

~~ALASKA LEGISLATURE COMMITTEE FILES 1900-1900 00/2~~

4096 SJUD SB 341 (FILE 4) - SB 341 (FILE 5) 926



# RECORDS CERTIFICATION

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*James O. Smith*  
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*11/7/89*  
Date

SB

341

(FILE 4)



OVERVIEW OF SENATE JUDICIARY COMMITTEE  
MAJOR CHANGES TO SB 341

1. Section 36.30.005(c) The University of Alaska is subject to the requirements of SB 341, but it has the authority to issue its own regulations implementing the chapter in conformance with state APA requirements.

2. Section 36.30.010 The term of the Chief procurement officer is four years as opposed to automatically expiring with the governor's term.

3. Section 36.30.015 The department of administration may not delegate the authority to dispose of surplus supplies to any agency.

4. Section 36.30.030 This provision has been modified to provide that the administrative director of courts shall adopt procedures governing the procurement of supplies, services, professional services and construction by the judicial branch. The procedures shall be based upon the competitive principles established under SB 341, but must be adapted to the special needs of the judicial branch as determined by the administrator of courts.

5. Section 36.30.040(b) This section addresses the areas in which the commissioner shall adopt regulations. It has been expanded to include the authority to adopt regulations concerning (1) conditions under which an agency may use the services of an employment program as defined under section 36.30.100(c) and (2) a bidder's or offeror's duties under 36.30.115 and 36.30.210 with respect to subcontractors.

6. Section 36.30.050(d) A provision is added which requires that lists maintained by the commissioner shall be used in providing notice of intent to make a small procurement to Alaska bidders as defined under 36.30.170(c).

7. Section 36.30.100(b)(3)&(c) The provision has been amended to provide that competitive sealed bidding procedures need not be utilized for the purchase of products or services manufactured or provided by an "employment program" which is defined to include a non-profit program designed to increase employment opportunities for individuals with physical or mental disabilities that constitute substantial handicaps to employment.

8. Section 36.30.115 This is a new section dealing with the responsibilities and duties of a contractor with respect to the subcontractors he proposes

to use in performance of a contract. It provides that within 48 hours after the opening of bids, each bidder will submit a list of the subcontractors proposed to be used in the performance of a contract and further provides those conditions under which a bidder may replace a listed subcontractor. Paragraph (e) of this section provides that a bidder who violates the section may either have his 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.

9. Section 36.30.120(b) The paragraph provides that bid security must be a bond provided by a surety company in an amount equal to at least 10% of the amount of the bid if the bid does not exceed \$100,000 or 10% of the first \$100,000 and 5% of the amount of the bid over \$100,000 if the bid exceeds \$100,000, up to a maximum of \$200,000 in security.

10. Section 36.30.130 The section is amended to provide that notice of an invitation to bid shall be published in the Alaska Administrative Journal. Paragraph (b) of the section further provides that if the state fails to substantially comply with the notice requirements of the section, the state is liable for the damages caused by that failure.

11. Section 36.30.150(b) This new paragraph provides that 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, if appropriate, determines in writing at the time of contract solicitation that the contract promotes overall economy for the purposes intended, encourages competition, is not unduly restrictive, and is in the best interests of the state.

12. Section 36.30.170 Paragraph (b) of this section provides that a contract based on solicited bids shall be awarded to the lowest responsive and responsible "Alaska bidder" if the bid is not more than 5% higher than the lowest non-resident bidder's. The paragraph further delineates the qualifications a person must possess in order to be an "Alaska bidder." Paragraph (c) of the section provides that an Alaska bidder who also qualifies as an "employment program," as defined under 36.30.100(c), shall be awarded a contract based on solicited bids if it is the lowest responsible and responsive bidder with a bid that is not more than 10% higher than the lowest bid of a non-resident. Original paragraph (d) of this section, excluding construction contracts in excess of \$5,000 from the Alaska bidder preference, has been deleted.

13. Section 36.30.200 Paragraph (a) is modified to provide that construction may only be procured by competitive sealed proposals under conditions specified in new paragraph (c) of this section. Paragraph (c) provides that when the chief procurement officer determines that it is advantageous to the state, a procurement officer may issue a request for proposals requesting the submission of offers to provide construction in accordance with a design provided by the offeror. The paragraph further provides that the request for proposals shall require that each proposal submitted contain a single price that includes the design and construction.

