch.

If one were to look at the Court System Procurement Guidelines, as they now read, they would not meet the substantially equivalent standard but would certainly meet the broader standard that this new language allows.

Throughout the court system guidelines, procurement for services, goods & construction are all defused together.

Under Competitive Sealed Bidding guidelines of the Court System, there is a provision if all bids are rejected the Director will determine whether it is in the Court Systems interest to solicit new bids, or to directly negotiate in which case the director would sign a bid waiver. If the Director authorizes direct negotiations each bidder must be notified of the intent to negotiate and the 3 lowest bidders are given a reasonable opportunity to negotiate. The negotiated contract can be awarded only if the negotiated price is lower than the lowest rejected bid and it is the lowest negotiated price offered by an competitive offerer. Now I ask you, if this doesn't sound like bid shopping?

Under the court system, debarment is not mentioned but suspension is. Under this procurement bill, suspension is for 3 months and debarment for 3 years. The Court system allows only for suspension and that being 2 years.

With these two examples given of the Court System Guidelines, we urge that the Court System, the Univ. of Alaska, Legislature, Ak. Railroad fall under this procurement bill.

If there is not support for the above, we urge that you support the previous language under the Court System that will provide that the Court System must adopt regulations that are substantially equivalent to the regulations of this chapter.

In summary, I would like to emphasize that a significant portion of public construction in Alaska is procured with State dollars by

political subdivisions and other "grant" recipients, yet this bill does not require any grant or appropriation recipient to utilize procurement practices consistent with this procurement bill.

See pg 5
line 9-13

If one were to research the abuse in construction, professional and service procurement, ^{In sure} one would find the majority of abuses with the various entities that are not covered under this bill.

If state dollars are spent by others then why not institute similar safeguards on procurement for grant recipients.

Our recommendation is that a new section be provided that will require any grant or appropriation recipient to adopt procedures to govern the procurement of supplies ~~and~~ services and construction to be subject to regulations adopted by the Commissioner of Administration in accordance with this chapter.

Finally,

One must also keep in mind that this Procurement bill does not give preference for American Companies vs Foreign National companies, in the awarding of a procurement contract..Are we going to wait until we put our own American Companies out of business before we tighten up our competitive bidding criteria? We presently have at least 2 Chinese companies bidding on the Bradley Lake Project. Are we going to continue to watch American Construction companies go bankrupt while foreign national companies compete for our work?

AGC AMENDMENTS TO CS SB 341 (Jud)

Page 10, Line 18 After the word "Within" delete "48 hours" and insert two working days

Page 10, Line 19 After the word "bids," delete "each" and insert the apparent low

two lowest bidders shall submit

Page 11, Line 5 After the word "listed;" insert the following:

federal affirmative action requirements } (7) must be substituted in order for the prime contractor to satisfy required Disadvantaged Business Enterprise or Women's Business Enterprise or other contractually imposed requirement; ✓

(8) Was listed as a result of clerical error;

(9) Refuses to agree or abide with the bidder's labor agreement; ✓

Renumber remaining sections accordingly

Introduced: 1/14/86
Referred: Judiciary and
Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE SENATE SELECT
INTERIM COMMITTEE ON PROCURE-
MENT PRACTICES AND PROCEDURES

1 IN THE SENATE

2

SENATE BILL NO. 341

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to state procurement practices and
7 procedures; and providing for an effective date."

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

9 * Section 1. PURPOSE. This Act shall be construed and applied to
10 promote its underlying purposes and policies. The underlying purposes and
11 policies of this Act are to

12 (1) simplify, clarify, and modernize the law governing pro-
13 curement by the state;

14 (2) make as consistent as possible the procurement practices
15 among the executive branch, the legislative branch, and the judicial branch
16 of state government;

17 (3) provide for increased public confidence in the procedures
18 followed in state procurement;

19 (4) ensure the fair and equitable treatment of all persons who
20 deal with the procurement system of the state;

21 (5) provide increased economy in state procurement activities
22 and maximize to the fullest extent practicable the purchasing value of
23 state funds;

24 (6) foster effective broad-based competition within the free
25 enterprise system;

26 (7) provide safeguards for the maintenance of a procurement
27 system of quality and integrity;

28 (8) permit the continued development of state procurement prac-
29 tices and policies; and

1 (9) eliminate and prevent discrimination in state contracting
2 because of race, religion, color, national origin, sex, age, marital sta-
3 tus, pregnancy, or parenthood.

