

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

9056 SENATE STATE AFFAIRS

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR SHARP

TO: CSSB 275( ), version "C" dated 3/25/96

1 Page 7, following line 2:

2 Insert a new bill section to read:

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

4 Sec. 36.30.175. PROHIBITION AGAINST ASSIGNMENT. A person who  
5 is awarded a contract under AS 36.30.170 and who received an Alaska bidder  
6 preference under AS 36.30.170 or a preference under AS 36.30.170(e) or (f) for the  
7 contract may not assign the contract to another person."

8 Renumber the following bill sections accordingly.

9 Page 17, line 29:

10 Delete "secs. 53 - 55"

11 Insert "secs. 54 - 56"

12 Page 18, line 11:

13 Delete "15, 19, 24 - 25, 27 - 29, 41 - 43, 45, 47(a), and 48 - 51"

14 Insert "16, 20, 25 - 26, 28 - 30, 42 - 44, 46, 48(a), and 49 - 52"

15 Page 18, line 13:

16 Delete "16 - 18, 20 - 23, 26, 30, 31, 33 - 40, 44, and 47(b)"

17 Insert "15, 17 - 19, 21 - 24, 27, 31, 32, 34 - 41, 45, and 48(b)"

18 Page 18, line 15:

19 Delete "32"

20 Insert "33"

- 1 Page 18, line 16:
- 2       Delete "46"
- 3       Insert "47"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR SHARP

TO: CSSB 275( ), version "C" dated 3/25/96

1 Page 13, following line 4:

2 Insert a new bill section to read:

3 "\* Sec. 30. AS 36.30 is amended by adding a new section to read:

4 Sec. 36.30.345. PROHIBITION AGAINST BID OR OFFER SHOPPING.

5 After the deadline for submitting competitive sealed bids under AS 36.30.100 -  
6 36.30.190, an agency may not contact or negotiate with a bidder who is not the low  
7 bidder or apparent low bidder in order to change the price or other terms of a bid that  
8 is not the low bid or apparent low bid. After the deadline for submitting competitive  
9 sealed proposals under AS 36.30.200 - 36.30.270, an agency may not negotiate with  
10 an offeror to change the terms of the offeror's proposal until the agency has awarded  
11 the contract to an offeror."

12 Renumber the following bill sections accordingly.

13 Page 17, line 29:

14 Delete "secs. 53 - 55"

15 Insert "secs. 54 - 56"

16 Page 18, line 11:

17 Delete "41 - 43, 45, 47(a), and 48 - 51"

18 Insert "42 - 44, 46, 48(a), and 49 - 52"

19 Page 18, line 13:

20 Delete "33 - 40, 44, and 47(b)"

21 Insert "32, 34 - 41, 45, and 48(b)"

1 Page 18, line 15:

2 Delete "32"

3 Insert "33"

4 Page 18, line 16:

5 Delete "46"

6 Insert "47"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR SHARP

TO: CSSB 275( ), version "C" dated 3/25/96

1 Page 16, line 29, before "[BY LAW].":

2       Insert "However, if an agency solicits through the general services  
3 administration or from federal supply schedules of the general services administration,  
4 and if the solicitation is made to persons who are located out of this state, the agency  
5 shall use competitive sealed bidding or competitive sealed proposals under AS 36.30.100  
6 - 36.30.270 for the procurement"

# LEGAL SERVICES

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## MEMORANDUM

March 25, 1996

**SUBJECT:** Draft CSSB 275( ) on state procurement  
(Work Order No. 9-GS2020\C)

**TO:** Senator Randy Phillips  
Attn: Jerry Burnett

**FROM:**  Theresa Bannister  
Legislative Counsel

This memo accompanies the bill draft described above.

1. Certain stylistic changes have been made to SB 275 for this draft in order to comply with the legislature's drafting style. If you would like details on these changes, please advise.
2. The amendment of AS 36.30.030 raises an issue with regard to the separation of powers because the legislative branch is imposing a procurement obligation on the judicial branch. The Alaska Constitution provides for the separation of powers between the legislative, judicial, and executive branches of the government. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976). The doctrine precludes one branch from intruding into the functions of another branch.
3. The language establishing the content and due date of the first lease extension report under AS 36.30.083 (Lease Extensions Authorized) has been moved to the end of the bill because it is temporary law.
4. In the section amending AS 36.30.170(b)(e), the Alaska bidder definition is changed to limit it to persons who have maintained and staffed a particular place of business in the state for six months that deals in the supplies, services, or construction of the general nature solicited by the agency.

Please note that although a state agency is given some leeway to prefer its own residents, the new language may raise constitutional issues when it imposes the six months' requirement. It raises a state equal protection issue because it discriminates against other state residents with a shorter residency. Although the federal equal protection test is fairly relaxed in a situation like this, the provision may also raise an equal protection issue under the federal constitution if the basic rationale for the six months' requirement is economic protectionism.

Senator Randy Phillips

March 25, 1996

Page 2

The provision may also raise a privileges and immunities issue under the federal constitution if its practical application is too broad and the nature of the right involved is considered a fundamental right. If the provision fails under the federal equal protection clause or the privileges and immunities provision, the recent state constitutional amendment (art. I, sec. 23 allowing a state resident preference) may not protect the provision because the amendment only allows the preference to the extent allowed by federal law. The provision raises a freedom of interstate travel issue under the federal constitution because it discriminates against those persons who have moved to the state less than six months before the date of the bid. These problems exist with the current statutory language as well.

5. In sec. AS 36.30.550 the language was adjusted somewhat so that the coverage is consistent with AS 36.30.560. If the intent was to change the coverage, AS 36.30.555, 36.30.560, and related sections can be adjusted to be consistent with your intent in AS 36.30.550.

6. In sec. 36.30.565(a) please examine the language to make sure it is what you intended.

7. In AS 36.30.850(b)(23), the language was rewritten. Please examine to make sure it is what you intended.

8. In AS 36.30.850(b)(34), the language was rewritten. Please examine to make sure it is what you intended.

9. In AS 36.30.910, it would be better, at least for clarity, to include, instead of a general reference to a federal law, the specific requirements that an agency is to follow. If you would like to establish these in statute, please advise, so that we can work out just what provisions you want to include.

10. The new provisions amending AS 24.55.275, AS 36.30.015, AS 36.30.020, and 36.30.030 have been included in the section making them effective September 30, 1996. Is this what you want?

If I may be of further assistance, please advise.

TLB:pl:klb  
96-090.plm

Enclosure

9-GS2020\C  
Bannister  
3/25/96

CS FOR SENATE BILL NO. 275( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR  
A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state procurement practices and procedures; and providing  
2 for an effective date."

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

4 \* Section 1. AS 24.55.275 is amended to read:

5 Sec. 24.55.275. CONTRACT PROCEDURES. The ombudsman shall adopt  
6 by regulation procedures consistent with AS 36.30 to be followed by the office of the  
7 ombudsman in contracting for services. However, the procedure for requests for  
8 proposals does not apply to contracts for investigations under AS 24.55.100, and the  
9 office of the ombudsman shall comply with AS 36.30.170(b).

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

11 (e) The board of directors of the Alaska Railroad Corporation and the board  
12 of directors of the Alaska Aerospace Development Corporation shall adopt procedures  
13 to govern the procurement of supplies, services, professional services, and construction.  
14 The procedures must be substantially equivalent to the procedures prescribed in this

1 chapter and in regulations adopted under this chapter. Notwithstanding the other  
2 provisions of this subsection, the Alaska Railroad Corporation and the Alaska  
3 Aerospace Development Corporation shall comply with AS 36.30.170(b).

4 \* Sec. 3. AS 36.30.015(f) is amended to read:

5 (f) The board of directors of the Alaska Housing Finance Corporation,  
6 notwithstanding AS 18.56.088, shall adopt regulations under AS 44.62 (Administrative  
7 Procedure Act) and the board of trustees of the Alaska State Pension Investment Board  
8 shall adopt regulations under AS 37.10.240 to govern the procurement of supplies,  
9 services, professional services, and construction for the respective public corporation  
10 and board. The regulations must [(1)] reflect competitive bidding principles and  
11 provide vendors reasonable and equitable opportunities to participate in the  
12 procurement process [;] and must [(2)] include procurement methods to meet  
13 emergency and extraordinary circumstances. Notwithstanding the other provisions  
14 of this subsection, the Alaska Housing Finance Corporation and the Alaska State  
15 Pension Investment Board shall comply with AS 36.30.170(b).

16 \* Sec. 4. AS 36.30.015(h) is amended to read:

17 (h) The board of directors of the Alaska Seafood Marketing Institute shall  
18 adopt procedures to govern the procurement of supplies, services, and professional  
19 services. The procedures must be similar to the procedures prescribed in this chapter  
20 and in regulations adopted under this chapter, except that the Alaska Seafood  
21 Marketing Institute shall comply with AS 36.30.170(b).

22 \* Sec. 5. AS 36.30.020 is amended to read:

23 Sec. 36.30.020. LEGISLATURE. The Legislative Council shall adopt and  
24 publish procedures to govern the procurement of supplies, services, professional  
25 services, and construction by the legislative branch. The procedures must be based on  
26 the competitive principles consistent with this chapter and must be adapted to the  
27 special needs of the legislative branch as determined by the Legislative Council. The  
28 procedures must be consistent with the provisions of AS 36.30.080(c) - (e) and  
29 36.30.085. Notwithstanding the other provisions of this section, the legislative  
30 agencies subject to the legislative council's regulations shall comply with  
31 AS 36.30.170(b).

1 \* Sec. 6. AS 36.30.030 is amended to read:

2 Sec. 36.30.030. COURT SYSTEM. The administrative director of courts shall  
3 adopt and publish procedures to govern the procurement of supplies, services,  
4 professional services, and construction by the judicial branch. The procedures must  
5 be based on the competitive principles consistent with this chapter and must be adapted  
6 to the special needs of the judicial branch as determined by the administrative director  
7 of courts. The procedures must be consistent with the provisions of AS 36.30.080(c) -  
8 (e) and 36.30.085. Notwithstanding the other provisions of this section, the judicial  
9 branch shall comply with AS 36.30.170(b).

10 \* Sec. 7. AS 36.30.040(b)(4) is amended to read:

11 (4) conditions and procedures for the use of source selection methods  
12 authorized by this chapter, including single [SOLE] source procurements, emergency  
13 procurements, and small procurements;

14 \* Sec. 8. AS 36.30.040(b)(15) is amended to read:

15 (15) a bidder's or offeror's duties under this chapter [AS 36.30.115  
16 AND 36.30.210]; and

17 \* Sec. 9. AS 36.30.050(a) is amended to read:

18 (a) Except for persons debarred or suspended under AS 36.30.635 -  
19 36.30.655, the [THE] commissioner shall establish and maintain current lists of  
20 persons who desire to provide supplies, services, professional services, or construction  
21 services to the state.

22 \* Sec. 10. AS. 36.30.080 is amended by adding a new subsection to read:

23 (f) When the department is acquiring leased space of 3,000 square feet or less,  
24 the department may procure the leased space using the procedures for small  
25 procurements under AS 36.30.320.

26 \* Sec. 11. AS 36.30 is amended by adding a new section to read:

27 Sec. 36.30.083. LEASE EXTENSIONS AUTHORIZED. (a) Notwithstanding  
28 any other provision of this chapter, the department, the legislative council, or the court  
29 system may extend, for up to a maximum extension of 10 years, a real property lease  
30 that is entered into under this chapter, including procedures and regulations adopted  
31 under AS 36.30.020 and 36.30.030, if a minimum cost savings of

- 1 (1) 10 percent can be achieved on the rent due under the lease; or  
2 (2) five percent can be achieved on the rent due under the lease and the  
3 lessor agrees to make modifications of the leased real property to bring the real  
4 property into compliance with the requirements of 42 U.S.C. 12101 - 12213  
5 (Americans with Disabilities Act of 1990).

6 (b) The cost savings under (a) of this section shall be calculated on the  
7 remaining term of the lease and any renewals, including extensions allowed under (a)  
8 of this section.

9 (c) The department and the Legislative Affairs Agency shall submit  
10 individually an annual report to the Legislative Budget and Audit Committee detailing  
11 the leases extended and the cost savings achieved by the entity under (a) or (b) of this  
12 section during the previous fiscal year. The report is due August 31 of each year.

13 \* Sec. 12. AS 36.30.115 is amended to read:

14 Sec. 36.30.115. SUBCONTRACTORS FOR CONSTRUCTION  
15 CONTRACTS. (a) Within five working days after the identification of the apparent  
16 low bidder for a construction contract, the apparent low bidder shall submit a list of  
17 the subcontractors the bidder proposes to use in the performance of the construction  
18 contract. The list must include the name and location of the place of business for each  
19 subcontractor, [AND] evidence of each [THE] subcontractor's valid Alaska business  
20 license, and [ A BIDDER FOR A CONSTRUCTION CONTRACT SHALL ALSO  
21 SUBMIT] evidence of each subcontractor's registration under AS 08.18. If a  
22 subcontractor on the list did not have a valid Alaska business license and a valid  
23 certificate of registration under AS 08.18 at the time the bid was opened, the bidder  
24 may not use the subcontractor in the performance of the contract, and shall replace the  
25 subcontractor with a subcontractor who had a valid Alaska business license and a valid  
26 certificate of registration under AS 08.18 at the time the bid was opened.

27 (b) The apparent low [A] bidder for a construction contract may replace  
28 a listed subcontractor if the subcontractor

- 29 (1) fails to comply with AS 08.18;  
30 (2) files for bankruptcy or becomes insolvent;  
31 (3) fails to execute a contract with the bidder involving performance

1 of the work for which the subcontractor was listed and the bidder acted in good faith;

2 (4) fails to obtain bonding;

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

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

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

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

9 (9) is determined by the procurement officer not to be a responsible  
10 subcontractor.

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

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

19 (e) If a construction contract is awarded to a bidder who violates this section,  
20 the procurement [PURCHASING] officer may

21 (1) cancel the contract; or

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

24 • Sec. 13. AS 36.30.130(a) is amended to read:

25 (a) The procurement officer shall give adequate public notice of the invitation  
26 to bid at least 21 days before the date for the opening of bids. If the procurement  
27 officer determines [A DETERMINATION IS MADE] in writing that a shorter notice  
28 period is advantageous [NECESSARY] for a particular bid and adequate  
29 competition is anticipated, the 21-day period may be shortened. [THE  
30 DETERMINATION SHALL BE MADE BY THE CHIEF PROCUREMENT OFFICER  
31 FOR BIDS FOR SUPPLIES, SERVICES, OR PROFESSIONAL SERVICES, THE

1 DETERMINATION SHALL BE MADE BY THE COMMISSIONER OF  
2 TRANSPORTATION AND PUBLIC FACILITIES FOR BIDS FOR  
3 CONSTRUCTION OR ACQUISITION OF PROPERTY FOR THE STATE  
4 EQUIPMENT FLEET.] Notice shall be published in the Alaska Administrative  
5 Journal. The time and manner of notice must be in accordance with regulations  
6 adopted by the commissioner of administration. When practicable, notice may include

7 (1) publication in a newspaper calculated to reach prospective bidders  
8 located in the state;

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

11 (3) notices mailed to all active prospective contractors on the  
12 appropriate list maintained under AS 36.30.050

13 (A) if the contractors are located in the state;

14 (B) upon request, if the contractors are not located in the state.

15 • Sec. 14. AS 36.30.170(b) is amended to read:

16 (b) The procurement officer shall award a contract based on solicited bids to  
17 the lowest responsive and responsible bidder after an Alaska bidder preference of five  
18 percent, an Alaska products preference as described in AS 36.30.322 - 36.30.338, and  
19 a recycled products preference under AS 36.30.339 have been applied. In this  
20 subsection, "Alaska bidder" means a person who

21 (1) holds a current Alaska business license;

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

24 (3) has maintained, for a period of six months immediately before  
25 the date of the bid, a place of business within the state that deals in the supplies,  
26 services, or construction of the general nature solicited by the agency and that is  
27 staffed by the bidder or an employee of the bidder [FOR A PERIOD OF SIX  
28 MONTHS IMMEDIATELY PRECEDING THE DATE OF THE BID];

29 (4) is incorporated or qualified to do business under the laws of the  
30 state, is a sole proprietorship and the proprietor is a resident of the state, or is a  
31 partnership and all partners are residents of the state; and

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

3 \* Sec. 15. AS 36.30.200 is amended to read:

4 Sec. 36.30.200. CONDITIONS FOR USE. (a) Except as otherwise provided  
5 in this chapter, or unless specifically exempted by law, an agency contract shall be  
6 awarded by competitive sealed proposals if it is not awarded by competitive sealed  
7 bidding. [CONSTRUCTION MAY ONLY BE PROCURED BY COMPETITIVE  
8 SEALED PROPOSALS IF THE CONDITIONS UNDER (c) OF THIS SECTION ARE  
9 MET.]

10 (b) The commissioner may provide by regulation that it is either not  
11 practicable or not advantageous to the state to procure specified types of supplies,  
12 services, or construction by competitive sealed bidding that would otherwise be  
13 procured by that method. When the [CHIEF] procurement officer [, OR FOR  
14 CONSTRUCTION CONTRACTS OR PROCUREMENTS FOR THE STATE  
15 EQUIPMENT FLEET, THE COMMISSIONER OF TRANSPORTATION AND  
16 PUBLIC FACILITIES.] determines in writing with particularity that the use of  
17 competitive sealed proposals is more [BIDDING IS EITHER NOT PRACTICABLE  
18 OR NOT] advantageous to the state than competitive sealed bidding, a contract may  
19 be entered into by competitive sealed proposals [IN ACCORDANCE WITH THE  
20 REGULATIONS. WHEN IT IS DETERMINED THAT IT IS PRACTICABLE BUT  
21 NOT ADVANTAGEOUS TO USE COMPETITIVE SEALED BIDDING, THE CHIEF  
22 PROCUREMENT OFFICER OR COMMISSIONER OF TRANSPORTATION AND  
23 PUBLIC FACILITIES SHALL SPECIFY WITH PARTICULARITY THE BASIS FOR  
24 THE DETERMINATION].

25 (c) When the commissioner of transportation and public facilities [CHIEF  
26 PROCUREMENT OFFICER] determines that it is advantageous to the state, a  
27 procurement officer may issue a request for proposals requesting the submission of  
28 offers to provide construction in accordance with a design provided by the offeror.  
29 The request for proposals shall require that each proposal submitted contain a single  
30 price that includes the design/build.

31 • Sec. 16. AS 36.30.210 is repealed and reenacted to read:

1           Sec. 36.30.210. REQUEST FOR PROPOSALS. (a) A request for competitive  
2 sealed proposals must contain the date, time, and place for delivering proposals, a  
3 specific description of the supplies, construction, services, or professional services to  
4 be provided under the contract, and the terms under which the supplies, construction,  
5 services, or professional services are to be provided.

