

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6640 SENATE STATE AFFAIRS

heard 2x in Sen LaC

1 IN THE SENATE

BY FAIKS AND COGHILL

2

SENATE BILL NO. 58

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the definition of 'Alaska bidder' for purposes of the Alaska bidder preference in the awarding of state contracts."

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8

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

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* Section 1. AS 36.30.170(b) is amended to read:

11

(b) The procurement officer shall award a contract based on

12

solicited bids to the lowest responsive and responsible bidder after

13

an Alaska bidder preference of five percent and an Alaska products

14

preference as described in AS 36.30.322 - 36.30.338 have been applied.

15

In this subsection, "Alaska bidder" means a person who

16

(1) holds a current Alaska business license;

17

(2) submits a bid for goods, services, or construction

18

under the name as appearing on the person's current Alaska business

19

license;

20

(3) has maintained a place of business within the state

21

staffed by the bidder or an employee of the bidder for a period of six

22

months immediately preceding the date of the bid;

23

(4) is incorporated [OR QUALIFIED TO DO BUSINESS] under the

24

laws of the state, is a sole proprietorship [,] and the proprietor is

25

a resident of the state, or is a partnership [,] and at least 50

26

percent of the [ALL] partners are residents of the state; and

27

(5) if a joint venture, is composed entirely of ventures

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that qualify under (1) - (4) of this subsection.

29

(c) If a bidder qualifies under (b) of this section as an Alaska

SB 170
says 1 general partner
still saw deal as compared to corp.
SB 58

1 bidder, is offering services through an employment program as defined
2 under AS 36.30.100(c), and is the lowest responsible and responsive
3 bidder with a bid that is not more than 10 percent higher than the
4 lowest bid of a nonresident, the procurement officer shall award the
5 contract to that bidder.

6 (d) The procurement officer shall award an insurance-related
7 contract based on solicited bids to the lowest responsive and respon-
8 sible bidder after an Alaska bidder preference of five percent. In
9 this subsection, "Alaska bidder" means a person who meets the criteria
10 set out in (b)(1) - (5) of this section and who is an Alaska domestic
11 insurer.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An Act Relating to State BRU: General Services
Procurement
 Sponsor: Rules Components: Purchasing
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS (PHONE)	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Implementation costs will be minimal. Efficiencies gained will be reflected in improved service delivery.

Prepared By: Robert J. Link, Director *Robert J. Link* Phone: 465-2250
 Division: General Services & Supply Date: December 27, 1988
 Approved by Commissioner: John M. Andrews *John M. Andrews* Date: 1/3/89
 Agency: Department of Administration ~~December 27, 1988~~

Distribution (by preparer):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE _____
IN ACCORDANCE WITH UNIFORM RULE 23

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035
2/13/89

FURTHER Finance

DATE TURNED INTO OFFICE 3-17-89

Mr. President:

State Affairs

Committee considered

SB 170

state procurement

and recommended:

replace with CS SB¹⁷⁰ (St Aff) same title
[] attached amendment(s) and [] new title

[] _____ letter of intent adopted

do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

FISCAL NOTE(S) attached [] zero
[] appropriation no FN attached

[] fiscal impact
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
[Signature]
[Signature]
[Signature]

[Signature]
[Signature]

Chairman signature and recommendation

[] Committee backup attached

SB 170 RELATING TO STATE PROCUREMENT

TO TESTIFY

BOB LINK, DEPT. ADMINISTRATION

LOREN RASMUSSEN, D.O.T.

FRANK TURPIN, ALASKA RAILROAD CORP. *of Larry Wood*

BRIAN ROGERS, UNIVERSITY

JIM BALDWIN, A.G.'S OFFICE

RESA JERRELL, ASSOCIATED GENERAL CONTRACTORS

OTHERS (SEE WITNESS LIST)

F.Y.I.

AMENDMENTS FROM RAILROAD AND UNIVERSITY ARE TABBED IN YOUR PACKET (JUST NUMBERED IN MEMBERS' PACKETS). FAIKS HAS REVIEWED WITH JIM BALDWIN; COPIES HAVE ALSO BEEN PROVIDED TO DEPT. ADMINISTRATION. ACCORDING TO FAIKS' STAFF, SHE DOESN'T SUPPORT EXEMPTING THE RAILROAD ALTOGETHER BUT WOULD SUPPORT EASING UP -- BALDWIN IS PREPARING AMENDMENTS.

DEPT. ADMINISTRATION PUT THE BILL TOGETHER WITH INPUT FROM ALL STATE AGENCIES. PROPOSALS THAT WERE TOO CONTROVERSIAL WERE NOT INCLUDED.

SB 170 MAKES A SERIES OF UNRELATED CHANGES TO THE CODE. READ MY NOTES WRITTEN ON THE BILL ITSELF, AND THE GOVERNOR'S TRANSMITTAL LETTER.

ORIGINAL PROCUREMENT BILL DEVELOPED BY SENATE SELECT COMMITTEE ON PROCUREMENT (AFTER THE SHEFFIELD IMPEACHMENT TRIAL). FAIKS CHAIRED. HEARINGS WERE HELD AROUND THE STATE. MUCH OF OUR CODE IS BASED ON ARIZONA'S MODEL CODE.

FAIKS' GOAL WAS TO HANDLE THINGS IN A STANDARDIZED WAY WITH SOME EXCEPTIONS, BUT TO MAKE SURE THE EXCEPTIONS WERE HARD TO GET AND WERE WELL DOCUMENTED.

EFFECTIVE DATE ON BILL WAS JULY 1, 1987. LEGISLATURE EXTENDED TO JANUARY 1, 1988.

CODE APPLIES TO ALL STATE AGENCIES. D.O.A. ADMINISTERS FOR ALL EXCEPT THE LEGISLATURE, COURTS, A.S.B.A., UNIVERSITY, AND RAILROAD.

170POOPB.TXT
3/17/89

SB 170 STATE PROCUREMENT CODE

TO TESTIFY

BOB LINK, DEPT. ADMINISTRATION

VIRGINIA RAGEL, DEPT. LAW (BALDWIN IS OUT OF TOWN)

SUZANNE TRYCK, UNIVERSITY (BRIAN ROGERS IS NOT IN TOWN)

F.Y.I.

PACKET CONTAINS MEMO FROM OUR LEGAL DIVISION NOTING QUESTIONABLE CONSTITUTIONALITY OF THE ALASKA BIDDER'S PREFERENCE.

THESE AMENDMENTS WERE DROPPED BY THE UNIVERSITY AFTER DISCUSSION AT OUR LAST MEETING:

EXEMPTION FROM THE CODE FOR CONFERENCE REGISTRATION FEES
PROOF OF APPLICATION FOR BUSINESS LICENSE RATHER THAN
ACTUALLY HAVING LICENSE ITSELF
PENALTIES -- INTENTIONALLY KNOWING

ONE OTHER AMENDMENT YOU SHOULD AT LEAST BRING UP:

FAIKS' SB 58 WILL BE UP IN L&C MONDAY -- DEALS WITH MAKE-UP OF PARTNERSHIP FOR PURPOSES OF ALASKA BIDDER PREFERENCE. IN SECTION 8 OF SB 170 (PAGE 4, LINES 26-27) WE REQUIRE THAT AT LEAST ONE OF THE GENERAL PARTNERS BE AN ALASKAN RESIDENT; L&C C.S. FOR FAIKS' BILL DOESN'T REQUIRE GENERAL. DEPT. ADMIN. SAYS THEY'LL ACCEPT IT EITHER WAY -- PREFER "GENERAL PARTNERS" BECAUSE THEY'RE "MANAGEMENT". L&C IS GOING WITHOUT GENERAL BECAUSE OF A COMPLAINT FILED WITH THE OMBUDSMAN THAT THEY FEEL MIGHT TURN INTO A COURT CHALLENGE. UNDER CURRENT STATUTE, ALL PARTNERS MUST BE ALASKAN RESIDENTS.

MEMO IN PACKET FROM JIM BALDWIN, A.G. ARGUES AGAINST PROVISION IN OUR C.S. WHICH GRANTS RAILROAD LATITUDE. AFRAID RAILROAD WILL SET PRECEDENT FOR OTHER PUBLIC CORPORATIONS TO SEEK LATITUDE. "IT IS FERVENTLY HOPED THAT THE GOAL OF UNIFORMITY CAN SOMEDAY BE ACHIEVED."

original bill w/ comments Sandra
noted at each section

Sen. Pourchot
Mar. 10, 1989

SB 170, RELATING TO STATE PROCUREMENT

- Sec 1 Evidence of Alaska business license to bid
- Sec 2 Confidentiality of estimated cost of construction contract
- Sec 3 Technical: change reference from bidder to subcontractor
- Sec 4 Amount of bid security
- Sec 5 Qualification of partnership as Alaska bidder
- Sec 6-7 Evidence of Alaska business license
- Sec 8-9 Calculation of Alaska bidder preference
- Sec 10 Allow multi-step sealed proposals
- Sec 11-12 Delegation of authority to approve sole source contract for items under \$5000
- Sec 13 Determination of nonresponsibility
- Sec 14 Written statement of determination to award contract to nonresident not required for sealed competitive bids
- Sec 15 Limited use of cost-plus-a-percentage-of-cost contract
- Sec 16 Stay of award if protest filed
- Sec 17 Additional exceptions to procurement code
- Sec 18 Alternate procurement methods for specific items
- Sec 19 Revised definition of state money
- Sec 20 Conforming repealers, plus repeal requirement that list of in-state and out-of-state procurements be maintained

Baldwin - language on vendors marketing outsiders' bids
Rogers - Greenland issue
[5000] 10000 - # contracts in this category?

With staff notes.

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

SENATE BILL NO. 170

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to state procurement."

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

8 * Section 1. ^{COMPETITIVE SEALED BID} AS 36.30.110(b) is amended to read:

If the bidder is required to have an Alaska business license under AS 43.70

(b) The bidder must have a valid Alaska business license at the time designated, in the invitation to bid, for bid opening. The [WHEN

*Univ. wants amend-
ment; DOA10
thinks unnecessary
since ~~CEO~~ ¹¹ considers
application for a
license as hangga
license.*

RESPONDING TO THE INVITATION TO BID, THE] bidder shall supply evidence
or of the bidder's application
of the bidder's valid Alaska business license/in accordance with regu-
lations adopted by the commissioner. A bidder for a construction

14

contract shall also submit evidence of the bidder's registration under

15

AS 08.13.

16

* Sec. 2. AS 36.30.110 is amended by adding a new subsection to read:

*Not currently addressed
in code. DOT ¹⁷ concerned if
someone requests
this info. under FOI,
will give them "leg
up" over other bidders
Prevent bid rigging*

(c) If the commissioner of transportation and public facilities
makes a written finding that it is in the state's best interest, the
estimated cost of a construction contract is confidential information
and may not be released to the public before bid opening.

21

* Sec. 3. AS 36.30.115(b) is amended to read:

22

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

23

tractor

24

(1) fails to comply with AS 08.18;

25

(2) files for bankruptcy or becomes insolvent;

26

(3) fails to execute a contract with the bidder involving

27

performance of the work for which the subcontractor was listed and the

28

bidder acted in good faith;

29

(4) fails to obtain bonding;

- 1 (5) fails to obtain insurance acceptable to the state;
2 (6) fails to perform the contract with the bidder involving
3 work for which the subcontractor was listed;
4 (7) must be substituted in order for the prime contractor
5 to satisfy required state and federal affirmative action requirements;
6 (8) refuses to agree or abide with the bidder's labor
7 agreement; or
8 (9) is determined by the procurement officer not to be a
9 *clarification only* - responsible subcontractor [BIDDER].

10 * Sec. 4. AS 36.30.120(b) is amended to read:

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

because each bidder's bid amount varies, different bid bonds were being required for the same project - seemed unreasonable, plus inefficient to administer

15 [(1) 10 PERCENT OF THE AMOUNT OF THE BID IF THE BID DOES NOT
16 EXCEED \$100,000; OR
17 (2) 10 PERCENT OF THE FIRST \$100,000 AND FIVE PERCENT OF
18 THE AMOUNT OF THE BID OVER \$100,000 IF THE BID EXCEEDS \$100,000 UP TO
19 A MAXIMUM OF \$200,000 IN SECURITY].

20 * Sec. 5. AS 36.30.170(b) is amended to read:

21 The procurement officer shall award a contract based on solicited
22 bids to the lowest responsive and responsible bidder after an Alaska
23 bidder preference of five percent and an Alaska products preference as
24 described in AS 36.30.322 -- 36.30.338 have been applied. In this
25 subsection, "Alaska bidder" means a person who

- 26 (1) holds a current Alaska business license;
27 (2) submits a bid for goods, services, or construction
28 under the name as appearing on the person's current Alaska business
29 license;

→ Currently corporations can receive authorization from DCED to do business in the state & get the bidder's preference even though many or all of the shareholders may be non-Alaskans. Conversely, all partners in a partnership must be Alaskans in order for the preference to apply.

Sen. Fauts has introduced SB 58, which would require 50% of the partners to be Alaskan. (in Sen L-2)

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

4 (4) is incorporated or qualified to do business under the
5 laws of the state, or is a sole proprietorship[,], and the proprietor
6 is a resident of the state, or is a partnership[,], and one or more of
7 the general [ALL] partners is a resident [ARE RESIDENTS] of the state;

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

10 * Sec. 6. ^{COMPETITIVE SEALED PROPOSALS} AS 36.30.210(a) is amended to read:

11 (a) A request for competitive sealed proposals must contain the
12 date, time, and place for delivering proposals, a specific description
13 of the supplies, construction, services, or professional services to
14 be provided under the contract, and the terms under which the sup-
15 plies, construction, services, or professional services are to be
16 provided. The request shall require the offeror [TO SUBMIT EVIDENCE
17 OF THE OFFEROR'S VALID ALASKA BUSINESS LICENSE AND], no later than
18 five working days after identifying which proposal is most advanta-
19 geous to the state, to list subcontractors the offeror proposes to use
20 in the performance of the contract. The list shall include the name
21 and location of the place of business for each subcontractor, the work
22 to be subcontracted to each subcontractor, and evidence of the subcon-
23 tractor's valid Alaska business license. An offeror for a construc-
24 tion contract shall also submit evidence of the offeror's registration
25 under AS 08.18 and evidence of registration for each listed subcon-
26 tractor.

see sec. 7

27 * Sec. 7. AS 36.30.210 is amended by adding a new subsection to
28 read:

makes consistent (e) The offeror must have a valid Alaska business license at the
with competitive sealed bid

1 time designated, in the request for proposals, for opening of the pro-
2 posals. The offeror shall supply evidence of the offeror's valid
3 Alaska business license in accordance with regulations adopted by the
4 commissioner.

5 * Sec. 8. AS 36.30.250(b) is amended to read:

6 (b) In determining whether a proposal is advantageous to the
7 state, the procurement officer shall take into account, in accordance
8 with regulations of the commissioner, whether the offeror [QUALIFIES
9 AS AN ALASKA BIDDER UNDER AS 36.30.170(b) OR] is offering the services
10 of an employment program as defined in AS 36.30.100(c).

