



LAWS OF ALASKA

1982

Source

Chapter No.

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144

AN ACT

Relating to public contracts; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: July 21, 1982
Actual Effective Date: July 22, 1982

AN ACT

Relating to public contracts; and providing for
an effective date.

* Section 1. AS 19.10.170(a) is amended to read:

(a) Except as provided in AS 36.98 and AS 44.33.300, it shall be the general policy of the department to require the construction of all highways under bid contract. However, subject to the provisions of (b) of this section, when the estimated cost of a construction project is less than \$100,000 or when it appears to be in the best interests of the state, the department may perform the work notwithstanding any other provisions of law.

* Sec. 2. AS 35.15.010(a) is amended to read:

(a) Except as provided in AS 36.98 and AS 44.33.300, it shall be the general policy of the department to require the construction of all public works under bid contract. However, when the estimated cost of a construction project is less than \$100,000, or when it appears to be in the best interests of the state, the department may perform the work, notwithstanding any other provisions of law. A complete record shall be kept by the commissioner or his designee of all transactions entered into under this section including names of employees involved in the transactions.

* Sec. 3. AS 24 is amended by adding a new chapter to read:

CHAPTER 23. LEGISLATIVE CONTRACT PROCEDURE.

Sec. 24.23.010. APPLICATION. This chapter applies to contracts

Chapter 144

1 for services to be provided to a legislative agency or legislative commit-
2 tee unless

3 (1) the total amount of a professional services contract or
4 contracts awarded to a person from a legislative agency or legislative
5 committee does not exceed \$25,000 in a 12-month period;

6 (2) the contract is a written employment contract for services
7 to be performed under direct supervision regardless of the existence of
8 an employer-employee relationship and the person responsible for awarding
9 the contract certifies that the services will be performed under direct
10 supervision of the person responsible for awarding the contract and the
11 contract is filed with the Legislative Affairs Agency;

12 (3) the contract is awarded based on competitive bids ob-
13 tained under the competitive bid procedure provided in AS 37.05.230; or

14 (4) the required services are to be provided by an agency or
15 department of the state government or by a municipality.

16 Sec. 24.23.020. REQUESTS FOR PROPOSALS. (a) A formal written re-
17 quest for proposals soliciting an offer to perform the required services
18 under a contract must be extended to a sufficient number of providers of
19 the required services to assure that public interest in competition is
20 adequately served. Proposals from at least six firms shall be solicited
21 for contracts equal to or greater than \$100,000. Proposals from at least
22 three firms shall be solicited for contracts of less than \$100,000. For-
23 mal advertising in a medium that will reasonably bring the proposal to
24 the attention of persons able to provide the required services may be
25 substituted for direct solicitation or used jointly with direct solici-
26 tation of proposals. The professional services contractors register
27 (AS 36.98.020) maintained by the Department of Administration and the
28 Department of Transportation and Public Facilities may be used in soli-
29 citing proposals under this section.

1 (b) If the expertise required is not available to enable a legisla-
2 tive agency or committee to solicit the number of proposals required
3 under (a) of this section, the agency or committee shall solicit pro-
4 posals

5 (1) from each person or firm listed on the professional
6 services contractors register maintained under AS 36.98.020 that appears
7 to possess the required expertise;

8 (2) from each person or firm responding to the public notice
9 given under (a) of this section that appears to possess the required
10 expertise; and

11 (3) from any person or firm with the required expertise of
12 which the agency or committee may be aware.

13 (c) A request for proposals need not be extended under this section
14 if there is a single source of the required services or if one person or
15 firm can clearly perform the required services more satisfactorily
16 because of the person's or firm's prior work.

17 (d) The exemption in (c) of this section applies only if a legis-
18 lative committee by vote of the majority of its members has approved the
19 exemption and a written justification signed by the person responsible
20 for awarding the contract that details the reasons for the exemption is
21 filed under AS 24.23.060 as a public record. A contract proposed for
22 award under the exemption in (c) of this section must be approved by the
23 committee before it is valid.