14. Section 36.30.210 This section is modified to provide that an offeror must list the subcontractors he proposes to use in the performance of the contract within 48 hours after the date by which the proposals must be received. In addition, paragraph (d) of the section provides that the duties of bidders under section 36.30.115(b) - (e) with respect to subcontractors apply to competitive sealed proposals.

15. Section 36.30.230 This section provides that the register of proposals, and the proposals themselves, are open for public inspection after the notice of intent to award a contract is issued under section 36.30.365.

16. Section 36.30.240 This section is amended to provide that discussions with responsible offerors submitting proposals determined to be reasonably susceptible of being selected for award are excluded from application of the Alaska Open Meetings Law as specified in AS 44.62.310.

17. Section 36.30.250 In new paragraph (b), the procurement officer is directed to take into account, in accordance with regulations of the commissioner, whether the offeror qualifies as an Alaska bidder under section 36.30.170(b) or is offering the services of an employment program as defined in section 36.30.100(c), in determining whether a proposal is advantageous to the state.

18. Section 36.30.270 This is a new section which incorporates the substance of the provisions of SB 204 relating to architectural, engineering and land surveying contracts. The major difference between this section and SB 204 is that section 270 applies only to procurement practices of executive agencies, specifically excluding those practices as undertaken by the court system or the legislature.

19. Section 36.30.320 Paragraph (b) provides that a contract for professional services not exceeding \$25,000 may be made under regulations adopted by the commissioner

for small procurements. Under paragraph (e) of this section, notice of small procurements shall be provided to Alaska bidders designated by the commissioner under section 36.30.050(d).

20. Section 36.30.340 This section now applies to all contracts governed by the procurement code rather than solely to those negotiated under competitive sealed bid method.

21. Section 36.30.362 This is a new section requiring the procurement officer to issue a written statement explaining his actions should he award a contract to a person who does not reside or maintain a place of business in Alaska, if the supplies, services, professional services or construction which is the subject of the contract could have been obtained from in-state sources.

22. Section 36.30.510 This section requires that a contract file open for inspection by the public shall be kept by the commissioner and the contracting agency for each contract awarded under the competitive sealed proposal procedure. A file kept by the commissioner shall contain a summary of the information in the file of the contracting agency.

23. Section 36.30.540 Paragraphs (4) and (5) of this section provide that the commissioner's biennial report to the legislature concerning agency procurements shall include a list of all procurements made from both out-of-state and in-state sources, with the exception of small procurements as specified in section 36.30.320.

24. Section 36.30.850(b) This section now includes an exemption for contracts of the department of fish and game for non-point-to-point flights requiring specialized flying and piloting skills.

25. Section 36.30.930 The civil penalty for violation of the chapter now applies to a person who contracts for a purchase of supplies, equipment for the state fleet, services, professional services or construction in a manner the person knows to be contrary to the requirements of this chapter or the regulations adopted under this chapter. The person is liable for all costs and damages to the state arising out of the violation.

26. Section 36.30.990 This section deals with definitions of terms as used in the bill. Under paragraph (1), "agency" is now defined to exclude the University of Alaska, a regional native housing authority created under AS 18.55.996 and a regional electrical authority created under AS 18.57.020. Under paragraph (10), the term "grant" is defined to include the furnishing by the state of

assistance to a person to support a program authorized by law, but it does not include an award whose primary purpose is to procure an end-product for a state agency, whether in the form of supplies, services, professional services or construction.

27. Section 10. Under this section, AS 18.55.100 is amended by providing a new subsection which, among other things, specifies that to the extent AS 36.30 conflicts with the responsibilities of ASHA under AS 18.55.110, the provisions of AS 18.55.110 shall prevail.

28 Section 40. Under this section, AS 37.05.316 is amended to delete reference to the term "contract" in favor of the word "grant."