4 * Sec. 2. AS 36 is amended by adding a new chapter to read:

5 CHAPTER 30. STATE PROCUREMENT CODE.

6 ARTICLE 1. ORGANIZATION OF STATE PROCUREMENT.

7 Sec. 36.30.005. CENTRALIZATION OF PROCUREMENT AUTHORITY. (a)

8 Except as otherwise provided, all rights, powers, duties, and
9 authority relating to the procurement of supplies, services, and
10 professional services, and the control over supplies, services, and
11 professional services vested in or exercised by an agency on
12 January 1, 1987, are transferred to the commissioner of administration
13 and to the chief procurement officer.

14 (b) Except as otherwise provided, all rights, powers, duties,
15 and authority relating to the procurement of construction and
16 procurements to or disposals from the state equipment fleet and the
17 control over construction and the state equipment fleet vested in or
18 exercised by an agency on January 1, 1987, are transferred to the
19 commissioner of transportation and public facilities, subject to
20 regulations adopted by the commissioner of administration.

21 Sec. 36.30.010. CHIEF PROCUREMENT OFFICER. (a) The commis-
22 sioner shall appoint to the partially exempt service the chief
23 procurement officer of the state who is responsible for procurement of
24 supplies, services, and professional services for agencies in the
25 executive branch. The chief procurement officer shall have at least
26 five years of prior experience in public procurement and may be
27 removed by the commissioner only for cause. The term of office of the
28 chief procurement officer expires when the term of the governor
29 expires.

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

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

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

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

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

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

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

18 (7) provide for other matters that may be necessary to
19 carry out the provisions of this chapter and the regulations adopted
20 under this chapter.

21 Sec. 36.30.015. EXECUTIVE BRANCH AGENCIES. (a) The Department
22 of Transportation and Public Facilities may contract for construction
23 and procurements for the state equipment fleet. The Department of
24 Transportation and Public Facilities may dispose of property of the
25 state equipment fleet. The commissioner of transportation and public
26 facilities may delegate to another agency the authority to contract
27 for construction. Before delegating authority to an agency under this
28 subsection, the commissioner of transportation and public facilities
29 shall make a written determination that the agency is capable of

1 implementing the delegated authority. Contracts for construction and
2 procurements to and disposals from the state equipment fleet are
3 governed by this chapter and regulations adopted by the commissioner
4 of administration under this chapter.

5 (b) The commissioner may delegate to an agency the authority to
6 contract for and manage supplies, except property of the state
7 equipment fleet, services, and professional services. Notwithstanding
8 delegation of authority under this subsection, an agency's authority
9 to contract for supplies, services, and professional services, is
10 governed by this chapter and regulations adopted by the commissioner
11 under this chapter. Before delegating authority to an agency under
12 this subsection, the commissioner shall make a written determination
13 that the agency is capable of implementing the delegated authority.

14 (c) The commissioner may not delegate the authority to adopt
15 regulations under this chapter.

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

18 (e) The board of directors of the Alaska Railroad Corporation
19 shall adopt procedures to govern the procurement of supplies, ser-
20 vices, professional services, and construction by the corporation.
21 The procedures must be substantially equivalent to the procedures pre-
22 scribed in this chapter and in regulations adopted under this chapter.

23 Sec. 36.30.020. LEGISLATURE. The Legislative Council shall
24 adopt procedures to govern the procurement of supplies, services,
25 professional services, and construction by the legislature, legisla-
26 tors, and legislative agencies and committees. The procedures must be
27 substantially equivalent to the procedures prescribed in this chapter.

28 Sec. 36.30.030. COURT SYSTEM. The supreme court shall adopt
29 procedures to govern the procurement of supplies, services,

1 professional services, and construction by the judicial branch. The
2 procedures must be substantially equivalent to the procedures pre-
3 scribed in this chapter.