24 Sec. 24.23.025. STANDARD OVERHEAD RATE. (a) If the University of
25 Alaska or a state agency has established a standard overhead rate appli-
26 cable to contracts for services from the University of Alaska or the
27 state agency, the standard overhead rate shall be included in a proposal
28 for a contract submitted by the University of Alaska or the state agency
29 under AS 24.23.030.

1 (b) As used in this section, "standard overhead rate" means a
2 charge established by the University of Alaska or a state agency that is
3 designed to compensate the University of Alaska or the state agency for
4 administration and support services incidentally provided with the pro-
5 fessional services.

6 Sec. 24.23.030. PREPARATION AND ACCEPTANCE OF PROPOSALS. (a) A
7 proposal for a contract shall be self-contained and written with care
8 and thoroughness. A proposal for a contract may be accepted only if it
9 represents a sound approach to providing the required services.

10 (b) A contract for the Legislative Affairs Agency shall be approved
11 by the Legislative Council. A contract for the legislative finance
12 division or the legislative audit division shall be approved by the
13 Legislative Budget and Audit Committee.

14 (c) A legislative committee may request the Legislative Affairs
15 Agency, the legislative finance division, or the legislative audit
16 division to carry out the responsibilities set out in AS 24.23.020-
17 (a).

18 Sec. 24.23.040. AWARD OF CONTRACT. (a) If a contract is awarded
19 by a legislative committee, execution of the contract must be authorized
20 by a majority vote of the full membership of the committee.

21 (b) A contract must be executed by the provider of the service and
22 the person responsible for awarding the contract and must be approved as
23 to form by the executive director of the Legislative Affairs Agency, the
24 director of the legislative finance division, or the legislative audit
25 division and also by legislative legal counsel.

26 (c) A contract awarded under this chapter shall contain

- 27 (1) the amount of the contract stated on its first page;
28 (2) the date for the work to begin;
29 (3) the date by which the work must be completed;

1 (4) a description of the services to be performed under the
2 contract; and

3 (5) a certification that sufficient money is available in an
4 appropriation to be encumbered for the amount of the contract.

5 Sec. 24.23.050. EVALUATION. If a contract is awarded by a legis-
6 lative committee, the committee or the project director must provide a
7 written evaluation of the services provided under the contract before
8 final payment on the contract may be made. The evaluation shall be
9 filed under AS 24.23.060 and is open for public inspection.

10 Sec. 24.23.060. FILING. (a) A copy of each contract and each
11 exemption granted under AS 24.23.020(b) must be filed, as is appropriate,
12 with the Legislative Affairs Agency, the ombudsman, the legislative
13 finance division, or the legislative audit division, and is open for
14 public inspection. The request for proposals and each proposal submitted
15 must be attached to the filed copy unless the contract is one in which
16 requests for proposals are not required.

17 (b) A contract for services provided to the legislative audit
18 division in the preparation of an audit report is not required to be
19 filed under (a) of this section until the audit report is released under
20 AS 24.20.311.

21 Sec. 24.23.070. DEFINITION. In this chapter "professional
22 services" means professional, technical, or consultant's services that
23 are predominantly intellectual in character and that

24 (1) include analysis, evaluation, prediction, planning, or
25 recommendation; and

26 (2) result in the production of a report or the completion of
27 a task.

28 * Sec. 4. AS 24.55 is amended by adding a new section to read:

29 Sec. 24.55.275. CONTRACT PROCEDURES. The ombudsman shall adopt by

Chapter 144

1 regulation procedures consistent with AS 24.23 to be followed by the
2 office of the ombudsman in contracting for services. However, the pro-
3 cedure for requests for proposals does not apply to contracts for inves-
4 tigations under AS 24.55.100.