POLICY ISSUES - SB 341

- 7H 1.) 36.30.010 Chief Procurement Officer's term  
- Expiration coincides the Governor's term.
- 7H 2.) 36.30.015 Executive Branch Agencies  
- Should University of Alaska be included?  
- Should ASHA be excluded?
- 7H 3.) 36.30.050 (d) Lists of Contractors  
- Small Procurements  
- Names furnished on a rotating basis
- 7H 4.) 36.30.130 (b) Notice of Bids  
- Liability of State for failure to give notice expressly disavowed
- 7H 5.) 36.30.170 Alaska Preference  
- Should construction contracts in excess of \$5,000 be included?  
- Definition of "Alaska Bidder"
- 6.) 36.30.110 & 210 Subcontractors listed at time of opening bid or submitting proposals  
- Inclusion of provisions protecting subcontractors derived from California Law.
- 7.) 36.30.320 (b) Small procurements  
- Professional services - how should they be handled?
- 8.) 36.30.850 Application of this Chapter  
- Grants are excluded under (b)(1)
- 9.) 36.30.930 Civil penalty  
- Employee liable for all amounts paid plus 20%

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POLICY ISSUES - SB 341

4 years  
~~3 years~~

- 1. 36.30.010 - Chief Procurement Officer's term expires with Governor's term.
- 2. 36.30.130(b) - Degree of state's liability for failure to give notice of bid - no liability under current draft. See proposed amendment #1.
- 3. 36.30.170 - Alaska bidder preference - additional or different requirements.
- 4. New sections:
  - a.) Move to roll SB 204 (contracts for architectural and engineering services) into SB 341 with directions to legal services to make all changes necessary for it to comport with SB 341.
  - b.) Section requiring written justification for choice of a non-Alaskan contract recipient if goods or services could have been procured from an Alaskan source. See proposed amendment #2.

yes

PROPOSED 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."

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.

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 expires when the term of the governor expires. Duties of the Chief Procurement Officer are enumerated.

Sec. 36.30.015. The commissioner of transportation and public facilities may contract for construction, procurements for the state equipment fleet, and 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 Alaska Railroad Corporation must adopt procedures substantially equivalent to the procurement code and regulations adopted by the commissioner.

Sec. 36.30.020. The Legislature must adopt procedures substantially equivalent to the procurement code.

Sec. 36.30.030. The Court System must adopt procedures substantially equivalent to the procurement code.

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. The list must be used by the state agencies for small purchases

Sec. 36.30.060. Specification regulations must be adopted by the commissioner. Specifications must promote overall economy for the purposes intended and 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. 36.30.120. 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.

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.

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 retained.

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.

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 award.

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.

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 and the evaluation factors set out in the RFP.

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. Contracts are subject to review by the Department of Law.

#### 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 commission.

#### Article 5. Contract Formation and Modification.

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.

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

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 based on established catalogue or market prices; 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 10. 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.

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 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; or leases of ferry terminal facilities under AS 19.60.010.

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(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 61 amend other Alaska statutes to reflect the provisions of this chapter.

SECTION 62. The commissioner must report to the legislature by December 1, 1987, concerning procurements by state agencies during the first 6 months of 1987.

SECTION 63. The commissioner of administration shall adopt the regulations required under this chapter by January 1, 1987.

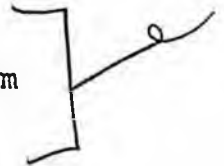
SECTION 64. This is the repealer section.

SECTION 65. Section 63 of this Act takes effect immediately.

SECTION 66. Except as provided in sec. 65, this Act takes effect January 1, 1987.

MAJOR CHANGES TO CS SB 341 SINCE 3/5/86 DRAFT

1. Sec 1. Purpose. Amendment suggested by the court system re: consistent procurement practices for all branches of state government.
2. Sec 36.30.030 Court system amendment re: nature of its procurement practices.
3. Sec 36.30.200 Amendment restricting the use of competitive sealed proposals in construction context.
4. Sec 36.30.270 Incorporates SB 204 concerning architectural, engineering and land surveying services into SB 341.
5. Sec 36.30.362 Requires written justification for contracts awarded to non-residents.
6. Sec 36.30.850(b)(12) Excludes Fish and Game non-point-to-point flights from the bill.
7. Sec 40. Amends AS 37.05.316 concerning grants to remove "contract" language.