11 * Sec. 9. ^{COMPETITIVE SEALED PROPOSALS} AS 36.30.250 is amended by adding new subsections to read:

12 (c) For the purpose of evaluating cost factors, the proposed
13 costs of an offeror who qualifies as an Alaska bidder under AS 36.30.-
14 170(b) shall be reduced by five percent.

15 (d) An evaluation factor must be included which takes into
16 consideration whether an offeror qualifies as an Alaska bidder under
17 AS 36.30.170(b). At least 10 percent of the value of the rating
18 system, or weighting value, used must be assigned to the Alaska bidder
19 evaluation factor.

20 * Sec. 10. AS 36.30 is amended by adding a new section to read:

21 Sec. 36.30.265. MULTI-STEP SEALED PROPOSALS. When it is con-
22 sidered impractical to initially prepare a definitive description of
23 the procurement to support an award based on stated selection crite-
24 ria, the procurement officer may issue an expression of interest
25 requesting the submission of unpriced technical offers, to be followed
26 by a request for proposals limited to the offerors whose offers are
27 determined to be technically qualified under the criteria set out in
28 the expression of interest.

29 * Sec. 11. ^{SOLE SOURCE} AS 36.30.300(a) is amended to read:

see sec. 9

currently in regulation

in consulting contracts especially price is a small part of contract evaluation

similar to AS 36.30.190 on multi-step competitive sealed bidding. used primarily by DOT when open to different approaches to accomplish a goal

1 (a) A contract may be awarded for supplies, services, profes-
2 sional services, or construction without competitive sealed bidding,
3 competitive sealed proposals, or other competition in accordance with
4 regulations adopted by the commissioner [OF ADMINISTRATION]. A con-
5 tract may be awarded under this section only when the chief procure-
6 ment officer or, for construction contracts or procurements for the
7 state equipment fleet, the commissioner of transportation and public
8 facilities determines in writing that there is only one source for the
9 required procurement or construction. A sole source procurement may
10 not be awarded if a reasonable alternative source exists. The written
11 determination must include findings of fact that support by clear and
12 convincing evidence the determination that only one source exists.

Except for procurements of supplies, services, or construction that do
not exceed the amount for small procurements under AS 36.30.320(a),
the [THE] authority to make the determination required by this subsec-
tion may not be delegated.

currently must be
approved by the
commissioner
(DOT or DCA) -
cumbersome for
small items

<5,000⁰⁰

16
17 * Sec. 12. AS 36.30.305(a) is amended to read:

LIMITED COMPETITION

18 (a) A contract for supplies, services, professional services, or
19 a construction contract under \$100,000, may be awarded without compe-
20 titive sealed bidding or competitive sealed proposals, in accordance
21 with regulations adopted by the commissioner [OF ADMINISTRATION]. A
22 contract may be awarded under this section only when the commissioner
23 [OF ADMINISTRATION], or, for construction contracts under \$100,000 or
24 procurements for the state equipment fleet, the commissioner of trans-
25 portation and public facilities, determines in writing that a situa-
26 tion exists that makes competitive sealed bidding or competitive
27 sealed proposals impractical or contrary to the public interest.
28 Procurements under this section shall be made with competition that is
29 practicable under the circumstance. Except for procurements of

same as
Sec. 11

1 supplies, services, or construction that do not exceed the amount for
2 small procurements under AS 36.30.320(a), the [THE] authority to make
3 a determination required by this section may not be delegated.

4 * Sec. 13. AS 36.30.360(a) is amended to read:

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exception process
is more workable.
Model Procurement
Code is "non-
responsibility."

(a) A written determination of nonresponsibility [RESPONSIBILI-
TY] of a bidder or offeror shall be made by the procurement officer in
accordance with regulations adopted by the commissioner. The unrea-
sonable failure of a bidder or offeror to promptly supply information
in connection with an inquiry with respect to responsibility is
grounds for a determination of nonresponsibility with respect to the
bidder or offeror.

* Sec. 14. AS 36.30.362 is amended to read:

written statement
would not be
required for
sealed competitive
bidding. Award
goes to the
lowest bidder,
regardless of
place of residence.
There's no
discretion.

Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESI-
DENT. Except for awards made under AS 36.30.170, if [IF] the procure-
ment officer awards a contract to a person who does not reside or
maintain a place of business in the state and if the supplies, ser-
VICES, professional services, or construction that is the subject of
the contract could have been obtained from sources in the state, the
procurement officer shall issue a written statement explaining the
basis of the award. The statement required under this section shall
be kept in the contract file.

* Sec. 15. AS 36.30.370 is amended to read:

Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of
this section, any type of contract that will promote the best inter-
ests of the state may be used, except that the use of a cost-plus-a-
percentage-of-cost contract may only be used when permitted by regu-
lations adopted by the commissioner, or, for construction contracts,
by the commissioner of transportation and public facilities [IS PRO-
HIBITED]. A cost-reimbursement contract may be used only when a

Example: additions to a
construction project that
become necessary midway through a
project (like removal of additional rock, etc.)

Currently, if a bid award is protested, the award can be made anyway unless a written determination is made. Sec. 16 requires the award be stayed unless a written determination is made.

University concerned that Sec. 16 will make it too easy for losing bidders to hold up the procurement process.

1 determination is made in writing by the procurement officer that a
2 cost-reimbursement contract is likely to be less costly to the state
3 than any other type or that it is impracticable to obtain the sup-
4 plies, services, professional services, or construction required
5 except under a cost-reimbursement contract.

6 * Sec. 16. AS 36.30.575 is repealed and reenacted to read:

7 Sec. 36.30.575. STAY OF AWARD. If a protest is filed within the
8 time set out in AS 36.30.565 and before an award is made, award of the
9 contract shall be stayed until a decision is made on the protest,
10 unless the chief procurement officer, the commissioner, or, for con-
11 struction contracts or procurements for the state equipment fleet, the
12 commissioner of transportation and public facilities, makes a written
13 determination that

14 (1) a reasonable probability exists that the protest will
15 be denied; or

16 (2) delay of award of the contract is contrary to the
17 state's best interests.

18 * Sec. 17. AS 36.30.850(b) is amended to read:

19 (b) This chapter applies to every expenditure of state money
20 [FUNDS, IRRESPECTIVE OF THEIR SOURCES, INCLUDING FEDERAL ASSISTANCE
21 EXCEPT AS OTHERWISE SPECIFIED IN AS 36.30.890,] by the state, acting
22 through an agency, under a contract, except that this chapter does not
23 apply to

24 (1) grants;

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

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

See sec. 19

- 1 (4) contracts for medical doctors and dentists;
- 2 (5) acquisitions or disposals of real property or interest
- 3 in real property, except as provided in AS 36.30.080;
- 4 (6) disposals under AS 38.05;
- 5 (7) contracts for the preparation of ballots under AS 15.-
- 6 15.030;
- 7 (8) acquisitions or disposals of property and other con-
- 8 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
- 9 091;
- 10 (9) disposals of obsolete property under AS 19.05.060;
- 11 (10) disposals of obsolete material or equipment under
- 12 AS 35.20.060;
- 13 (11) agreements with providers of services under AS 44.47.-
- 14 250; AS 47.07; AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195,
- 15 and 47.25.310;
- 16 (12) contracts of the Department of Fish and Game for
- 17 flights that involve specialized flying and piloting skills and are
- 18 not point-to-point;
- 19 (13) purchases of income-producing assets for the state
- 20 treasury or a public corporation of the state; [.]
- 21 (14) operation of the state boarding school established
- 22 under AS 14.16, if the State Board of Education or the commissioner of
- 23 education adopts regulations for use by the state boarding school in
- 24 procurement and contracting;
- 25 (15) a contract that is a delegation, in whole or in part,
- 26 of investment powers held by the commissioner of revenue under AS 14.-
- 27 25.180, AS 14.40.400, AS 14.42.200, 14.42.210, AS 18.56.095, AS 22.-
- 28 25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or AS 39.35.-
- 29 080;

adds contracts for
day care
14
assistance
(was abs
oversight)

1 (16) a contract that is a delegation, in whole or in part,
2 of investment powers of the Board of Trustees of the Alaska Permanent
3 Fund Corporation under AS 37.13; [OR]

4 (17) the purchase of books, book binding services, news-
5 papers, periodicals, audio-visual materials, network information ser-
6 vices access, approval plans, professional memberships, archival
7 materials, objects of art, and items for museum or archival acquisi-
8 tion having cultural, historical, or archaeological significance; in
9 this paragraph

10 (A) "approval plans" means book selection services in
11 which current book titles meeting an agency's customized speci-
12 fications are provided to the agency subject to the right of the
13 agency to return those books that do not meet with the agency's
14 approval;

15 (B) "audio-visual materials" means nonbook prerecorded
16 materials, including records, tapes, slides, transparencies,
17 films, filmstrips, cassettes, videos, compact discs, laser discs,
18 and items that require the use of equipment to render them us-
19 able;

20 (C) "archival materials" means the noncurrent records
21 of an agency that are preserved after appraisal because of their
22 value;

23 (D) "network information services" means a group of
24 resources from which cataloging information, holdings records,
25 inter-library loans, acquisitions information, and other refer-
26 ence resources can be obtained;

these are purchased from the national organization
27 (18) contracts for purchase of standardized examinations for
28 licensure under AS 08;

procurement code furnished through surplus property act. to GF; in many cases, should go to loan fund
29 (19) disposals of supplies acquired through foreclosure of
30 SB0170a
The additions in this section are generally routine purchases for which a sole source justification must be written each time such a purchase is made.

University proposes additional exemptions:

conference registration fees
guest speakers + entertainment

1 loans issued under AS 03.10;

little interest in competing. Univ. supports strongly.

(20) purchases of curatorial and conservation services to maintain, preserve, and interpret objects of art and items having cultural, historical, or archaeological significance to the state;

DNR purchases all that's available

(21) acquisition of confidential seismic survey data necessary for pre-sale oil and gas lease analyses under AS 38.05.180;

intent is for services to be provided by local people.

(22) contracts for village public safety officers;

(23) expenditures to pay travel expenses of personal care

attendants and sign language interpreters needed to accompany developmentally disabled members of the Governor's Council for the Handicapped and Gifted to meetings for which reimbursement of members' expenses is authorized under AS 47.80.060;

flat fees

(24) contracts for home health care and adult residential and foster care services provided under regulations adopted by the Department of Health and Social Services; or

for consistency with federal requirements - Univ. supports strongly

(25) contracts for supplies or services for research projects funded by money received from the federal government or private grants.

* Sec. 18. AS 36.30 is amended by adding a new section to read:

Sec. 36.30.855. ALTERNATE PROCUREMENT METHODS. (a) An alternate procurement method to the methods provided by AS 36.30.100 -- 36.30.320 may be used, in accordance with regulations adopted by the commissioner,

consistent with old law which listed

(1) if the commissioner determines in writing that food, clothing, medical supplies, or supplies for use in laboratory or medical studies can be purchased otherwise to the best advantage of the state;

thing you didn't need to bid for. Current law requires either bid or competitive

(2) if rates are fixed by law or ordinance;

sealed proposal; this would allow an alternative method.

(3) to purchase products or services manufactured or

1 provided by an employment program operated by a nonprofit organization
2 to increase employment opportunities for individuals with physical or
3 mental disabilities that constitute substantial handicaps to employ-
4 ment;

5 (4) to purchase products or services provided by the cor-
6 rectional industries program established under AS 33.32.

7 (b) An alternate procurement method to the methods provided by
8 AS 36.30.100 -- 36.30.320 may be used for purchases of supplies and
9 services to support operations of the division of Alaska state troop-
10 ers or the division of fish and wildlife protection if the procurement
11 officer for the Department of Public Safety makes a written determina-
12 tion that publicity of the purchases would jeopardize the safety of
13 personnel or the success of the operation.

14 * Sec. 19. AS 36.30.990 is amended by adding a new paragraph to read:

15 *excludes money the state spends on others' behalf (i.e. when the state acts as agent)*
16 (17) "state money" means any money appropriated to an
17 agency or spent by an agency (under an appropriation) irrespective of
18 its sources, including federal assistance except as otherwise spec-
19 ified in AS 36.30.890.

19 *Conforming* * Sec. 20. AS ^(now in Sec. 18) 36.30.100(b)(1) -- (4), 36.30.540(4) -- (5), ^(per sec. 16) 36.30.605;
20 ^(per sec. 17) and AS 44.47.250(c) are repealed. *list of in-state & out-of-state procurements (too long & involved.)*

Additional amendment proposals:

University: bid limit: require open competitive bidding above \$10,000 [\$5,000]
penalties: if intentionally contract in a manner you know to be contrary

Railroad: remove RR Corp. from procurement code
require additional proof that vendors are Alaska bidders

FISCAL NOTE

REQUEST:

Revision Date: March 20, 1989 Agency Affected: Department of Administration
 Title: An Act Relating to State BRU: General Services
Procurement
 Sponsor: Rules Components: Purchasing
 Requestor: Senate, State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS (PHONE)	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)


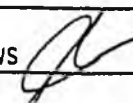
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Implementation costs will be minimal. Efficiencies gained will be reflected in improved service delivery.

Prepared By: Robert J. Link, Director  Phone: 465-2250
 Division: General Services & Supply Date: _____
 Approved by Commissioner: John M. Andrews  Date: 3/21/89
 Agency: Department of Administration

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

**STATE OF ALASKA
1989 LEGISLATIVE SESSION**

BILL VERSION: SB 170 (b)
PUBLISH DATE: 2/13/89

REQUEST: FISCAL NOTE

Revision Date: 12/27/88
Title: An Act Relating to State Procurement
Sponsor: Rules
Requestor: Governor

Agency Affected: DOT&PF
BRU: Design & Construction, Maintenance & Operations: State Equipment Fleet
Components: _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Although the fiscal note and impact of this bill is shown as zero there will be some positive effects. The cost savings will be in the form of increased efficiencies in the procurement process.

Prepared by: Loren Rasmussen
Division: Engineering & Operations, Standards
Approved by Commissioner: M-K & H
Agency: DOT & PF

Phone: 465-2960
Date: 12/28/88
Date: 12/30/88

- Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

State affairs

Sen. Fourchot
March 17, 1989

PROPOSED AMENDMENTS

CS SB 170 PROCUREMENT CODE

AMENDMENT #1
(Requested by University)

page 2, line 28 and page 5, line 27

If the bidder is required to have an Alaska business license
under AS 43.70, the bidder must have a valid Alaska business
license at the time designated, in the invitation to bid, for bid
opening.

NOTE: AS 43.70.110 defines "business" for the purposes of
the Alaska business license. Those not required to have a
license include: fisheries businesses, fishermen, liquor
licenses, insurance businesses, mining, and coin-operated
amusement and gaming machines.

The procurement code, by not referencing this definition,
requires that all businesses that bid on state contracts
have an Alaska business license.

AMENDMENT #2
(Requested by Alaska Railroad, Univerity)

Page 4, lines 21-23

(3) has maintained a substantial bona fide place of business within the state [STAFFED BY THE BIDDER OR AN EMPLOYEE OF THE BIDDER FOR A PERIOD OF SIX MONTHS IMMEDIATELY PRECEDING THE DATE OF THE BID];

Add a new subsection to read:

(e) In this section "substantial bona fide place of business" means a place that is

(1) regularly used for the sale of the supplies or services called for in the invitation to bid;

(2) staffed by the bidder or at least one employee of the bidder who is a resident of the state;

(3) equipped and staffed to offer any maintenance, warranty, or repair services called for in the invitation to bid; and

(4) continuously used in the state at a single location for a period of six months immediately preceding the date of the invitation to bid.