6           (b) An offeror for a construction contract shall submit evidence of the offeror's  
7 registration under AS 08.18. A request for sealed proposals for a construction contract  
8 must require the offeror, no later than five working days after the proposal that is the  
9 most advantageous to the state is identified, to list subcontractors the offeror proposes  
10 to use in the performance of the construction contract. The list must include the  
11 information required under AS 36.30.115(a), and the provisions of AS 36.30.115(b) -  
12 (e) apply to competitive sealed proposals for construction contracts; in this sentence,  
13 "bidder" in AS 36.30.115(a) - (e) is read as "offeror."

14           (c) A request for proposals must contain the information necessary for an  
15 offeror to submit a proposal or contain references to any information that cannot  
16 reasonably be included with the request. The request must provide a description of the  
17 factors that will be considered by the procurement officer when evaluating the  
18 proposals received, including the relative importance of price and other evaluation  
19 factors.

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

24           (e) The offeror must have a valid Alaska business license at the time  
25 designated, in the request for proposals, for opening of the proposals.

26 • Sec. 17. AS 36.30.230 is amended to read:

27           Sec. 36.30.230. DISCLOSURE OF PROPOSALS. The procurement officer  
28 shall open proposals so as to avoid disclosure of contents to competing offerors before  
29 notice of intent to award a contract is issued [DURING THE PROCESS OF  
30 NEGOTIATION]. A register of proposals containing the name and address of each  
31 offeror shall be prepared in accordance with regulations adopted by the commissioner.

1 The register and the proposals are open for public inspection after the notice of intent  
2 to award a contract is issued under AS 36.30.365. To the extent that the offeror  
3 designates and the procurement officer concurs, trade secrets and other proprietary data  
4 contained in the proposal documents are confidential.

5 \* Sec. 18. AS 36.30.230 is amended by adding a new subsection to read:

6 (b) If a solicitation is cancelled under AS 36.30.350 after proposals are  
7 received but before a notice of intent to award a contract has been issued under  
8 AS 36.30.365, a protest of the solicitation or of the cancellation of the solicitation has  
9 not been filed by an interested party under AS 36.30.560, and the time specified in  
10 AS 36.30.565(a) for filing a protest has expired, the procurement officer may return  
11 a proposal to the offeror that made the proposal. The procurement officer shall keep  
12 a list of returned proposals in the file for the solicitation.

13 \* Sec. 19. AS 36.30.260 is amended to read:

14 Sec. 36.30.260. CONTRACT EXECUTION. A contract awarded under  
15 competitive sealed proposals must contain

16 (1) a statement of the amount of the contract [STATED ON ITS  
17 FIRST PAGE];

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

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

22 (4) certification by the project director for the contracting agency, the  
23 head of the contracting agency, or a designee that sufficient money is [FUNDS ARE]  
24 available in an appropriation to be encumbered for the amount of the contract.

25 \* Sec. 20. AS 36.30.300 is repealed and reenacted to read:

26 Sec. 36.30.300 SINGLE SOURCE PROCUREMENTS. (a) A contract may  
27 be awarded for supplies, services, professional services, or construction without  
28 competitive sealed bidding, competitive sealed proposals, or other competition in  
29 accordance with regulations adopted by the commissioner. A contract may be awarded  
30 under this section only when the chief procurement officer or, for construction  
31 contracts or procurements for the state equipment fleet, the commissioner of

1 transportation and public facilities determines in writing that

2 (1) it is not practicable to award a contract by competitive sealed  
3 bidding under AS 36.30.100, competitive sealed proposals under AS 36.30.200, or  
4 limited competition under AS 36.30.305; and

5 (2) award of the contract under this section is in the state's best interest.

6 (b) An agency using a single source procurement under (a) of this section shall  
7 submit written evidence to support a request for the single source procurement. The  
8 commissioner of administration or the commissioner of transportation and public  
9 facilities, as appropriate, may also require the submission of cost or pricing data in  
10 connection with an award under this section.

11 (c) To the extent practicable, the procurement officer shall negotiate with the  
12 single source to obtain contract terms advantageous to the state.

13 (d) Procurement requirements may not be aggregated or structured so as to  
14 constitute a purchase under this section or to circumvent the source selection  
15 procedures required by AS 36.30.100 - 36.30.270.

16 (e) The authority to make a determination required by this section may not be  
17 delegated, even if the authority to contract is delegated under AS 36.30.015(a) - (b).

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

19 (a) A contract for supplies, services, professional services, or a construction  
20 contract under \$100,000 [,] may be awarded without competitive sealed bidding or  
21 competitive sealed proposals, in accordance with regulations adopted by the  
22 commissioner. A contract may be awarded under this section only when the chief  
23 procurement officer [, OR, FOR CONSTRUCTION CONTRACTS UNDER \$100,000  
24 OR PROCUREMENTS FOR THE STATE EQUIPMENT FLEET, THE  
25 COMMISSIONER OF TRANSPORTATION AND PUBLIC FACILITIES.] determines  
26 in writing that a situation exists that makes competitive sealed bidding or competitive  
27 sealed proposals impractical or contrary to the public interest, except that the  
28 attorney general may make the determination for services of legal counsel, and  
29 the commissioner of transportation and public facilities may make the  
30 determination for construction contracts under \$100,000 or procurements for the  
31 state equipment fleet. Procurements under this section shall be made with

1 competition that is practicable under the circumstances [CIRCUMSTANCE. EXCEPT  
2 FOR PROCUREMENTS OF SUPPLIES, SERVICES, PROFESSIONAL SERVICES,  
3 OR CONSTRUCTION THAT DO NOT EXCEED THE AMOUNT FOR SMALL  
4 PROCUREMENTS UNDER AS 36.30.320(a) OR (b), AS APPLICABLE, THE  
5 AUTHORITY TO MAKE A DETERMINATION REQUIRED BY THIS SECTION  
6 MAY NOT BE DELEGATED].

7 \* Sec. 22. AS 36.30.305(d) is amended to read:

8 (d) Single [SOLE] source procurements may not be made under this section.

9 \* Sec. 23. AS 36.30 is amended by adding a new section to read:

10 Sec. 36.30.308. INNOVATIVE COMPETITIVE PROCUREMENTS. (a) A  
11 contract may be awarded for supplies, services, professional services, or construction  
12 using an innovative procurement process, with or without competitive sealed bidding  
13 or competitive sealed proposals, in accordance with regulations adopted by the  
14 commissioner. A contract may be awarded under this section only when the chief  
15 procurement officer, or, for construction contracts or procurements of the state  
16 equipment fleet, the commissioner of transportation and public facilities, determines  
17 in writing that it is advantageous to the state to use an innovative competitive  
18 procurement process in the procurement of new or unique requirements of the state,  
19 new technologies, or to achieve best value.

20 (b) The procurement officer shall submit a procurement plan to the Department  
21 of Law for review and approval as to form before issuing the notice required by (c)  
22 of this section.

23 (c) A procurement under this section is subject to the requirements of  
24 AS 36.30.130.

25 (d) This section does not preclude the adoption of regulations providing for the  
26 use of bonuses instead of preferences in a procurement of construction.

27 \* Sec. 24. AS 36.30 is amended by adding new sections to read:

28 Sec. 36.30.311. EMPLOYMENT PROGRAM PROCUREMENTS. A  
29 procurement of products manufactured or services provided by an employment  
30 program of the state may be made without competitive sealed bidding or competitive  
31 sealed proposals, in accordance with regulations adopted by the commissioner.

1           Sec. 36.30.313. CORRECTIONAL INDUSTRIES PROCUREMENTS. A  
2 procurement of products or services provided by the correctional industries program  
3 established under AS 33.32 may be made without competitive sealed bidding or  
4 competitive sealed proposals, in accordance with regulations adopted by the  
5 commissioner.

6 • Sec. 25. AS 36.30.315 is repealed and reenacted to read:

7           Sec. 36.30.315. FALSE STATEMENTS IN DETERMINATIONS;  
8 CRIMINAL PENALTY. If a state official knowingly makes a false statement in a  
9 determination under this chapter, the state official is guilty of a class A misdemeanor.

10 • Sec. 26. AS 36.30.320(a) is amended to read:

11           (a) A procurement for supplies, services, or professional services  
12 [CONSTRUCTION] that does not exceed an aggregate dollar amount of \$50,000, for  
13 construction that does not exceed an aggregate dollar amount of \$100,000, or for  
14 lease of space that does not exceed 3,000 square feet [\$25,000] may be made in  
15 accordance with regulations adopted by the commissioner for small procurements may  
16 be made in accordance with regulations adopted by the commissioner for small  
17 procurements.

18 • Sec. 27. AS 36.30 is amended by adding a new section to read:

19           Sec. 36.30.331. DELIVERY OF SUPPLIES. Supplies purchased under this  
20 chapter shall be delivered at a location within the state unless the department  
21 determines that a point of delivery outside the state would be in the best interest of the  
22 state. A bid or proposal involving the procurement of supplies must specify the  
23 delivery location and must state that the price is the delivered price at that location.

24 • Sec. 28. AS 36.30 is amended by adding a new section to read:

25           Sec. 36.30.333. PROCUREMENT OF PAPER. Except as otherwise required  
26 under AS 36.15.050, AS 36.30.322 - 36.30.332, and 36.30.334 - 36.30.338, when a  
27 state agency purchases paper, at least 25 percent of the quantity purchased must be  
28 recycled paper unless recycled paper is not available for the purchase or unless, after  
29 application of the procurement preference under AS 36.30.339, the recycled paper is  
30 more expensive than the nonrecycled paper.

31 • Sec. 29. AS 36.30 is amended by adding a new section to read:

1           Sec. 36.30.335. PRODUCT PREFERENCES. This chapter does not modify  
2 AS 36.15.010 and 36.15.020 regarding preference for Alaska forest products, or  
3 AS 36.15.050 and 36.15.060 regarding preference for Alaska agricultural and fisheries  
4 products, except as provided in AS 36.30.170(b), (c), (e) - (h), and 36.30.339.

5 \* Sec. 30. AS 36.30.520 is amended to read:

6           Sec. 36.30.520. RECORDS OF SINGLE [SOLE] SOURCE AND  
7 EMERGENCY PROCUREMENTS. (a) The commissioner shall maintain for a  
8 minimum of five years a record listing all single [SOLE] source procurement contracts  
9 made under AS 36.30.300 and emergency procurements made under AS 36.30.310.  
10 The record must contain

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

15           (b) The Department of Transportation and Public Facilities and any agency to  
16 whom the commissioner of administration or the commissioner of transportation and  
17 public facilities has delegated procurement authority under AS 36.30.015 shall, by  
18 October 1 of each year, submit to the commissioner of administration records of the  
19 type specified in (a) of this section for emergency procurements made under  
20 AS 36.30.310. The Department of Transportation and Public Facilities shall, even  
21 if procurement authority has been delegated under AS 36.30.015 to another  
22 agency, by October 1 of each year, submit to the commissioner of administration  
23 records of the type specified in (a) of this section for single source procurement  
24 contracts made under AS 36.30.300. The commissioner of administration shall  
25 maintain these records as required by (a) of this section.

26 \* Sec. 31. AS 36.30 is amended by adding a new section to read:

27           Sec. 36.30.522. RECORDS OF INNOVATIVE PROCUREMENTS. The  
28 commissioner and the contracting agency shall keep a file for each contract awarded  
29 under an innovative procurement process under AS 36.30.308. The file is subject to  
30 inspection under the same standards as described in AS 36.30.140(b) and 36.30.230.  
31 The file kept by the commissioner must contain a summary of the information in the

1 file of the contracting agency. The file kept by the contracting agency must contain

2 (1) a copy of the contract;

3 (2) the written determination under AS 36.30.308(a);

4 (3) the procurement plan as approved as to form by the Department of

5 Law;

6 (4) the record of notice under AS 36.30.130; and

7 (5) the record of respondents to the solicitation.

8 \* Sec. 32. AS 36.30 is amended by adding a new section to article 9 to read:

9 Sec. 36.30.550. APPLICABILITY OF PROTEST AND APPEAL

10 PROCEDURES. (a) Except for small procurements made under AS 36.30.320, the  
11 provisions of AS 36.30.560 - 36.30.615 apply to a solicitation, the proposed award of  
12 a contract, and the award of a contract for supplies, services, professional services, or  
13 construction.

14 (b) The commissioner shall adopt regulations providing for protest and appeal  
15 procedures of small procurements made under AS 36.30.320.

16 \* Sec. 33. AS 36.30.565(a) is repealed and reenacted to read:

17 (a) A protest based on alleged improprieties or ambiguities in a solicitation  
18 must be filed at least 10 days before the due date of the bid or proposal, unless a later  
19 protest due date is specifically allowed in the solicitation. If a solicitation is made  
20 with a shortened public notice period and the protest is based on alleged improprieties  
21 or ambiguities in the solicitation, the protest must be filed before the due date of the  
22 bid or proposal. Notwithstanding the other provisions in this subsection, the protest  
23 of an invitation to bid or a request for proposals in which a pre-bid or pre-proposal  
24 conference is held within 12 days of the due date must be filed before the due date of  
25 the bid or proposal if the protest is based on alleged improprieties or ambiguities in  
26 the solicitation. A protest based upon alleged improprieties in an award of a contract  
27 or a proposed award of a contract must be filed within 10 days after a notice of intent  
28 to award the contract is issued by the procurement officer.

29 \* Sec. 34. AS 36.30.580(a) is amended to read:

30 (a) The procurement officer of the contracting agency shall issue a written  
31 decision containing the basis of the decision within 15 [14] days after a protest has

1           been filed. A copy of the decision shall be furnished to the protester by certified mail  
2           or other method that provides evidence of receipt.

3       \* Sec. 35. AS 36.30.580(b) is amended to read:

4           (b) The time for a decision may be extended up to 30 [26] days for good cause  
5           by the commissioner of administration, or, for protests involving construction or  
6           procurements for the state equipment fleet, the commissioner of transportation and  
7           public facilities. If an extension is granted, the procurement officer shall notify the  
8           protester in writing of the date that [OF] the decision is due.

9       \* Sec. 36. AS 36.30.585 is amended by adding a new subsection to read:

10           (c) Notwithstanding (a) and (b) of this section, if a protest is sustained in  
11           whole or part, the protester's damages are limited to reasonable bid or proposal  
12           preparation costs.

13       \* Sec. 37. AS 36.30.605(a) is amended to read:

14           (a) The procurement officer of the contracting agency shall file a complete  
15           report on the protest and decision with the commissioner of administration or the  
16           commissioner of transportation and public facilities, as appropriate, within 10 [SEVEN]  
17           days after a protest appeal is filed. The procurement officer shall furnish a copy of  
18           the report to the protester and to interested parties that have requested a copy of the  
19           appeal under AS 36.30.595(b).

20       \* Sec. 38. AS 36.30.605(c) is amended to read:

21           (c) The protester may file comments on the protest report with the  
22           commissioner of administration or the commissioner of transportation and public  
23           facilities, as appropriate, within 10 [SEVEN] days after the report is received. The  
24           protester shall provide copies of the comments to the procurement officer and to  
25           interested parties that have requested a copy of the appeal under AS 36.30.595(b).

26       \* Sec. 39. AS 36.30.620(a) is amended to read:

27           (a) A contractor shall file a claim concerning a contract awarded under this  
28           chapter with the procurement officer. The contractor shall certify that the claim is  
29           made in good faith, that the supporting data are accurate and complete to the best of  
30           the contractor's knowledge and belief, and that the amount requested accurately  
31           reflects the contract adjustment for which the contractor believes the state is liable.

1 A claim under this section must be filed within 90 days after the contractor  
2 becomes aware of the basis of the claim or should have known the basis of the  
3 claim, whichever is earlier.

4 \* Sec. 40. AS 36.30.620 is amended by adding a new subsection to read:

5 (g) This section does not apply to payment disputes governed by  
6 AS 37.05.285.

7 \* Sec. 41. AS 36.30.655 is amended to read:

8 Sec. 36.30.655. LIST OF PERSONS DEBARRED OR SUSPENDED. The  
9 commissioner shall maintain a list of all persons debarred or suspended from  
10 consideration for award of contracts. The commissioner shall remove a person  
11 debarred or suspended from the lists of contractors under AS 36.30.050 for the  
12 period of debarment or suspension.

13 \* Sec. 42. AS 36.30.850(b)(23) is amended to read:

14 (23) operation, protection, or disposals of equipment, supplies, and  
15 other assets acquired through foreclosure or other legal proceedings relating to [OF]  
16 loans issued under AS 03.10;

17 \* Sec. 43. AS 36.30.850(b) is amended by adding new paragraphs to read:

18 (34) procurements of contracts with the media for advertising;

19 (35) purchases of livestock by a correctional industries program  
20 established under AS 33.32.

21 \* Sec. 44. AS 36.30.910 is amended to read:

22 Sec. 36.30.910. PURCHASES THROUGH GENERAL SERVICES  
23 ADMINISTRATION. Notwithstanding any other provision of this chapter, [THIS  
24 CHAPTER DOES NOT PREVENT] purchasing through the general services  
25 administration or from federal supply schedules of the general services  
26 administration may be made without competitive sealed bidding, competitive  
27 sealed proposals, or other competition, so long as the purchasing is made in  
28 accordance with regulations adopted by the commissioner for purchases under  
29 this section and as provided under 41 U.S.C. 251 - 266 [BY LAW].

30 \* Sec. 45. AS 36.30.990 is amended by adding a new paragraph to read:

31 (22) "state official" means a public employee, public officer, or official

1 of an agency.

2 \* Sec. 46. Section 3, ch. 59, SLA 1994, is amended to read:

3 Sec. 3. AS 36.30.130(a) is repealed and reenacted to read:

4 (a) The procurement officer shall give adequate public notice of the invitation  
5 to bid at least 21 days before the date for the opening of bids. If the procurement  
6 officer determines [A DETERMINATION IS MADE] in writing that a shorter notice  
7 period is advantageous [NECESSARY] for a particular bid and adequate  
8 competition is anticipated, the 21-day period may be shortened. [THE  
9 DETERMINATION SHALL BE MADE BY THE CHIEF PROCUREMENT OFFICER  
10 FOR BIDS FOR SUPPLIES, SERVICES, OR PROFESSIONAL SERVICES. THE  
11 DETERMINATION SHALL BE MADE BY THE COMMISSIONER OF  
12 TRANSPORTATION AND PUBLIC FACILITIES FOR BIDS FOR  
13 CONSTRUCTION OR ACQUISITION OF PROPERTY FOR THE STATE  
14 EQUIPMENT FLEET.] Notice shall be published in the Alaska Administrative  
15 Journal. The time and manner of notice must be in accordance with regulations  
16 adopted by the commissioner of administration. When practicable, notice may include

17 (1) publication in a newspaper calculated to reach prospective bidders;

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

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

22 \* Sec. 47. (a) AS 36.30.015(c), 36.30.090, 36.30.095, 36.30.100(b), 36.30.850(b)(14),  
23 and 36.30.900 are repealed.

24 (b) AS 36.30.320(b) is repealed.