4 Sec. 36.30.040. PROCUREMENT REGULATIONS. (a) The commissioner
5 shall adopt regulations governing the procurement, management, con-
6 trol, and disposal of supplies by agencies and the procurement,
7 management, and control of services, professional services and
8 construction by agencies. The commissioner may audit and monitor the
9 implementation of the regulations and the requirements of this chapter
10 with respect to using agencies.

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

13 (1) suspension, debarment, and reinstatement of prospective
14 bidders and contractors;

15 (2) bid protests;

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

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

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

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

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

26 (8) storerooms and inventories, including determination of
27 appropriate stock levels and the management, transfer, sale, or other
28 disposal of agency supplies;

29 (9) definitions and classes of contractual services and

- 1 procedures for acquiring them;
- 2 (10) providing for conducting price analysis;
- 3 (11) use of payment and performance bonds in connection with
- 4 contracts for supplies and services;
- 5 (12) guidelines for use of cost principles in negotiations,
- 6 adjustments, and settlements; and
- 7 (13) the elimination and prevention of discrimination in
- 8 state contracting because of race, religion, color, national origin,
- 9 sex, age, marital status, pregnancy, or parenthood.

10 Sec. 36.30.050. LISTS OF CONTRACTORS. (a) The commissioner

11 shall establish and maintain lists of persons who desire to provide

12 supplies, services, professional services, or construction services to

13 the state.

14 (b) A person who desires to be on a list shall submit to the

15 commissioner evidence of a valid Alaska business license together with

16 a biennial fee in an amount established by regulation. A construction

17 contractor shall also submit a valid certificate of registration

18 issued under AS 08.18. The commissioner, by regulation, may require

19 submission of additional information.

20 (c) The lists shall be used by the chief procurement officer or

21 an agency when issuing invitations to bid or requests for proposals

22 under this chapter.

23 (d) The lists shall be used by the Legislative Council, the

24 court system, and the Alaska Railroad Corporation.

25 Sec. 36.30.060. SPECIFICATIONS. (a) The commissioner shall

26 adopt regulations governing the preparation, revision, and content of

27 specifications for supplies, services, professional services, and

28 construction required by an agency. The commissioner shall monitor

29 the use of these specifications.

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

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

12 (d) In this section, "specification" means a description of the
13 physical or functional characteristics, or of the nature of a supply,
14 service, professional service, or construction project; it may include
15 requirements for inspecting, testing, and delivery.

16 Sec. 36.30.070. SUPPLY MANAGEMENT. The commissioner shall adopt
17 regulations governing the

18 (1) management of supplies during their entire life cycle;

19 (2) sale, lease, or disposal of surplus supplies by public
20 auction, competitive sealed bidding, or other appropriate method
21 designated by regulation;

22 (3) purchase of surplus supplies by an employee of the
23 using or disposing agency; and

24 (4) transfer of excess supplies.

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

1 lease the space through the department.

2 (b) The department may enter into lease-financing agreements,
3 including lease-purchase agreements and agreements related to the
4 issuance of certificates of participation. A lease-financing agree-
5 ment must provide that lease payments are subject to annual appropria-
6 tion.

7 (c) If the department intends to enter into a lease or lease-
8 financing agreement with an annual rent to the state anticipated to
9 exceed \$1,000,000, the department shall provide notice to the legisla-
10 ture. The notice must include the anticipated annual lease obligation
11 amount and the anticipated total construction, acquisition, or other
12 costs of the project. The department may not enter into an agreement
13 under this subsection unless the project has been approved by the
14 legislature by law. An appropriation for the project does not consti-
15 tute approval of the project for purposes of this subsection.

16 ARTICLE 2. COMPETITIVE SEALED BIDDING.

17 Sec. 36.30.100. GENERAL POLICY. (a) Except as otherwise pro-
18 vided in this chapter, or unless specifically exempted by law, an
19 agency contract shall be awarded by competitive sealed bidding.