NOTE: This language, prepared by the Attorney General's office, is designed to eliminate firms that carry on limited business enterprises exclusively for the purpose of taking advantage of the Alaska bidder's preference. It was drafted after review of some other states' statutes (see attached letter from Jim Baldwin).

The Railroad had suggested that bidders be required to have an inventory of \$50,000; the AG feels that this would be difficult to determine and may have undesirable effects on legitimate Alaska bidders.

AMENDMENT #3
(Requested by University)

Page 8, after line 1 -- add a new section

AS 36.30.320(a) is amended to read:

(a) A procurement for supplies, services, or construction that does not exceed an aggregate dollar amount of \$10,000 [\$5,000] may be made in accordance with regulations adopted by the commissioner for small procurements.

NOTE: Open competitive bidding is not required for small procurements. The Department of Administration is preparing for presentation to the committee a summary of recent procurements in the \$5,000 to \$10,000 range.

The University notes that the federal government uses a \$25,000 limit and the state of Oregon a \$10,000 limit.

AMENDMENT #4
(Requested by University)

page 12, after line 19

(27) contracts for supplies or services purchased outside
the United States for use outside the United States

NOTE: This addresses the Greenland and Antarctica research
camp concern.

(Requested by Department of Law)

(28) contracts for hearing officers

NOTE: The department asserts that the procurement process
slows down the administration of justice through
administrative agencies. If this exemption is enacted, the
department intends to develop a list of qualified persons
interested in serving as hearing officers. Appointments of
hearing officers would be made from this list on a rotating
basis.

AMENDMENT #5
(Requested by University)

page 13, after line 16

AS 36.30.930 is amended by adding a new subsection to read:

(3) a person who files a protest to halt the award of a contract under AS 36.30.560 which is determined to be frivolous or unfounded is liable for all costs and damages to the state and the contractor arising out of the protest.

NOTE: Under current law, if a bid award is protested the award is made anyway unless there is a written determination that it shouldn't be. SB 170 would shift this burden, requiring that the award be stayed unless there is a written determination that it should be awarded anyway. The University is concerned that the new procedure will make it too easy for a losing bidder to hold up the procurement process, thus injuring the successful bidder.

The determination that a protest is frivolous would be made by the courts.

AMENDMENT #6
(Requested by Department of Law)

page 13, line 22

(17) "state money" means any money appropriated to an agency or spent by an agency [UNDER AN APPROPRIATION] irrespective of its sources, including federal assistance except as otherwise specified in AS 36.30.890 but does not include money held in trust by an agency for a person.

NOTE: SB 170 proposes a new definition of "state money" to clarify that only expenditure of money appropriated to an agency or spent under an appropriation is subject to the procurement code. Not subject would be money such as that of companies for which the state acts as the trustee, receiver, or conservator (for example, money of a bank that the state has taken possession of or a client's money held in trust by the Office of Public Advocacy).

However, it has come to the department's attention that the definition in SB 170 would exclude contracts of an agency from the code if the agency operates exclusively with nonappropriated money (ASBA for example).

Original sponsor: Rules/Governor

pp. 1, 8, 12, 14

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR SENATE BILL NO. 170 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state procurement."

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

8 * Section 1. AS 36.30.015(e) is amended to read:

9 (e) The board [BOARDS] of directors of the [ALASKA RAILROAD
10 CORPORATION AND THE] Alaska State Building Authority shall adopt
11 procedures to govern the procurement of supplies, services, profes-
12 sional services, and construction by the authority [CORPORATION]. The
13 procedures must be substantially equivalent to the procedures pre-
14 scribed in this chapter and in regulations adopted under this chapter.

15 * Sec. 2. AS 36.30.015 is amended by adding a new subsection to read:

16 (f) The board of directors of the Alaska Railroad Corporation
17 shall adopt and publish procedures to govern the procurement of sup-
18 plies, services, professional services, and construction by the corpo-
19 ration. The procedures must be based on the competitive principles
20 consistent with this chapter and must be adapted to the special needs
21 of the corporation as determined by the board of directors.

22 * Sec. 3. AS 36.30.040(b) is amended to read:

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

25 (1) suspension, debarment, and reinstatement of prospective
26 bidders and contractors;

27 (2) bid protests;

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

added
RAILROAD

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

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

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

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

9 (8) storerooms and inventories, including determination of
10 appropriate stock levels and the management of agency supplies;

11 (9) transfer, sale or other disposal of supplies;

12 (10) definitions and classes of contractual services and
13 procedures for acquiring them;

14 (11) providing for conducting price analysis;

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

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

19 (14) conditions under which an agency may use the services
20 of an employment program [AS DEFINED UNDER AS 36.30.100(c)];

21 (15) a bidder's or offeror's duties under AS 36.30.115 and
22 36.30.210; and

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

27 * Sec. 4. AS 36.30.110(b) is amended to read:

28 (b) The bidder must have a valid Alaska business license at the
29 time designated in the invitation to bid for bid opening. The [WHEN

1 RESPONDING TO THE INVITATION TO BID, THE] bidder shall supply evidence
2 of the bidder's valid Alaska business license in accordance with
3 regulations adopted by the commissioner. A bidder for a construction
4 contract shall also submit evidence of the bidder's registration under
5 AS 08.18.

6 * Sec. 5. AS 36.30.110 is amended by adding a new subsection to read:

7 (c) If the commissioner of transportation and public facilities
8 makes a written finding that confidentiality is in the state's best
9 interest, the estimated cost of a construction contract is confiden-
10 tial information and may not be released to the public before bid
11 opening.

12 * Sec. 6. AS 36.30.115(b) is amended to read:

13 (b) A bidder may replace a listed subcontractor if the subcon-
14 tractor

15 (1) fails to comply with AS 08.18;

16 (2) files for bankruptcy or becomes insolvent;

17 (3) fails to execute a contract with the bidder involving
18 performance of the work for which the subcontractor was listed and the
19 bidder acted in good faith;

20 (4) fails to obtain bonding;

21 (5) fails to obtain insurance acceptable to the state;

22 (6) fails to perform the contract with the bidder involving
23 work for which the subcontractor was listed;

24 (7) must be substituted in order for the prime contractor
25 to satisfy required state and federal affirmative action requirements;

26 (8) refuses to agree or abide with the bidder's labor
27 agreement; or

28 (9) is determined by the procurement officer not to be a
29 responsible subcontractor [BIDDER].

1 * Sec. 7. AS 36.30.120(b) is amended to read:

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

6 [(1) 10 PERCENT OF THE AMOUNT OF THE BID IF THE BID DOES NOT
7 EXCEED \$100,000; OR

8 (2) 10 PERCENT OF THE FIRST \$100,000 AND FIVE PERCENT OF
9 THE AMOUNT OF THE BID OVER \$100,000 IF THE BID EXCEEDS \$100,000 UP TO
10 A MAXIMUM OF \$200,000 IN SECURITY].

11 * Sec. 8. AS 36.30.170(b) is amended to read:

12 (b) The procurement officer shall award a contract based on
13 solicited bids to the lowest responsive and responsible bidder after
14 an Alaska bidder preference of five percent and an Alaska products
15 preference as described in AS 36.30.322 - 36.30.338 have been applied.
16 In this subsection, "Alaska bidder" means a person who

17 (1) holds a current Alaska business license;

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

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

24 (4) is incorporated or qualified to do business under the
25 laws of the state, is a sole proprietorship [,] and the proprietor is
26 a resident of the state, or is a partnership [,] and one or more of
27 the general [ALL] partners is a resident [ARE RESIDENTS] of the state;
28 and

29 (5) if a joint venture, is composed entirely of venturers

1 [VENTURES] that qualify under (1) - (4) of this subsection.

2 * Sec. 9. AS 36.30.170(c) is amended to read:

3 (c) If a bidder qualifies under (b) of this section as an Alaska
4 bidder, is offering services through an employment program [AS DEFINED
5 UNDER AS 36.30.100(c)], and is the lowest responsible and responsive
6 bidder with a bid that is not more than 10 percent higher than the
7 lowest bid of a nonresident, the procurement officer shall award the
8 contract to that bidder.

9 * Sec. 10. AS 36.30.210(a) is amended to read:

10 (a) A request for competitive sealed proposals must contain the
11 date, time, and place for delivering proposals, a specific description
12 of the supplies, construction, services, or professional services to
13 be provided under the contract, and the terms under which the sup-
14 plies, construction, services, or professional services are to be
15 provided. The request must [SHALL] require the offeror [TO SUBMIT
16 EVIDENCE OF THE OFFEROR'S VALID ALASKA BUSINESS LICENSE AND], no later
17 than five working days after the [IDENTIFYING WHICH] proposal that is
18 the most advantageous to the state is identified, to list subcontrac-
19 tors the offeror proposes to use in the performance of the contract.
20 The list must [SHALL] include the name and location of the place of
21 business for each subcontractor, the work to be subcontracted to each
22 subcontractor, and evidence of the subcontractor's valid Alaska busi-
23 ness license. An offeror for a construction contract shall also
24 submit evidence of the offeror's registration under AS 08.18 and
25 evidence of registration for each listed subcontractor.

26 * Sec. 11. AS 36.30.210 is amended by adding a new subsection to read:

27 (e) The offeror must have a valid Alaska business license at the
28 time designated, in the request for proposals, for opening of the pro-
29 posals. The offeror shall supply evidence of the offeror's valid

1 Alaska business license in accordance with regulations adopted by the
2 commissioner.

3 * Sec. 12. AS 36.30.250(b) is amended to read:

4 (b) In determining whether a proposal is advantageous to the
5 state, the procurement officer shall take into account, in accordance
6 with regulations of the commissioner, whether the offeror [QUALIFIES
7 AS AN ALASKA BIDDER UNDER AS 36.30.170(b) OR] is offering the services
8 of an employment program [AS DEFINED IN AS 36.30.100(c)].

9 * Sec. 13. AS 36.30.250 is amended by adding new subsections to read:

10 (c) For the purpose of evaluating cost factors, the proposed
11 costs of an offeror who qualifies as an Alaska bidder under AS 36.30.-
12 170(b) shall be reduced by five percent.

13 (d) The request for proposals must include an Alaska bidder
14 evaluation factor that takes into consideration whether an offeror
15 qualifies as an Alaska bidder under AS 36.30.170(b). At least 10
16 percent of the value of the rating system or weighting value used
17 shall be assigned to the Alaska bidder evaluation factor.

18 * Sec. 14. AS 36.30 is amended by adding a new section to read:

19 Sec. 36.30.265. MULTI-STEP SEALED PROPOSALS. When it is con-
20 sidered impractical to initially prepare a definitive purchase
21 description to support an award based on listed selection criteria,
22 the procurement officer may issue an expression of interest requesting
23 the submission of unpriced technical offers, and then later issue a
24 request for proposals limited to the offerors whose offers are deter-
25 mined to be technically qualified under the criteria set out in the
26 expression of interest.

27 * Sec. 15. AS 36.30.300(a) is amended to read:

28 (a) A contract may be awarded for supplies, services, profes-
29 sional services, or construction without competitive sealed bidding,

1 competitive sealed proposals, or other competition in accordance with
2 regulations adopted by the commissioner [OF ADMINISTRATION]. A con-
3 tract may be awarded under this section only when the chief procure-
4 ment officer or, for construction contracts or procurements for the
5 state equipment fleet, the commissioner of transportation and public
6 facilities determines in writing that there is only one source for the
7 required procurement or construction. A sole source procurement may
8 not be awarded if a reasonable alternative source exists. The written
9 determination must include findings of fact that support by clear and
10 convincing evidence the determination that only one source exists.
11 Except for procurements of supplies, services, or construction that do
12 not exceed the amount for small procurements under AS 36.30.320(a),
13 the [THE] authority to make the determination required by this subsec-
14 tion may not be delegated.

15 * Sec. 16. AS 36.30.305(a) is amended to read:

16 (a) A contract for supplies, services, professional services, or
17 a construction contract under \$100,000, may be awarded without compet-
18 itive sealed bidding or competitive sealed proposals, in accordance
19 with regulations adopted by the commissioner [OF ADMINISTRATION]. A
20 contract may be awarded under this section only when the commissioner
21 [OF ADMINISTRATION], or, for construction contracts under \$100,000 or
22 procurements for the state equipment fleet, the commissioner of trans-
23 portation and public facilities, determines in writing that a situa-
24 tion exists that makes competitive sealed bidding or competitive
25 sealed proposals impractical or contrary to the public interest.
26 Procurements under this section shall be made with competition that is
27 practicable under the circumstance. Except for procurements of sup-
28 plies, services, or construction that do not exceed the amount for
29 small procurements under AS 36.30.320(a), the [THE] authority to make

1 a determination required by this section may not be delegated.

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* Sec. 17. AS 36.30.320(a) is amended to read:

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(a) A procurement for supplies, services, or construction that does not exceed an aggregate dollar amount of \$10,000 [\$5,000] may be made in accordance with regulations adopted by the commissioner for small procurements.

* Sec. 18. AS 36.30.360(a) is amended to read:

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

* Sec. 19. AS 36.30.362 is amended to read:

Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESIDENT. Except for awards made under AS 36.30.170, if [IF] the procurement officer awards a contract to a person who does not reside or maintain a place of business in the state and if the supplies, services, professional services, or construction that is the subject of the contract could have been obtained from sources in the state, the procurement officer shall issue a written statement explaining the basis of the award. The statement required under this section shall be kept in the contract file.

* Sec. 20. AS 36.30.370 is amended to read:

Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of this section, any type of contract that will promote the best interests of the state may be used, except that the use of a cost-plus-a-percentage-of-cost contract may only be used when permitted by

1 regulations adopted by the commissioner, or, for construction con-
2 tracts, by the commissioner of transportation and public facilities
3 [IS PROHIBITED]. A cost-reimbursement contract may be used only when
4 a determination is made in writing by the procurement officer that a
5 cost-reimbursement contract is likely to be less costly to the state
6 than any other type or that it is impracticable to obtain the sup-
7 plies, services, professional services, or construction required
8 except under a cost-reimbursement contract.

9 * Sec. 21. AS 36.30.575 is repealed and reenacted to read:

10 Sec. 36.30.575. STAY OF AWARD. If a protest is filed within the
11 time set out in AS 36.30.565 and before an award is made, award of the
12 contract shall be stayed until a decision is made on the protest,
13 unless the chief procurement officer, the commissioner, or, for con-
14 struction contracts or procurements for the state equipment fleet, the
15 commissioner of transportation and public facilities, makes a written
16 determination that

17 (1) a reasonable probability exists that the protest will
18 be denied; or

19 (2) delay of award of the contract is contrary to the
20 state's best interests.