MAJOR CHANGES TO CS SB 341 SINCE 2/9/86 DRAFT

1. Sec 36.30.005(c) University of Alaska. Must comply with the law, but has authority to issue its own regulations which will conform to APA requirements. ✓
2. Sec 36.30.015 DOA may not delegate the authority to dispose of supplies. Currently has this authority under AS 44.71.010. ✓
3. Sec 36.30.040(b) Expands areas in which DOA will adopt regulations to implement the chapter, e.g., for contracting with employment program and duties of bidders re: subcontractors. —
4. Sec 36.30.050(d) Adds a preference for Alaskan bidders in small procurements. ✓
5. Sec 26.30.100(b)&(c) Deletes "sheltered workshop" in favor of "employment program" to include additional organizations. —
6. Sec 36.30.115 New section addressing bidder's duties with respect to subcontractors; establishes penalties for violations.
7. Sec 36.30.140 (b) Clarifies when bidding information is available to the public.
8. Sec 36.30.170(b), (c) & (d) Clarifies requirements for qualifying as an Alaska bidder. Adds a new paragraph covering employment programs. Deletes provisions denying Alaska bidder preference for construction contracts in excess of \$5,000.
9. Sec 36.30.210(a)&(d) Amends offeror's duties with respect to subcontractors to comport with bidder's duties.
10. Sec 36.30.240 Adds section providing that Alaska Open Meetings Law does not apply to meetings with offerors.
11. Sec 36.30.250 Requires procurement officer to consider whether offeror is Alaska

bidder or employment program in determining whether a proposal is "advantagous" to the state.

12. Sec 36.30.340 Moves section dealing with Department of Law review of contracts to Article 5.
13. Sec 36.30.540 Deletes small procurements from biennial lists of in/out of state contracts provided to legislature.
14. Sec 36.30.930 Scierter requirement of "knowledge" added to civil penalty provision.
15. Sec 10. AS 18.55.100. Amended to provide that ASHA is not required to comply with SB 341 in situations where it would jeopardize its federal funding as provided in AS 18.55.110.

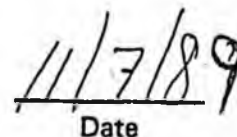


# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date

SB

341

(FILE 5)

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 <sup>and management</sup> 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.

*MPL-2.02  
Admin. Dept.  
Organization  
of State*

*Include the 1987  
Sec. 36.30.010  
with supplies  
and mgt.*

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.~~ *Admin*  
24 ~~The Department of~~  
25 ~~Transportation and Public Facilities may dispose of property of the~~  
26 ~~state equipment fleet.~~ The commissioner of transportation and public  
27 facilities may delegate to another agency the authority to contract  
28 for construction. Before delegating authority to an agency under this  
29 subsection, the commissioner of transportation and public facilities  
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 ~~suppl~~<sup>suppl</sup> 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

*delete  
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1 be awarded for periods of three years or less;

2 (4) for the purchase of products or <sup>out</sup> 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 <sup>time place</sup> 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.

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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

Clarify

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,

*Mandatory  
notice  
44.62.175  
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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.

*Contracts Agency*

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

*line & place?  
for consistency*

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.

*Each agency -  
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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~~ <sup>chief procurement officer</sup> 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~~ <sup>acquisition</sup>  
18 ~~supplies, services, professional services, or construction.~~ <sup>of maintenance and operation of state equip fleet or</sup> 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

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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

*no 36.30.310?*

*delete*

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 <sup>or</sup> 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.

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ARTICLE 6. PROCUREMENT RECORDS AND REPORTS.

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

Sec. 36.30.510. RECORDS OF CONTRACTS AWARDED UNDER COMPETITIVE SEALED PROPOSALS. 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 must contain

*commissioner  
agency*

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

*comm. agency*

- (4) a summary of the information required under (1) - (3) of this section.

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

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

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

1 procurement authority under AS 36.30.015 shall, by October 1 of each  
2 year, submit to the commissioner of administration records of the type  
3 specified in (a) of this section. The commissioner of administration  
4 shall maintain these records as required by (a) of this section.

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

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

10 (1) the records prepared under AS 36.30.510(4) and 36.30.-  
11 520(a) for the previous two fiscal years;

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

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

17 ARTICLE 7. LEGAL AND CONTRACTUAL REMEDIES.

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

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

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

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

1 (4) a detailed statement of the legal and factual grounds  
2 of the protest, including copies of relevant documents; and

3 (5) the form of relief requested.

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

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

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

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

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

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

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

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

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

1 of the state.

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

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

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

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

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

28 Sec. 36.30.590. APPEAL ON A PROTEST. (a) An appeal from a  
29 decision of a procurement officer on a protest may be filed by the

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

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

- 9 (1) a copy of the decision being appealed; and  
10 (2) identification of the factual or legal errors in the  
11 decision that form the basis for the appeal.