25 \* Sec. 48. REVISOR'S CHANGES. The revisor of statutes is requested to change the  
26 heading of art. 5 of AS 36.30 from "Article 5. Preference for Alaska Products." to "Article 5.  
27 Preferences." Additionally, the revisor of statutes is requested to renumber AS 36.30.339  
28 AS 36.30.337, to place that section in art. 5 of AS 36.30.

29 \* Sec. 49. TRANSITION: REGULATIONS. Notwithstanding secs. 53 - 55 of this Act,  
30 the commissioner of administration and the commissioner of transportation and public facilities  
31 may proceed to adopt regulations necessary to implement respective changes in law enacted

1 by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but  
2 not before the effective date of the change in law in this Act.

3 \* Sec. 50. APPLICABILITY. Notwithstanding the changes in law made by this Act, the  
4 state agencies may continue to act on or consider a provision of a solicitation, notice of intent  
5 to award, or response to solicitation made before the effective date of the relevant change in  
6 law enacted by this Act, to the extent that the provision is not inconsistent with a provision  
7 of this Act.

8 \* Sec. 51. FIRST LEASE EXTENSION REPORT. Notwithstanding AS 36.30.083(c),  
9 enacted by sec. 11 of this Act the first lease extension report under AS 36.30.083(c) is due  
10 August 31, 1997, and must cover fiscal year 1997.

11 \* Sec. 52. Sections 8 - 13, 15, 19, 24 - 25, 27 - 29, 41 - 43, 45, 47(a), and 48 - 51 of this  
12 Act take effect immediately under AS 01.10.070(c).

13 \* Sec. 53. Sections 1 - 7, 14, 16 - 18, 20 - 23, 26, 30, 31, 33 - 40, 44, and 47(b) of this  
14 Act take effect September 30, 1996.

15 \* Sec. 54. Section 32 of this Act takes effect January 1, 1997.

16 \* Sec. 55. Section 46 of this Act takes effect August 22, 1998.

**DEPARTMENT OF ADMINISTRATION**

**DIVISION OF GENERAL SERVICES**

P.O. BOX 110210  
JUNEAU, ALASKA 99811-0210  
PHONE: (907) 465-2250  
FAX: (907) 465-2189

March 19, 1996

The Honorable Bert Sharp  
Alaska State Legislature  
State Capitol Room 214  
Juneau, AK 99801

Dear Senator Sharp:

The following additional information is provided at the request of Ms. Anne Ringstad to address several sections of SB 275 you had questions about.

**Section 5 -- Why 10 years on lease extensions rather than the 5 years in prior statute?**

During past negotiations authorized under previous law, a number of lessors advised that 5 years was not sufficient time to enable refinancing, which would result in greater lease savings. Ten years gives the state the ability to achieve greater rent savings. A good business case to extend leases for ten years will not be possible for all leases. In those situations, a shorter extension, or no extension, may be appropriate.

**Section 9 -- If a procurement officer shortens the circulation period, could it conflict with the 10 day rule proposed in section 30 and prevent a bidder from protesting?**

The purpose of section 30 is to require bidders to bring protests forward early in the solicitation process so the state and other bidders are not delayed by an extension over a protest brought at the last minute. Section 9 is intended to give the procurement officer issuing the bid or RFP authority to make a determination to reduce the notice period when advantageous to the state and when adequate competition can be achieved.

The potential conflict can be resolved. Section 30 could limit a protest to be filed within 10 days, only when a full 21-day notice period is given. If the circulation period is shortened, a protest of the solicitation could be required just prior to bid opening.

**Section 10 -- Why not extend the requirement to be in the line of business from 6 months to 12 months? Will this stop the practice of brokering?**

The time period could be extended to 12 months, but we used 6 months because it is the time prescribed in law to qualify for the Alaska Bidder's Preference. A longer period of time also prevents start-up and new Alaska businesses from eligibility for the Alaska Bidder's Preference. Requiring the bidder to have regularly provided the supplies, services, and construction of the general nature sought by the state in the bidders' normal course of business should result in only bidders receiving the preference that have some business history of selling the supply and service. It should prevent the brokering of preferences. A bidder would not be eligible for the preference if they could not demonstrate sales of the type of supply or service sought by the state.

**Section 19 -- Provide more explanation about how the innovative procurement process works.**

Often agencies and vendors both criticize the procurement process as not working for more complex, unique, or new procurements. Today's business environment is rapidly evolving and changing. What worked a few years ago to buy relatively straightforward commodity-type items does not always work in today's marketplace, or result in the best process to meet the state's need. Establishing an innovative method of source selection encourages procurement practitioners to exercise outside-the-box-thinking and develop better procurement solutions.

After considerable time spent trying to adapt the state's procurement process to acquire research projects for the Exxon Valdez Oil Spill Trustee Council, we gave up and let Federal Contracting Officers procure under the Broad Agency Announcement method available in the federal procurement system. The specific problem with the EVOS projects was the requirement for public review of the proposals during the evaluation process. Statute does not allow disclosure of proposals prior to negotiations to prevent offerors from gaining knowledge of the other's proposal. Under the unique EVOS requirements, they needed the ability to develop a competitive process that deviated from the strict RFP rules set out in statute. The innovative procurement approach would have permitted that.

It is a source selection method allowing a procurement officer to devise the best possible method of acquisition. It encourages innovation in the procurement process. To use an innovative procurement approach, a procurement plan must be developed and approved as to form by the Department of Law. Finally, the Chief Procurement Officer must determine in writing that there is advantage to the state to use an innovative process over all other methods of source selection. All notice requirements of the law and protest requirements would still apply to this method of source selection. Records of all innovative procurements will be kept as with sole source methods of

source selection to facilitate auditing and to evaluate and promote better methods of acquisition when developed.

**Section 23 -- Provide more explanation of what raising the small procurement thresholds would do.**

This amendment adopts the limits set by the Federal Acquisition Streamlining Act of 1994 and allows for quicker, more efficient acquisition of supplies, services, professional services, and construction by agencies, while allowing a limited number of purchasing practitioners familiar with the formal bidding and RFP process to concentrate on more complex higher dollar procurements.

The use of Competitive Sealed Bids and Competitive Sealed Proposals under statute are the most rigorous competitive source selection methods set out in law. They result in more process time for procurements. Under existing law, small procurements of services, supplies, and construction costing under \$25,000, can be purchased through a more simplified small procurement process under AS 36.30.320. For supplies and services over \$5,000 a minimum of three written quotes must be received and award made to the lowest responsive and responsible bidder, taking into account applicable Alaskan bidder and Alaska product preferences. In the case of professional services, three written proposals must be received, and award made to the most qualified responsive and responsible offeror, taking into account the applicable Alaskan bidder and Alaska product preferences. These relatively simple written procedures allow for more efficient and timely acquisitions.

**Sections 36 and 37 -- Thirty (30) days may not be sufficient time for a contractor to close out a claim.**

At this time there is no limitation when a contractor can bring a claim against the state. There have been circumstances when claims have been brought as much as three years after completion of the work, despite the state's efforts to hasten resolution of the claim. Ninety (90) days would provide adequate protection of the state's interests, and hasten resolution of contract controversy claims.

**Section 40 -- Provide more explanation why purchase of lobbying, public relations and advertising by the Governor's Office, and Livestock by ACI, should be exempted under AS 36.30.850 (b).**

It has been difficult to procure these types of services under the constraints of the Procurement Code. In the case of lobbying and public relations services, the firms chosen must be able to effectively represent the state's philosophy on political issues. The effectiveness of PR firms and lobbyists must sometimes be judged by their affiliation with influential individuals of a particular party or organization and by the

reputation of a firm's employees. The service required is that of influencing the opinions of key individuals or groups through various means. Evaluation of these services is necessarily subjective and situational and does not lend itself to the competitive solicitation process.

Advertising is also difficult to procure via competitive solicitation. Elements of popularity such as circulation, Nielson ratings, and demographics, as well as the geographic area targeted (often determined by congressional district boundaries) must be taken into consideration. These factors play such a critical role in advertising that they are often the only means to assure effectiveness. Therefore, a level playing field is often impossible to establish. The process of procuring effective advertising, particularly that which seeks to influence the constituency of congressional or federal leadership, is inconsistent with the principles of competition.

The section also exempts livestock purchased by the Mt. McKinley meat packing plant operated by Alaska Correctional Industries. The plant is obligated to purchase livestock brought in by valley farmers. It is simply not possible to go out for competitive quotes or bids when someone brings in livestock to be purchased and butchered by the plant.

**Section 41 -- Provide more explanation of how purchasing off of GSA supply schedules would work. There is concern this provision might lock vendors out.**

With the passage of the Federal streamlining Act of 1994, General Services Supply schedules were made available to state and local governments for the first time. In years past, these GSA price agreements were only available to the federal government. This fall Congress placed a moratorium on this provision of the Federal Procurement Streamlining Act of 1994. At this time it is not clear if the law will be changed, allowed to go into effect, or be further restricted. Some supply schedules such as air travel were not included for use by state and local governments.

Current Alaska statute permits purchases through the General Service Administration.

**"AS 36.30.910 PURCHASES THROUGH GENERAL SERVICES ADMINISTRATION. This chapter does not prevent purchasing through the general services administration as provided by law."**

Although it appears to permit purchases from the GSA supply schedules, the new federal law was passed after AS 36.30.910. The proposed amendment to the procurement code seeks to clarify that purchases from GSA supply schedules are authorized.

If the federal law is permitted to stand, it offers smaller states and local governments the opportunity to obtain better pricing than their limited buying power can drive in many circumstances. It also offers convenience to state agencies to purchase from

authorized supply schedule catalogs without the administrative cost of a formal bid with assurances that the state agencies are receiving fair pricing.

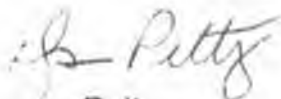
We anticipate the Department of Administration will act as a gatekeeper for the use of GSA supply schedules. Supply schedules that conflict with existing contracts would not be used. We want to obtain the best pricing permitted by the manufacturer from local dealers. Passage of the amendment would allow Alaska vendors offering GSA supply schedule pricing to be accessed without formal bid under the supply schedules.

We do not anticipate use of the schedules for purchases outside of the state without a competitive bid process. Invitation to bids for supplies offered on GSA supply schedules may use schedule pricing as a bid evaluation benchmark. If we get lower bids, we will award to the low bidder. If the GSA pricing is lower, we should use the supply schedule for purchases.

If the federal moratorium is lifted, use of GSA supply schedules is one way to reduce operating costs by achieving better pricing and more efficient and timely purchasing.

I hope this addresses your concerns. I am available to discuss any of these issues further at your convenience.

Sincerely,



Dugan Petty  
Director

DP/nl

cc: The Honorable Randy Phillips  
Alaska State Senator  
State Capitol Room 103  
Juneau, AK 00801

Mark Boyer  
Commissioner  
Department of Administration

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

P.O. BOX 110200  
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February 22, 1996

The Honorable Bert Sharp, Chair  
Senate State Affairs Committee  
Alaska State Legislature  
Juneau, Alaska 99801

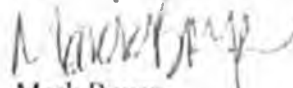
Dear Mr. Chair:

I am writing to request that you schedule for hearing SB 275, "An Act relating to state procurement practices and procedures; and providing for an effective date." This legislation proposes to change state procurement practices to make them more efficient, effective, and economic while preserving public accountability.

The proposed revisions to the state procurement code set out in this bill are the result of recommendations made by the statewide Procurement Advisory Council, formed by the Department of Administration to review and streamline statewide procurement practices. The council is made up of private, state, and University of Alaska procurement professionals, vendors, and small business advocates. The Federal Acquisition Streamlining Act of 1994 served as a model for recommendations included in this proposed legislation.

Enclosed is a sectional analysis of SB 275 for your information to use as you begin your deliberations on this important legislation. I look forward to your scheduling this important legislation as soon as possible. For additional information, or any questions, please contact Dugan Petty, Director of the Division of General Services at 465-2250.

Sincerely



Mark Boyer  
Commissioner

MB/m

Enclosure

cc: Pat Pourchot, Legislative Liaison  
Office of the Governor

Dugan Petty, Director  
Division of General Services

David Koivuniemi, Asst. Commissioner  
Department of Administration

Alison Elgee, Deputy Commissioner  
Department of Administration

Sam Kito, Special Assistant  
Department of Transportation & Public Facilities

TONY KNOWLES  
GOVERNOR



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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 9, 1996

275-

The Honorable Drue Pearce  
Senate President  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear President Pearce:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that proposes to change state procurement practices to make them more efficient, effective and economic while preserving public accountability.

Today's rapidly changing business environment, coupled with declining state revenue, underscores the importance of streamlining our administrative practices. This bill responds to that need by reducing costs, simplifying procurement practices, focusing on results, and empowering procurement officers to make sound purchasing decisions.

The proposed revisions to the state procurement code set out in this bill are the result of recommendations made by the statewide Procurement Advisory Council, formed by the Department of Administration, to review and streamline statewide procurement practices. The council is made up of private, state and University of Alaska procurement professionals, vendors and small business advocates.

Critics rightfully argue that government procurement is not getting the best value for the public. Some current practices impede an agency's ability to accomplish its business, and are not efficient. This bill seeks to correct these problems by simplifying acquisition of office leases under 5,000 square feet and giving procurement officers the discretion to shorten the solicitation process when adequate competition exists along with the ability to enter into a single source contract when in the best interest of the state.

This bill also would allow state agencies, including the legislative council, University of Alaska and state Supreme Court, to enter into or renew lease-purchase agreements for real property without legislative approval if the annual payment does not exceed \$500,000 and

total lease-purchase payments do not exceed \$2.5 million. This mirrors the threshold lease rates in current statute for which no legislative approval is needed. And this proposal simplifies small procurements by increasing their dollar limit to the levels set in the Federal Acquisition Streamlining Act of 1994.

This bill will result in cost savings for the state because of streamlined acquisition methods and more economic contracts that will allow for lease extensions in return for rent concessions; purchases from General Services Administration supply schedules as authorized in the Federal Acquisition Streamlining Act of 1994; and prevention of preference brokering that adds cost to contracts without adding value.

Contractors and bidders have been critical of the costly and time-consuming protest process under the current procurement code. This bill allows a simplified protest process for small procurement to provide more immediate and less costly redress of procurement actions.

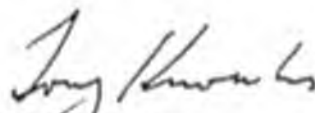
The procurement process is often identified as a barrier to accomplishing the state's business. This bill establishes an innovative procurement track allowing the purchase of new, unique services or supplies or technologies in controlled circumstances without strict adherence to the formal invitation to bid or competitive sealed proposal rules. This permits and encourages a tailored, innovative solution aimed at reducing costs and improving results. This provision also looks to the future through a reporting mechanism that will allow procurement officers to see what works and doesn't work in applying this process for purchasing new services and supplies. That will help build better, faster, and cheaper solutions for tomorrow's procurement culture.

Integrity, competition, and accountability must remain at the very core of our procurement process. With increased discretion for procurement officers, increased accountability is also expected. Anyone making a false statement or providing false evidence in the alternate source selection process would be guilty of a class A misdemeanor.

The changes offered in this bill simplify and streamline state procurement practices and will result in more efficiency and cost savings in the acquisition of services and supplies.

I urge your support of this bill.

Sincerely,



Tony Knowles  
Governor

File  
SB 129

**MEMORANDUM**

**DEPARTMENT OF ADMINISTRATION**

**OFFICE OF THE COMMISSIONER**

55 FEB 6 Phone: (907) 465-2200

Fax: (907) 465-2135

**DIVISION OF GENERAL SERVICES & SUPPLY**

**TO:** Honorable Representative Terry Martin  
Honorable Senator Randy Phillips  
Vice Chairs  
Legislative Budget and Audit Committee

**DATE:** February 3, 1995

**FROM:** Mark Boyer   
Commissioner  
Department of Administration

**SUBJECT:** SB 129 Report as  
Required by Section 12(c),  
HCS CSSB 129 (STA),  
Lease Extensions  
Authorized

Attached please find a copy of our Lease Savings Report. This report details leases extended and the cost savings achieved.

Legislation calls for a report on activity on January 2, 1995. This report is dated January 3, 1995, the first working day in 1995.

Following is a summary of actions taken through December 31, 1994.

- ◆ Thirty-nine (39) successful negotiations have been completed. Total savings resulting from these negotiations over the life of these leases equal \$19,263,700.00.
- ◆ The total square footage affected is in excess of 516,700 square feet, statewide.
- ◆ Thirty negotiations were unsuccessful. Lessors could not or would not meet the minimum requirement of SB 129.
- ◆ Of the remaining 217 leases administered by the Division of General Services:
  - 126 leases—extension was not considered to be in the State's best interest.
  - 91 leases—either the lessor did not respond at all; the agency did not want to extend; or the lease was considered to offer minimal savings, was too small or already below market rents.
- ◆ In capturing these savings, we have expended approximately 3,300 staff hours at a cost of \$130,348.00.