21 * Sec. 22. AS 36.30.850(b) is amended to read:

22 (b) This chapter applies to every expenditure of state money
23 [FUNDS, IRRESPECTIVE OF THEIR SOURCES, INCLUDING FEDERAL ASSISTANCE
24 EXCEPT AS OTHERWISE SPECIFIED IN AS 36.30.890,] by the state, acting
25 through an agency, under a contract, except that this chapter does not
26 apply to

27 (1) grants;

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

- 1 lawsuits in which the state is or may become a party;
- 2 (3) contracts of the University of Alaska where the work is
3 to be performed substantially by students enrolled in the university;
- 4 (4) contracts for medical doctors and dentists;
- 5 (5) acquisitions or disposals of real property or interest
6 in real property, except as provided in AS 36.30.080;
- 7 (6) disposals under AS 38.05;
- 8 (7) contracts for the preparation of ballots under AS 15.-
9 15.030;
- 10 (8) acquisitions or disposals of property and other con-
11 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
12 091;
- 13 (9) disposals of obsolete property under AS 19.05.060;
- 14 (10) disposals of obsolete material or equipment under
15 AS 35.20.060;
- 16 (11) agreements with providers of services under AS 44.47.-
17 250; AS 47.07; AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195,
18 and 47.25.310;
- 19 (12) contracts of the Department of Fish and Game for
20 flights that involve specialized flying and piloting skills and are
21 not point-to-point;
- 22 (13) purchases of income-producing assets for the state
23 treasury or a public corporation of the state; [.]
- 24 (14) operation of the state boarding school established
25 under AS 14.16, if the State Board of Education or the commissioner of
26 education adopts regulations for use by the state boarding school in
27 procurement and contracting;
- 28 (15) a contract that is a delegation, in whole or in part,
29 of investment powers held by the commissioner of revenue under

1 AS 14.25.180, AS 14.40.400, AS 14.42.200, 14.42.210, AS 18.56.095,
2 AS 22.25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or
3 AS 39.35.080;

4 (16) a contract that is a delegation, in whole or in part,
5 of investment powers of the Board of Trustees of the Alaska Permanent
6 Fund Corporation under AS 37.13; [OR]

7 (17) the purchase of books, book binding services, newspa-
8 pers, periodicals, audio-visual materials, network information ser-
9 vices access, approval plans, professional memberships, archival
10 materials, objects of art, and items for museum or archival acquisi-
11 tion having cultural, historical, or archaeological significance; in
12 this paragraph

13 (A) "approval plans" means book selection services in
14 which current book titles meeting an agency's customized specifi-
15 cations are provided to the agency subject to the right of the
16 agency to return those books that do not meet with the agency's
17 approval;

18 (B) "audio-visual materials" means nonbook prerecorded
19 materials, including records, tapes, slides, transparencies,
20 films, filmstrips, cassettes, videos, compact discs, laser discs,
21 and items that require the use of equipment to render them
22 usable;

23 (C) "archival materials" means the noncurrent records
24 of an agency that are preserved after appraisal because of their
25 value;

26 (D) "network information services" means a group of
27 resources from which cataloging information, holdings records,
28 inter-library loans, acquisitions information, and other refer-
29 ence resources can be obtained;

1 (18) contracts for the purchase of standardized examinations
2 for licensure under AS 08;

3 (19) disposals of supplies acquired through foreclosure of
4 loans issued under AS 03.10;

5 (20) purchases of curatorial and conservation services to
6 maintain, preserve, and interpret

7 (A) objects of art; and

8 (B) items having cultural, historical, or archaeologi-
9 cal significance to the state;

10 (21) acquisition of confidential seismic survey data neces-
11 sary for pre-sale oil and gas lease analyses under AS 38.05.180;

12 (22) contracts for village public safety officers;

13 (23) expenditures to pay travel expenses of personal care
14 attendants and sign language interpreters needed to accompany develop-
15 mentally disabled members of the Governor's Council for the Handi-
16 capped and Gifted to meetings for which reimbursement of members'
17 expenses is authorized under AS 47.80.060;

18 (24) contracts for home health care and adult residential
19 and foster care services provided under regulations adopted by the
20 Department of Health and Social Services;

21 (25) contracts for supplies or services for research pro-
22 jects funded by money received from the federal government or private
23 grants; or

24 (26) guest speakers or performers for an educational or
25 cultural activity.

26 * Sec. 23. AS 36.30.850(e) is amended to read:

27 (e) AS 36.30.170 applies to all insurance contracts involving
28 state money. In this subsection, "state money" includes [, INCLUDING]
29 state grants and reimbursement to municipalities, school districts,

Added

1 and other entities.

2 * Sec. 24. AS 36.30 is amended by adding a new section to read:

3 Sec. 36.30.855. ALTERNATE PROCUREMENT METHODS. (a) In place of
4 the methods provided by AS 36.30.100 - 36.30.320, an alternate pro-
5 curement method may be used in the following situations, in accordance
6 with regulations adopted by the commissioner:

7 (1) if the commissioner determines in writing that food,
8 clothing, medical supplies, or materials for use in laboratory or
9 medical studies can be purchased otherwise to the best advantage of
10 the state;

11 (2) if rates are fixed by law or ordinance;

12 (3) to purchase products or services manufactured or pro-
13 vided by an employment program;

14 (4) to purchase products or services provided by the cor-
15 rectional industries program established under AS 33.32.

16 (b) An alternate procurement method to the methods provided by
17 AS 36.30.100 - 36.30.320 may be used for purchases of supplies and
18 services to support operations of the division of Alaska state troop-
19 ers or the division of fish and wildlife protection if the procurement
20 officer for the Department of Public Safety makes a written determina-
21 tion that publicity of the purchases would jeopardize the safety of
22 personnel or the success of the operation.

23 * Sec. 25. AS 36.30.990 is amended by adding new paragraphs to read:

24 (17) "employment program" means a nonprofit program to
25 increase employment opportunities for individuals with physical or
26 mental disabilities that constitute substantial handicaps to employ-
27 ment;

28 (18) "state money" means any money appropriated to an
29 agency or spent by an agency irrespective of its source, including

added

1 federal assistance except as otherwise specified in AS 36.30.890, but
2 does not include money held in trust by an agency for a person.
3 * Sec. 26. AS 36.30.100(b)(1), 36.30.100(b)(2), 36.30.100(b)(3), 36.-
4 30.100(b)(4), 36.30.100(c), 36.30.540(4), 36.30.540(5), 36.30.605, and
5 AS 44.47.250(c) are repealed.

Original sponsor: Rules/Governor

pp - 1, 14

OK

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2

CS FOR SENATE BILL NO. 170 (Finance)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to state procurement."

Per Dr. Pearce's constituent who had problem during Christmas holidays (see p.14)

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

8 * Section 1. AS 01.10.080 is amended to read:

9 Sec. 01.10.080. COMPUTATION OF TIME. The time in which an act
10 provided by law is required to be done is computed by excluding the
11 first day and including the last, unless the last day is a holiday,
12 and then it is also excluded. This section does not apply to AS 36.-

added

13

30. See p.14

Procurement code

14 * Sec. 2. AS 36.30.015(e) is amended to read:

15 (e) The board [BOARDS] of directors of the [ALASKA RAILROAD
16 CORPORATION AND THE] Alaska State Building Authority shall adopt
17 procedures to govern the procurement of supplies, services, profes-
18 sional services, and construction by the authority [CORPORATION]. The
19 procedures must be substantially equivalent to the procedures pre-
20 scribed in this chapter and in regulations adopted under this chapter.

21 * Sec. 3. AS 36.30.015 is amended by adding a new subsection to read:

22 (f) The board of directors of the Alaska Railroad Corporation
23 shall adopt and publish procedures to govern the procurement of sup-
24 plies, services, professional services, and construction by the corpo-
25 ration. The procedures must be based on the competitive principles
26 consistent with this chapter and must be adapted to the special needs
27 of the corporation as determined by the board of directors.

28 * Sec. 4. AS 36.30.040(b) is amended to read:

29 (b) The commissioner shall adopt regulations pertaining to the

- 1 following:
- 2 (1) suspension, debarment, and reinstatement of prospective
3 bidders and contractors;
- 4 (2) bid protests;
- 5 (3) conditions and procedures for the procurement of per-
6 ishables and items for resale;
- 7 (4) conditions and procedures for the use of source selec-
8 tion methods authorized by this chapter, including sole source pro-
9 curements, emergency procurements, and small procurements;
- 10 (5) the opening or rejection of bids and offers, and waiver
11 of informalities in bids and offers;
- 12 (6) confidentiality of technical data and trade secrets
13 submitted by actual or prospective bidders or offerors;
- 14 (7) partial, progressive, and multiple awards;
- 15 (8) storerooms and inventories, including determination of
16 appropriate stock levels and the management of agency supplies;
- 17 (9) transfer, sale or other disposal of supplies;
- 18 (10) definitions and classes of contractual services and
19 procedures for acquiring them;
- 20 (11) providing for conducting price analysis;
- 21 (12) use of payment and performance bonds in connection with
22 contracts for supplies, services, and construction;
- 23 (13) guidelines for use of cost principles in negotiations,
24 adjustments, and settlements;
- 25 (14) conditions under which an agency may use the services
26 of an employment program [AS DEFINED UNDER AS 36.30.100(c)];
- 27 (15) a bidder's or offeror's duties under AS 36.30.115 and
28 36.30.210; and
- 29 (16) the elimination and prevention of discrimination in

1 state contracting because of race, religion, color, national origin,
2 sex, age, marital status, pregnancy, parenthood, handicap, or politi-
3 cal affiliation.

4 * Sec. 5. AS 36.30.110(b) is amended to read:

5 (b) The bidder must have a valid Alaska business license at the
6 time designated in the invitation to bid for bid opening. The [WHEN
7 RESPONDING TO THE INVITATION TO BID, THE] bidder shall supply evidence
8 of the bidder's valid Alaska business license in accordance with
9 regulations adopted by the commissioner. A bidder for a construction
10 contract shall also submit evidence of the bidder's registration under
11 AS 08.18.

12 * Sec. 6. AS 36.30.110 is amended by adding a new subsection to read:

13 (c) If the commissioner of transportation and public facilities
14 makes a written finding that confidentiality is in the state's best
15 interest, the estimated cost of a construction contract is confiden-
16 tial information and may not be released to the public before bid
17 opening.

18 * Sec. 7. AS 36.30.115(b) is amended to read:

19 (b) A bidder may replace a listed subcontractor if the subcon-
20 tractor

21 (1) fails to comply with AS 08.18;

22 (2) files for bankruptcy or becomes insolvent;

23 (3) fails to execute a contract with the bidder involving
24 performance of the work for which the subcontractor was listed and the
25 bidder acted in good faith;

26 (4) fails to obtain bonding;

27 (5) fails to obtain insurance acceptable to the state;

28 (6) fails to perform the contract with the bidder involving
29 work for which the subcontractor was listed;

1 (7) must be substituted in order for the prime contractor
2 to satisfy required state and federal affirmative action requirements;

3 (8) refuses to agree or abide with the bidder's labor
4 agreement; or

5 (9) is determined by the procurement officer, not to be a
6 responsible subcontractor [BIDDER].

7 * Sec. 8. AS 36.30.120(b) is amended to read:

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

12 [(1) 10 PERCENT OF THE AMOUNT OF THE BID IF THE BID DOES NOT
13 EXCEED \$100,000; OR

14 (2) 10 PERCENT OF THE FIRST \$100,000 AND FIVE PERCENT OF
15 THE AMOUNT OF THE BID OVER \$100,000 IF THE BID EXCEEDS \$100,000 UP TO
16 A MAXIMUM OF \$200,000 IN SECURITY].

17 * Sec. 9. AS 36.30.170(b) is amended to read:

18 (b) The procurement officer shall award a contract based on
19 solicited bids to the lowest responsive and responsible bidder after
20 an Alaska bidder preference of five percent and an Alaska products
21 preference as described in AS 36.30.322 - 36.30.338 have been applied.
22 In this subsection, "Alaska bidder" means a person who

23 (1) holds a current Alaska business license;

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

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

1 (4) is incorporated or qualified to do business under the
2 laws of the state, is a sole proprietorship [,] and the proprietor is
3 a resident of the state, or is a partnership [,] and one or more of
4 the general [ALL] partners is a resident [ARE RESIDENTS] of the state;
5 and

6 (5) if a joint venture, is composed entirely of venturers
7 [VENTURES] that qualify under (1) - (4) of this subsection.

8 * Sec. 10. AS 36.30.170(c) is amended to read:

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

15 * Sec. 11. AS 36.30.210(a) is amended to read:

16 (a) A request for competitive sealed proposals must contain the
17 date, time, and place for delivering proposals, a specific description
18 of the supplies, construction, services, or professional services to
19 be provided under the contract, and the terms under which the sup-
20 plies, construction, services, or professional services are to be
21 provided. The request must [SHALL] require the offeror [TO SUBMIT
22 EVIDENCE OF THE OFFEROR'S VALID ALASKA BUSINESS LICENSE AND], no later
23 than five working days after the [IDENTIFYING WHICH] proposal that is
24 the most advantageous to the state is identified, to list subcontrac-
25 tors the offeror proposes to use in the performance of the contract.
26 The list must [SHALL] include the name and location of the place of
27 business for each subcontractor, the work to be subcontracted to each
28 subcontractor, and evidence of the subcontractor's valid Alaska busi-
29 ness license. An offeror for a construction contract shall also

1 submit evidence of the offeror's registration under AS 08.18 and
2 evidence of registration for each listed subcontractor.

3 * Sec. 12. AS 36.30.210 is amended by adding a new subsection to read:

4 (e) The offeror must have a valid Alaska business license at the
5 time designated, in the request for proposals, for opening of the pro-
6 posals. The offeror shall supply evidence of the offeror's valid
7 Alaska business license in accordance with regulations adopted by the
8 commissioner.

9 * Sec. 13. AS 36.30.250(b) is amended to read:

10 (b) In determining whether a proposal is advantageous to the
11 state, the procurement officer shall take into account, in accordance
12 with regulations of the commissioner, whether the offeror [QUALIFIES
13 AS AN ALASKA BIDDER UNDER AS 36.30.170(b) OR] is offering the services
14 of an employment program [AS DEFINED IN AS 36.30.100(c)].

15 * Sec. 14. AS 36.30.250 is amended by adding new subsections to read:

16 (c) For the purpose of evaluating cost factors, the proposed
17 costs of an offeror who qualifies as an Alaska bidder under AS 36.30.-
18 170(b) shall be reduced by five percent.

19 (d) The request for proposals must include an Alaska bidder
20 evaluation factor that takes into consideration whether an offeror
21 qualifies as an Alaska bidder under AS 36.30.170(b). At least 10
22 percent of the value of the rating system or weighting value used
23 shall be assigned to the Alaska bidder evaluation factor.

24 * Sec. 15. AS 36.30 is amended by adding a new section to read:

25 Sec. 36.30.265. MULTI-STEP SEALED PROPOSALS. When it is con-
26 sidered impractical to initially prepare a definitive purchase de-
27 scription to support an award based on listed selection criteria, the
28 procurement officer may issue an expression of interest requesting the
29 submission of unpriced technical offers, and then later issue a

1 request for proposals limited to the offerors whose offers are deter-
2 mined to be technically qualified under the criteria set out in the
3 expression of interest.