20 (b) Competitive sealed bidding is not required

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

25 (2) when rates are fixed by law or ordinance;

26 (3) for contracts for the operation of transportation
27 systems for students to and from the schools within the state, as are
28 authorized under AS 14.09.010; these contracts may be awarded by bid
29 or negotiation and, at the discretion of the Board of Education, may

1 be awarded for periods of three years or less;

2 (4) for the purchase of products or services manufactured
3 or provided by a sheltered workshop;

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

6 (6) for professional services; or

7 (7) for concessions operated on state property.

8 (c) In this section "sheltered workshop" means a place where
9 manufacture or handiwork is carried on, and that is operated for the
10 primary purpose of providing remunerative employment to individuals
11 with physical or mental disabilities that constitute substantial
12 handicaps to employment.

13 Sec. 36.30.110. INVITATION TO BID. (a) When competitive sealed
14 bidding is used, the procurement officer shall issue an invitation to
15 bid. It must include a date by which the bid must be received, pur-
16 chase description, and all contractual terms and conditions applicable
17 to the procurement.

18 (b) The invitation to bid shall require the bidder to list
19 subcontractors the bidder proposes to use in the performance of the
20 contract. When responding to the invitation, the bidder shall also
21 supply evidence of the bidder's valid Alaska business license and
22 evidence of a valid Alaska business license for each listed
23 subcontractor. A bidder for a construction contract shall also submit
24 evidence of the bidder's registration under AS 08.18 and evidence of
25 registration for each listed subcontractor.

26 Sec. 36.30.120. BID SECURITY. (a) Bid security shall be re-
27 quired for all competitive sealed bidding for construction contracts
28 when the price is estimated by the procurement officer to exceed an
29 amount established by regulation of the commissioner. Bid security on

1 construction contracts under the amount set by the commissioner may be
2 required when the circumstances warrant. Bid security may be required
3 for competitive sealed bidding for contracts for supplies, services,
4 or professional services in accordance with regulations of the
5 commissioner when needed for the protection of the state.

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

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

12 (2) five percent of the amount of the bid if the bid
13 exceeds \$100,000.

14 (c) When the invitation to bid requires security, the procure-
15 ment officer shall reject a bid that does not comply with the bid
16 security requirement unless, in accordance with regulations, the
17 officer determines that the bid fails to comply in a nonsubstantial
18 manner with the security requirements.

19 Sec. 36.30.130. PUBLIC NOTICE OF INVITATION TO BID. (a) The
20 procurement officer shall give adequate public notice of the invita-
21 tion to bid at least 21 days before the date for the opening of bids.
22 If a determination is made in writing that a shorter notice period is
23 necessary for a particular bid, the 21-day period may be shortened.
24 The determination shall be made by the chief procurement officer for
25 bids for supplies, services, or professional services. The
26 determination shall be made by the commissioner of transportation and
27 public facilities for bids for construction or acquisition of property
28 for the state equipment fleet. Notice shall be mailed to all active
29 prospective contractors on the appropriate list maintained under

1 AS 36.30.050. The time and manner of notice must be in accordance
2 with regulations adopted by the commissioner of administration. When
3 practicable, notice may include

4 (1) publication in a newspaper calculated to reach prospec-
5 tive bidders;

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

8 (3) publication in the Alaska Administrative Journal.

9 (b) Failure to comply with the notice requirements of this
10 section does not invalidate a bid or the award of a contract. The
11 state is not liable for damages caused by failure to comply with this
12 section.

13 Sec. 36.30.140. BID OPENING. (a) The procurement officer shall
14 open bids publicly in the presence of one or more witnesses at the
15 time and place designated in the invitation to bid. The amount of
16 each bid and other relevant information that is specified by regula-
17 tion of the commissioner, together with the name of each bidder, shall
18 be recorded.

19 (b) The information recorded under (a) of this section is open
20 to public inspection as soon as practicable before the contract is
21 awarded. The bids are not open for public inspection until after a
22 contract is awarded. To the extent the bidder designates and the
23 procurement officer concurs, trade secrets and other proprietary data
24 contained in a bid document are confidential.