**LEGISLATIVE REPORT**  
**SB 129 SAVINGS AS OF DECEMBER 31, 1994**

This is the final report of SB 129 extension and savings. SB 129 which allowed extension of current leases up to five (5) additional years in return for ADA compliance and/or reduced rates, has reduced the Leasing obligation and attained ADA compliance in 39 instances. More specifically:

SB 129 Savings:	FY 21		FY 22		TYPE OF LEASE		STAFF HOURS FOR SAVINGS
	GF	RSA	GF	RSA	GF	RSA	
1. Ensearch Bldg (Revenue)	(\$ 55.9)	(\$ 3.7)	(\$ 74.6)	(\$ 5.0)	(\$ 391.7)	(\$ 26.3)	40 HOURS
2. Correspondence Study	(\$ 17.7)		(\$ 21.2)		(\$ 114.8)		4.5 HOURS
3. Stangle Prop. (DOE)	(\$ 2.7)		(\$ 2.7)		(\$ 13.5)		1 HOURS
4. Rainbow Development	(\$ .7)		(\$ 1.4)		(\$ 7.0)		4 HOURS
5. M Snowden (Labor)	(\$ 8.4)		(\$ 16.8)		(\$ 117.6)		1.5 HOURS
6. M & K Swartz (Labor)	(\$ .1)		(\$ 1.0)		(\$ 5.1)		1.5 HOURS
7. Public Safety (Jumeau)	(\$ 5.6)		(\$ 9.1)		(\$ 45.7)		8 HOURS
8. Personnel/EEO (Anch)	(\$ 3.7)		(\$ 7.3)		(\$ 34.6)		250 HOURS
9. Auke Bay Co. (DC&ED)	(\$ 3.3)		(\$ 8.0)		(\$ 39.9)		(COMBINED)
10. Astro Enterprises (DEC)	(\$ 5.5)		(\$ 11.1)		(\$ 55.4)		30 HOURS
11. Galena Const. (ADPS)	(\$ 1.7)		(\$ 6.9)		(\$ 34.5)		3 HOURS
12. Bernard Kline (Labor)	(\$ .8)	(\$ .5)	(\$ 3.4)	(\$ 1.8)	(\$ 17.0)	(\$ 9.0)	7.5 HOURS
13. Goldbelt J.V. (DOE)	(\$ 25.5)	(\$ .1)	(\$ 101.8)	(\$ .3)	(\$ 636.4)	(\$ 1.7)	18 HOURS
14. Chr.King & Chr. (DOE)				(\$ 1.1)		(\$ 5.6)	4 HOURS
15. C-6 Enterprises (UPS)	(\$ .1)		(\$ 1.2)		(\$ 6.1)		2 HOURS
16. Sixth & K Ltd (DOR/DOE)	(\$ .5)	(\$ 1.0)	(\$ 2.7)	(\$ 6.0)	(\$ 13.9)	(\$ 31.0)	2 HOURS
17. Sixth & K Ltd (DEED/APUC)		(\$ 3.0)		(\$ 11.9)		(\$ 62.5)	8 HOURS
18. K & R Moore (DNR)	(\$ .2)		(\$ 1.0)		(\$ 5.1)		6 HOURS
19. SD & RK Hall (DHSS)			(\$ 11.6)	(\$ 2.3)	(\$ 58.1)	(\$ 11.7)	15 HOURS
20. New York Life (APOC)	(\$ 1.3)		(\$ 3.1)		(\$ 15.7)		20 HOURS
21. Frontier Building (Multi)			(\$1,181.5)		(\$14,177.8)		2,163 HOURS
22. City of Kasaan (DNR)			(\$ 115.9)		(\$ 1,274.6)		10 HOURS
23. Fesko Ventures (Voc Rehab)			(\$ .7)		(\$ 9.7)		4 HOURS
24. Fesko Ventures (Labor)			(\$ 4.8)	(\$ 1.0)	(\$ 26.4)	(\$ 5.2)	4 HOURS
25. M.K. Snowden (DNR)			(\$ .3)		(\$ 36.0)		3 HOURS
26. Ak Pac Univ (Voc Rehab)			(\$ 13.4)		(\$ 80.4)		4 HOURS
27. Wistler Ent. (DPS)			(\$ 1.5)		(\$ 10.3)		2 HOURS
28. Chr.King & Chr. (DHSS)			(\$ .2)	(\$ .1)	(\$ 1.0)	(\$ .6)	3 HOURS
29. Muna, Yupik Corp (DOC)			(\$ 1.0)		(\$ 6.1)		7 HOURS
30. Diamond Center (DMVA)			(\$ .9)		(\$ 5.4)		3 HOURS
31. Labor Co. (DNR)			(\$ 4.8)		(\$ 50.6)		4 HOURS
32. Byram Investments (DOE)			(\$ 1.1)	(\$ .3)	(\$ 10.9)	(\$ 3.0)	3 HOURS
33. Fischer Properties (DT&G)			(\$ 20.2)		(\$ 226.0)		25 HOURS
34. Cap. Off. Park JV (DT&G)			(\$ 108.9)		(\$ 1,181.6)		250 HOURS
35. K & S Leasing Inc (DH&SS)						(\$ 47.4)	8 HOURS
36. K & S Leasing Inc (Multi)					(\$ 77.1)	(\$ 1.2)	8 HOURS
37. Simpson Partshp. (DEC)				(\$ 4.8)		(\$ 40.9)	10 HOURS
38. Goldbelt JV (DOR/PIC)				(\$ 10.8)		(\$150.9)	45 HOURS
39. Chr.King & Chr. (DOE)			(\$ 4.9)		(\$ 78.7)		10 HOURS
<b>TOTALS BY FUNDING SOURCE</b>	<b>18133.71</b>	<b>18 8.31</b>	<b>181,745.81</b>	<b>18 45.41</b>	<b>1838,866.71</b>	<b>18397.81</b>	<b>2,994 HOURS</b>

**LEGISLATIVE REPORT**  
**SB 129 SAVINGS AS OF DECEMBER 31, 1994**

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TOTAL REDUCTIONS BY FISCAL YEAR : FY 94 = (8142.9) • FY 95 = (81,710.4) • LIFE OF LEASES = (819,262.7)

STAFF HOURS, TO GAIN SAVINGS = 1,131 HOURS @ PA III RATE (\$36.40) 1,519 @ PA IV RATE (\$46.17) 144 HOURS @ ADMIN ASST RATE (\$23.34) = \$110,902.59  
.....  
.....

**DETAILS ON EXTENSIONS**

1. Lease No. 2012, The Ensearch Building, Revenue, Anchorage. Added 5 years in return for a 10% reduction in rent (from \$1.51 to \$1.359) and full ADA compliance.
2. Lease No. 2122, The Centralized Correspondence Study Lease in Juneau. Added 5 years to term in return for full ADA compliance and a 15% rent reduction (from \$1.3903 to \$1.1818)
3. Lease No. 2102, Stengle Properties, Sitka. Added 5 years in return for full ADA compliance and 10% rent reduction. (from \$2.53 to \$2.277)
4. Lease No. 1570, Rainbow Development, Juneau. Added 5 years to term in return for full ADA compliance and a 5% rent reduction. (from \$1.1946 to \$1.1348)
5. Lease No. 2138, M. Snowden, Sitka. Added 5 years in return for full ADA compliance and a 5% rent reduction. (from \$1.6966 to \$1.6118)
6. Lease No. 1901, M. & K. Swartz, Petersburg. Added 5 years in return for full ADA compliance and a 5% rent reduction. (from \$1.5682 to \$1.4898)
7. Lease No. 1677 A/B, Ch. & H. Fluck, Juneau. Added 5 years in return for full ADA compliance and a 5% rent reduction. (from \$1.67 to \$1.5831)
8. Lease No. 2349, Auke Bay Co., Anchorage. Added 5 years in return for full ADA compliance and a 7.5% rent reduction. (from \$1.15 to \$1.0631)
9. Lease No. 2053 A/D, Auke Bay Co., Anchorage. Added 5 years in return for full ADA compliance and a 7.5% cost reduction. (from \$1.15 to \$1.0631)
10. Lease No. 2359, Astro Enterprises, Palmer. Added 5 years in return for full ADA compliance and a 9.9% rent reduction. (from \$1.2269 to \$1.0631)
11. Lease No. 2116, Galena Construction, Galena. Added 5 years in return for a 25% rent reduction (from \$2.75 to \$2.0625) and ADA compliance.
12. Lease No. 2069, Kemal. Added 5 years in return for a 5% rent reduction (from \$1.1016 to \$1.047) and ADA compliance.
13. Lease No. 1627 A/B, Goldbelt J.V., Juneau. Added 5 years in return for a 10% rent reduction (from \$2.0751 to \$1.8676) ADA compliance was met.
14. Lease No. 2106, Cherrier King & Cherrier, Kodiak. Added 5 years in return for a 10% rent reduction (from \$2.031 to \$1.828) and ADA compliance.
15. Lease No. 2036, C-4 Enterprises, Inc., Talkeetna. Added 5 years in return for a 10% rent reduction (from \$5.550 to \$4.995)

**LEGISLATIVE REPORT**  
**SB 129 SAVINGS AS OF DECEMBER 31, 1994**

16. Lease No. 2088 A/B, Sixth & K Limited, Anchorage. Added 5 years in return for a 10% rent reduction (from \$1.33 to \$1.19) and ADA compliance.
17. Lease No. 2308 A/B, Sixth & K Limited, Anchorage. Added 5 years in return for a 10% rent reduction (from \$1.336 to \$1.269) and ADA compliance.
18. Lease No. 2357, Kenneth & Roseleen Moore, Homer. Added 5 years in return for a 10% rent reduction (from \$1.4493 to \$1.3044) and ADA compliance.
19. Lease No. 1833, Steven D. & Robyn K. Hall, Anchorage. Added 5 years in return for a 5% rent reduction (from \$1.491 to \$1.416) and ADA compliance.
20. Lease No. 2046, New York Life, assigned to Byram Investments. Added 5 years in return for a 10% rent reduction (from \$.90 to \$.81) and ADA compliance.
21. Lease No. 2011, The Frontier Building, Anchorage. Negotiations added 5 years, the lease was modified to reflect standard Terms & Conditions of State Leases. The cost was reduced from \$3.28 per square foot (sf) for 145,253 leaseable sf, to \$2.15 per sf for 130,456 sf of usable sf and ADA compliance was gained.
22. Lease No. 1906, The City Of Kasaan, Juneau. Negotiations added 5 years and added an option for "First Right of Refusal" for space that is, or may become vacant during the state's occupancy. The cost was reduced from \$2.34 to \$1.85 per sf for the 21,498 sf leased.
23. Lease No. 2309, Fesko Ventures, Wasilla. Added 5 years in return for a 5% rent reduction (from \$.87 to \$.83) and ADA compliance.
24. Lease No. 2066, Fesko Ventures, Wasilla. Added 5 years in return for a 6.5% rent reduction (from \$1.10 to \$1.03) and ADA compliance.
25. Lease No. 2177, Michael K. Snowden, Sitka. Added 5 years in return for a 5% rent reduction (from \$.836 to \$.80) and ADA compliance.
26. Lease No. 1849, Alaska Pacific University, Anchorage. Added 5 years in return for a 10% rent reduction (from \$1.6360 to \$1.4888) and ADA compliance.
- 27. Lease No. 2080 A/B, Mistler Enterprises, Delta Junction. Added 5 years in return for a 10% rent reduction (from \$.8644 to \$.7815) and full ADA compliance.
- 28. Lease No. 2171, Cherrier King & Cherrier, Kodiak. Added 5 years in return for a 5% rent reduction (from \$1.70 to \$1.6736) and full ADA compliance.
- 29. Lease No. 2132, Nunakautek Yupik Corp., Bethel. Added 5 years in return for a 5% rent reduction (from \$1.533 to \$1.456) and full ADA compliance.
- 30. Lease No. 2313, Diamond center, Anchorage. Added 5 years in return for a 5% rent reduction (from \$1.64 to \$1.56) and full ADA compliance.
- 31. Lease No. 2328, Labor Co., Palmer. Added 5 years in return for a 10% reduction in rent (from \$1.347 to \$1.213) and full ADA compliance.
- 32. Lease No. 2335, Byram Investments, Anchorage. Added 5 years in return for a 10% reduction in rent (from \$1.1960 to \$1.076) and full ADA compliance.
- 33. Lease No. 1511, Fischer Properties, Anchorage. Added 5 years in return for a 5% reduction in rent and (from \$1.0902 to \$1.0356) full ADA

**LEGISLATIVE REPORT  
SB 129 SAVINGS AS OF DECEMBER 31, 1994**

compliance.

- 34. Lease No. 1444, Capital Office Park, Juneau. Negotiations added 5 years in exchange for a 10% reduction from \$2.34 per square foot (sf) to \$2.11 in rent for the two remaining years of the current term, dropping to \$1.88 sf for the 5 year extension.
- 35. Lease No. 1680, K & S Leasing, Nome. Added 5 years in return for a 7% rent reduction (from \$2.6262 to \$2.4424) and full ADA compliance.
- 36. Lease No. 2170, K & S Leasing, Nome. Added 5 years in return for a 7% reduction in rent (from \$2.45 to \$2.2785) and full ADA compliance.
- 37. Lease No. 2239, Simpson Partnership, Anchorage. Added 5 years in return for a 5% reduction in rent (from \$1.2387 to \$1.1767) and full ADA compliance.
- 38. Lease No. 2223 A/B/C, Goldbelt JV, Juneau. Added 5 years in return for a 10% reduction in rent (from \$2.47 to \$2.23). Full ADA compliance had been required prior to the current extension.
- 39. Lease No. 2345, Cherrier King & Cherrier, Anchorage. Added 5 years in return for a 5% rent reduction (from \$1.29 to \$1.2255) and ADA compliance.

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Conclusions as of 12/31/94

- We have completed 12 successful negotiations/extensions under SB 129.
- The total savings made for these leases, for the term of the extension and through any remaining renewals, is in excess of \$19,263,700.00.
- The total square footage affected is in excess of 316,700 square feet, statewide.
- We had 10 unsuccessful negotiations where Lessor's could not, or would not, meet the minimum requirements of SB 129.
- Of the remaining 117 leases administered by the Division of General Services:
  - 136 leases - extension was not considered to be in the state's best interest.
  - 91 leases - either the lessor did not respond at all, the agency did not want to extend or the lease was considered to offer minimal savings, were too small or already below market rents.
- We expended approximately 3,300 staff hours at the Purchasing Agent III/IV level at a cost of \$110,100.00 in personal services costs.
- This report can not reflect the total cost avoidance realized by postponing major moves for an additional 5 years nor is it possible to fully quantify an exact value of the ADA compliance gained.

NOTE: NEW TRANSACTIONS THAT HAVE BEEN FINALIZED BETWEEN JUNE 19, 1994 AND DECEMBER 31, 1994 AND ADDED TO THE REPORT ARE ANNOTATED WITH AN ASTERISK (\*)  
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SENATE BILL NO. 275

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/9/96

Referred: STA, JUD, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state procurement practices and procedures; and providing  
2 for an effective date."

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

4 • Section 1. AS 36.30.040(b)(4) is amended to read:

5 (4) conditions and procedures for the use of source selection methods  
6 authorized by this chapter, including single [SOLE] source procurements, emergency  
7 procurements, and small procurements;

8 • Sec. 2. AS 36.30.040(b)(15) is amended to read:

9 (15) a bidder's or offeror's duties under this chapter [AS 36.30.115  
10 AND 36.30.210]; and

11 • Sec. 3. AS 36.30.050(a) is amended to read:

12 (a) Except for persons debarred or suspended under AS 36.30.635 -  
13 36.30.655, the [THE] commissioner shall establish and maintain current lists of  
14 persons who desire to provide supplies, services, professional services, or construction

1 services to the state.

2 \* Sec. 4. AS 36.30.080 is amended by adding a new subsection to read:

3 (f) When the department is acquiring leased space of 5,000 square feet or less,  
4 the department may procure the leased space using the procedures for small  
5 procurements under AS 36.30.320.

6 \* Sec. 5. AS 36.30 is amended by adding a new section to read:

7 Sec. 36.30.083. LEASE EXTENSIONS AUTHORIZED. (a) Notwithstanding  
8 any other provision of this chapter, the department, the Board of Regents of the  
9 University of Alaska, the legislative council, or the court system may extend, for up  
10 to a maximum extension of 10 years, a real property lease that is entered into under  
11 this chapter including procedures and regulations adopted under AS 36.30.005(c),  
12 36.30.020, and 36.30.030, if a minimum cost savings of

13 (1) 10 percent can be achieved on the rent due under the lease; or

14 (2) five percent can be achieved on the rent due under the lease and the  
15 lessor agrees to make modifications of the leased real property to bring the real  
16 property into compliance with the requirements of 42 U.S.C. 12101 - 12213  
17 (Americans with Disabilities Act of 1990).

18 (b) The cost savings under (a) of this section shall be calculated on the  
19 remaining term of the lease and any renewals, including extensions allowed under (a)  
20 of this section.

21 (c) The department, the University of Alaska, the court system, and the  
22 Legislative Affairs Agency shall submit individually an annual report to the Legislative  
23 Budget and Audit Committee detailing the leases extended and the cost savings  
24 achieved by that entity under (a) or (b) of this section. The first report is due  
25 August 31, 1997, and must cover fiscal year 1997. Subsequent reports are due  
26 August 31 of each succeeding year.

27 \* Sec. 6. AS 36.30.085(d) is amended to read:

28 (d) If the department, Board of Regents, legislative council, or supreme court  
29 intends to enter into or renew a lease-purchase agreement for real property with an  
30 annual rent to the department, University of Alaska, legislative council, or  
31 supreme court that is anticipated to exceed \$500,000, or with total lease payments

1 that exceed \$2,500,000 for the full term of the lease-purchase agreement. the  
2 department, Board of Regents, legislative council, or supreme court shall provide  
3 notice to the legislature. The notice must include the

4 (1) anticipated total construction, acquisition, or other costs of the  
5 project;

6 (2) anticipated annual amount of the rental obligation; and

7 (3) total lease payments for the full term of the lease-purchase  
8 agreement.

9 • Sec. 7. AS 36.30.085(e) is amended to read:

10 (e) The department, the Board of Regents, the legislative council, or the  
11 supreme court may not enter into a lease-purchase agreement to acquire real property  
12 with an annual rent to the department, University of Alaska, legislative council,  
13 or supreme court that is anticipated to exceed \$500,000, or with total lease  
14 payments that exceed \$2,500,000 for the full term of the lease-purchase  
15 agreement, unless the agreement has been approved by the legislature by law.

16 • Sec. 8. AS 36.30.115 is amended to read:

17 Sec. 36.30.115. SUBCONTRACTORS FOR CONSTRUCTION  
18 CONTRACTS. (a) Within five working days after the identification of the apparent  
19 low bidder for a construction contract, the apparent low bidder shall submit a list of  
20 the subcontractors the bidder proposes to use in the performance of the construction  
21 contract. The list must include the name and location of the place of business for each  
22 subcontractor, [AND] evidence of each [THE] subcontractor's valid Alaska business  
23 license, and [ A BIDDER FOR A CONSTRUCTION CONTRACT SHALL ALSO  
24 SUBMIT] evidence of each subcontractor's registration under AS 08.18. If a  
25 subcontractor on the list did not have a valid Alaska business license and valid  
26 certificate of registration under AS 08.18 at the time the bid was opened, the bidder  
27 may not use the subcontractor in the performance of the contract, and shall replace the  
28 subcontractor with a subcontractor who had a valid Alaska business license and a valid  
29 certificate of registration under AS 08.18 at the time the bid was opened.

30 (b) The apparent low [A] bidder for a construction contract may replace  
31 a listed subcontractor if the subcontractor

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

14 (c) If a bidder for a construction contract fails to list a subcontractor or lists

15 more than one subcontractor for the same portion of work and the value of that work

16 is in excess of half of one percent of the total bid, the bidder shall be considered to

17 have agreed to perform that portion of work without the use of a subcontractor and to

18 have represented the bidder to be qualified to perform that work.

19 (d) A bidder for a construction contract who attempts to circumvent the

20 requirements of this section by listing as a subcontractor another contractor, who, in

21 turn, sublets the majority of the work required under the contract violates this section.

22 (e) If a construction contract is awarded to a bidder who violates this section,

23 the procurement [PURCHASING] officer may

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

27 • Sec. 9. AS 36.30.130(a) is amended to read:

28 (a) The procurement officer shall give adequate public notice of the invitation

29 to bid at least 21 days before the date for the opening of bids. If the procurement

30 officer determines [A DETERMINATION IS MADE] in writing that a shorter notice

31 period is advantageous [NECESSARY] for a particular bid and adequate

-+

New Text Underlined (DELETED TEXT BRACKETED)

1 competition is anticipated, the 21-day period may be shortened. [THE  
2 DETERMINATION SHALL BE MADE BY THE CHIEF PROCUREMENT OFFICER  
3 FOR BIDS FOR SUPPLIES, SERVICES, OR PROFESSIONAL SERVICES. THE  
4 DETERMINATION SHALL BE MADE BY THE COMMISSIONER OF  
5 TRANSPORTATION AND PUBLIC FACILITIES FOR BIDS FOR  
6 CONSTRUCTION OR ACQUISITION OF PROPERTY FOR THE STATE  
7 EQUIPMENT FLEET.] Notice shall be published in the Alaska Administrative  
8 Journal. The time and manner of notice must be in accordance with regulations  
9 adopted by the commissioner of administration. When practicable, notice may include

10 (1) publication in a newspaper calculated to reach prospective bidders  
11 located in the state;

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

14 (3) notices mailed to all active prospective contractors on the  
15 appropriate list maintained under AS 36.30.050

16 (A) if the contractors are located in the state;

17 (B) upon request, if the contractors are not located in the state.