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

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

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

29 Sec. 36.30.605. PROTEST REPORT. (a) The procurement officer of

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

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

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

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

1 The commissioner shall notify the procurement officer in writing that  
2 the time for submission of the comments has been extended and the date  
3 the comments are due.

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

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

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

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

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

1 officer constitutes a waiver of the claim. Before issuing the  
2 decision the procurement officer shall review the facts relating to  
3 the controversy and obtain necessary assistance from legal, fiscal,  
4 and other advisors.

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

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

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

21 "This is the final decision of the procurement officer.  
22 This decision may be appealed to the commissioner of  
23 \_\_\_\_\_ (administration/transportation  
24 and public facilities). If you appeal, you must file  
25 a written notice of appeal with the commissioner within  
26 <sup>14</sup> five days after you receive this decision."

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

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

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

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

18 Sec. 36.30.630. HEARING ON A CONTRACT CONTROVERSY. (a) Except  
19 as provided in (b) of this section, a hearing shall be conducted  
20 according to AS 36.30.670 and regulations adopted by the commissioner  
21 of administration on a contract controversy appealed to the commis-  
22 sioner of administration or the commissioner of transportation and  
23 public facilities or referred to either commissioner under  
24 AS 36.30.620(f).

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

1           Sec. 36.30.632. DELEGATION. The commissioner of administration  
2 and the commissioner of transportation and public facilities may  
3 delegate responsibilities under AS 36.30.590 and 36.30.630 to the head  
4 of the contracting agency.

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

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

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

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

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

1           (2) conviction under state or federal statutes of embezzle-  
2 ment, theft, forgery, bribery, falsification or destruction of re-  
3 cords, receiving stolen property, or other offense indicating a lack  
4 of business integrity or business honesty that currently and seriously  
5 affects responsibility as a state contractor;

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

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

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

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

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

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

23           (7) any other cause listed in regulations of the  
24 commissioner determined to be so serious and compelling as to affect  
25 responsibility as a state contractor, including debarment by another  
26 governmental entity for a cause listed in the regulations.

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

1 decision must

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

3 (2) inform the debarred person of rights to judicial appeal  
4 or inform the suspended person of rights to administrative and judi-  
5 cial appeal.

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

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

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

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

26 Sec. 36.30.660. REINSTATEMENT. (a) The commissioner of  
27 administration or the commissioner of transportation and public  
28 facilities may at any time after a final decision to debar a person  
29 from consideration for award of contracts reinstate the person after

1 determining that the cause for which the person was debarred no longer  
2 exists or has been substantially mitigated.

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

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

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

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

29 (b) The hearing officer may

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

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

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

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

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

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

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

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

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

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

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

25          (9) administer oaths or affirmations.

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

28          Sec. 36.30.675. RECOMMENDATION BY THE HEARING OFFICER. (a) If  
29 the commissioner of administration or the commissioner of

1 transportation and public facilities is not acting as hearing officer,  
2 the hearing officer shall recommend a decision to the commissioner  
3 based on the evidence presented. The recommendation shall include  
4 findings of fact and conclusions of law.

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

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

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

24 (b) A final decision of the commissioner of administration or  
25 the commissioner of transportation and public facilities under  
26 AS 36.30.630(b) may be appealed to the superior court for a trial de  
27 novo.

28 Sec. 36.30.690. EXCLUSIVE REMEDY. Notwithstanding AS 44.77 or  
29 other law to the contrary, AS 36.30.560 - 36.30.699 and regulations

1 adopted under those sections provide the exclusive procedure for  
2 asserting a claim against an agency arising in relation to a  
3 procurement under this chapter.

4 Sec. 36.30.695. OTHER RULES OF PROCEDURE. The commissioner may  
5 adopt by regulation additional rules of procedure providing for the  
6 expeditious administrative review of all contract claims or contro-  
7 versies, both before the contracting agency and through an appeal  
8 heard de novo.

9 Sec. 36.30.699. DEFINITION. In AS 36.30.560 - 36.30.695,  
10 "interested party" means an actual or prospective bidder or offeror  
11 whose economic interest may be affected substantially and directly by  
12 the issuance of a contract solicitation, the award of a contract, or  
13 the failure to award a contract; whether an actual or prospective  
14 bidder or offeror has an economic interest depends on the  
15 circumstances.