5 * Sec. 5. AS 36 is amended by adding a new chapter to read:

6 CHAPTER 98. PROFESSIONAL SERVICES CONTRACTS.

7 Sec. 36.98.010. APPLICATION. This chapter applies to contracts
8 for professional services provided to a state agency unless

9 (1) the total amount of the contract does not exceed \$25,000;

10 (2) the contract is an employment contract for services to be
11 performed under direct supervision regardless of the existence of an
12 employer-employee relationship and a written justification signed by the
13 person responsible for awarding the contract is filed with the commis-
14 sioner;

15 (3) the contract is awarded based on competitive bids ob-
16 tained under the procedure provided in AS 37.05.230.

17 Sec. 36.98.020. PROFESSIONAL SERVICES CONTRACTORS REGISTER. (a)
18 The commissioner shall establish and maintain a professional services
19 contractors register.

20 (b) A person or firm that desires to provide professional services
21 to a state agency may submit to the commissioner a statement of qualifi-
22 cations and performance data, and any other information that the commis-
23 sioner, by regulation, may require.

24 (c) The commissioner may at any time require the person or firm to
25 revise the statement of qualifications and performance data or any other
26 information submitted by the person or firm if the commissioner believes
27 that the credentials or record of experience of the person have materi-
28 ally changed since the last filing by the person or firm.

29 Sec. 36.98.030. SOLICITATION OF SERVICES. (a) When a state

1 agency proposes to enter into a contract for professional services, the
2 agency shall give public notice soliciting proposals for the profes-
3 sional services contract by publication at least three times in one or
4 more newspapers in general circulation in the state and, when appropri-
5 ate, in a newspaper in local circulation where the work is to be per-
6 formed. The first notice shall be published not less than 30 days
7 before the date on which the agency expects to enter into the contract
8 and each subsequent notice shall be published at intervals of no more
9 than three days thereafter. The notice shall include

10 (1) a general description of the proposed project for which
11 the agency is seeking professional services; and

12 (2) the procedure by which a person or firm interested in the
13 professional services contract may make its proposal to the agency for
14 consideration for the contract.

15 (b) In addition to complying with the publication requirements of
16 (a) of this section, when a state agency proposes to enter into a con-
17 tract for professional services it shall

18 (1) review the register of professional services contractors
19 maintained by the commissioner under AS 36.98.020; and

20 (2) provide a request for proposals for the proposed profes-
21 sional services contract to each prospective contractor who, after
22 review of the register of professional services contractors under (1) of
23 this subsection, the agency finds is qualified for consideration for the
24 contract.

25 (c) A request for proposals must be extended to a sufficient
26 number of prospective providers of the required services to assure that
27 public interest in competition is adequately served. Proposals from at
28 least six persons or firms with the required expertise shall be solicited
29 for contracts equal to or greater than \$100,000. Proposals from at

Chapter 144

1 least three persons or firms with the required expertise shall be soli-
2 cited for contracts of less than \$100,000 if the expertise required is
3 available. If the expertise required is not available to enable an
4 agency to solicit the number of proposals otherwise required under this
5 subsection, the agency shall solicit proposals

6 (1) from each person or firm listed on the professional
7 services contractors register maintained under AS 36.98.020 who appears
8 to possess the required expertise;

9 (2) from each person or firm responding to the public notice
10 given under (a) of this section who appears to possess the required
11 expertise.

12 (d) The provisions of this section do not apply if

13 (1) the contracting agency demonstrates that there is a
14 single source of the expertise or knowledge required or that one person
15 or firm can clearly perform the required tasks more satisfactorily
16 because of the person's or firm's prior work; however, this exemption
17 applies only if the head of the state agency has submitted a written
18 request to the commissioner that details the reasons for the exemption
19 and the commissioner or deputy commissioner has authorized in writing
20 the state agency to enter contract negotiations with the single source;

21 (2) the commissioner makes a written determination that
22 public necessity will not permit delay incident to the procedures other-
23 wise required by this chapter; or

24 (3) the service is to be provided by another state agency, a
25 federal agency, or a political subdivision of the state.

26 (e) A request for proposals must contain a description of the work
27 to be performed under the contract and the terms under which the work is
28 to be performed. A request for proposals must contain that information
29 necessary for a prospective contractor to submit a response or contain

1 references to any information that cannot reasonably be included with
2 the request. The request for proposals must provide a description of
3 the factors that will be considered by the state agency when it evaluates
4 the proposals received.