18 \* Sec. 10. AS 36.30.170(b) is amended to read:

19 (b) The procurement officer shall award a contract based on solicited bids to  
20 the lowest responsive and responsible bidder after an Alaska bidder preference of five  
21 percent, an Alaska products preference as described in AS 36.30.322 - 36.30.338, and  
22 a recycled products preference under AS 36.30.339 have been applied. In this  
23 subsection, "Alaska bidder" means a person who

24 (1) holds a current Alaska business license;

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

27 (3) has maintained, for a period of six months immediately before  
28 the date of the bid, a place of business within the state that regularly provides in  
29 the normal course of business the supplies, services, or construction of the general  
30 nature solicited by the agency and that is staffed by the bidder or an employee of  
31 the bidder [FOR A PERIOD OF SIX MONTHS IMMEDIATELY PRECEDING THE

1 DATE OF THE BID);

2 (4) is incorporated or qualified to do business under the laws of the  
3 state, is a sole proprietorship and the proprietor is a resident of the state, or is a  
4 partnership and all partners are residents of the state; and

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

7 Sec. 11. AS 36.30.200 is amended to read:

8 Sec. 36.30.200. CONDITIONS FOR USE. (a) Except as otherwise provided  
9 in this chapter, or unless specifically exempted by law, an agency contract shall be  
10 awarded by competitive sealed proposals if it is not awarded by competitive sealed  
11 bidding. [CONSTRUCTION MAY ONLY BE PROCURED BY COMPETITIVE  
12 SEALED PROPOSALS IF THE CONDITIONS UNDER (c) OF THIS SECTION ARE  
13 MET.]

14 (b) The commissioner may provide by regulation that it is either not  
15 practicable or not advantageous to the state to procure specified types of supplies,  
16 services, or construction by competitive sealed bidding that would otherwise be  
17 procured by that method. When the [CHIEF] procurement officer[, OR FOR  
18 CONSTRUCTION CONTRACTS OR PROCUREMENTS FOR THE STATE  
19 EQUIPMENT FLEET, THE COMMISSIONER OF TRANSPORTATION AND  
20 PUBLIC FACILITIES.] determines in writing with particularity that the use of  
21 competitive sealed proposals is more [BIDDING IS EITHER NOT PRACTICABLE  
22 OR NOT] advantageous to the state than competitive sealed bidding, a contract may  
23 be entered into by competitive sealed proposals [IN ACCORDANCE WITH THE  
24 REGULATIONS. WHEN IT IS DETERMINED THAT IT IS PRACTICABLE BUT  
25 NOT ADVANTAGEOUS TO USE COMPETITIVE SEALED BIDDING, THE CHIEF  
26 PROCUREMENT OFFICER OR COMMISSIONER OF TRANSPORTATION AND  
27 PUBLIC FACILITIES SHALL SPECIFY WITH PARTICULARITY THE BASIS FOR  
28 THE DETERMINATION].

29 (c) When the commissioner of transportation and public facilities [CHIEF  
30 PROCUREMENT OFFICER] determines that it is advantageous to the state, a  
31 procurement officer may issue a request for proposals requesting the submission of

1 offers to provide construction in accordance with a design provided by the offeror.  
2 The request for proposals shall require that each proposal submitted contain a single  
3 price that includes the design/build.

4 \* Sec. 12. AS 36.30.210 is repealed and reenacted to read:

5 Sec. 36.30.210. REQUEST FOR PROPOSALS. (a) A request for competitive  
6 sealed proposals must contain the date, time, and place for delivering proposals, a  
7 specific description of the supplies, construction, services, or professional services to  
8 be provided under the contract, and the terms under which the supplies, construction,  
9 services, or professional services are to be provided.

10 (b) An offeror for a construction contract shall submit evidence of the offeror's  
11 registration under AS 08.18. A request for sealed proposals for a construction contract  
12 must require the offeror, no later than five working days after the proposal that is the  
13 most advantageous to the state is identified, to list subcontractors the offeror proposes  
14 to use in the performance of the construction contract. The list must include the  
15 information required under AS 36.30.115(a). The provisions of AS 36.30.115(b) - (e)  
16 apply to competitive sealed proposals for construction contracts.

17 (c) A request for proposals must contain that information necessary for an  
18 offeror to submit a proposal or contain references to any information that cannot  
19 reasonably be included with the request. The request must provide a description of the  
20 factors that will be considered by the procurement officer when evaluating the  
21 proposals received, including the relative importance of price and other evaluation  
22 factors.

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

27 (e) The offeror must have a valid Alaska business license at the time  
28 designated, in the request for proposals, for opening of the proposals.

29 \* Sec. 13. AS 36.30.230 is amended to read:

30 Sec. 36.30.230. DISCLOSURE OF PROPOSALS. The procurement officer  
31 shall open proposals so as to avoid disclosure of contents to competing offerors before

1 notice of intent to award a contract is issued [DURING THE PROCESS OF  
2 NEGOTIATION]. A register of proposals containing the name and address of each  
3 offeror shall be prepared in accordance with regulations adopted by the commissioner.  
4 The register and the proposals are open for public inspection after the notice of intent  
5 to award a contract is issued under AS 36.30.365. To the extent that the offeror  
6 designates and the procurement officer concurs, trade secrets and other proprietary data  
7 contained in the proposal documents are confidential.

8 \* Sec. 14. AS 36.30.230 is amended by adding a new subsection to read:

9 (b) If a solicitation is cancelled under AS 36.30.350 after proposals are  
10 received but before a notice of intent to award a contract has been issued under  
11 AS 36.30.365, a protest of the solicitation or of the cancellation of the solicitation has  
12 not been filed by an interested party under AS 36.30.560, and the time specified in  
13 AS 36.30.565(a) for filing such a protest has expired, the procurement officer may  
14 return a proposal to the offeror that made the proposal. The procurement officer shall  
15 keep a list of returned proposals in the file for the solicitation.

16 \* Sec. 15. AS 36.30.260 is amended to read:

17 Sec. 36.30.260. CONTRACT EXECUTION. A contract awarded under  
18 competitive sealed proposals must contain

19 (1) a statement of the amount of the contract [STATED ON ITS  
20 FIRST PAGE];

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

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

25 (4) certification by the project director for the contracting agency, the  
26 head of the contracting agency, or a designee that sufficient money is [FUNDS ARE]  
27 available in an appropriation to be encumbered for the amount of the contract.

28 \* Sec. 16. AS 36.30.300 is repealed and reenacted to read:

29 Sec. 36.30.300 SINGLE SOURCE PROCUREMENTS. (a) A contract may  
30 be awarded for supplies, services, professional services, or construction without  
31 competitive sealed bidding, competitive sealed proposals, or other competition in

1 accordance with regulations adopted by the commissioner. A contract may be awarded  
2 under this section only when the chief procurement officer or, for construction  
3 contracts or procurements for the state equipment fleet, the commissioner of  
4 transportation and public facilities determines in writing that

5 (1) it is not practicable to award a contract by competitive sealed  
6 bidding under AS 36.30.100, competitive sealed proposals under AS 36.30.200, or  
7 limited competition under AS 36.30.305; and

8 (2) award of the contract under this section is in the state's best interest.

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

13 (c) To the extent practicable, the procurement officer shall negotiate with the  
14 single source to obtain contract terms advantageous to the state.

15 (d) Procurement requirements may not be aggregated or structured so as to  
16 constitute a purchase under this section or to circumvent the source selection  
17 procedures required by AS 36.30.100 - 36.30.270.

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

19 (a) A contract for supplies, services, professional services, or a construction  
20 contract under \$100,000, may be awarded without competitive sealed bidding or  
21 competitive sealed proposals, in accordance with regulations adopted by the  
22 commissioner. A contract may be awarded under this section only when the chief  
23 procurement officer or, for construction contracts under \$100,000 or procurements for  
24 the state equipment fleet, the commissioner of transportation and public facilities, or,  
25 for services of legal counsel, the attorney general, determines in writing that a  
26 situation exists that makes competitive sealed bidding or competitive sealed proposals  
27 impractical or contrary to the public interest. Procurements under this section shall be  
28 made with competition that is practicable under the circumstances  
29 [CIRCUMSTANCE. EXCEPT FOR PROCUREMENTS OF SUPPLIES, SERVICES,  
30 PROFESSIONAL SERVICES, OR CONSTRUCTION THAT DO NOT EXCEED THE  
31 AMOUNT FOR SMALL PROCUREMENTS UNDER AS 36.30.320(a) OR (b), AS

1 APPLICABLE, THE AUTHORITY TO MAKE A DETERMINATION REQUIRED  
2 BY THIS SECTION MAY NOT BE DELEGATED].

3 \* Sec. 18. AS 36.30.305(d) is amended to read:

4 (d) Single [SOLE] source procurements may not be made under this section.

5 \* Sec. 19. AS 36.30 is amended by adding a new section to read:

6 Sec. 36.30.308. INNOVATIVE PROCUREMENTS. (a) A contract may be  
7 awarded for supplies, services, professional services, or construction using an  
8 innovative procurement process, with or without competitive sealed bidding or  
9 competitive sealed proposals, in accordance with regulations adopted by the  
10 commissioner. A contract may be awarded under this section only when the chief  
11 procurement officer, or, for construction contracts or procurements of the state  
12 equipment fleet, the commissioner of transportation and public facilities, determines  
13 in writing that it is advantageous to the state to use an innovative competitive  
14 procurement process in the procurement of new or unique requirements of the state,  
15 new technologies, or to achieve best value.

16 (b) The procurement officer shall submit a procurement plan to the Department  
17 of Law for review and approval as to form before issuing the notice required by (c)  
18 of this section.

19 (c) A procurement under this section is subject to the requirements of  
20 AS 36.30.130.

21 (d) Nothing in this section precludes the adoption of regulations providing for  
22 the use of bonuses instead of preferences in a procurement of construction.

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

24 Sec. 36.30.311. EMPLOYMENT PROGRAM PROCUREMENTS. A  
25 procurement of products manufactured or services provided by an employment  
26 program of the state may be made without competitive sealed bidding or competitive  
27 sealed proposals, in accordance with regulations adopted by the commissioner.

28 \* Sec. 21. AS 36.30 is amended by adding a new section to read:

29 Sec. 36.30.313. CORRECTIONAL INDUSTRIES PROCUREMENTS. A  
30 procurement of products or services provided by the correctional industries program  
31 established under AS 33.32 may be made without competitive sealed bidding or

1 competitive sealed proposals, in accordance with regulations adopted by the  
2 commissioner.

3 \* Sec. 22. AS 36.30.315 is amended to read:

4 Sec. 36.30.315. FALSE STATEMENTS IN DETERMINATIONS [BY  
5 CHIEF PROCUREMENT OFFICER]; CRIMINAL PENALTY. (a) In a  
6 determination made by a state official [THE CHIEF PROCUREMENT OFFICER]  
7 under AS 36.30.300 - 36.30.310, the state official making the determination [CHIEF  
8 PROCUREMENT OFFICER] shall independently examine the material facts of the  
9 procurement and independently determine whether the procurement is eligible for the  
10 procurement method requested.

11 (b) If a state official [THE CHIEF PROCUREMENT OFFICER] knowingly  
12 makes a false statement in a determination made [BY THE CHIEF PROCUREMENT  
13 OFFICER] under AS 36.30.300 - 36.30.310, the state official [CHIEF  
14 PROCUREMENT OFFICER] is guilty of a class A misdemeanor.

15 \* Sec. 23. AS 36.30.320(a) is amended to read:

16 (a) A procurement for supplies, services, or professional services  
17 [CONSTRUCTION] that does not exceed an aggregate dollar amount of \$50,000,  
18 construction that does not exceed an aggregate dollar amount of \$100,000, or  
19 lease of space that does not exceed 5,000 square feet [\$25,000] may be made in  
20 accordance with regulations adopted by the commissioner for small procurements.

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

22 Sec. 36.30.331. DELIVERY OF SUPPLIES. Supplies purchased under this  
23 chapter shall be delivered at a location within the state unless the department  
24 determines that a point of delivery outside the state would be in the best interest of the  
25 state. A bid or proposal involving the procurement of supplies shall specify the  
26 delivery location and shall state that the price is the delivered price at that location.

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

28 Sec. 36.30.333. PROCUREMENT OF PAPER. Except as otherwise required  
29 under AS 36.15.050, AS 36.30.322 - 36.30.332, and 36.30.334 - 36.30.338, when a  
30 state agency purchases paper, at least 25 percent of the quantity purchased must be  
31 recycled paper unless recycled paper is not available for the purchase or unless, after

1 application of the procurement preference under AS 36.30.339, the recycled paper is  
2 more expensive than the nonrecycled paper.

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

4 Sec. 36.30.335. **PRODUCT PREFERENCES.** This chapter does not modify  
5 AS 36.15.010 and 36.15.020 regarding preference for Alaska forest products, or  
6 AS 36.15.050 and 36.15.060 regarding preference for Alaska agricultural and fisheries  
7 products, except as provided in AS 36.30.170(b), (c), and (e) - (h), and 36.30.339.

8 \* Sec. 27. AS 36.30.520(a) is amended to read:

9 (a) The commissioner shall maintain for a minimum of five years a record  
10 listing all single [SOLE] source procurement contracts made under AS 36.30.300 and  
11 emergency procurements made under AS 36.30.310. The record must contain

12 (1) each contractor's name;

13 (2) the amount and type of each contract, and

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

16 \* Sec. 28. AS 36.30 is amended by adding a new section to read:

17 Sec. 36.30.522. **RECORDS OF INNOVATIVE PROCUREMENTS.** The  
18 commissioner and the contracting agency shall keep a file for each contract awarded  
19 under an innovative procurement process under AS 36.30.308. The file is subject to  
20 inspection under the same standards as described in AS 36.30.140(b) and 36.30.230.  
21 The file kept by the commissioner must contain a summary of the information in the  
22 file of the contracting agency. The file kept by the contracting agency must contain

23 (1) a copy of the contract;

24 (2) the written determination under AS 36.30.308(a);

25 (3) the procurement plan as approved as to form by the Department of  
26 Law;

27 (4) the record of notice under AS 36.30.130; and

28 (5) the record of respondents to solicitation.

29 \* Sec. 29. AS 36.30 is amended by adding a new section to article 9 to read:

30 Sec. 36.30.550. **APPLICABILITY OF PROTEST AND APPEAL**  
31 **PROCEDURES.** (a) Except for small procurements made under AS 36.30.320, the

1 provisions of AS 36.30.560 - 36.30.615 apply to a solicitation, a proposed contract  
2 award, and a contract for supplies, services, professional services, or construction.

3 (b) The commissioner shall adopt regulations providing for protest and appeal  
4 procedures of small procurements made under AS 36.30.320.

5 \* Sec. 30. AS 36.30.565(a) is amended to read:

6 (a) A protest based upon alleged improprieties or ambiguities in a  
7 solicitation must be filed at least 10 days before the due date of the bid or  
8 proposal as stated in the solicitation. A protest based upon alleged improprieties in  
9 an award of a contract or a proposed award of a contract must be filed within 10 days  
10 after a notice of intent to award the contract is issued by the procurement officer.

11 \* Sec. 31. AS 36.30.580(a) is amended to read:

12 (a) The procurement officer of the contracting agency shall issue a written  
13 decision containing the basis of the decision within 15 [14] days after a protest has  
14 been filed. A copy of the decision shall be furnished to the protester by certified mail  
15 or other method that provides evidence of receipt.

16 \* Sec. 32. AS 36.30.580(b) is amended to read:

17 (b) The time for a decision may be extended up to 30 [26] days for good cause  
18 by the commissioner of administration, or for protests involving construction or  
19 procurements for the state equipment fleet, the commissioner of transportation and  
20 public facilities. If an extension is granted, the procurement officer shall notify the  
21 protester in writing of the date that [OF] the decision is due.

22 \* Sec. 33. AS 36.30.585 is amended by adding a new subsection to read:

23 (c) Notwithstanding (a) and (b) of this section, if a protest is sustained in  
24 whole or part, the protester's damages are limited to reasonable bid or proposal  
25 preparation costs.

26 \* Sec. 34. AS 36.30.605(a) is amended to read:

27 (a) The procurement officer of the contracting agency shall file a complete  
28 report on the protest and decision with the commissioner of administration or the  
29 commissioner of transportation and public facilities, as appropriate, within 10 [SEVEN]  
30 days after a protest appeal is filed. The procurement officer shall furnish a copy of the  
31 report to the protester and to interested parties that have requested a copy of the appeal

1 under AS 36.30.595(b).

2 \* Sec. 35. AS 36.30.605(c) is amended to read:

3 (c) The protester may file comments on the protest report with the  
4 commissioner of administration or the commissioner of transportation and public  
5 facilities, as appropriate, within 10 [SEVEN] days after the report is received. The  
6 protester shall provide copies of the comments to the procurement officer and to  
7 interested parties that have requested a copy of the appeal under AS 36.30.595(b).

8 \* Sec. 36. AS 36.30.620(a) is amended to read:

9 (a) A contractor shall file a claim concerning a contract awarded under this  
10 chapter with the procurement officer. The contractor shall certify that the claim is  
11 made in good faith, that the supporting data are accurate and complete to the best of  
12 the contractor's knowledge and belief, and that the amount requested accurately  
13 reflects the contract adjustment for which the contractor believes the state is liable.  
14 A claim under this section must be filed within 30 days after the contractor  
15 becomes aware of the basis of the claim or should have known the basis of the  
16 claim, whichever is earlier.

17 \* Sec. 37. AS 36.30.620 is amended by adding a new subsection to read:

18 (g) This section does not apply to payment disputes governed by  
19 AS 37.05.285.

20 \* Sec. 38. AS 36.30.655 is amended to read:

21 Sec. 36.30.655. LIST OF PERSONS DEBARRED OR SUSPENDED. The  
22 commissioner shall maintain a list of all persons debarred or suspended from  
23 consideration for award of contracts. The commissioner shall remove a person  
24 debarred or suspended from the lists of contractors under AS 36.30.050 for the  
25 period of rebarment or suspension.

26 \* Sec. 39. AS 36.30.850(b)(23) is amended to read:

27 (23) operation and protection of assets or disposals of equipment  
28 and supplies acquired through foreclosure or other legal proceedings relating to [OF]  
29 loans issued under AS 03.10;

30 \* Sec. 40. AS 36.30.850(b) is amended by adding new paragraphs to read:

31 (34) procurements by the Office of the Governor for lobbying, public

1 relations, or advertising;

2 (35) purchases of livestock by a correctional industries program  
3 established under AS 33.32.