4 * Sec. 16. AS 36.30.300(a) is amended to read:

5 (a) A contract may be awarded for supplies, services, profes-
6 sional services, or construction without competitive sealed bidding,
7 competitive sealed proposals, or other competition in accordance with
8 regulations adopted by the commissioner [OF ADMINISTRATION]. A con-
9 tract may be awarded under this section only when the chief procure-
10 ment officer or, for construction contracts or procurements for the
11 state equipment fleet, the commissioner of transportation and public
12 facilities determines in writing that there is only one source for the
13 required procurement or construction. A sole source procurement may
14 not be awarded if a reasonable alternative source exists. The written
15 determination must include findings of fact that support by clear and
16 convincing evidence the determination that only one source exists.
17 Except for procurements of supplies, services, or construction that do
18 not exceed the amount for small procurements under AS 36.30.320(a),
19 the [THE] authority to make the determination required by this subsec-
20 tion may not be delegated.

21 * Sec. 17. AS 36.30.305(a) is amended to read:

22 (a) A contract for supplies, services, professional services, or
23 a construction contract under \$100,000, may be awarded without compet-
24 itive sealed bidding or competitive sealed proposals, in accordance
25 with regulations adopted by the commissioner [OF ADMINISTRATION]. A
26 contract may be awarded under this section only when the commissioner
27 [OF ADMINISTRATION], or, for construction contracts under \$100,000 or
28 procurements for the state equipment fleet, the commissioner of trans-
29 portation and public facilities, determines in writing that a

1 situation exists that makes competitive sealed bidding or competitive
2 sealed proposals impractical or contrary to the public interest.
3 Procurements under this section shall be made with competition that is
4 practicable under the circumstance. Except for procurements of sup-
5 plies, services, or construction that do not exceed the amount for
6 small procurements under AS 36.30.320(a), the [THE] authority to make
7 a determination required by this section may not be delegated.

8 * Sec. 18. AS 36.30.320(a) is amended to read:

9 (a) A procurement for supplies, services, or construction that
10 does not exceed an aggregate dollar amount of \$10,000 [\$5,000] may be
11 made in accordance with regulations adopted by the commissioner for
12 small procurements.

13 * Sec. 19. AS 36.30.360(a) is amended to read:

14 (a) A written determination of nonresponsibility [RESPONSIBIL-
15 ITY] of a bidder or offeror shall be made by the procurement officer
16 in accordance with regulations adopted by the commissioner. The
17 unreasonable failure of a bidder or offeror to promptly supply infor-
18 mation in connection with an inquiry with respect to responsibility is
19 grounds for a determination of nonresponsibility with respect to the
20 bidder or offeror.

21 * Sec. 20. AS 36.30.362 is amended to read:

22 Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESI-
23 DENT. Except for awards made under AS 36.30.170, if [IF] the procure-
24 ment officer awards a contract to a person who does not reside or
25 maintain a place of business in the state and if the supplies, ser-
26 vices, professional services, or construction that is the subject of
27 the contract could have been obtained from sources in the state, the
28 procurement officer shall issue a written statement explaining the
29 basis of the award. The statement required under this section shall

1 be kept in the contract file.

2 * Sec. 21. AS 36.30.370 is amended to read:

3 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of
4 this section, any type of contract that will promote the best inter-
5 ests of the state may be used, except that the use of a cost-plus-a-
6 percentage-of-cost contract may only be used when permitted by regula-
7 tions adopted by the commissioner, or, for construction contracts, by
8 the commissioner of transportation and public facilities [IS PROHIB-
9 ITED]. A cost-reimbursement contract may be used only when a deter-
10 mination is made in writing by the procurement officer that a cost-
11 reimbursement contract is likely to be less costly to the state than
12 any other type or that it is impracticable to obtain the supplies,
13 services, professional services, or construction required except under
14 a cost-reimbursement contract.

15 * Sec. 22. AS 36.30.575 is repealed and reenacted to read:

16 Sec. 36.30.575. STAY OF AWARD. If a protest is filed within the
17 time set out in AS 36.30.565 and before an award is made, award of the
18 contract shall be stayed until a decision is made on the protest,
19 unless the chief procurement officer, the commissioner, or, for con-
20 struction contracts or procurements for the state equipment fleet, the
21 commissioner of transportation and public facilities, makes a written
22 determination that

23 (1) a reasonable probability exists that the protest will
24 be denied; or

25 (2) delay of award of the contract is contrary to the
26 state's best interests.

27 * Sec. 23. AS 36.30.850(b) is amended to read:

28 (b) This chapter applies to every expenditure of state money
29 [FUNDS, IRRESPECTIVE OF THEIR SOURCES, INCLUDING FEDERAL ASSISTANCE

1 EXCEPT AS OTHERWISE SPECIFIED IN AS 36.30.890,] by the state, acting
2 through an agency, under a contract, except that this chapter does not
3 apply to

4 (1) grants;

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

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

10 (4) contracts for medical doctors and dentists;

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

13 (6) disposals under AS 38.05;

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

16 (8) acquisitions or disposals of property and other con-
17 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
18 091;

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

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

22 (11) agreements with providers of services under AS 44.47.-
23 250; AS 47.07; AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195,
24 and 47.25.310;

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

28 (13) purchases of income-producing assets for the state
29 treasury or a public corporation of the state; [.]

1 (14) operation of the state boarding school established
2 under AS 14.16, if the State Board of Education or the commissioner of
3 education adopts regulations for use by the state boarding school in
4 procurement and contracting;

5 (15) a contract that is a delegation, in whole or in part,
6 of investment powers held by the commissioner of revenue under AS 14.-
7 25.180, AS 14.40.400, AS 14.42.200, 14.42.210, AS 18.56.095, AS 22.-
8 25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or AS 39.35.-
9 080;

10 (16) a contract that is a delegation, in whole or in part,
11 of investment powers of the Board of Trustees of the Alaska Permanent
12 Fund Corporation under AS 37.13; [OR]

13 (17) the purchase of books, book binding services, newspa-
14 pers, periodicals, audio-visual materials, network information ser-
15 vices access, approval plans, professional memberships, archival
16 materials, objects of art, and items for museum or archival acquisi-
17 tion having cultural, historical, or archaeological significance; in
18 this paragraph

19 (A) "approval plans" means book selection services in
20 which current book titles meeting an agency's customized specifi-
21 cations are provided to the agency subject to the right of the
22 agency to return those books that do not meet with the agency's
23 approval;

24 (B) "audio-visual materials" means nonbook prerecorded
25 materials, including records, tapes, slides, transparencies,
26 films, filmstrips, cassettes, videos, compact discs, laser discs,
27 and items that require the use of equipment to render them us-
28 able;

29 (C) "archival materials" means the noncurrent records

1 of an agency that are preserved after appraisal because of their
2 value;

3 (D) "network information services" means a group of
4 resources from which cataloging information, holdings records,
5 inter-library loans, acquisitions information, and other refer-
6 ence resources can be obtained;

7 (18) contracts for the purchase of standardized examinations
8 for licensure under AS 08;

9 (19) disposals of supplies acquired through foreclosure of
10 loans issued under AS 03.10;

11 (20) purchases of curatorial and conservation services to
12 maintain, preserve, and interpret

13 (A) objects of art; and

14 (B) items having cultural, historical, or archaeologi-
15 cal significance to the state;

16 (21) acquisition of confidential seismic survey data neces-
17 sary for pre-sale oil and gas lease analyses under AS 38.05.180;

18 (22) contracts for village public safety officers;

19 (23) expenditures to pay travel expenses of personal care
20 attendants and sign language interpreters needed to accompany develop-
21 mentally disabled members of the Governor's Council for the Handi-
22 capped and Gifted to meetings for which reimbursement of members'
23 expenses is authorized under AS 47.80.060;

24 (24) contracts for home health care and adult residential
25 and foster care services provided under regulations adopted by the
26 Department of Health and Social Services;

27 (25) contracts for supplies or services for research pro-
28 jects funded by money received from the federal government or private
29 grants; or

1 (26) guest speakers or performers for an educational or
2 cultural activity.

3 * Sec. 24. AS 36.30.850(e) is amended to read:

4 (e) AS 36.30.170 applies to all insurance contracts involving
5 state money. In this subsection, "state money" includes [, INCLUDING]
6 state grants and reimbursement to municipalities, school districts,
7 and other entities.

8 * Sec. 25. AS 36.30 is amended by adding a new section to read:

9 Sec. 36.30.855. ALTERNATE PROCUREMENT METHODS. (a) In place of
10 the methods provided by AS 36.30.100 - 36.30.320, an alternate pro-
11 curement method may be used in the following situations, in accordance
12 with regulations adopted by the commissioner:

13 (1) if the commissioner determines in writing that food,
14 clothing, medical supplies, or materials for use in laboratory or
15 medical studies can be purchased otherwise to the best advantage of
16 the state;

17 (2) if rates are fixed by law or ordinance;

18 (3) to purchase products or services manufactured or pro-
19 vided by an employment program;

20 (4) to purchase products or services provided by the cor-
21 rectional industries program established under AS 33.32.

22 (b) An alternate procurement method to the methods provided by
23 AS 36.30.100 - 36.30.320 may be used for purchases of supplies and
24 services to support operations of the division of Alaska state troop-
25 ers or the division of fish and wildlife protection if the procurement
26 officer for the Department of Public Safety makes a written determina-
27 tion that publicity of the purchases would jeopardize the safety of
28 personnel or the success of the operation.

29 * Sec. 26. AS 36.30 is amended by adding a new section to read:

added

Effectively increases time by limiting to work days

1
2 Sec. 36.30.960. COMPUTATION OF TIME. The time in which an act
3 under this chapter is required to be done is computed by excluding the
4 first day and including the last.

5 * Sec. 27. AS 36.30.990 is amended by adding new paragraphs to read:

6 (17) "day" or "working day" means a state working day;

7 (18) "employment program" means a nonprofit program to
8 increase employment opportunities for individuals with physical or
9 mental disabilities that constitute substantial handicaps to employ-

10 (19) "state money" means any money appropriated to an agency
11 or spent by an agency irrespective of its source, including federal
12 assistance except as otherwise specified in AS 36.30.890, but does not
13 include money held in trust by an agency for a person.

14 * Sec. 28. AS 36.30.100(b)(1), 36.30.100(b)(2), 36.30.100(b)(3), 36.-
15 30.100(b)(4), 36.30.100(c), 36.30.540(4), 36.30.540(5), 36.30.605, and
16 AS 44.47.250(c) are repealed.

I. provided by Bob Link, DOA 3-17-89

Competitive Procurements less than \$10,000
Items on list ... 194

Department Tracking Number	Contractor Vendor *****	Dollar Amount *****	Date of Award *****	Description *****	IN *
1 -0-	JEFFUS & WILLIAMS CO INC	\$2,512.00	05/11/88	NEW TELEPHONE SYSTEM PURCHASE AND INSTALLATION	Y
1 77659	The Computer Center	\$1,255.00	05/23/88	Computer Hardware and Software	y
1 77661	IBM	\$3,001.00	05/23/88	Computer Software.	y
1 77662	Paper Trail	\$447.00	05/23/88	Computer Peripherals	y
1 77901	Club America Technologies , Inc.	\$213.00	08/17/88	Computer Modem Everex Evercom 24E.	n
2 0201111988	UNITEE CONSTRUCTION INC	\$9,203.00	03/04/88	MICROWAVE TOWERS	Y
2 BID51129	Ak Janitoria I	\$9,295.80	02/16/88	Janitorial Services - Fbks Yth FacI	y
2 BID51130	BERT'S ENTERPRI	\$9,200.44	01/04/88	Janitorial Service, 5800 SF, Anch.	y
2 BID51158	Royal Printing	\$6,560.00	02/22/88	Contract for Printing F&G Booklet	y
2 BID51168	Van Waters & Rogers	\$6,556.56	03/15/88	Can Liners	y
2 BID51177	Color Art Print	\$9,471.55	03/22/88	Governor's Letterhead Stationery	y
2 BID51178	Ak Biomedica I Service	\$9,155.54	03/09/88	X Ray Film and Related Supplies	y
2 BID51195	ASETS	10,000.00	02/11/88	Print Establishing a Business in Ak	y
2 BID12189	MICROAGE, AND COMPUTER CENTER	\$5,395.00	07/08/88	COMPUTER SOFTWARE/FIR MWARE, JUNEAU.	Y
2 BID51210	Brodie/Dohrm an	\$8,901.88	04/25/88	Transport Cart	y
2 BID51217	Employment Trai	\$9,551.00	03/14/88	Print Catalog	y
2 BID51233	TEAMWORKS	\$8,550.00	05/09/88	JANITORIAL FOR EKLUTNA LAKE	y

2	BID51237	Refrigeratio n & Food Equipment	\$5,863.00	05/03/88	Pressure Steamer, Kitchen Equip.	y
2	BID51260	A T Publishing	\$3,375.00	07/05/88	Print Maps	y
2	BID51262	Sitka Pharmacy	\$9,942.48	07/14/88	Vidio Camera and acces.	y
2	BID51264	KIEIN-Northl igh	\$7,826.00	06/08/88	Matting, Framing & Mounting, Pho to's	y
2	BID51276	VARIOUS	\$7,168.00	06/27/88	Payroll Warrants	y
2	BID51280	A-1 CESSPOOL	\$5,250.00	09/23/88	SEPTIC TANK PUMPING (PALMER CORR)	y
2	BID51304	AK GENERAL ALARM	\$6,603.60	08/12/88	VIDEO CAMERAS & MONITORS	y
2	BID51309	Van Cleve Print	\$9,520.00	08/04/88	Warrant Envelops	y
2	BID8140	LYNN CANAL CORPORATION	\$8,086.00	03/11/88	LEASE DNR IN HAINES	Y
2	23352	YOUNGS CLEANING SERVICE	\$9,996.00	12/09/88	JANITORIAL SERVICES	Y
2	BID51326	Automated Laundry	\$7,095.00	10/12/88	Apparel Press and compressor	y
2	BID51329	COLUMBIA RESTAURANT & BAR	\$7,635.00	11/04/88	WALK IN FREEZER-	y
2	BID51336	Nat Computer Pr	\$2,040.00	10/10/88	Printing of Loan Repayment Books	y
2	BID12084	American Canvas Co., Inc.	\$6,000.00	06/14/88	Visual indent. neck collars for caribou , deer, and moose	n
2	BID11934	VARIOUS	\$6,977.00	04/06/88	MICRO EQUIPMENT	n
2	BID11996	BROADHEAD/GA RET	\$6,810.75	05/05/88	METAL LATHE	n
2	BID12017	LUMMI FISHERY	\$4,960.00	04/01/88	NET MODIFICATION	n
2	BID12020	THETA SCIENTIFI	\$4,960.00	05/23/88	MICRO SOFTWARE	n
2	BID12028	J.T. WILLIS	\$5,805.00	04/27/88	NETPENS, GILL NETS&BEACHSE INES DFG	n
2	BID12052	VARIOUS	\$608.40	04/22/88	METAL	n
2	BID12056	FUNCO	\$4,545.00	04/25/88	comb. basketball/v olleyball wrest.	n
2	BID12064	MICROAGE	\$1,424.90	06/30/88	MICRO HARDWARE	n