25 Sec. 36.30.150. BID ACCEPTANCE AND BID EVALUATION. Bids shall
26 be unconditionally accepted without alteration or correction, except
27 as authorized in AS 36.30.160. The procurement officer shall evaluate
28 bids based on the requirements set out in the invitation to bid, which
29 may include criteria to determine acceptability such as inspection,

1 testing, quality, delivery, and suitability for a particular purpose.
2 The criteria that will affect the bid price and be considered in
3 evaluation for award must be objectively measurable, such as dis-
4 counts, transportation costs, and total or life cycle costs. The
5 invitation to bid must set out the evaluation criteria to be used.
6 Criteria may not be used in bid evaluation if they are not set out in
7 the invitation to bid.

8 Sec. 36.30.160. LATE BIDS; CORRECTION OR WITHDRAWAL OF BIDS;
9 CANCELLATION OF AWARDS. (a) Bids received after the bid due date
10 indicated on the invitation to bid may not be accepted unless the
11 delay was due to an error of a state employee directly responsible for
12 opening the bids.

13 (b) Correction or withdrawal of inadvertently erroneous bids
14 before or after bid opening, or cancellation of awards or contracts
15 based on bid mistakes may be permitted in accordance with regulations
16 adopted by the commissioner. After bid opening, changes in bid prices
17 or other provisions of bids prejudicial to the interest of the state
18 or fair competition may not be permitted. Except as otherwise
19 provided by regulation, a decision to permit the correction or with-
20 drawal of a bid, or to cancel an award or contract based on a bid
21 mistake, shall be supported by a written determination made by the
22 procurement officer. If a bidder is permitted to withdraw a bid
23 before award, an action may not be maintained against the bidder or
24 the bid security.

25 Sec. 36.30.170. CONTRACT AWARD AFTER BIDS. (a) Except as
26 provided in (b) of this section, the procurement officer shall award a
27 contract based on the solicited bids with reasonable promptness by
28 written notice to the lowest responsible and responsive bidder whose
29 bid conforms in all material respects to the requirements and criteria

1 set out in the invitation to bid.

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

7 (1) holds a current Alaska business license;

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

11 (3) has maintained a place of business within the state for
12 a period of six months immediately preceding the date of the bid; and

13 (4) if a joint venture, is composed entirely of ventures
14 that qualify under (1) - (3) of this subsection.

15 (c) The provisions of (b) of this section do not apply to con-
16 struction contracts for highways and public works if the construction
17 contract exceeds \$5,000.

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

25 ARTICLE 3. COMPETITIVE SEALED PROPOSALS.

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

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

15 Sec. 36.30.210. REQUEST FOR PROPOSALS. (a) A request for
16 competitive sealed proposals must contain the date by which the pro-
17 posal must be received, a description of the supplies, construction,
18 services, or professional services to be provided under the contract,
19 and the terms under which the supplies, construction, services, or
20 professional services are to be provided. The request shall require
21 the offeror to list subcontractors the offeror proposes to use in the
22 performance of the contract. The offeror must also supply evidence of
23 the offeror's valid Alaska business license together with evidence of
24 a valid Alaska business license for each listed subcontractor. An
25 offeror for a construction contract shall also submit evidence of the
26 offeror's registration under AS 08.18 and evidence of registration for
27 each listed subcontractor.

28 (b) A request for proposals must contain that information
29 necessary for an offeror to submit a proposal or contain references to

1 any information that cannot reasonably be included with the request.
2 The request must provide a description of the factors that will be
3 considered by the procurement officer when evaluating the proposals
4 received, including the relative importance of price and other
5 evaluation factors.

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

11 Sec. 36.30.220. STANDARD OVERHEAD RATE. (a) If an agency
12 submits a proposal in response to a request for competitive sealed
13 proposals, the agency must include its standard overhead rate within
14 its proposal.

15 (b) In this section, "standard overhead rate" means a charge
16 established for services and professional services from an agency that
17 is designed to compensate the agency for administration and support
18 services incidentally provided with the services contracted for.