4 • Sec. 41. AS 36.30.910 is amended to read:

5 Sec. 36.30.910. PURCHASES THROUGH GENERAL SERVICES  
6 ADMINISTRATION. Notwithstanding any other provision of this chapter, [THIS  
7 CHAPTER DOES NOT PREVENT] purchasing through the general services  
8 administration or from federal supply schedules of the general services  
9 administration may be made without competitive sealed bidding, competitive  
10 sealed proposals, or other competition, so long as the purchasing is made in  
11 accordance with regulations adopted by the commissioner for purchases under  
12 this section and as provided by federal law.

13 • Sec. 42. AS 36.30.990 is amended by adding a new paragraph to read:

14 (22) "state official" means a public employee, public officer, or official  
15 of an agency.

16 • Sec. 43. Section 3, ch. 59, SLA 1994, is amended to read:

17 Sec. 3. AS 36.30.130(a) is repealed and reenacted to read:

18 (a) The procurement officer shall give adequate public notice of the invitation  
19 to bid at least 21 days before the date for the opening of bids. If the procurement  
20 officer determines [A DETERMINATION IS MADE] in writing that a shorter notice  
21 period is advantageous [NECESSARY] for a particular bid and adequate  
22 competition is anticipated, the 21-day period may be shortened. [THE  
23 DETERMINATION SHALL BE MADE BY THE CHIEF PROCUREMENT OFFICER  
24 FOR BIDS FOR SUPPLIES, SERVICES, OR PROFESSIONAL SERVICES. THE  
25 DETERMINATION SHALL BE MADE BY THE COMMISSIONER OF  
26 TRANSPORTATION AND PUBLIC FACILITIES FOR BIDS FOR  
27 CONSTRUCTION OR ACQUISITION OF PROPERTY FOR THE STATE  
28 EQUIPMENT FLEET.] Notice shall be published in the Alaska Administrative  
29 Journal. The time and manner of notice must be in accordance with regulations  
30 adopted by the commissioner of administration. When practicable, notice may include

31 (1) publication in a newspaper calculated to reach prospective bidders:

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

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

5 \* Sec. 44. (a) AS 36.30.015(c), 36.30.090, 36.30.095, 36.30.100(b), 36.30.850(b)(14),  
6 and 36.30.900 are repealed.

7 (b) AS 36.30.320(b) is repealed.

8 \* Sec. 45. REVISOR'S CHANGES. The revisor of statutes is requested to change the  
9 heading of article 5 of AS 36.30 from "Article 5. Preference for Alaska Products." to  
10 "Article 5. Preferences.". Additionally, the revisor of statutes is requested to renumber  
11 AS 36.30.339 to AS 36.30.337, to place that section in article 5 of AS 36.30.

12 \* Sec. 46. TRANSITION: REGULATIONS. Notwithstanding secs. 49 - 51 of this Act,  
13 the commissioner of administration and the commissioner of transportation and public facilities  
14 may proceed to adopt regulations necessary to implement respective changes in law enacted  
15 by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but  
16 not before the effective date of the change in law in this Act.

17 \* Sec. 47. APPLICABILITY. Notwithstanding the changes in law made by this Act, the  
18 state agencies may continue to act on or consider a provision of a solicitation, notice of intent  
19 to award, or response to solicitation made before the effective date of the relevant change in  
20 law enacted by this Act, to the extent that the provision is not inconsistent with a provision  
21 of this Act.

22 \* Sec. 48. Sections 2 - 9, 11, 15, 20 - 22, 24 - 26, 38 - 40, 42, 44(a), and 45 - 47 of this  
23 Act take effect immediately under AS 01.10.070(c).

24 \* Sec. 49. Sections 1, 10, 12 - 14, 16 - 19, 23, 27, 28, 30 - 37, 41, and 44(b) of this Act  
25 take effect September 30, 1996.

26 \* Sec. 50. Section 29 of this Act takes effect January 1, 1997.

27 \* Sec. 51. Section 43 of this Act takes effect August 22, 1998.

## PROCUREMENT BILL SECTION ANALYSIS

Section 1 revises the references to the commissioner's authority to adopt regulations governing sole-source procurements to single source procurements consistent with the amendment in Section 15.

Section 2 revises the reference to the commissioner's authority to adopt regulations governing the listing of subcontractors consistent with the amendment in Sections 8 and 12.

Section 3 clarifies AS 36.30.050(a) by allowing the commissioner of administration to exclude the names of persons debarred or suspended from the list of contractors that is maintained by the department.

Section 4 adds a new subsection to AS 36.30.080, which will allow the department of administration (department), at its option, to procure lease space of 5000 square feet or less utilizing the more simplified procedures for small procurement under AS 36.30.320. It is the experience of the department that smaller office leases may be acquired more efficiently and quicker without the use of formal competitive bidding processes.

Section 5 adds new section AS 36.30.083, authorizing negotiated lease extensions with current lessors without utilizing the competitive procedures of AS 36.30, provided the extension is not longer than 10 years and the state receives, at a minimum, a cost savings of a) 10 percent over the term of the extension, or b) 5 percent over the term of the extension and the lessor agrees to make modifications to the lease space to bring it into compliance with applicable requirements of the Americans with Disabilities Act of 1990. This section also requires the department, the University of Alaska, the Alaska Court System and the Legislative Affairs Agency to submit an annual report to the Legislative Budget and Audit committee detailing the leases extended under this provision and the cost savings achieved. A similar provision in statute resulted in a rent savings of \$1,790,400.00 in FY 95.

Sections 6 and 7 of the bill amend AS 36.30.085, to allow the department, Board of Regents, legislative council, or supreme court to enter into or renew lease purchase agreements of real estate, without the need for legislative notice and approval, if it is anticipated that the annual rent will not exceed \$500,000 or the total lease-purchase price will not exceed \$2,500,000. These are the same threshold lease rate values as set out in AS 36.30.080, for which no legislative notice or approval is required.

Section 8 amends AS 36.30.115 by deleting reference to the subcontractor notification requirements of AS 36.30.115 for purposes of supply and services, but retains this requirement for construction bids.

Section 9 amends AS 36.30.130(a) by allowing a procurement officer, rather than only the chief procurement officer, to determine, in writing, when a shorter period than 21 days notice may be shortened, taking into account whether shorter notice is advantageous and still provides for adequate competition. This section improves efficiency by permitting the procurement officer making the purchase to exercise the discretion to reduce the circulation period.

Section 10 tightens the requirements for a bidder to qualify for the Alaska bidder's preference by requiring in addition to the existing standards in AS 36.30.170(b), that the bidder has, for a period of six months immediately preceding the date of the bid, maintained a place of business within the state that in the normal course of business regularly provides the supplies, services, or construction of the general nature solicited by the agency and that is staffed by the bidder or an employee of the bidder. This should eliminate a current practice of a person brokering his or her bidder preference by bidding on a contract for which they do not normally do such business, receiving the preference, then assigning the contract to an entity that would not qualify for the preference.

Section 11 amends AS 36.30.200, to expand the authorized use of competitive sealed proposals. The amendment empowers the procurement officer actually making the purchase to determine, in writing, when use of a competitive sealed proposal to procure a good or service is more advantageous to the state than use of the more restrictive competitive sealed bid. Use of the comparison is often a better method for obtaining best value and incorporating past vendor performance in award criteria. In subsection (c), the chief procurement officer is replaced with the commissioner of transportation and public facilities, as the person who may determine when it is advantageous to the state to issue a request for proposals for submission of offers to provide construction in accordance with a design provided by the offeror (i.e., a design/build offer). Because construction bids and proposals are under the authority of the department of transportation and public facilities, it makes little sense to have the chief procurement officer in the department of administration make such a determination.

Section 12 repeals and reenacts 36.30.210. The reenacted statute deletes the reference to the subcontractor notification requirements of AS 36.30.115, for competitive sealed proposal acquisitions of supplies, services, and professional services, but retains this requirement for construction competitive sealed proposals.

Section 13 amends AS 36.30.230 to require that the procurement officer not disclose the content of competing offers after proposals are opened until after the notice of intent to award has been issued. By keeping such proposals confidential until a notice of intent is issued, the state is able to utilize its negotiation powers under AS 36.30.240, to obtain best and final offers without jeopardizing the integrity of the competitive process if the proposals were allowed to be made public immediately upon opening as in the case of competitive bids.

Section 14 adds a new subsection to AS 36.30.230, to allow that proposals received in response to a request for proposals be returned to the offeror, without public disclosure, when a solicitation is canceled before a notice of intent to award is issued and no protest of the solicitation or cancellation has been filed within the time allowed. The procurement officer must keep a list of returned proposals. Under current law, the procurement officer is required to keep all proposals received and there is no exception for canceled solicitations. This new subsection will allow a new solicitation to occur without competitors' prices having been revealed, thus increasing the competitiveness and fairness of the process.

Section 15 is a housekeeping measure that deletes the administrative requirement that the amount of the contract must be stated on the first page of the contract. While it may be administratively

convenient to have the amount noted on the first page of a contract, there is no legal reason to mandate it in law. This matter is more appropriately handled through the state Administrative Manual.

Section 16 repeals and reenacts AS 36.30.300, dealing with single source procurements. The new provision allows use of the single source procurement when it is determined by the chief procurement officer or, for construction contracts or procurements for the state equipment fleet, the commissioner of transportation and public facilities makes a written determination that it is not practicable to award a contract by one of the competitive methods in AS 36.30 and the award of the contract to a single source is in the state's best interest. This section will make use of the single source provision in the code a more useful tool for procurement units and more workable than the current law.

Section 17 makes use of limited competition consistent with other sections of AS 36.30, namely, noting the attorney general's authority to procure legal services for the state is applicable under limited competition methods. Further, the amendment deletes the nondelegation of a decision to use limited competition so that the chief procurement officer is able to delegate this determination, similar to other delegations.

Section 18 revises limited competition procurements to reflect that single source procurements may not be entered into under this section.

Section 19 is a new section, AS 36.30.308, authorizing the use of innovative procurement methods in the procurement of new or unique requirements to the state, new technologies, or to achieve best value when determined by the chief procurement officer, or commissioner of transportation and public facilities for construction, that an innovative procurement method is to the state's best advantage. This creates an avenue to develop improved approaches that may achieve savings, improve results, and permits "outside the box" thinking when appropriate. The section also permits the continuation of the existing preference bonus program permitted in statute for construction.

Section 20 relates to the repeal of AS 36.30.100(1), to permit the purchase of products or services manufactured by an employment program without the use of competitive sealed bidding. This new section, placed in Article 4 (Other Procurement Methods), clarifies that purchases from an employment program are not subject to either competitive sealed bidding or competitive sealed proposal processes, but that the commissioner may adopt regulations governing agencies' purchases from an employment program.

Section 21 relates to the repeal of AS 36.30.100(b)(3) to permit the purchase of services provided by correctional industries to be made without competitive sealed bidding. The new statute AS 36.30.313, placed in Article 4 (Other Procurement Methods), clarifies that purchases from Alaska Correctional Industries (ACI) are not subject to either competitive sealed bidding or competitive sealed proposal processes, but that the commissioner may adopt regulations governing agencies' purchases from ACI.

Section 22 expands the impact of the criminal penalty for false statements in determinations from just the chief procurement officer to any "state official" acting under authority of a provision of

the code. All state officials should be accountable under the code for knowingly making a false statement in a determination. This expands responsibility to coincide with expanded authority.

Section 23 increases the amount for use of small procurement procedures to procurement of supplies or professional services that do not exceed the aggregate dollar amount of \$50,000 and for construction that does not exceed an aggregate dollar amount of \$100,000, and for lease space that does not exceed 5,000 square feet (as noted in section 2 of the bill). This section efficiently expands the use of simplified procurement procedures consistent with the Federal Acquisition Streamlining Act of 1994.

Sections 24 through 26 are provisions in current law which have been reorganized and given new section numbers.

Section 27 modifies the existing recordkeeping requirements to include single source procurements in accordance with the amendment in Section 14.

Section 28 is a new section requiring that records of innovative procurements be kept and opened for inspection. The items which must be maintained in the file are identified. Successful innovative procurements should be shared with procurement officers if they achieve savings and improve results.

Section 29 adds a new section to allow for the commissioner to adopt regulations to govern protests and appeals of small procurements made under AS 36.30.320. This section permits the development of a simplified protest procedure for small procurements that should reduce time and cost for the vendor and the state.

Section 30 repeals and reenacts AS 36.30.565 requiring a protest of a solicitation to be filed within 10 days of bid opening and allows a procurement officer to accept a late filed protest provided there is a showing of good cause.

Sections 31 through 35, amend the time provisions for the filing of decisions, appeals, protest reports and responses by making them more uniform to court rules, i.e., 7 days, 10 days, 15 days.

Sections 36 and 37 amend AS 36.30.620, regarding contract claims, by requiring a claim to be filed within 30 days after the contractor becomes aware of the basis of the claim or should have known the basis of the claim, whichever is earlier. Under present law, no time limitation for bringing a contract claim is stated. This amendment will force contractors to bring claims expeditiously so that they may be resolved in a timely fashion and the evidence and issues do not become stale, with unnecessary expenses accruing. The time limitation is not applicable to payment disputes governed by AS 37.05.285.

Section 38 amends AS 36.30.655, to require the commissioner to remove the names of persons debarred or suspended from the list of contractors maintained by the department during the period of debarment or suspension.

Sections 39 and 40 amend AS 36.30.850(b), by exempting from the code 1) procurements by the office of the Governor for lobbying, public relations and advertising, 2) purchases of livestock

for correctional industries, and 3) operation and protection of assets or disposals of equipment and supplies acquired through foreclosure, or other legal proceedings, of agricultural loans under AS 03.10.

Section 41 amends AS 36.30.910 to make clear that purchasing through the federal general services administration or from "General Services Administration, Federal Supply Schedules," may be made by an agency without competitive process provided such purchases are made in accordance with regulations to be adopted by the commissioner and as provided for in federal law.

Section 42 defines "state official," to mean a public employee or public officer or official.

Section 43 preserves the repealer provision in existing statute.

Section 44 contains sections of the current code to be repealed, many of which were the result of renumbering as noted herein, including:

AS 36.30.015(c) is repealed, resolving a conflict in statute that charges the Chief Procurement Officer with responsibility for disposals of surplus property. While AS 36.30.015(c) prohibits the Commissioner of Administration from delegating surplus property disposals. Under this revision, the Commissioner can delegate preparation of regulations and disposal of surplus property.

AS 36.30.090, Delivery of Supplies, is repealed to move to Section 23 in the new preferences.

AS 36.30.095, Procurement of Paper, is repealed to move to Section 24 of the new preferences article.

AS 36.30.100(b) repeals exemption of competitive bidding for food, clothing, and medical supplies, as well as exemptions for purchases from employment programs and Correctional Industries, which are re-enacted in Sections 20 and 21 of the bill.

AS 36.30.850(b)(14) repeals the exemption for purchases by state boarding schools.

AS 36.30.900 repeals the product preferences references. It is reenacted in the preferences section.

Section 45 requests the revision to retitle Article 5 from "Preference for Alaska Products" to "Article 5 Preferences." The new article will include other preferences such as the "Recycled Product Preference." The revision is also requested to renumber appropriate sections.

Section 46 permits adoption of regulations to implement revisions to statute, but the regulation may not be effective before the effective date of the law.

Section 47 permits continuation of existing procurement actions begun under the law prior to the effective date of revisions.

Sections 48 through 51 provide for effective dates.

## PROCUREMENT BILL SECTION ANALYSIS

Section 1 revises the references to the Commissioner's authority to adopt regulations governing sole-source procurements to single-source procurements consistent with the amendment in Section 15.

Section 2 revises the reference to the Commissioner's authority to adopt regulations governing the listing of subcontractors consistent with the amendment in Sections 11 and 43.

Section 3 clarifies AS 36.30.050(a) by allowing the commissioner of administration to exclude the names of persons debarred or suspended from the list of contractors that is maintained by the department.

Section 4 adds a new subsection to AS 36.30.080, which will allow the Department of Administration (department), at its option, to procure lease space of 5000 square feet or less utilizing the more simplified procedures for small procurement under AS 36.30.320. It is the experience of the department that smaller office leases may be acquired more efficiently and quicker without the use of formal competitive bidding processes.

Section 5 adds new section AS 36.30.083, authorizing negotiated lease extensions with current lessors without utilizing the competitive procedures of AS 36.30, provided the extension is not longer than 10 years and the state receives, at a minimum, a cost savings of a) 10 percent over the term of the extension, or b) 5 percent over the term of the extension and the lessor agrees to make modifications to the lease space to bring it into compliance with applicable requirements of the Americans with Disabilities Act of 1990. This section also requires the department, the University of Alaska, the Alaska Court System and the Legislative Affairs Agency to submit an annual report to the Legislative Budget and Audit committee detailing the leases extended under this provision and the cost savings achieved. A similar provision in statute resulted in a rent savings of \$1,790,400.00 in FY 95.

Sections 6 and 7 of the bill amend AS 36.30.085, to allow the department, Board of Regents, legislative council, or supreme court to enter into or renew lease purchase agreements of real estate, without the need for legislative notice and approval, if it is anticipated that the annual rent will not exceed \$500,000 or the total lease-purchase price will not exceed \$2,500,000. These are the same threshold lease rate values as set out in AS 36.30.080, for which no legislative notice or approval is required.

Section 8 amends AS 36.30.130(a) by allowing a procurement officer, rather than only the chief procurement officer, to determine, in writing, when a shorter period than 21 days notice may be shortened, taking into account whether shorter notice is advantageous and still provides for adequate competition. This section improves efficiency by permitting the procurement officer making the purchase to exercise the discretion to reduce the circulation period.

Section 9 tightens the requirements for a bidder to qualify for the Alaska's bidder preference by requiring in addition to the existing standards in AS 36.30.170(b), that the bidder has, for a

period of six months immediately preceding the date of the bid, maintained a place of business within the state that in the normal course of business regularly provides the supplies, services or construction of the general nature solicited by the agency and that is staffed by the bidder or an employee of the bidder. This should eliminate a current practice of a person brokering his or her bidder preference by bidding on a contract for which they do not normally do such business, receiving the preference, then assigning the contract to an entity that would not qualify for the preference.

Section 10 amends AS 36.30.200, to expand the authorized use of competitive sealed proposals. The amendment empowers the procurement officer actually making the purchase to determine, in writing, when use of a competitive sealed proposal to procure a good or service is more advantageous to the state than use of the more restrictive competitive sealed bid. Use of the comparison is often a better method for obtaining best value and incorporating past vendor performance in award criteria. In subsection (c), the chief procurement officer is replaced with the commissioner of transportation and public facilities, as the person who may determine when it is advantageous to the state to issue a request for proposals for submission of offers to provide construction in accordance with a design provided by the offeror (i.e., a design/build offer). Because construction bids and proposals are under the authority of the department of transportation and public facilities, it made little sense to have the chief procurement officer in the department of administration make such a determination.