16 ARTICLE 8. INTERGOVERNMENTAL RELATIONS.

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

27 Sec. 36.30.710. SALE, ACQUISITION, OR USE OF SUPPLIES BY A  
28 PUBLIC PROCUREMENT UNIT. (a) A public procurement unit may sell to,  
29 acquire from, or use any supplies belonging to another public

1 procurement unit or external procurement activity independent of the  
2 requirements of AS 36.30.070 and 36.30.100 - 36.30.280.

3 (b) A public procurement unit may enter into an agreement,  
4 independent of the requirements of AS 36.30.060 and 36.30.100 36.-  
5 30.280, with another public procurement unit or external procurement  
6 activity for the cooperative use of supplies or services under the  
7 terms agreed upon between the parties.

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

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

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

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

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

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

- 21           (1) development of product specifications;
- 22           (2) development of quality assurance test methods, includ-  
23 ing receiving, inspection, and acceptance procedures;
- 24           (3) use of product testing and inspection facilities; and
- 25           (4) use of personnel training programs.

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

29           Sec. 36.30.735. RESTRICTION ON CONTRACTING WITH OR EMPLOYING

1 EXPERTS ON RADIATION HAZARDS. (a) Except for the Department of  
2 Health and Social Services, the Department of Labor, the Department of  
3 Environmental Conservation, and the Department of Military and Veter-  
4 ans' Affairs, a state agency may not

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

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

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

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

19 Sec. 36.30.740. REVIEW OF PROCUREMENT REQUIREMENTS. To the  
20 extent possible, the commissioner may collect information concerning  
21 the type, cost, quality, and quantity of commonly used supplies,  
22 equipment for the state fleet, services, or construction being  
23 procured or used by state public procurement units. The commissioner  
24 may also collect this information from local public procurement units.  
25 The commissioner may make this information available to a public  
26 procurement unit upon request.

27 Sec. 36.30.750. CONTRACT CONTROVERSIES. (a) Under a coopera-  
28 tive purchasing agreement, controversies arising between an adminis-  
29 tering public procurement unit and its bidders, offerors, or

1 contractors shall be resolved in accordance with AS 36.30.560 -  
2 36.30.699.

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

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

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

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

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

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

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

26 ARTICLE 9. GENERAL PROVISIONS.

27 Sec. 36.30.850. APPLICATION OF THIS CHAPTER. (a) This chapter  
28 applies only to contracts solicited or entered into after January 1,  
29 1987, unless the parties agree to its application to a contract

1 solicited or entered into before that date.

2 (b) This chapter applies to the disposal of state supplies and  
3 every expenditure of state funds irrespective of their sources, in-  
4 cluding federal assistance except as otherwise specified in AS 36.-  
5 30.890, by the state, acting through an agency, under a contract,  
6 except that this chapter does not apply to

7 (1) grants;

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

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

13 (4) contracts for medical doctors and dentists;

14 (5) contracts for the purchase of residential child care  
15 services under AS 47.40;

16 (6) disposals of land or interests in land;

17 (7) disposals under AS 38.05;

18 (8) contracts for the preparation of ballots under AS 15.-  
19 15.030;

20 (9) acquisitions or disposals of property and other con-  
21 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-  
22 091;

23 (10) acquisitions of real property or disposals of obsolete  
24 property under AS 19.05.060, 19.05.100, 19.05.110, or 19.05.120;

25 (11) disposals of obsolete material or equipment under  
26 AS 35.20.060; or

27 (12) leases of ferry terminal facilities under AS 19.60.010.

28 (c) Except for AS 36.30.700 - 36.30.790, this chapter does not  
29 apply to contracts between two or more agencies, the state and its

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1 political subdivisions, or the state and other governments.

2 (d) Nothing in this chapter or in regulations adopted under this  
3 chapter prevents an agency or political subdivision from complying  
4 with the terms and conditions of a grant, gift, bequest, or coopera-  
5 tive agreement.

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

13 Sec. 36.30.870. ADOPTION OF REGULATIONS. (a) Regulations under  
14 this chapter shall be adopted in accordance the Administrative  
15 Procedure Act (AS 44.62).