19 Sec. 36.30.230. TREATMENT OF PROPOSALS. The procurement officer
20 shall open proposals so as to avoid disclosure of contents to compet-
21 ing offerors during the process of negotiation. A register of pro-
22 posals containing the name and address of each offeror shall be pre-
23 pared in accordance with regulations adopted by the commissioner. The
24 register and the proposals are open for public inspection after the
25 contract is awarded. To the extent that the offeror designates and
26 the procurement officer concurs, trade secrets and other proprietary
27 data contained in the proposal documents are confidential.

28 Sec. 36.30.240. DISCUSSION WITH RESPONSIBLE OFFERORS AND REVI-
29 SIONS TO PROPOSALS. As provided in the request for proposals, and

1 under regulations adopted by the commissioner, discussions may be
2 conducted with responsible offerors who submit proposals determined to
3 be reasonably susceptible of being selected for award for the purpose
4 of clarification to assure full understanding of, and responsiveness
5 to, the solicitation requirements. Offerors shall be accorded fair
6 and equal treatment with respect to any opportunity for discussion and
7 revision of proposals, and revisions may be permitted after submis-
8 sions and before the award of the contract for the purpose of
9 obtaining best and final offers. In conducting discussions, the
10 procurement officer may not disclose information derived from
11 proposals submitted by competing offerors.

12 Sec. 36.30.250. AWARD OF CONTRACT. The procurement officer
13 shall award a contract under competitive sealed proposals to the
14 responsible and responsive offeror whose proposal is determined in
15 writing to be the most advantageous to the state taking into
16 consideration price and the evaluation factors set out in the request
17 for proposals. Other factors and criteria may not be used in the
18 evaluation. The contract file must contain the basis on which the
19 award is made.

20 Sec. 36.30.260. CONTRACT EXECUTION. A contract awarded under
21 competitive sealed proposals must contain

- 22 (1) the amount of the contract stated on its first page;
- 23 (2) the date for the supplies to be delivered or the dates
24 for construction, services, or professional services to begin and be
25 completed;
- 26 (3) a description of the supplies, construction, services,
27 or professional services to be provided; and
- 28 (4) certification by the project director for the contract-
29 ing agency, the head of the contracting agency, or a designee that

1 sufficient funds are available in an appropriation to be encumbered
2 for the amount of the contract.

3 Sec. 36.30.270. REVIEW AND APPROVAL BY DEPARTMENT OF LAW. If a
4 contract contains a term that is in conflict with a state standard
5 form contract term or if a standard term is deleted or modified by a
6 term that is not standard, the contract must be reviewed by the De-
7 partment of Law and approved as to form.

8 ARTICLE 4. OTHER PROCUREMENT METHODS.

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

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

29 (c) The procurement officer shall negotiate with the single

1 supplier, to the extent practicable, to obtain a contract advantageous
2 to the state.

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

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

20 (b) A contract for professional services that does not exceed
21 \$25,000 may be made under regulations adopted by the commissioner for
22 small procurements, except that an agency may not contract

23 (1) for the services of legal counsel without the approval
24 of the attorney general; or

25 (2) with a person under this subsection if the total amount
26 of professional services contracts awarded to that person from the
27 agency exceeds \$25,000 in a 12-month period.

28 (c) Small procurements need not be made through competitive
29 sealed bidding or competitive sealed proposals but shall be made with

1 competition that is practicable under the circumstances.

2 (d) Procurement requirements may not be artificially divided or
3 fragmented so as to constitute a purchase under this section or to
4 circumvent the source selection procedures required by AS 36.30.100 -
5 36.30.270.

6 ARTICLE 5. CONTRACT FORMATION AND MODIFICATION.

7 Sec. 36.30.350. BID CANCELLATION, REJECTION. An invitation to
8 bid, a request for proposals, or other solicitation may be cancelled
9 or any or all bids or proposals may be rejected in whole or in part or
10 the date for opening bids or proposals may be delayed when it is in
11 the best interests of the state in accordance with regulations adopted
12 by the commissioner. The reasons for cancellation, rejection, or
13 delay in opening bids or proposals shall be made part of the contract
14 file.