2	BID12105	J & S SERVICE	\$6,698.00	07/07/88	LAB EQUIPMENT	n
2	BID12123	MICROAGE COMP	\$207.76	06/08/88	MICRO STUFF	n
2	BID12153	800 SOFTWARE	\$6,204.00	06/22/88	Micro Software	n
2	BID12163	ADF SYSTEMS, IN	\$5,390.00	09/23/88	AWARD REVISION	n
2	BID12184	SYSTEM INDUST.	\$7,250.00	07/25/88	COMPUTER HARDWARE/SOF TWARE	n
2	BID12288	J. L. EAGAR INC	\$6,548.00	09/26/88	FIBERGLASS TROUGHES	n
2	BID51169	A T Publishing	\$6,262.00	02/29/88	Alaska Trapping Regulations #29	Y
2	BID51224	VARIOUS	\$2,040.24	05/25/88	GROC. KETCH.- JULY	n
2	BID51226	VARIOUS	\$8,552.31	05/25/88	GROC. VOC TEC SEWARD - JULY	n
2	BID51255	OLYMPIC GRAPHIC	\$6,765.50	06/14/88	PRINT MAP ATLAS (HABITAT DIV.)	y
2	BID51281	Photo & Sound	\$7,997.00	07/06/88	Purchase Video/RGB Projector	Y
2	BID51297	VARIOUS	\$4,586.15	08/30/88	GROCERIES - SEWARD SKILL CTR. - OCT	n
2	BID51355	VARIOUS	\$1,480.55	12/07/88	GROC. - JAN. CONSUMPTION - WILDWOOD	n
2	6503988	A T PUBLISHING	\$4,000.00	02/19/88	EMS NEWSLETTER RENEW CA 23534 (AT PUBLISHING)	Y
2	2519188	CAPITAL CITY CLEANERS	\$8,070.00	06/15/88	LAUNDRY SERVICE FOR THE FERRY LACONTE	Y
2	2525388	ALTERNATIVE FENCE CO	\$5,000.00	04/08/88	RENEW CA 25967 ALTERNATIVE FENCE CO	y
2	5J1589	DUDS &SUDS	\$9,000.00	08/19/88	Renew CA-23484/Lau ndry Service	Y
2	5SC01189	ECONOMIC LAB	\$8,317.56	10/17/88	Renew CA-23515/Eco nomic Laboratory	Y
2	120088789	DUDS & SUDS	\$9,334.52	06/03/88	Renew CA-23576/Lau ndry & Dry Clean	Y
2	1201689	MARY RUDOLPH	\$3,000.00	11/02/88	JANITORIAL Lease #1999	Y

2	BID50833	ALPAC CORP	\$5,000.00	07/22/88	Renew CA-23480 - Soda Dispenser	Y
2	BID51254	Asplund Supply	\$5,152.32	05/12/88	Laundry Detergents FOR navil mountain corrrections	y
2	BID51159	Burkhardt Dental	\$3,912.65	03/09/88	Dental supplies & Equipment FOR correctional centers	y
2	BID11991	AURORA N. FUEL	\$9,185.00	03/22/88	drums of fuel in Dutch Harbor	y
2	BID11961	GREER TANK INC.	\$7,178.00	02/24/88	fabrication of 8000 gal Tank	y
2	2018388	ANCHORAGE CRYSLER	\$9,912.00	04/13/88	LEASE VAN	Y
2	BID11898	M & M JANITORIAL	\$5,422.00	01/05/88	CA26439 JANITORIAL CONTRACT -DOUGLAS LAB	Y
2	BID12360	Space Unlimited	\$1,400.00	12/02/88	Storage lease	y
2	BID12414	RUSSELL CHUN	\$4,280.40	12/13/88	ADDIT.SPACE DOL KETCHIKAN	y
2	BID51052	Fast Print	\$6,585.00	06/02/88	multipart carbonless forms	y
2	BID51121	Ridgway's Inc.	\$6,575.00	01/07/88	Print General Safety Code Books	y
2	BID12162	FURBISH CHEMICA	\$6,225.00	07/27/88	CARPET MAINTENANCE EQUIPMENT	y
2	BID12172	RENT A CAN	\$9,954.00	07/19/88	PORTABLE toilets	y
2	BID12189	VARIOUS	\$4,928.00	07/25/88	LOTUS 1-2-3 NETWORK SOFTWARE	y
2	BID12213	Galena Construc	\$750.00	05/20/88	L. 1072 extend Mo. to Mo.	y
2	BID12222	COOKS WAREHOUSI	\$8,530.00	07/26/88	SUBMERISBLE PUMPS	y
2	BID12232	VARIOUS	\$970.00	07/07/88	GS&S MICRO UPGRADE	y
2	BID12236	3M ALASKA BRANC	\$9,407.92	09/27/88	ROTARY DOCUMENT CAMERA	y
2	BID51209	A T Publishing	\$6,875.00	04/01/88	Print Alaska Mineral Industry 1987	y

2	BID11982	NYLON NET	\$7,000.00	03/07/88	Hoop Nets	y
2	BID12004	GLACIER REFRIG.	\$6,024.00	04/25/88	REFRIG.REPAI RS/SERV	y
2	BID12035	VARIOUS	\$3,499.40	05/20/88	FROB renovation and move ITB	y
2	BID12036	ALASTEK	\$9,806.80	04/29/88	IBM COPIER MAINTENANCE	y
2	BID12043	DURAN ENT.	\$5,244.64	04/26/88	BOILER/BURNE R	y
2	BID12047	Wright Services	\$7,800.00	05/10/88	CA 20530, Archives & Records	y
2	BID12049	VARIOUS	\$1,471.50	06/01/88	REBID GS&S NETWORK	y
2	BID12052	VARIOUS	\$7,271.85	04/22/88	METAL	y
2	BID12054	BROWN & SONS	\$5,753.70	05/23/88	TEN 20 TON JACKS	y
2	BID12055	STERO NORTH	\$4,780.00	05/20/88	FOUR VIDEO CAMCORDERS	y
2	BID12064	VARIOUS	\$9,784.09	06/27/88	IBM Desktop Publishing - sole sourc	y
2	BID12079	CHRISITNA'S	\$3,000.00	04/01/88	janitorial services, temp. P/S bldg	y
2	BID12080	The Office Pl.	\$5,981.25	06/17/88	Industrial Shredders	y
2	BID12081	Capital Office	\$790.00	04/06/88	Inventory of systems furniture Juno	y
2	BID12085	VARIOUS	\$5,808.00	05/20/88	software-Ras pb. Road, Anchorage, Ak	y
2	BID12091	VARIOUS	\$7,916.36	06/06/88	software-bra nd specific and other	y
2	BID12092	VARIOUS	\$7,858.00	06/21/88	Lease 1990 convert space to Lab	y
2	BID12098	Arctic Office P	\$4,350.00	06/03/88	purchase-te lecopiers-3	y
2	BID12105	J & S SERVICE	\$6,195.00	07/07/88	ASPHALT CONTENT GAUGE	y
2	BID12107	C & R Window Cl	\$9,250.00	06/14/88	window washing contract 5 bldgs.	y
2	BID12109	HOWSER'S SUPRMK	\$9,120.00	04/27/88	Negotiate Mo. to Mo. L. 0889 for dept 12	y
2	BID12132	LEWIS & LEWIS	\$9,000.00	06/08/88	PLOTTER	y
2	BID12147	MICROAGE COMPUTERS	\$6,200.00	08/01/88	EXPANDED MEMORY ADAPTOR	y

2	BID12161	Thibodeau	\$9,671.00	07/12/88	Craig-Lease- Bid	y
2	BID12271	REFRIGERATIO N &	\$8,742.00	09/27/88	REFUSE COMPACTOR	y
2	BID12285	TRANSALASKA	\$5,550.00	10/10/88	SLAVE TERMINALS FOR STATE MAINFRAME	y
2	BID12290	C & C Custodia!	\$7,305.00	10/17/88	janitorial services	y
2	BID12298	NATIONAL COMPUT	\$624.00	11/04/88	NON CONTRACT PERIPHERALS PS2'S	y
2	BID12306	Arctic Couriers	\$7,740.00	10/17/88	courier services in the Fairbanks	y
2	BID12310	Transalaska D.S	\$6,893.00	12/13/88	Telex Display Terminal	y
2	BID12320	Transalaska D.S	\$9,264.56	10/24/88	controller 32 Port	y
2	BID12239	CROWLEY ENVIRO	\$6,338.00	09/23/88	OIL POLLUTION CLEANUP EQUIP.	y
2	BID12241	Audio Video Inc	\$5,825.00	08/24/88	metal detection system/weapo	y
2	BID12240	AK DIVING SERVC	\$5,892.50	10/11/88	AIR COMPRESSOR	y
2	BID12252	ACTION ENTERPRISES	\$7,751.70	09/02/88	NOVELL SOFTWARE	N
2	BID12257	PACIFIC RIM TCH	\$6,993.00	09/26/88	DIGITIZED MAPPING	y
2	BID12259	AK BUILDERS CAC	\$5,429.98	09/13/88	ROOFING MATERIAL	y
2	BID12262	TRANSALASKA	\$8,747.00	09/13/88	CONTROLLER	y
2	BID12268	ACTION ENTERPRISES	\$3,317.52	09/27/88	3/4" VIDEOCASSETT E RECORDER	N
2	BID12270	TAKU SMOKERIES	\$9,600.00	12/13/88	REBID CA25968 FREEZER REQUIREMENTS	y
2	BID12338	Computer Centr.	\$5,995.00	11/14/88	CRT typewriter	y
2	BID12341	The Office Pla.	\$8,196.86	10/28/88	library shelving	y
2	BID12350	C&C CUSTODIAL	\$1,850.00	09/28/88	janitorial temporary serv. Tronpers	y
2	BID51310	AAA Moving & Storage	\$9,688.00	09/29/88	DFYS Move	y
2	BID51312	Van Waters & Rogers	\$6,083.40	08/12/88	Lignosite	y

2	BID12328	World Wide Move	\$403.75	09/08/88	Move 30 l.f of partition s to FROB	y
2	BID11955	Circle Plumbing	\$5,630.00	02/23/88	Boiler repair @ Trail Lakes Hatchery	y
2	BID12354	REFRIGeratio n & FOOD EQ	\$5,970.00	12/09/88	COOLER UNIT COUNTER	y
2	BID51377	JAMES T STANLEY	\$2,928.00	11/10/88	Lease, DEC Hazardous Waste Room	y
4	81963	A T PUBLISHING	\$8,437.50	06/16/88	PRINTING OF PERMANENT FUND ANNUAL REPORTS FOR THE AK PERMANENT FUND CORPORATION.	Y
4	po 81968	DATA PROCESSING SUPPLIES OF ALASKA	\$6,655.00	07/22/88	PRINT AND DELIVER SPECIAL WARRANT ENVELOPES FOR THE ALASA PERMANENT FUND.	Y
5	05J2588	IUNIO	\$4,545.00	04/25/88	CUSTODIAL SERVICES	Y
5	880252	ANN FITZGIBRONS	\$6,048.00	01/15/88	CURATORIAL ASSISTANCE FOR THE ART BANK LOAN PROGRAM	Y
5	05VR2188	COMTEL INC	\$1,515.00	02/25/88	TELEPHONE SYSTEM FOR TACOMA VOCATIONAL REHABILITATI ON	N
5	-0-	JEFFUS & WILLIAMS CO INC	\$3,942.00	07/11/88	NEW TELEPHONE SYSTEM PURCHASE AND INSTALLATION	Y
6	12035	DENALI TRANSPORTATI ON CORP	\$1,939.00	06/06/88	MOVING SERVICES FOR FROB	Y
6	06910	NORCOM	\$7,916.00	06/06/88	COMPUTER STUFF	N
7	CA12035	DENALI TRANSPORTATI ON CORP	\$2,909.00	06/06/88	MOVING SERVICES FOR FROB	Y
7	07882217	THE OFFICE PLACE	\$5,340.00	04/06/88	LEASE COPIER RICOH	Y
7	07882632	MOORE BUSINESS FORMS	\$9,797.00	05/23/88	FORM 07-1004 EMPLOYER'S QUARTERLY REPORT.	Y

7	0701272A	SAFETY & SUPPLY CO	\$8,217.75	09/16/88	SAFETY EQUIPMENT DOL ANCHORAGE BOTH RENTAL/REGIS TRATION FEES NORTHWEST SPORTSHOW IN MINNEAPOL	15	Y
7	10762	B.M.J. ENTERPRISES	\$4,338.00	08/09/88	JANITORIAL SERVICES IN KODIAK.		Y
8	CA23702	NATIONAL COMPUTER PRINT INC	\$2,040.00	10/10/88	PRINT , ASSEMBLE AND DISTRIBUTE LOAN COUPON BOOKS		N
8	-0-	AURORATRONIC S CO INC	\$5,229.66	06/13/88	NEW TELEPHONE SYSTEM PURCHASE AND INSTALLATION		Y
8	CA23381	E & S DIVERSIFIED SERVICES INC	\$6,410.00	02/28/88	JANITORIAL SERVICES FOR OIL & GAS COMMISSION IN ANCHORAGE	10	Y
880312		Stutzmann Engineering Assco., Inc.	\$3,800.00	06/29/88	survey trust lands		Y
10	1009605288	OMNI DISTRIBUTERS	\$8,050.00	03/23/88	CHAINSAWS		N
11	880273	REEVE CONSULTING ENGINEERS	\$8,000.00	02/25/88	EVLAUATE EXISTING ELECTRICAL SYSTEM AT BIG LAKE HATCHERY		Y
11	IHP880041	DESIGN 2	\$5,000.00	04/15/88	ESTABLISH PROCEDURE FOR ARCHITECTUAL BARRIER REGULATIONS		Y
11	IHP88050	HORAN, CORAK & CO	\$9,500.00	06/22/88	APPRAISAL PETERSON CREEK 2		Y
11	77638	James T. Willis	\$5,005.00	04/26/88	net pens.		n
11	77801	Craig Taylor	\$8,530.00	07/25/88	Flygt Gumbersible pumps		Y
11	11554A87	TRANSALASKA DATA SYSTEMS	\$2,038.00	03/22/88	COMPUTER HARDWARE		Y
11	IHP88043A	APPRAISERS CO	\$5,395.00	07/27/88	FIELDING LAKE LAND APPRAISAL		Y