Section 11 is amended by deleting reference to the subcontractor notification requirements of AS 36.30.115, for purchases of supplies, services, and professional services, but retains this requirement for construction.

Section 12 amends AS 36.30.230 to require that the procurement office not disclose the content of competing offers after proposals are opened until after the notice of intent to award has been issued. By keeping such proposals confidential until a notice of intent is issued, the state is able to utilize its negotiation powers under AS 36.30.240, to obtain best and final offers without jeopardizing the integrity of the competitive process if the proposals were allowed to be made public immediately upon opening as in the case of competitive bids.

Section 13 adds a new subsection to AS 36.30.230, to allow that proposals received in response to a request for proposals be returned to the offeror, without public disclosure, when a solicitation is canceled before a notice of intent to award is issued and no protest of the solicitation or cancellation has been filed within the time allowed. The procurement officer must keep a list of returned proposals. Under current law, the procurement office is required to keep all proposals received and there is no exception for canceled solicitations. This new subsection will allow a new solicitation to occur without competitors' prices having been revealed, thus, increasing the competitiveness and fairness of the process.

Section 14 is a housekeeping measure that deletes the administrative requirement that the amount of the contract must be stated on the first page of the contract. While it may be administratively convenient to have the amount noted on the first page of a contract, there is no legal reason to mandate it in law. This matter is more appropriately handled through the state Administrative Manual.

Section 15 repeals and reenacts AS 36.30.300, dealing with single source procurements. The new provision allows use of the single source procurement when it is determined by the chief procurement officer or, for construction contracts or procurements for the state equipment fleet, the commissioner of transportation and public facilities makes a written determination that it is not practicable to award a contract by one of the competitive methods in AS 36.30 and the award of the contract to a single source is in the state's best interest. This section will make use of the single source provision in the code a more useful tool for procurement units and more workable than the current law.

Section 16 makes use of limited competition consistent with other sections of AS 36.30, namely, noting the attorney general's authority to procure legal services for the state is applicable under limited competition methods. Further, the amendment deletes the nondelegation of a decision to use limited competition so that the chief procurement officer is able to delegate this determination, similar to other delegations.

Section 17 revises limited competition procurements to reflect that single-source procurements may not be entered into under this section.

Section 18 is a new section, AS 36.30.308, authorizing the use of innovative procurement methods in the procurement of new or unique requirements to the state, new technologies, or to achieve best value when determined by the chief procurement officer, or commissioner of transportation and public facilities for construction, that an innovative procurement method is to the state's best advantage. This creates an avenue to develop improved approaches that may achieve savings, improve results, and permits "outside the box" thinking when appropriate.

Section 19 relates to the repeal of AS 36.30.100(1), to permit the purchase of products or services manufactured by an employment program without the use of competitive sealed bidding. This new section, placed in Article 4 (Other Procurement Methods), clarifies that purchases from an employment program are not subject to either competitive sealed bidding or competitive sealed proposal processes, but that the commissioner may adopt regulations governing agencies' purchases from an employment program.

Section 20 relates to the repeal of AS 36.30.100(b)(3) to permit the purchase of services provided by correctional industries to be made without competitive sealed bidding. New AS 36.30.313, placed in Article 4 (Other Procurement Methods), clarifies that purchases from Alaska Correctional Industries (ACI) are not subject to either competitive sealed bidding or competitive sealed proposal processes, but that the commissioner may adopt regulations governing agencies' purchases from ACI.

Section 21 expands the impact of the criminal penalty for false statements in determinations from just the chief procurement officer to any "state official" acting under authority of a provision of the code. All state officials should be accountable under the code for knowingly making a false statement in a determination. This expands responsibility to coincide with expanded authority.

Section 22 increases the amount for use of small procurement procedures to procurement of supplies or professional services that do not exceed the aggregate dollar amount of \$50,000 and for construction that does not exceed an aggregate dollar amount of \$100,000, and for lease space that does not exceed 5,000 square feet (as noted in section 2 of the bill). This section efficiently expands the use of simplified procurement procedures consistent with the Federal Acquisition Streamlining Act of 1994.

Sections 23 through 25 are provisions in current law which have been reorganized and given new section numbers.

Section 26 modifies the existing recordkeeping requirements to include single-source procurements in accordance with the amendment in Section 14.

Section 27 is a new section requiring that records of innovative procurements be kept and opened for inspection. The items which must be maintained in the file are identified. Successful innovative procurements should be shared with procurement officers if they achieve savings and improve results.

Section 28 adds a new section to allow for the commissioner to adopt regulations to govern protests and appeals of small procurements made under AS 36.30.320. This section permits the development of a simplified protest procedure for small procurements that should reduce time and cost for the vendor and the state.

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Sections 30 through 34, amend the time provisions for the filing of decisions, appeals, protest reports and responses by making them more uniform to court rules, i.e., 7 days, 10 days, 15 days.

Sections 35 and 36 amend AS 36.30.620, regarding contract claims, by requiring a claim to be filed within 30 days after the contractor becomes aware of the basis of the claim or should have known the basis of the claim, whichever is earlier. Under present law, no time limitation for bringing a contract claim is stated. This amendment will force contractors to bring claims expeditiously so that they may be resolved in a timely fashion and the evidence and issues do not become stale, with unnecessary expenses accruing. The time limitation is not applicable to payment disputes governed by AS 37.05.285.

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Sections 38 and 39 amend AS 36.30.850(b), by exempting from the code 1) procurements by the office of the Governor for lobbying, public relations and advertising, 2) purchases of livestock for correctional industries, and 3) operation and protection of assets or disposals of equipment

and supplies acquired through foreclosure, or other legal proceedings, of agricultural loans under AS 03.10.

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AS 36.30.090, Delivery of Supplies, is repealed to move to Section 23 in the new preferences.

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Section 46 permits continuation of existing procurement actions begun under the law prior to the effective date of revisions.

Sections 47 through 50 provide for effective dates.

As Seen In Computer Digest

## **Understanding the Federal Acquisition Streamlining Act**

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On October 13, 1994, President Clinton signed into law the Federal Acquisition Streamlining Act of 1994 ("FASA"). While those who now do business with the federal government may be aware of these changes, those seeking federal contracts are well served by a closer look at these reforms.

The comprehensive acquisition reform legislation streamlines the federal government's \$200 billion-a-year acquisition system and dramatically changes the way the government performs its contracting functions. Generally, the statute seeks to: (1) increase the government's reliance on commercial goods and services; (2) streamline the procurement process for high-volume, low-value acquisitions; (3) improve access by small businesses to government contracting opportunities; (4) improve the bid protest process; and (5) extend the Truth in Negotiations Act to civilian agencies and raise to \$500,000 the threshold for submitting certified cost or pricing data under that Act.

### **Acquiring Commercial Items**

A key provision in FASA is a strongly stated preference for buying commercial "off-the-shelf" items, rather than purchasing through the detailed bidding process for government-unique items. To encourage the private sector to sell to the government, the statute defines commercial items more broadly and eliminates numerous statutory requirements for purchases of such items.

The definition of commercial items is expanded to include items that are sold in substantial quantities in the commercial marketplace, such as computer software. Also included in the definition are commercial items that are based on evolving technology that may not be currently available in the marketplace, but will be available in time to satisfy government requirements. In addition, the FASA reduces impediments to the government's purchase of commercial items by exempting such purchases from over thirty statutes that contain requirements unique to government procurements. The goal of these changes is to simplify the procurement process for companies who do not ordinarily sell to the government.

### **Simplified Acquisition Threshold**

The FASA also raises the threshold for the government's use of simplified acquisition procedures from \$25,000 to \$100,000. This change is significant because more than ninety percent of annual federal procurement transactions are below \$100,000. Thus, by raising the simplified acquisition threshold to \$100,000, FASA vastly streamlines how the government will procure most goods and services.

For simplified acquisitions, government contracting officials can avoid much of the "red tape" that slows down the purchase of goods and services. Simplified acquisition not only lessens the government's burden, but also reduces the time and resources a contractor must spend ensuring that its product meets peculiar government standards.

The increase to the simplified acquisition threshold will be phased in two stages: \$50,000 initially and \$100,000 as agencies make progress toward implementation of an electronic procurement system. By implementing an electronic procurement system, the government hopes to cut down on the excess time and resources needed to conduct the current paper-based system. Accordingly, FASA

requires that within five years, the current paper-based process of providing notice of and response to solicitations will be replaced with a quicker, more efficient, and more easily accessible electronic-based system.

Eventually, the government's electronic bulletin board will be the only place to see a synopsis of contracting opportunities below \$250,000.

### **Protests and Claims**

FASA also addresses issues relating to bid protests and contractor claims. Under certain circumstances, contractors can file formal challenges or bid protests, against unfavorable terms in a government solicitation or to contest the government's decision to award a contract to a competitor. The FASA strives to reduce the number of bid protests by requiring that prospective contractors who are not selected for award be given information about the government's decision in a more timely fashion.

FASA now provides that within five days after the government receives a request for information unsuccessful offerors will be debriefed by the government and told why their offer was not accepted and the basis for the government's selection decision.

Under certain circumstances, contractors can file claims against the government for increased costs caused by the government's actions during performance of the contract. FASA increases the threshold for requiring that contract claims be certified from \$50,000 to \$100,000. The statute also reduces the time period for bringing suit in the United States Court of Federal Claims from twelve months to ninety days after receiving a contracting officer's decision on the claim. This will make the time period for filing suit in the court consistent with that for filing in the agency boards of contract appeals.

### **Small Business Procedures**

The government has adopted policies designed to assist various types of small and disadvantaged businesses and to ensure that Congress' socio-economic objectives are met. To implement these policies, under certain circumstances, the government may provide contracting preferences for small businesses, small disadvantaged businesses, women-owned businesses, and contractors performing in a labor surplus area. This effort has been expanded by the FASA. The statute provides that civilian agencies, as well as the Defense Department, set-aside certain contracts to ensure that five percent of federal contracts are awarded to small disadvantaged businesses. The statute also creates a five percent women-owned business contracting goal.

### **Truth in Negotiations**

FASA raises the Truth in Negotiations Act ("TINA") threshold for submitting certified cost or pricing data from \$100,000 to \$500,000. The statute also extends TINA's application from the Defense Department to civilian agencies. TINA is generally designed to ensure that when the government buys at a price that has not been tested in the competitive marketplace, the government is put on an equal footing with its contractors. Raising the threshold to \$500,000 for certified cost or pricing data is intended to reduce the risk of inaccurate cost or pricing data submissions and to lessen the contractor's burden of compiling such data.

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## SB 275

### Comparison of Substantive Changes

BILL SECTION	CURRENT LAW	SB 275
3 and 38	A bidders' list of all parties who wish to receive bids or proposals is maintained.	A bidders' list of all parties who wish to receive bids or proposals is maintained, but will not include persons debarred or suspended under procedures that exist in current law.
4	Office leases are acquired through formal ITB or RFP regardless of size.	Small office leases of 5,000 s f. or less may be acquired by DGS with simplified small purchase procedures i.e. at least 3 written proposals or quotes.
5	Unable to negotiate rent concessions for lease extensions, unless the lease has an extension option remaining.	Authorizes the extension of existing leases for up to 10 years in return for rent concessions. Similar to a provision of law authorized by the 18th legislature in SB 129.
6 and 7	A lease purchase of real property must be noticed to the legislature and receive approval in law.	A lease purchase of real property with an annual rent of \$500,000 or less or with a total rent of up to \$2,500,000 could be entered into without notice or law. Transactions with a higher amount require legislative notice and approval in law.
8 and 12	Bidders must identify all subcontractors for all bid and RFP awards within 5 days of award. subcontractors must have business license, certificate of registration, and contractors are restricted from changing subcontractors except under specified circumstances.	Subcontractors for only construction bids or RFPs must be identified within 5 days of award, must have a business license, certificate of registration and the subcontractor may not be changed except under the current specified circumstance in the law. The change deletes this requirement for non-construction procurements.
9	The chief procurement officer must make a determination in writing to shorten formal notice of a bid or RFP to less than 21 days if necessary.	The procurement officer issuing the bid or RFP may make a determination in writing to shorten formal notice of a bid or RFP to less than 21 days if it is advantageous to the state and adequate competition is anticipated.
10	A bidder may receive the Alaska bidders' preference and other preferences in the award of a bid and then assign the purchase to another lower bidder or supplier. The result can and has been that the state pays as much as 10% more to a bidder receiving the preference than what would have been paid to the second low bidder from whom the state actually receives the goods. The bidder receiving the preference provides no added value because they are not in the line of business. They simply broker their preference to others who supply the state.	To qualify for the Alaska bidders' preference or any other preferences dependent upon the application of the Alaska bidders' preference, the bidder must have maintained a place of business for 6 months that regularly provides the supplies, services, or construction of the general nature solicited by the agency. If a prospective bidder can't meet the requirement, they can bid but would not receive the award evaluation preference.  A similar provision was included in HB 288 passed by the 19th legislature last session, but vetoed by the Governor for reasons unrelated to this provision.
11	The use of an RFP instead of a bid for purchases including construction may be used when the chief procurement officer determines in writing that a bid is either not practicable or advantageous to the state.	The use of an RFP instead of a bid for services and supplies may be used when the procurement officer determines in writing that use of an RFP is more advantageous to the state. For construction the written determination is made by the commissioner of DOT/PF.
13	Procurement officer must not disclose proposal contents to competing offerors during negotiations.	Procurement officer must not disclose proposal contents to competing offerors prior to Notice of Intent to Award. This will avoid exposure of proposal contents until after an award decision is made and will

BILL SECTION	CURRENT LAW	SB 275
		uphold the integrity of the process.
14	When an RFP is canceled prior to notice of intent to award, proposals must be retained by the state. After cancellation, the state is obliged to provide copies of the proposals under Freedom of Information and thereby exposes competitors proposals to one another, making future RFPs problematic.	When an RFP is canceled prior to notice of intent to award, the state will maintain a list of proposals received but will return the proposals to the proposers.
15	Contracts entered into through competitive sealed proposal must have the amount of the contract on the first page.	Contracts entered into through competitive sealed proposals may state the amount of the contract on any page.
16	A contract with a sole source provider may be entered into only after a written determination by the chief procurement officer based on independently verified and clear and convincing evidence that only one source exists for the purchase. A sole source may not be awarded if a reasonable alternative source exists. Except for small procurements, this determination may not be delegated.	A single source contract may be entered into when the chief procurement officer, or for construction the commissioner of transportation and public facilities, determines in writing that award through a bid or RFP is not practical, and award to a single source is in the state's best interest. The chief procurement officer or commissioner of transportation is not barred from delegating the determination.
17	Determinations to use the limited competition procurement process require a written determination by the chief procurement officer and the determination may not be delegated.	Limited competition procurements may be delegated. The attorney general would make limited competition determinations for legal services contracts.
19	No innovative purchasing method exists. Purchases may only be made through a formal bid, RFP, small procurement procedures, sole source, limited competition or emergency procedures.	Permits the use of an innovative procurement as method of source selection for new, unique requirements, new technology, or to achieve best value only after: 1, the chief procurement officer, or commissioner of DOT/PF for construction, determines the innovative method is advantageous to the state. 2, the department of law approves the procurement plan as to form. The procurement is subject to the public notice requirements and subject to all protest requirements, but not bound by the formal bid or RFP requirements of statute.
22	Requires the chief procurement officer to independently examine material facts when making a determination for an alternate procurement (sole source, limited competition, or emergency). If the chief procurement officer knowingly makes a false statement, he or she would be guilty of a class A misdemeanor.	Expands the requirement to independently examine the material facts to any state official making a determination for an alternate procurement (single source, limited competition, or emergency). If the state official knowingly makes a false statement, he or she would be guilty of a class A misdemeanor.
23	Formal bids or RFPs are required for all purchases and construction over \$25,000. Under this threshold, more simplified small procurement procedures may be used.	Formal bids or RFPs are required for all purchases over \$50,000, and \$100,000 for construction. Under this threshold more simplified small procurement procedures may be used.
28	Records of innovative procurements not required.	Records of innovative procurements shall be kept by the department of administration.
29	The two tiered protest process applies to all procurements regardless of dollar amount.	The two tiered protest process applies to all procurements except small procurements. The commissioner of administration is permitted to establish simplified procedures for protests of small procurements.
30	A protest of an award of a contract must be filed within 10 days of the notice of intent to award. Statute is silent on protest of a solicitation.	A protest of a solicitation must be filed 10 days before bid or RFP opening.  A protest of an award remains unchanged.
31	Procurement officer response to a protest -- 14 days	Procurement officer response to a protest -- 15 days

BILL SECTION	CURRENT LAW	SB 275
32  34  35	<p>A procurement officer's decision on a protest may be extended up to -- 28 days.</p> <p>The procurement officer's report to the commissioner of administration is due within -- 7 days.</p> <p>The protester's report to the commissioner of administration is due within -- 7 days.</p>	<p>A procurement officer's decision on a protest may be extended up to -- 30 days.</p> <p>The procurement officer's report to the commissioner of administration is due within -- 10 days.</p> <p>The protester's report to the commissioner of administration is due within -- 10 days.</p>
33	No limitation of a protester's damages if a protest is sustained in whole or in part.	Limits a protester's damages to reasonable bid or proposal preparation costs.
36 and 37	No statute of limitations exists for bringing a contract claim against the state.	A contract claim must be brought within 30 days after the contractor becomes aware of the claim or should have known the basis of the claim. The restriction does not limit a contractor's rights under a disputed billing timely payment rule of AS 36 05 285.
39	Operations and protection of assets or disposals of equipment/supplies acquired by DNR through foreclosure or other legal proceedings of agricultural loans are technically subject to the Procurement Code. An example is Matanuska Maid Dairy.	Exempts operations and protection of assets or disposals of equipment/supplies acquired by DNR through foreclosure or other legal proceedings of agricultural loans from the Procurement Code. An example is Matanuska Maid Dairy.
40	Lobbying, public relations, and advertising contracts of the Governor's office, and livestock purchased by Alaska Correctional Industries are subject to the provisions of the Procurement Code.	Exempts lobbying, public relations, and advertising contracts of the Governor's office and livestock purchased by Alaska Correctional Industries from the provisions of the Procurement Code.
41	The Procurement Code does not prevent purchases through the General Services Administration as provided by law.	Clarifies that it is specifically permissible to purchase from federal GSA supply schedules in accordance with regulations established by the commissioner of administration and as provided by federal law.