15 Sec. 36.30.360. DETERMINATION OF RESPONSIBILITY. (a) A written
16 determination of responsibility of a bidder or offeror shall be made
17 by the procurement officer in accordance with regulations adopted by
18 the commissioner. The unreasonable failure of a bidder or offeror to
19 promptly supply information in connection with an inquiry with respect
20 to responsibility is grounds for a determination of nonresponsibility
21 with respect to the bidder or offeror.

22 (b) Information furnished by a bidder or offeror under (a) of
23 this section is confidential and may not be disclosed without prior
24 written consent by the bidder or offeror.

25 Sec. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT. At least
26 10 days before the formal award of a contract under this chapter the
27 procurement officer shall provide to each bidder or offeror notice of
28 intent to award a contract. The notice shall conform to regulations
29 adopted by the commissioner.

1 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of
2 this section, any type of contract that will promote the best inter-
3 ests of the state may be used, except that the use of a cost-plus-
4 a-percentage-of-cost contract is prohibited. A cost-reimbursement
5 contract may be used only when a determination is made in writing by
6 the procurement officer that a cost-reimbursement contract is likely
7 to be less costly to the state than any other type or that it is
8 impracticable to obtain the supplies, services, professional services,
9 or construction required except under a cost-reimbursement contract.

10 Sec. 36.30.380. APPROVAL OF ACCOUNTING SYSTEM. Except for a
11 contract awarded through competitive sealed bidding and a firm fixed-
12 price contract, a contract type may not be used unless it has been
13 determined in writing by the procurement officer that the proposed
14 contractor's accounting system

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

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

20 Sec. 36.30.390. MULTI-TERM CONTRACTS. (a) Unless otherwise
21 provided by law, a contract for supplies, services, or professional
22 services may be entered into for any period of time considered to be
23 in the best interests of the state provided the term of the contract
24 and conditions of renewal or extension, if any, are included in the
25 solicitation and funds are available for the first fiscal period at
26 the time of contracting. Payment and performance obligations for
27 succeeding fiscal periods shall be subject to the availability and
28 appropriation of funds for them.

29 (b) Before using a multi-term contract, the procurement officer

1 shall determine in writing that

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

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

7 (c) When funds are not appropriated or otherwise made available
8 to support continuation of performance in a subsequent fiscal period,
9 the contract shall be cancelled. The contractor may only be reim-
10 bursed for the reasonable value of any nonrecurring costs incurred but
11 not amortized in the price of the supplies, services, or professional
12 services delivered under the contract that are not otherwise
13 recoverable. The cost of cancellation may be paid from any appropria-
14 tions available for these purposes.

15 Sec. 36.30.400. COST OR PRICING DATA. (a) Before an award of a
16 contract or a change order or contract modification, the contractor or
17 prospective contractor shall submit cost and pricing data. The con-
18 tractor or prospective contractor shall certify that, to the best of
19 the contractor's or prospective contractor's knowledge and belief, the
20 data submitted is accurate, complete, and current as of a mutually
21 determined specified date and will continue to be accurate and com-
22 plete during the performance of the contract.

23 (b) When a contractor becomes aware of a situation that may form
24 the basis of a claim for compensation in addition to that provided for
25 under the contract and before performing work or supplying materials
26 not required under the contract, the contractor shall submit cost and
27 pricing data on the additional work or materials. The contractor
28 shall certify that, to the best of the contractor's knowledge and
29 belief, the data submitted is accurate, complete, and current and is

1 the actual cost to the contractor of performing the additional work or
2 supplying the additional materials.

3 (c) A contract, change order, or contract modification under
4 which a certificate is required under (a) or (b) of this section must
5 contain a provision that the price to the state, including the con-
6 tractor's profit or fee, will be adjusted to exclude any significant
7 sums by which the state finds that the price is increased because the
8 cost or pricing data furnished by the contractor or prospective
9 contractor is inaccurate, incomplete, or not current as of the date
10 agreed upon by the parties.