11	1114088	NELSON MARINE & EQUIPMENT	\$8,207.00	04/14/88	BOAT TO BETHEL	Y
11	IHP89032	AUDREY MAGOUN	\$2,000.00	09/27/88	DEV. OF MARTEN AGING TECH.	Y 11
1126988	NYLON NET		\$7,000.00	01/18/88	FABRICATION N OF ALUMINUM START TANKS	
11	77654	Swanson's Marine	\$8,600.00	05/20/88	18ft. boat	y
11	1152388	NELSON MARINE & EQUIPMENT	\$7,646.00	04/14/88	BOAT	Y
12	124379888	GTE ALASKA INC	\$7,399.00	02/23/88	TELEPHON SYSTEM FOR BETHEL	Y
12	DMV188	JOHNSON & HOLEN	\$5,500.00	04/13/88	HEARING OFFICER TRAINING	N
12	12J10188	JEFFUS & WILLIAMS	\$3,500.00	03/01/88	TELEPHONE MAINTENANCE	Y
12	130805	GOLDEN NORTH VAN LINES	\$6,562.00	09/05/88	MOVE HOUSEHOLD GOODS BRIAN LESTER TRANSFER FROM SITKA TO COOPER LANDING	Y
12	DO 130799	MAYFLOWER WORLD WIDE MOVERS	\$9,107.00	08/15/88	MOVING - HOUSEHOLD GOODS DILLINGHAM TO FAIRBANKS TRANSFER	Y
12	L1473	TRI-VALLEY VOLUNTEER FIRE DEPARTMENT	\$5,825.00	03/29/88	TROOPER'S OFFICE IN HEALY	Y
12	DO 130797	MAYFLOWER WORLD WIDE MOVERS	\$7,866.00	08/29/88	MOVING HOUSEHOLD GOODS HAINES TO SITKA TRANSFER	Y
12	130866	MAYFLOWER WORLD WIDE MOVERS	\$5,448.00	10/20/88	HOUSEHOLD GOODS TRANSFER AST FROM JUNEAU TO TALKEETNA	Y
12	DO 130808	MAYFLOWER WORLD WIDE MOVERS	\$5,900.00	09/08/88	MOVING HOUSEHOLD GOODS FAIRBANKS TO YAKUTAT TRANSFER	Y

12 DO 130809	MAYFLOWER WORLD WIDE MOVERS	\$8,638.00	09/12/88	MOVING HOUSEHOLD GOODS CORDOVA TO SITKA TRANSFER	Y
12 D000996262	MOVER'S WORLD	\$6,895.00	03/01/88	HOUSEHOLD GOODS MOVE FISH AND WILDLIFE PROTECTION TROOPER ANCHORAGE TO KOTZEBUE.	Y
12 PO 79396	IMAGE CONTROL SYSTEMS	\$7,275.00	12/28/88	FILM PROCESSOR	Y
12 CA21621	NORTHWAY NATIVES INC	\$5,160.00	03/29/88	STATE TROOPER OFFICE LEASE IN NORTHWAY	Y
12 DO 130760	MAYFLOWER WORLD WIDE MOVERS	\$6,350.00	08/19/88	MOVING HOUSEHOLD GOODS KETCHIKAN TO ANCHORAGE TRANSFER	Y
12 DO 130747	GOLDEN NORTH VAN LINES	\$7,875.00	08/15/88	MOVING HOUSEHOLD GOODS ANIAK TO DILLINGHAM TRANSFER	Y
12 1202888	MOUNTAIN VIEW COMMUNITY COUNCIL	\$2,000.00	04/14/88	LEASE IN ANCHORAGE	Y
12 D0996228	GOLDEN NORTH	\$6,475.00	02/10/88	HOUSEHOLD MOVE	Y
12 DO 130762	AK TERMINAL INC	\$7,075.00	08/22/88	MOVING HOUSEHOLD GOODS FAIRBANKS TO BETHEL TRANSFER	Y
12 0996274	GOLDEN NORTH VAN LINES	\$6,250.00	03/03/88	HOUSEHOLD GOODS MOVE ALASKA STATE TROOPER STEVE STANTON ANCHORAGE TO NOME.	Y
12 0996240	WORLD WIDE MOVERS	\$8,115.00	02/29/88	HOUSEHOLD GOODS MOVE KOTZEBUE TO KETCHIKAN; STATE TROOPER.	Y

12	0996236	QUALITY MOVING AND STORAGE	\$9,900.00	02/12/88	HOUSEHOLD GOODS MOVE NOME TO KETCHIKAN AST.	Y
12	0996278	WORLD WIDE MOVERS	\$6,786.00	02/19/88	HOUSEHOLD GOODS MOVE ALASKA STATE TROOPER JUNEAU TO KOTZEBUE.	Y
18	12092	VWR SCIENTIFIC INC.	\$3,929.00	06/21/88	PURCHASE OF LAB AND EQUIPMENT.	Y
20	880187	FAMILY MEDICAL CLINIC	\$5,580.00	04/08/88	TRAINING FOR NURSES AT SPRING CREEK	Y
20	2020888	EXECUTONE OF ALASKA	\$1,417.00	04/27/88	BARROW PHONE INSTALLATION	Y
20	2008689	ANCH COLD STORAGE CO.	\$8,767.00	09/22/88	PROVIDE/INST MULTIPLE FLAVOR SODA DISPENSOR.	Y
25	2530688	AURORATRONIC S	\$1,505.00	04/12/88	TELEPHONE SYSTEM FOR DOT	N
25	2513088	WIEN & ASSOCIATES	\$9,452.00	03/22/88	COMPUTER HARDWARE	Y
25	CA23728	SNOW WHITE AMERICAN LINES	10,000.00	11/09/88	COONTRAT TO PROVIDE LAUNDRY SERVICE FOR THE MV TRESTUMEND	Y
25	2517888	JEFFUS & WILLIAMS COMPANY	\$3,108.00	02/24/88	MAINTENANCE FOR COMPUTER SYSTEM	Y
25	P081776	ELLE	\$8,531.00	03/14/88	BATH TOWELS FOR MARINE HIGHWAYS	N
25	77870	COMPUTER CENTER	\$596.00	11/08/88	DISPLAY WRITE	Y
25	77916	NATIONAL COMPUTER SPECIALITES	\$770.00	11/08/88	D BASE II PLUS	N
25	BID119378	AK RURAL INVESTMENTS	\$9,180.00	02/15/88	LEASE	Y
25	2526388	AK POWER & TELEPHONE	\$5,539.00	04/27/88	TOK PHONE INSTALLATION	Y
25	77869	JUNEAU ELECTRONICS	\$624.00	11/08/88	LOTUS	Y
25	77904	Bergh Inc.	\$8,803.00	08/31/88	Wheel Chair Lifts	n

City/State

B

Audit questions governor's contracts

By **ROBERT LAURIE**
Times Juneau Bureau

JUNEAU — A legislative audit questions whether having the governor's "personal trust and confidence" is adequate justification for sole-source contracts issued by the governor's office.

The newly-released audit of state contracts issued to out-of-state firms in the first nine months of 1988 uncovered a number of flaws in the state's new procurement code and offered recommendations to remedy the problems.

"I think they have made some progress, but there's still work to be done," said Sen. Jan Falks, who requested the evaluation of the code last fall.

The Anchorage Republican pushed adoption of the procurement code in the

wake of contracting abuses revealed in the 1985 Senate impeachment hearings of former Gov. Bill Sheffield. The Senate decided that there was not enough proof to level formal charges against Sheffield.

After it was adopted by the legislature, the code went into effect in 1988.

Falks says the audit, accepted earlier this month by the Legislative Budget and Audit Committee, shows that "there's too many contracts going to out-of-staters under the justification of 'well, we like this guy better' or 'he has the governor's trust' or 'that's not part of the procurement code.'" So even though I feel state government is doing a little better, they still have a tendency to go Outside for that special person under sole-source more

See Audit, page B-5

State procurement means mired in confusion

By **ROBERT LAURIE**
Times Juneau Bureau

JUNEAU — The state's contracting of foreign nationals to staff its offices in Tokyo and Seoul runs afoul of the state's procurement code, according to the legislative audit. It says confusion over which procurement method should be used needs to be cleared up.

The state's chief procurement officer says the services performed by the six individuals do not constitute a professional service, instead their du-

ties appear to create an employer-employee relationship. The governor's office, on the other hand, says the opposite. It maintains that the state's computerized payroll system cannot handle the differences in foreign employee benefits and taxes.

Either way, the audit concludes, "the contracts were improperly awarded."

It recommends that the Department of Administration take the lead to seek legal clarification of statutes governing the hiring of foreign na-

tionals. If current law cannot be practiced, amendments should be sought to make it work.

"The continuity of services provided by the foreign nationals is essential for the expansion of Alaska's foreign markets. Services cannot be expected to cease due to ambiguity in the procurement laws," the audit reads.

Department of Administration Commissioner John Andrews agrees in a written reply to the audit. He

See Procurement, page B-5

... THE ANCHORAGE TIMES B-5

Audit: 'Personal trust and confidence'

Continued from page B-1

than I think they can adequately justify."

Of 117 state contracts issued to out-of-state companies in the first nine months of 1988, competitive bids were used to find 43 contractors, while 48 contracts skipped the competitive bid process and were awarded to sole-source contractors.

According to the audit, the most frequently cited reason for awarding sole-source contracts was the "unequaled expertise" of the selected firm, or that no other source could perform the required services.

Of 11 professional service contracts issued by the governor's office, nine were awarded sole-source. Three of the contracts were awarded to advisers on the basis of the governor's personal "trust and confidence."

Richard Walker, former ambassador to South Korea, received two contracts worth up to \$130,000 for his work in opening doors for the state in Taiwan and South Korea.

"He is beyond repute," said David Ramseur, spokesman for Gov. Steve Cowper.

Bob Poe, Cowper's director of the office of International Trade, said Walker's contracts covered two years of work. He says the state plans to extend the contracts for another two years.

Poe says Walker was instrumental in gaining Cowper's introduction to South Korean President Noh Tae Woo, "something no other governor has done."

Wall Street oil analyst Kurt Wulff also won the governor's personal "trust and confidence" — even before Cowper met him. Wulff was awarded a \$35,000 contract to advise the state on oil in-

dustry issues.

"That doesn't necessarily imply the governor knew him beforehand," Ramseur said of the personal trust justification. He says Cowper read of Wulff in a magazine and was impressed with his independent appraisal of the oil industry.

A June 1987 article in Business Week says Wulff's "brutally frank breakup appraisals have helped set the stage for most of the big oil takeovers in recent years."

"We question whether the Governor's personal trust and confidence substantiates clear and convincing evidence that only one source exists," the audit concludes.

Falks says as far as she's concerned, the justification doesn't hold water.

"That's not part of the law. That is not why we had the pro-

urement code. It was to avoid cronyism. It was to avoid the political hire," said Falks.

Asked if she thought there was any cronyism in the governor's hiring, Falks replied "according to the audit, there appears to have been, even though they're doing better. My overall point has got to be, they appear to have done better since the last time we looked at this, but there's still that justification and I don't think that justification is good enough. So that would lead one to believe that there's some cronyism going on here but it's hard to prove. I can't prove it."

"Kurt Wulff and (Richard) Walker are eminently qualified for those contracts," Ramseur said. "Sen. Falks, the queen of questionable state spending practices, is barking up the wrong tree."

SPECIAL REPORT ON STATEWIDE PROFESSIONAL SERVICE
CONTRACTS AWARDED TO OUT-OF-STATE FIRMS

January 1, 1988 - September 30, 1988

Audit Control Number

02-4323-89-S

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

January 3, 1989

Members of the Legislative Budget
and Audit Committee:

In accordance with a Legislative Budget and Audit Committee special request and the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A SPECIAL REPORT ON STATEWIDE PROFESSIONAL SERVICE
CONTRACTS AWARDED TO OUT-OF-STATE FIRMS

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Audit Control Number

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As stated in the Report Objectives, Scope, and Methodology Section, the audit primarily involved a review of professional services contracts awarded to out-of-state firms. In accordance with the request from the Budget and Audit Committee, the contracts were reviewed to determine agency justification for awarding the contracts to non-Alaskan firms and agency compliance with applicable laws and regulations. The audit was conducted in accordance with generally accepted governmental performance auditing standards.



Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit

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REPORT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with a Legislative Budget and Audit Committee request and the provisions of Title 24 of the Alaska Statutes, a review was conducted of professional service contracts awarded to out-of-state firms. The objectives, scope, and methodology of our review follows.

Objectives

The objectives of our review were to:

1. Identify the total number of professional service contracts over \$5,000 awarded sole source and the justification given by the agency for awarding the contract.
2. Identify the total number of professional service contracts over \$5,000 awarded by competitive sealed proposal and justification for awarding the contract.
3. Evaluate agency compliance with applicable laws and regulations.
4. Identify protests by other bidders and categorize reasons for the protests.

Scope and Methodology

The scope of our review includes all out-of-state professional service contracts in excess of \$5,000 which were initially awarded or amended between January 1, 1988 and September 30, 1988. Contract information was requested from all executive branch agencies, Legislative Affairs, the University of Alaska, the Alaska Railroad Corporation, and the Alaska State Building Authority. Contract information for the Alaska Railroad and the Alaska State Building Authority were obtained from the Department of Commerce and Economic Development.

Contracts exempt from procurement regulations were excluded from our review. Exclusions include contracts awarded for medical services, grants, and expert witness costs. Also excluded from our review were contract amendments awarded by the Department of Law for ongoing legal services. Section 8154.1 of the administrative manual permits contract amendments for legal services which will enable counsel to continue to advise or represent the State in specific legal proceedings.

For each contract identified, agency justification for awarding the contract to an out-of-state firm was determined. Agency procedures used to award initial

contracts were also reviewed to determine compliance with applicable laws and regulations. In conjunction with this review any associated appeals filed in protest against contract awards were identified.

ORGANIZATION AND FUNCTION

The State Procurement Code, Alaska Statute 36.30, governs the procurement procedures used by state agencies. The impetus of the procurement code was to establish consistent procedures for all state agencies. To accomplish this the authority regulating the procurement practices of the State has been delegated as follows:

Executive branch agencies

AS 36.30.005 transfers all rights, powers, duties, and authority relating to the procurement of supplies, services, and professional services to the commissioner of administration and to the chief procurement officer (CPO). The commissioner of transportation and public facilities has been transferred authority relating to the procurement of construction and procurement of equipment or services for the state equipment fleet.

The CPO is appointed by the commissioner of administration to a partially exempt position and can only be removed for cause. The concept of a CPO supports uniformity of state procurement and provides for a certain degree of autonomy for ensuring that the State's best interests are being met.

The commissioner of administration may delegate procurement authority for the executive branch, for other than construction or the State's equipment fleet, to other departments after making a determination that the department is capable of implementing the delegated authority. Delegation does not include the authority to enter into contracts under alternative procurement methods without prior approval. Alternative procurement methods include sole source, limited competition, and emergency purchases.

University of Alaska

The Board of Regents have been transferred all rights, powers, duties, and authority relating to procurement for the University. The Board must adopt procurement regulations that are substantially equivalent to the regulations adopted by the commissioner of administration.

Alaska Railroad Corporation and the Alaska State Building Authority

The board of directors of the Alaska Railroad Corporation and the Alaska State Building Authority must adopt procedures to govern procurement by the corporation. The procedures must be substantially equivalent to the procedures and regulations prescribed in AS 36.30.

Legislature

The Legislative Council is required to adopt procedures to govern the procurement by the legislative branch. The procedures must be based on the competitive principles consistent with AS 36.30 and must be adapted to the special needs of the legislative branch as determined by the Legislative Council.

AUDITOR'S COMMENTS

Alaska Statute 36.30, effective January 1, 1988, provides for laws and regulations governing the procurement of goods, services, and professional services by state agencies. State agencies can procure professional services through the following five procurement methods:

1. Competitive Sealed Proposals - Required for all professional service contracts over \$25,000.
2. Small Purchase - A contract for professional services that does not exceed \$25,000. Small purchases need not be made under competitive sealed proposals but made with competition that is practicable under the circumstances.
3. Sole Source - Sole source procurements must be accompanied by clear and convincing evidence that only one source exists or an explanation that no other source is acceptable to fulfill the required service. Prior approval must be obtained from the CPO.
4. Emergency Procurement - There are two types of emergency procurement. Type A exists when there is a threat to public health, welfare, or safety. Type B is when a situation exists that makes the procurement through competitive sealed proposals impracticable or contrary to public interest. Prior approval must be obtained from the CPO, the commissioner of administration, or the commissioner of transportation and public facilities.
5. Limited Competition - Procurement which is restricted to several potential contractors. The contract amount cannot exceed \$100,000. Prior approval must be obtained from the commissioner of administration or the commissioner of transportation and public facilities depending on the type of service.