16 (b) Regulations under this chapter applicable to procurements of  
17 construction or procurements for or disposal of property of the state  
18 equipment fleet shall be adopted by the commissioner of administration  
19 only after consultation with the commissioner of transportation and  
20 public facilities.

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

24 Sec. 36.30.890. FEDERAL ASSISTANCE. If a procurement involves  
25 the expenditure of federal funds or federal assistance and there is a  
26 conflict between a provision of this chapter or a regulation adopted  
27 under a provision of this chapter and a federal statute or regulation  
28 the federal statute or regulation shall prevail.

29 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter

1 does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding  
2 preference for Alaska forest products, or AS 36.20.010 regarding  
preference to producers or dealers in Alaska except as provided in  
AS 36.30.170(b).

*[Handwritten initials]*

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

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

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

15 (1) a person who contracts for or purchases supplies,  
16 equipment for the state fleet, services, professional services, or  
17 construction in a manner contrary to the requirements of this chapter  
18 or the regulations adopted under this chapter is personally liable for  
19 the recovery of all state money paid plus 20 percent of that amount,  
20 legal interest from the date of payment, and all costs and damages  
21 arising out of the violation;

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

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

28 Sec. 36.30.990. DEFINITIONS. In this chapter, unless the con-  
29 text in which a term is used clearly requires a different meaning or a

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1 different definition is prescribed for a particular provision,

2 (1) "agency" means a department, institution, board, com-  
3 mission, division, authority, public corporation, the Alaska Pioneers'  
4 Home, or other administrative unit of the executive branch of state  
5 government, including the University of Alaska; it does not include  
6 the Alaska Railroad Corporation;

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

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

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

15 (5) "competitive sealed proposals" means the procedure  
16 under AS 36.30.200 - 36.30.270;

17 (6) "construction" means the process of building, altering,  
18 repairing, maintaining, improving, or demolishing a public highway,  
19 structure, building, or other public improvement of any kind to real  
20 property; *Alaska sealed bid. proj.* it includes *planning & design* required for the construc-  
21 tion; it does not include the routine operation of a public improve-  
22 ment to real property;

23 (7) "contract" means all types of state agreements, regard-  
24 less of what they may be called, for the procurement or disposal of  
25 supplies, equipment for the state fleet, services, professional  
26 services, or construction;

27 (8) "contract modification" means a written alteration in  
28 specifications, delivery point, rate of delivery, period of perfor-  
29 mance, price, quantity, or other provisions of a contract accomplished

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1 by mutual action of the parties to the contract;

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

3 (10) "grant" means the furnishing by the state of assis-  
4 tance, whether financial or otherwise, to a person to support a pro-  
5 gram authorized by law; it does not include an award whose primary  
6 purpose is to procure an end product <sup>(for a state agency)</sup> whether in the form of supplies,  
7 services, professional services, or construction; a contract resulting  
8 from such an award is not a grant but a procurement contract;

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

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

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

23 (14) "professional services" means profession<sup>al</sup>, technical,  
24 or consultant's services that are predominantly inte<sup>lectual</sup> in char-  
25 acter, result in the production of a report or the completion of a  
26 task, and include analysis, evaluation, prediction, planning, or  
27 recommendation; <sup>delete</sup> "professional services" does not include services  
28 performed under an employment contract for services to be performed  
29 under direct supervision, regardless of whether there is an employer-

1 } employee relationship, if the person responsible for awarding the  
2 contract files with the commissioner of administration a written  
3 justification for the contract;

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

9 (16) "supplies" means all property procured for the use of  
10 an agency, including equipment, materials, and insurance; it includes  
11 leases of privately owned real property for the use of agencies, such  
12 as office space, but does not include the procurement or disposition  
13 of other interests in land; and

14 (17) "using agency" means an agency that uses supplies,  
15 equipment from the state fleet, services, professional services, or  
16 construction procured under this chapter.

17 Sec. 36.30.995. SHORT TITLE. This chapter may be cited as the  
18 State Procurement Code.

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

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

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

29 Sec. 05.20.040. PERSONNEL TO INSPECT DEVICES. The department

1 shall designate a person qualified in experience and training as the  
2 inspector of devices. The department may employ additional employees  
3 as are necessary to administer this chapter. The inspector and the  
4 employees may be hired on a temporary basis or borrowed from other  
5 state departments or political subdivisions of the state, or the  
6 department may contract with individuals or firms for the inspecting  
7 service on an independent basis. The department shall prescribe the  
8 salary or other remuneration for this service. Contracting under this  
9 section is governed by AS 36.30 (State Procurement Code).