SB 275  
PROCUREMENT STREAMLINING KEY POINTS

**Simplifies Procurement Procedures**

- Raises the threshold for state's use of simplified small procurement procedures from \$25,000 to \$50,000. (sec. 23)
- Raises the threshold for construction simplified small procurement procedures from \$25,000 to \$100,000. (sec. 23)
- Permits a streamlined simplified protest process for small procurements. (sec. 29)
- Small office leases of up to 5,000 s.f. acquired through simplified small procurement procedures. (secs. 4 and 23)
- Bidders for other than construction contracts will no longer be required to list sub-contractors within five days of award. (secs. 8 and 12)
- Bidders for other than construction contracts are given more latitude to replace sub-contractors. (secs. 8 and 12)
- Proposals will be returned to proposers when an RFP is canceled to prevent disclosure to competitors. (sec. 14)

**Empowers Procurement Officers**

- A procurement officer may shorten the notice period for a purchase if adequate competition is anticipated. (sec. 9)
- Permits greater use of RFPs when advantageous as determined by the procurement officer. (sec. 11)
- Decreases restrictions on entering into a sole source contract by providing greater discretion to contract with a single source when in the state's best interest and award through an formal bid or RFP is not practical. (sec. 16)
- Grants discretion to the Chief Procurement Officer to permit other procurement officers to make determinations to enter into single source and limited competition procurements. (secs. 16 and 17)
- Expands requirement to independently verify material facts in a determination to any state official completing the determination of a single source, limited competition, or emergency contract. (sec. 22)
- Expands penalty for a knowing false statement to any state official making a false statement in an alternate procurement determination. (sec. 22)
- Permits the attorney general to determine when a legal services contract meets the requirements for a limited competition procurement. (sec. 17)

**Avoids Uneconomical Contracts and Practices**

- Prevents brokering of bidder preferences. (sec. 10)
- Protects the state from protest damages beyond reasonable bid preparation costs. (sec. 33)
- Removes debarred and suspended bidders from the bidders' list. (secs. 3 and 38)

- Protects the state from untimely contract controversy claims. (secs. 36 and 37)

#### **Streamlines Procurement Practices**

- Permits a streamlined and simplified protest process for small procurements. (sec. 29)
- Exempts the operation and disposal of assets acquired through foreclosure of agricultural loans from the complexities of the state procurement process. (sec. 39)
- Permits purchase of lobbying, public relations, and advertising contracts by the Governor's office and livestock by Alaska Correctional Industries outside the requirements of the procurement code. (sec. 40)
- Makes protest time deadlines more uniform and consistent with court rules. (secs. 31, 32, 34, and 35)
- Places all preference requirements in one part of statute for ease of reference by procurement officers. (secs. 24, 25, 26 and 45)
- Restricts disclosure of proposals until notice of intent to award is issued. (sec. 13)

#### **Encourages Innovation and Better Value**

- Provides for an innovative method of procurement for new, unique requirements; new technology; or to acquisition best value when advantageous to the state. (sec. 19)
- Encourages use of RFPs when appropriate to achieve best value. (sec. 11)
- Allows for economical and convenient purchases from federal supply schedules as authorized by the Federal Acquisition Streamlining Act of 1994. (sec. 41)

#### **Provides Opportunity to Achieve Reductions in Operating Cost**

- Lease rent concessions of at least 10% may be received in return for extensions of existing leases up to 10 years. (sec. 5)
- Lease purchases of real property not exceeding \$500,000 per year or \$2,500,000 for full-term may be entered into without legislative approval or law. (secs. 6 and 7)

**TESTIMONY OF JOHANNA MUNSON, EMCON ALASKA INC.  
RE: SB 275, STATE PROCUREMENT & PROCEDURES ACT**

My name is Johanna Munson. I work with EMCON Alaska, an environmental engineering and consulting firm. Thank you for the opportunity to speak to you today in support of the administration's proposed revisions to the state procurement code.

EMCON Alaska is very interested in the proposed changes in the procurement because the changes make the statute more business-friendly and give the state procurement staff the tools they need to respond to current market demands.

Specifically, the proposed Section 19, Innovative Procurements, would make it easier for the State to enter into energy service performance contracts. Performance contracting has been used successfully across the country by private industry and federal, state and local governments, including schools and colleges, to substantially reduce energy and operations costs through self-funded facility upgrades. Performance contracting enables government agencies to implement energy efficient upgrades and equipment replacements through a self-funding program. The total costs of engineering, design, construction, and monitoring of energy retrofit strategies are paid by the energy savings over a period of years. All improvements are financed at tax-exempt rates by the energy service contractor. Energy savings are guaranteed by the energy performance contractor, eliminating all risk to the customer.

Approximately 35 other states have adopted code revisions, similar to the one proposed here, to allow contracting officers the tools to operate more efficiently and respond to current market needs and shrinking state financial resources. Procurement codes are being changed to give the state officials the authority to implement energy performance contracts. I have a few examples here, from Wisconsin, Minnesota and Ohio. The lack of capital dollars available to fund needed facility upgrades is a common problem throughout the country. Other states have responded through procurement code changes similar to those proposed in the bill before you.

The traditional competitive bidding process does not allow the State to operate effectively in a changing business environment, an environment that includes constantly shrinking capital budgets.

Markets are changing and Alaska's business processes have to change with it if we are to operate efficiently and address the serious deferred maintenance needs of our public buildings.

The federal government has also gone through a 2.5 year process of changing their procurement code to allow for innovative contracting methods such as energy performance contracts. Elmendorf Air Force Base is currently drafting a Energy Performance Request for Qualification to implement a comprehensive energy services program.

Thank you for the opportunity to testify. I'd be happy to answer any questions you may have.

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**SUNSHINE GENERAL**

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An Alaskan Disability Company DB96-01  
Sales of Services & Supplies



March 19, 1996

Senate State Affairs Committee  
Subcommittee chaired by Randy Phillips  
Juneau, AK  
Fax: (907) 465-2070  
Attn: Ann

RE: Bill 482  
Senate Bill 275 (Procurement)

Dear Sirs,

I have great deal of concern in regards to the changes proposed in our State procurement system requirements. The bill gives way too much authority and control to the procurement officers and the parties who instruct them where and with who to award a contract. It also allows the State to deal directly with Outside companies for the procurement of a product of special needs. In some cases it will totally eliminate any Alaskan bidder from bidding a product

The changes to section 10 should be eliminated completely. These changes are a direct result of a few special interest parties in an attempt to eliminate preferences and in particular the disability bidders preference. This section would require bidders to handle a line item at least 6 months in advance from receiving the bidders preference due them in the course of general business. It is a direct attempt to eliminate brokers and in some cases, Alaskan Companies, from bidding on State procurement needs. Brokers, Procurement companies fulfill a great need in our State's system of procurement and usually save the State a great deal of money. The State has a number of ITB's which are offered only once a year or sometimes once every four years. No company can carry a particular line item, sometimes four years in advance, with the possibility of a future sale to the State, even if advance knowledge is known for a product. This will seriously harm many Alaskan companies, with the advantage going to the Outside companies or special interest companies. The changes to section 10, if approved, will cost the State a great deal of money and allow a few special interest parties to eliminate the disability preference. Please vote against this

The present administration and special interest groups are trying to make changes in regards to the State procurement procedures. The present procurement rules have taken many years to develop. The amount of changes offered in this bill is too large and drastic and extremely negative for most Alaskans. I believe our State should rewrite this bill, on a much smaller scale, with a great deal more accountability, in the future. Please consider my concerns seriously and if you need any other input from me, I am available at your convenience

Sincerely,

*David L. Getke*

David L. Getke, Owner  
DB96-01g

FEB 26 '96 15:41

P.1

J&S Service Company  
800 Mc Grath Road  
Fairbanks, Alaska 99712  
Ph# 1-(907)-457-3850  
Fax 1-(907)-457-7895

2/26/96

Att: Alaska legislators:

Re: HB482 & SB 275

I understand you are currently discussing change in AS36.30.170 in order to tighten up the Alaska's bidders preference. I personally think its a good idea an as such I would like to make one suggestion.

The part I am referring is section 8<sup>(10)</sup> requesting that a bidder within the previous six months have provided supplies similar in nature to those asked for in a current bid.

J&S Service Co. has been in business since 1986, and one of our best customers has been the Alaska Railroad.

As such I have and still do represent companies that manufacture items like rail wheels, axles and locomotive engine power packs.

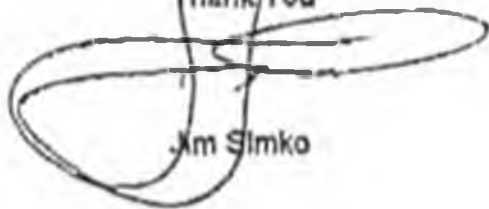
I mention this because these items are normally only put out for bid once a year. In fact partly do to my suggestion the time between bids may even go to 2 an 3 years, if both parties agree to terms.

What would happen in this situation? Also what happens to the "new" company that just started business, which in this industry happens all the time.

As I think back over the years, seeing all the "brokers" come and go I think that time in itself is the answer.

Those that have made a commitment, and have a real interest in the items and companies they represent are still in business, while those who have not are not.

Thank You



Jim Simko

Post-It® Fax Note	7871	Date: 2/26/96	Time: 1:00 PM
To: MARY KULAKA		From: Jim Simko	
Cell: 807 RR.		Co: J&S SER CO.	
Phone:		Phone: 4573850	
Fax: 2749527		Post #	



## FACSIMILE TRANSMITTAL

Date: March 19, 1996 # of Pages 2

A partnership program of

University of Alaska  
Small Business  
Development CenterState of Alaska  
Department of Commerce  
and Economic Development

To: <u>Jan/Senator Sharp</u>	From: <u>Mary Rucker</u>
Co: <u>Senate State Affairs</u>	Phone: <u>(907) 274-7232</u>
Fax No: <u>465-2070</u>	Fax No: <u>(907) 274-9524</u>

TO: Senator Sharp and Senate State Affairs Committee:

RE: SB 275

Members of BUY ALASKA have expressed concern over Section 10 of this bill.

- 1) A disabled business charges that the state is targeting his business because the state does not want him to be able to use the disabled bidders preference.
- 2) Jim Simko from J & S Services suggested that this may exclude businesses from instate preferences who bid on state contracts which are only let every 12 month or possible every 2-3 years from using their preference on specialized equipment, parts etc. that may be bought exclusively by the State of Alaska.

Senator Sharp has suggested to increase the requirement to be in the line of business from 6 to 12 months. This will tighten the requirements even more which was not the intent of J & S. J & S wants to deal with the infrequent nature of state purchasing on specialized items and not be more restrictive on in-state businesses who qualify for preferences, i.e. you can't say the business must provide the supplies, service etc within a 6 month period when the state only bids some items once a year or even longer. This problem is not addressed by increasing the timeframe to be in a specific line of business.

Please call Jim Simko at J & S Services if you have any questions. 457-1850.

Attachment.

University of Alaska  
Small Business  
Development Center430 W. 7th Avenue, Suite 110  
Anchorage, Alaska 99501(907) 274-7232  
(800) 478-7232  
FAX (907) 274-9524

**DRAFT**



**INFORMATION  
TECHNOLOGY AND  
GOVERNMENT  
PROCUREMENT:  
Priorities for Reform**

*Jerry Mechling*

**The Program on Strategic Computing and Telecommunications  
in the Public Sector**

**John F. Kennedy School of Government  
HARVARD UNIVERSITY**

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# The National Association of State Purchasing Officials

September, 1995

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One of the primary challenges for purchasing officials today is to provide our customers with information technology products and services that meet their needs, and to find the appropriate information technology tools that will enable us to conduct effective and efficient procurements. As advancements in technology charge ahead at an amazing rate, we must also position ourselves to keep pace with these changes and to provide procurement methodologies that assure our customers of receiving current and leading edge information technology products and services.

Recognizing this need, the National Association of State Purchasing Officials and the National Association of State Information Resource Executives, through a cooperative venture with Harvard University's Kennedy School of Government, Program of Strategic Computing and Telecommunications in the Public Sector, have developed a series of recommendations for procurement officials to consider as we move, develop and implement innovative solutions to meet our present and future information technology challenges.

The material contained in Jerry Mechling's report provides procurement officials with a thoughtful framework to consider appropriate procurement reform strategies and methodologies. As each procurement official works to develop "best in class" processes for information technology procurement, the risks and potential rewards of adopting each recommendation contained in this report should be given careful consideration.

On behalf of NASPO, I would like to take this opportunity to encourage the membership to read the report and consider the information provided to make informed procurement process reform decisions that meet the needs of your customers and organizations. I look forward to the continuation of the NASPO, NASIRE, Kennedy School of Government partnership, and the results that this continued effort will produce.

Douglas Richins, President  
National Association of State Purchasing Officials





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September, 1995

In 1994, the National Association of State Information Resource Executives identified information-technology procurement reform as a top priority for the association. NASIRE then joined with the National Association of State Purchasing Officials—which had designated the issue of equal importance among its membership—to seek common solutions for improvement. The joint mission of the project is for information technology purchasing to be timely, best value and flexible in meeting users' needs. Once identifying its goals, NASIRE and NASPO joined with Harvard University's Kennedy School of Government Strategic Computing and Telecommunications in the Public Sector program to undertake a study and investigation of issues and possible solutions.

The following paper, produced and published by the Strategic Computing and Telecommunications in the Public Sector program, completes the initial study phase of the project. It provides an overview of the issues both technology and procurement officials will face as they begin to market the recommendations and to change the procurement environment in the states. It also serves as a guide for policymakers, including legislators and cabinet-level officials.

On behalf of NASIRE, I appreciate Harvard's efforts in examining many challenges faced by those who must address issues surrounding the procurement of information technology. NASIRE is looking forward to continuing its support of and work on these efforts. I encourage the NASIRE membership to continue to collaborate with procurement colleagues for bringing meaningful reform to this important area.

P.K. Agarwal, President  
National Association of State Information Resource Executives

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## PREFACE

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The program on Strategic Computing and Telecommunications in the Public Sector was founded in 1987 to explore how information technologies (I-T) could be used by plans for large — even transformational — changes in the production and delivery of public services. An important element of the program since its inception has been seeking to understand how working relationships between I-T leaders and their programmatic and political counterparts could be improved.

The program carries out its research in collaboration with government practitioners and the vendor community. Research is heavily based on case studies, the identification of leading edge practice, and the development of conceptual frameworks and action plans.

What follows is a report on improving I-T use and procurement practices in government. Dual changes are considered: i.e., changes in procurement to improve the use of I-T, and changes in the use of I-T to improve procurement.

This report should be of value to information technology and procurement managers in government as well as to oversight agencies, vendors, and the general public. Our major recommendations are that governments should:

1. Distinguish between commodities (simple and well-known goods and services) and non-commodities (complex and novel goods and services) and design different procurement processes for each. Present procurement practices were designed reasonably well for commodity-like procurements, but do a poor job in procuring non-commodity goods and services.
2. Prepare for electronic markets and commerce, especially for the procurement of commodities. Electronic markets are more competitive and efficient primarily because they make comparison shopping easy among larger numbers of buyers and sellers. This helps government in its role as consumer, and also prepares American institutions to succeed in the world's increasingly global economy.
3. Support managerial discretion and organizational learning, especially for the procurement of non-commodities. The trend, in procurement as well as other management decision-making under conditions of complexity and change, is to empower the front-line while supporting them with better training and information, and providing incentives to maximize global rather than local-only values.

4. Organize around issues of electronic commerce and innovation as much as procurement *per se*. While procurement-only reforms will be important, even larger benefits — along with more support and less opposition — may be achieved in many settings by giving center stage to more outward-looking and fundamental needs for electronic commerce and public sector innovation.

While some may argue that procurement reforms are traditionally difficult to implement, we argue that recent political and technological developments have created conditions that are ripe for reform. The potential impacts are enormous. Governments now purchase approximately \$1,600 per capita each year in external goods and services, with about \$250 in information technologies. We can do much better at this work, and we should move now to do so.

## ACKNOWLEDGMENTS

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The research which has produced this report is the result of a collaborative effort between our program, the National Association of State Purchasing Officials (NASPO), and the National Association of State Information Resources Executives (NASIRE). Each association named members to a Task Force for the NASPO/ NASIRE Joint Information Technology Procurement Project with which we have had the pleasure of working since December, 1994. We are indebted to the guidance, insights, and enthusiasm of the Task Force members from NASPO (Gary Lambert of Massachusetts; Margaret McConnell of Arizona; and, Dugan Petty of Alaska), and NASIRE (P.K. Agarwal of California; George Lindamood of Washington; Carolyn Purcell of Texas; and, John Kost of Michigan), and their staff (Louise Spieler and Daren Arnold). We acknowledge and appreciate their keen interest in the strategic potential of information technology procurement.

The research and workshops of the program on Strategic Computing and Telecommunications in the Public Sector, including elements of the work presented here, are supported by program sponsors which include: American Management Systems, Andersen Consulting, CSC Consulting, EDS, Governing Magazine, IBM Consulting Group, NORTEL Federal Systems, North Communications, Novell, Inc., Texas Instruments, and Xerox Corporation. Without their generous and unconstrained support, special projects like this would not be possible.

We are also indebted to many federal, state, and local officials who made available their views and data through a national survey produced as part of this project, and to workshop participants for their insightful contributions to this work. A special word of appreciation is due the workshop presenters for giving so generously of their time and expertise: Cameron Birnie (State of Oregon); Robert Burke (Defense Finance and Accounting Service); Steven Kelman (U.S. OMB); Larry Koskinen (National Performance Review); John Kost (State of Michigan); Pat Martin; (State of Texas); and, JoAnne Payan (State of California).

Finally, we wish to thank Professors Alan Altshuler and Steven Kelmian (on leave), for their support and guidance, and our colleagues and critics who assisted in the research, editing, and production of this report, especially David Dec, Thomas Fletcher, Benn Konsynski, Megan McLean, John Springett, and Irene Yarmak.

## CHAPTER ONE

---

# I-T AND GOVERNMENT PROCUREMENT

Government — including all federal, state, and local agencies — is by far the biggest “industry” in the U.S. economy, accounting for 41% of the gross national product, or some \$9,757 per capita.<sup>1</sup> Of course, not all government work is produced from raw materials, as government procures some \$1,600 per capita (15% of its budget) each year from the private sector, including about \$250 per capita in computers and other information technologies (total I-T procurements of \$64 billion).<sup>2</sup> With continuing trends toward outsourcing and privatization, the percentage of government’s work handled via procurement is increasing.

And how well is all this procurement managed? In general, not very well. The process is widely believed to be costly, slow, and excessively detailed. Further, the conventional wisdom has traditionally been that the prospects for reform are gloomy: the problems are seen as not important or exciting enough to attract much political attention, yet far too bureaucratically stubborn to be fixed.

This report seeks to answer two primary questions:

1. How and to what extent could we improve the procurement of I-T in government?
2. How and to what extent could we improve procurement through the use of I-T?

The answers we develop are optimistic. We believe that the prospects for reform are sizable, having been improved substantially by recent developments in both the technological and political environment.

### **The Procurement of I-T: Problems of Prior Specification**

Government I-T procurements are similar to those for other goods and services: the process typically calls for pre-specification of requirements (often with the weight to be given to each requirement in the vendor evaluation process), followed by objective selection of the proposal that best meets those requirements. To ensure objectivity, detailed rules have been generated to guide the process. These rules permeate the training and acculturation of procurement officers, and are the basis for decision-making in the many reviews and audits called for in the procurement process, including the handling of appeals from disappointed bidders.

The procurement process focuses on controlling bias or favoritism in order to preserve free and open competition, thus seeking lowest cost for taxpayers and