The primary objective of our review was to ascertain agency justification for awarding professional service contracts to out-of-state firms. Agency justification was determined through verifying that the out-of-state firm was evaluated the highest under the competitive sealed proposal evaluation process and that proper approvals were obtained when an alternative procurement method was used. The chief procurement officer (CPO) has the exclusive authority for approving sole source determinations. It is the CPO's responsibility to determine that only one source exists and that it is in the State's best interest to award the contract.

A total of 117 professional service contracts were reviewed. The type of procurement method used and the percentage to total contracts is as follows:

<u>Procurement Method</u>	<u># of Contracts</u>	<u>% of Total</u>
Sole Source	48	41.0%
Competitive Sealed Proposal	43	36.5%
Limited Competition	3	2.5%
Emergency	9	8.0%
Small Purchase	14	12.0%
<u>Total</u>	<u>117</u>	<u>100.0%</u>

As indicated 41% of all professional service contracts awarded to out-of-state firms were awarded under the sole source procurement method. The most frequently cited reason for awarding sole source contracts was that the individual and/or firm awarded the contract possessed unequalled expertise, and no other source could perform the required services.

The Office of the Governor awarded 11 professional service contracts of which 9 were awarded sole source. Contracted services include consultants, advisors, and foreign nationals. The CPO approved the award of sole source contracts to the consultants and advisors since the individuals possessed the necessary professional qualifications and have the Governor's personal "trust and confidence." As discussed more fully in Recommendation No. 2, we question whether the Governor's personal trust and confidence substantiates clear and convincing evidence that only one source exists. Additionally as noted in Recommendation No. 1, proper procurement procedures were not adhered to when contracting with the foreign nationals.

Scientific research and consulting services comprised the major types of services procured by the University of Alaska. A total of 23 professional services contracts were awarded of which 15 were awarded sole source. University procurement regulations allow for limited solicitation of goods and services under \$10,000. The majority of sole source contracts awarded by the University are for amounts under the \$10,000 threshold. As discussed in Recommendation 5 and 6 of this report, the University needs to strengthen controls over the procurement of professional services.

Of the 117 contracts awarded 43 were awarded under the competitive sealed proposal method. The out-of-state firms were evaluated the highest in 29 instances and were awarded the contracts. The requirement that an evaluation factor must be included which takes into consideration whether an offeror qualifies as an Alaskan bidder did not become effective until May 1988. The majority of the 29 contracts were awarded prior to the effective date. No Alaskan firm submitted a proposal in 13 of the remaining 14 contracts.

The final contract was awarded to an out-of-state firm because the department wanted to advertise in an outside publication.

The appendix presented at the end of this report summarizes agency justification for awarding the contract to an out-of-state firm; agency justification for limiting solicitation; and type of service performed.

Compliance with procurement laws and regulations by state agencies were reviewed. Procurement regulations dictate the type of procurement method to be used, requirements for releasing request for proposals, standardization of proposal evaluation, application of the Alaska bidder's preference, and contract award. Tests of compliance were limited to these areas. Test results indicate that agencies are materially complying with the procurement regulations. Deviations from the prescribed regulations are noted in the findings and recommendations section of this report.

In conjunction with our compliance review any associated protest filed against a contract award was identified. Three official protests were filed. The basic contention of all three protests is that the contracts should have been awarded to an Alaskan firm. The out-of-state firms were evaluated the highest using the competitive sealed proposal (CSP) evaluation criteria and were awarded the contract. The commissioner of administration reviewed each appeal and rejected the protest based on unsubstantiated evidence.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Department of Administration (DOA) should pursue legal clarification of existing laws regulating contracting with foreign nationals and enforce them or should seek amendments of those laws if deemed unworkable.

The Office of the Governor, Office of International Trade, and the Department of Commerce and Economic Development contract with foreign nationals to work in their Asian offices. Services are procured through the use of professional service contracts. There is confusion and/or differences of opinion as to which procurement method should be used to contract for these staff positions.

The chief procurement officer alleges that the services performed by these individuals do not constitute a professional service and are exempt from the procurement code. He feels that the duties performed by the foreign nationals appear to create an employer/employee relationship. Section 8105 of the administrative manual requires that any employment contract should be reviewed by the Division of Personnel and the Department of Law.

The Office of the Governor contends that services performed do not constitute an employer/employee relationship and consider these individuals as contractors. The rationale for not entering into employment contracts is that filling the office positions through the State's personnel system would be impractical and cumbersome. They also cite that the State's payroll system could not easily accommodate the differences in foreign employee benefits and taxes.

The services were acquired through the sole source procurement method. AS 36.30.300 specifies that a contract may be awarded under sole source only when the CPO determines in writing that there is only one source for the required procurement. Under the assumption that the services were correctly classified as professional the contracts were awarded without prior approval by the CPO. However, if an employee/employer relationship exists then the contracts should have been reviewed by the Department of Law and the Division of Personnel. Under either scenario the contracts were improperly awarded. Independent approval was not obtained.

DOA should take the initiative to seek legal clarification of existing statutes and enforce them. In the event the present laws are not practicable, amendments should be

sought to make the procurement code more workable. The continuity of services provided by the foreign nationals is essential for the expansion of Alaska's foreign markets. Services cannot be expected to cease due to ambiguity in the procurement laws.

Recommendation No. 2

The Department of Administration should seek amendments to the Alaska statutes to clarify sections of the procurement code.

During the course of our review we noted areas that were either unclear or not addressed in the procurement code.

- A. Under the state procurement code, it is permissible to issue sole source contracts if the State's chief procurement officer (CPO) determines in writing that there is only one source for the requested procurement. AS 36.30.300(a) requires such determination must include findings of fact that support by clear and convincing evidence the determination that only one source exists. The authority to make the determination may not be delegated.

DOA has further defined the term, "clear and convincing evidence that only one source exists," for certain professional services contracts entered into by the governor's office. In a December 22, 1987 memorandum DOA has agreed in instances where it is essential that the Governor have the personal trust and confidence in the individual receiving the contract, and there is only one person available who has both the Governor's trust and the necessary professional qualifications, then clear and convincing evidence for sole source contracts exist. The memorandum also points out that, "whether or not another source exists is entirely a matter of his (the Governor) opinion and that a hypothetical future existence of another person in whom the Governor might come to have personal trust and confidence is irrelevant to the facts of the current situation."

Essentially an assumption has been made that the normal process may be flawed in such a way that a competitively awarded contract may result in the State contracting with an individual who is not trustworthy, truthful, or reliable. DOA is also implying that the relationship between the Governor and a potential contractor is so critical and sensitive that only the Governor can make the sole source determination.

We appreciate DOA's efforts of assuring that the chief policymaker of the State has the latitude to hire

advisors in which he has personal confidence. No doubt such an approach regarding extremely sensitive issues could enhance the effectiveness of the Office of the Governor operations.

However, we must take exception to DOA's interpretation of the state procurement code for the following reasons:

** When drafting the statute lawmakers have already made a concerted effort under AS 36.30.850 to exempt professional services that were of a unique and sensitive nature from the procurement code. For example, they exempted flight contracts where specialized flying and piloting skills were required. Nowhere in this section does it acknowledge that because of the sensitivity between the Governor and a contracted advisor, such contracts should be excluded from the code or handled in a specialized manner.

** The latitude DOA has allowed the Governor conflicts with the CPO's duties and responsibilities, which by law cannot be delegated. Since only the Governor can make the determination that he "personally trusts" someone and the department has established this as clear and convincing evidence that justifies award of a sole source contract, essentially the CPO has delegated his responsibilities.

Though we admit that a required contractual uniqueness between the Governor and a contractor may develop, we feel such instances would be rare and best handled through an amendment to the code. To acknowledge such latitude via a blanket memorandum may not only establish an undesirable precedent but also foster potential abuse in an area that is already difficult to administer due to the subjective nature and complexity of evaluating professional qualifications.

- B. As a general rule the procurement of professional services must be obtained through competitive sealed proposals. The use of other procurement methods are alternatives available to state agencies if the use of the competitive process is determined to be impracticable or not in the state's best interest. Sole source procurement can only be used when the CPO determines that there is clear and convincing evidence that only one source exists. The authority to make this determination can only be made by the CPO and cannot be delegated.

During our review several instances were noted where the authority to make the determination had been delegated. Delegation of authority occurred only when the CPO was absent from the office. Delegations were supported by a memorandum which authorized an individual to be the acting CPO. Random delegation was not perceived; however, delegation has occurred. We recognize that the law must be practicable, and no one can expect the CPO to be present at all times. It is unclear whether the delegation is in violation with state statutes. Clarification on what constitutes a delegation should be addressed.

- C. The CPO has been delegated exclusive authority to make sole source procurement determinations. A contract may only be awarded using sole source when there is clear and convincing evidence that only one source exists. The CPO has determined that court-ordered appointments fulfill these requirements. Although the departments may be legally bound by the order other procurement alternatives may exist. Amendments to the law should be enacted addressing court-ordered appointments.

Recommendation No. 3

The Division of General Services and Supply should strengthen controls over procurement reporting.

Alaska Statute 36.30.540 specifies that beginning with December 1, 1989 the Commissioner of Administration shall report to the legislature concerning procurements by state agencies. The procurement code requires that certain types of procurement information must be reported to the Department of Administration, Division of General Services and Supply (GSS). Procurement reporting is required when the purchasing agency use either competitive sealed proposals in excess of \$25,000 or any type of alternative procurement method regardless of dollar amount. Alternative methods include sole source, limited competition, and emergency purchases.

During the course of our review discrepancies were noted between procurement information obtained directly from departmental agencies versus that from GSS' procurement reporting system. Agencies are not reporting all required information. We realize that some confusion would exist when the procurement code was implemented. However, the procurement code has been in effect for approximately eleven months and reporting has not substantially improved. Accurate procurement information is essential for informed management decisions. GSS should implement procedures which will effectively monitor and control procurement reporting.

Recommendation No. 4

The Alaska Railroad Corporation should amend their procurement procedures to include the "Chief Procurement Officer" concept within their purchasing operations.

Under AS 36.30.015(e) the board of directors of the Alaska Railroad Corporation (ARRC) shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the corporation. The procedures must be substantially equivalent (emphasis added) to the procedures prescribed in the state procurement code.

When the Legislature enacted the state code, they recognized the importance of centralizing the authority of procurement, related activities. To assure that competitive and fair principles were utilized, the concept of the "chief procurement officer" (CPO) was adopted. As outlined in AS 36.30.010, the CPO must meet minimum experience requirements, is appointed to a fixed term of office and can only be removed from that position for cause. Such language obviously lends support that this position not only be qualified in public procurement but also have a certain degree of autonomy so that objective and fair procurement decisions can be made.

Further importance of the CPO methodology is recognized especially in the high-risk noncompetitive areas of procurement allowed in the state code. Under sole source procurements, a contract may be awarded only after the CPO has determined in writing that there is only one source, regardless of dollar limit. When emergency procurements are made under AS 36.30.310 and 2 AAC 12.440(b), again the CPO is involved in determining if public interest is being protected. In both cases, state law and regulations emphasize the key role played by the CPO by not allowing the authority to make such determinations to be delegated.

Based upon our review of ARRC procurement regulations and procedures, we have found that the CPO concept has not been adopted. Presently, procurement authority, including alternative procurement determinations, have been delegated to several individuals within the organizational structure. It is our opinion that because the state code has reiterated the importance of the CPO throughout the procurement process, that a purchasing system without such a functional counterpart cannot be "substantially equivalent" as mandated by AS 36.30.015(e).

Though it could be argued that ARRC, through its quasi-governmental status and its for-profit legislative mandate, is unique enough to be exempted from a near identical following of the state code, we feel such an interpretation has little merit for the following reasons:

1. As mentioned above the CPO concept is such an integral part of the state code, that to exclude that facet, would render the comparability highly questionable.
2. Though ARRC is excluded in the definition of an "agency" per AS 36.30.990 as is the Alaska State Building Authority, the latter entity has adopted the CPO concept.
3. The Legislature obviously desired a higher degree of likeness of those procedures adopted by ARRC to the state procurement code, than they required of themselves or the Court System. Under AS 36.30.020-.030 the Legislature and the Court System are required to adopt procedures based on the competitive principles consistent with the state procurement code. Conversely, ARRCs' procedures must be "substantially equivalent."

If management finds that the operations of the railroad would be seriously impeded by the adoption of the CPO scheme, the proper avenue would be to seek legal amendments through the legislative process. Until then, the Board of Directors should adopt, and management should adhere to, regulations that incorporate the CPO concept.

Recommendation No. 5

The University of Alaska should strengthen controls over the procurement of professional services.

Alaska Statute 36.30.005(c) authorizes the procurement of services, supplies, professional services, and construction for the University of Alaska to the Board of Regents. The Board of Regents has adopted regulations governing procurement management and control. A chief procurement officer has been appointed to supervise the procurement needs of the University. In order to facilitate the procurement process purchasing authority has been delegated to specified individuals on the statewide campuses. Authority is limited as to type of procurement and within designated dollar limits.

We performed a limited review on 23 professional services contracts awarded to out-of-state firms. Contracts for professional services which are exempt from procurement code regulations were not reviewed. Acquisition of services on four of the contracts were unauthorized. Individuals, who have not been delegated purchasing authority, are obligating university funds without prior approval. The contracts were later ratified since the vendors performed in good faith and the University received benefit from the services.

Strong internal controls dictate that only those individuals who are authorized to obligate state funds be allowed to do so. Proper and adequate control in the handling of public funds is the responsibility of all state administrators. The University should adhere to adopted procedures to ensure that funds are obligated by only authorized personnel.

Recommendation No. 6

The University of Alaska should adhere to statutes governing sole source procurement.

Alaska Statute 36.30.300 governs the sole source procurement of goods and services. A contract may be awarded using sole source only when the chief procurement officer determines in writing that there is only one source for the required procurement. The written determination must include clear and convincing evidence which support the use of the single source. The authority to make the determination cannot be delegated.

Alaska Statute 36.30.005(c) requires the University to adopt procurement regulations which are substantially equivalent to those adopted by the commissioner of administration. Deputy procurement officers have been authorized to make sole source determinations in accordance with Section 23 AAC 05.245(b) of the University's proposed procurement regulations. Authority is limited to procurements which do not exceed \$10,000. We do not believe that this regulation is equivalent to those adopted by the commissioner of administration. Section 2 AAC 12.410 of the Alaska Administrative Code prohibits delegation.

It is our understanding that legislation is currently being drafted which would allow the delegation of sole source determination for small purchases. Delegation would be limited to supplies and services. Sole source determination for professional services would still require the CPO's approval. We recommend that the delegation of authority be rescinded until the proposed legislation is enacted.

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