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

11 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person  
12 or corporation having a contract, quasi-contract, or tort claim  
13 against the state may bring an action against the state in the superi-  
14 or court. A person who may present the claim under AS 44.77 may not  
15 bring an action under this section except as set out in AS 44.77.-  
16 040(c). A person who may bring an action under AS 36.30.560 - 36.30.-  
17 695 may not bring an action under this section except as set out in  
18 AS 36.567 However, no action may be brought under this section if  
19 the claim

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

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

29 (3) arises out of assault, battery, false imprisonment,

1 false arrest, malicious prosecution, abuse of process, libel, slander,  
2 misrepresentation, deceit, or interference with contract rights.

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

4 Sec. 14.08.101. POWERS. A regional school board may

5 (1) sue and be sued;

6 (2) contract with the department, the Bureau of Indian  
7 Affairs, or any other school district, agency, or regional board for  
8 the provision of services, facilities, supplies or utilities;

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

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

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

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

20 (7) recommend to the department projects for construction,  
21 rehabilitation, and improvement of schools and education-related  
22 facilities as specified in AS 14.11.010(a), and plan, design, and  
23 construct the project when the responsibility for it is assumed under  
24 AS 14.11.020;

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

27 (9) by resolution adopted by a majority of all the members  
28 of the board and provided to the commissioner of the department,  
29 assume ownership of all land and buildings used in relation to the

1 schools in the regional educational attendance area;

2 (10) provide housing for rental to teachers, by leasing  
3 existing housing from a local agency or individual, or by entering  
4 into contractual arrangements with a local agency or individual to  
5 lease housing that will be constructed by the local agency or indi-  
6 vidual for that purpose.

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

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

11 (1) assist the United States Fish and Wildlife Service in  
12 the enforcement of federal laws and regulations pertaining to fish and  
13 game;

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

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

23 (4) accept money from any person under conditions requiring  
24 the use of the money for specific purposes in the furtherance of the  
25 protection, rehabilitation, propagation, preservation, or investiga-  
26 tion of the fish and game resources of the state or in settlement of  
27 claims for damages to fish or game resources;

28 (5) collect, classify, and disseminate statistics, data and  
29 information that, in the commissioner's discretion, will tend to

1 promote the purposes of this title except AS 16.51 and AS 16.52;

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

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

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

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

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

17 (11) not later than January 31 of each year, provide to the  
18 commissioner of revenue the names of those fish and shellfish species  
19 which the commissioner of fish and game designates as developing  
20 commercial fish species for that calendar year; a fish or shellfish  
21 species is a developing commercial fish species if, within a specified  
22 geographical region,

23 (A) the optimum yield from the harvest of the species  
24 has not been reached;

25 (B) a substantial portion of the allowable harvest of  
26 the species has been allocated to fishing vessels of a foreign  
27 nation; or

28 (C) a commercial harvest of the fish species has  
29 recently developed;

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

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

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

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

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

15           Sec. 18.15.120. TUBERCULOSIS CONTROL PROGRAM AUTHORIZED. The  
16 department may establish a comprehensive program for the control of  
17 tuberculosis in the state, and may

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

20           (2) establish necessary out-patient clinics for the care of  
21 tuberculosis;

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

25           (4) under the provisions of AS 36.30 (State Procurement  
26 Code), obtain, by purchase or donation from surplus federal property  
27 or otherwise, medical supplies and equipment useful in carrying out  
28 this program and to allot or resell these supplies and equipment to  
29 private institutions engaged by the department to carry out this

1 program;

2 (5) under the provisions of AS 36.30, contract with hos-  
3 pitals, associations, or sanatoria qualified and equipped to give  
4 adequate care inside or outside the state;

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

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

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

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

17 \* Sec. 10. AS 18.55.100 is amended by adding a new subsection to read:

18 (d) The authority's power to contract, lease, rent, construct,  
19 acquire, procure, and provide for services under this section is  
20 governed by AS 36.30.

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

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

27 \* Sec. 12. AS 19.05.080 is amended to read:

28 Sec. 19.05.080. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-  
29 RIALS BY PURCHASE OR EMINENT DOMAIN. The department on behalf of the