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

12 (1) the contract price is based on adequate price competi-
13 tion;

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

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

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

23 Sec. 36.30.420. RIGHT TO AUDIT RECORDS. (a) The state may, at
24 reasonable times and places, audit the books and records of a person
25 who has submitted cost or pricing data under AS 36.30.400 to the
26 extent that the books and records relate to the cost or pricing data.
27 A person who receives a contract, change order, or contract modifica-
28 tion for which cost or pricing data is required, shall maintain books
29 and records that relate to the cost or pricing data for three years

1 after the date of final payment under the contract, unless a shorter
2 period is authorized in writing by the commissioner.

3 (b) The state may audit the books and records of a contractor or
4 a subcontractor to the extent that the books and records relate to the
5 performance of the contract or subcontract. Books and records shall
6 be maintained by the contractor for a period of three years after the
7 date of final payment under the prime contract and by the subcontrac-
8 tor for a period of three years after the date of final payment under
9 the subcontract, unless a shorter period is authorized in writing by
10 the commissioner.

11 Sec. 36.30.430. STANDARD MODIFICATION CLAUSES FOR CONTRACTS.

12 (a) The commissioner shall adopt regulations permitting the inclusion
13 of clauses providing for adjustments in prices, time of performance,
14 or other contract provisions as appropriate.

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

- 18 (1) liquidated damages;
- 19 (2) specified excuses for delay or nonperformance;
- 20 (3) termination of the contract for default; and
- 21 (4) termination of the contract in whole or in part for the
22 convenience of the state.

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

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

29 (2) approval required by AS 36.30.270 is obtained.

1 Sec. 36.30.470. FISCAL RESPONSIBILITY. A contract modification,
2 change order, or contract price adjustment under a construction con-
3 tract in excess of an amount established by regulation of the commis-
4 sioner is subject to prior written certification by the fiscal officer
5 of the agency responsible for funding the project or the contract, or
6 other official responsible for monitoring and reporting upon the
7 status of the costs of the total project budget or contract budget, as
8 to the effect of the contract modification, change order, or adjust-
9 ment in contract price on the total project budget or the total con-
10 tract budget. If the certification of the fiscal officer or other
11 responsible official discloses a resulting increase in the total
12 project budget or the total contract budget, the procurement officer
13 may not approve the contract modification, change order, or adjustment
14 in contract price unless sufficient funds are available, or the scope
15 of the project or contract is adjusted to permit the degree of
16 completion that is feasible within the total project budget or total
17 contract budget as it existed before the contract modification, change
18 order, or adjustment in contract price under consideration. A
19 contract modification change order, or adjustment in contract that is
20 signed by both parties and has been reasonably relied on by a
21 contractor, is presumed to be valid even if the provisions of this
22 section have not been met.

23 Sec. 36.30.480. COST PRINCIPLE REGULATIONS. The commissioner
24 shall adopt regulations setting out cost principles that shall be used
25 to determine the allowability of incurred costs for the purpose of
26 reimbursing costs under contract provisions that provide for the
27 reimbursement of costs. If a written determination is approved at a
28 level above the procurement officer, the cost principles may be
29 modified by contract.

1 ARTICLE 6. PROCUREMENT RECORDS AND REPORTS.

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

7 Sec. 36.30.510. RECORDS OF CONTRACTS AWARDED UNDER COMPETITIVE
8 SEALED PROPOSALS. A contract file open for public inspection must be
9 kept by the commissioner and the contracting agency for each contract
10 awarded under competitive sealed proposals. The file must contain

- 11 (1) a copy of the contract;
12 (2) the register of proposals prepared under AS 36.30.230
13 and a copy of each proposal submitted;
14 (3) the written determination to award the contract pre-
15 pared under AS 36.30.250; and
16 (4) a summary of the information required under (1) - (3)
17 of this section.

18 Sec. 36.30.520. RECORDS OF SOLE SOURCE AND EMERGENCY PROCURE-
19 MENTS. (a) The commissioner shall maintain for a minimum of five
20 years a record listing all sole source procurement contracts made
21 under AS 36.30.300 and emergency procurements made under AS 36.30.310.
22 The record must contain

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

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