5 (f) Nothing in this section limits the authority of an agency to
6 use additional means that it may consider appropriate to notify prospec-
7 tive contractors that it proposes to enter into a contract for profes-
8 sional services.

9 (g) If a state agency has established a standard overhead rate
10 applicable to contracts for services from the state agency, the standard
11 overhead rate shall be included in a proposal for a contract submitted
12 under (a) of this section.

13 (h) As used in (g) of this section, "standard overhead rate" means
14 a charge established for services from a state agency that is designed to
15 compensate the state agency for administration and support services inci-
16 dentally provided with the professional services.

17 Sec. 36.98.040. AWARD OF CONTRACT. (a) After the responses are
18 submitted, the state agency shall evaluate them. The evaluation shall
19 consist of assigning point values to factors considered by the agency in
20 evaluating each proposal. Each proposal received must be evaluated
21 using the same factors as those set out in the request for proposal.

22 (b) The contract shall be executed by the contractor and the pro-
23 ject director for the contracting agency and be approved by the head of
24 the contracting agency or the designee of the head of the contracting
25 agency. If a contract is made by a board or commission, execution of
26 the contract on behalf of the board or commission shall be authorized by
27 the board or commission.

28 (c) A contract subject to this chapter shall be submitted to the
29 commissioner for review and approval and, if approved, is effective from

Chapter 144

1 the date of the approval. A state agency must clearly provide in the
2 request for proposal that the state is not obligated to perform under
3 the contract until the approval required by this subsection is granted.

4 (d) A contract awarded under this chapter shall contain:

5 (1) the amount of the contract stated on its first page;

6 (2) the date for the work to begin;

7 (3) the date by which the work must be completed;

8 (4) a description of the services to be performed under the
9 contract; and

10 (5) a certification by the project director for the contract-
11 ing agency, the head of the contracting agency, or his designee that
12 sufficient funds are available in an appropriation to be encumbered for
13 the amount of the contract.

14 (e) If the contract contains terms that are not provided in a
15 state standard form contract or if the standard terms are deleted or
16 modified by other terms that are not standard, the contract must be
17 reviewed by the Department of Law and approved as to form. The review
18 and approval required by this subsection must be completed before
19 approval of the award of the contract by the commissioner under (c) of
20 this section.

21 Sec. 36.98.050. CONTRACT ADMINISTRATION. (a) When a state agency
22 has entered into a professional services contract, that agency is respon-
23 sible for the diligent administration and monitoring of the performance
24 of the provisions of the contract.

25 (b) When a professional services contract is completed, the con-
26 tracting state agency shall evaluate the performance of the contractor
27 under the contract and shall report on and evaluate the use of the final
28 product of the contract. A copy of the report and evaluation prepared
29 under this subsection shall be transmitted to the commissioner and shall

1 be retained by the commissioner for as long as the commissioner is
2 required to maintain copies of completed contracts.

3 Sec. 36.98.060. FILING. A copy of each contract and the response
4 to the request for proposal upon which the contract was awarded must be
5 filed with both the commissioner and the contracting state agency and is
6 open for public inspection. The request for proposal and the name and
7 address of each person who submitted a response to it must also accompany
8 the filed copies.

9 Sec. 36.98.070. CONTRACT PROCEDURES. The commissioner shall, by
10 regulation adopted in accordance with the Administrative Procedure Act
11 (AS 44.62), establish the manner and form by which state professional
12 services contracts shall be prepared and processed, including, but not
13 limited to, a review process for persons aggrieved under this chapter.

14 Sec. 36.98.080. DEFINITIONS. In this chapter

15 (1) "commissioner" means the commissioner of administration;
16 except that for contracts entered into by the Department of Transporta-
17 tion and Public Facilities, "commissioner" means the commissioner of
18 transportation and public facilities;

19 (2) "professional services" means professional, technical, or
20 consultant's services that are predominantly intellectual in character
21 and that

22 (A) include analysis, evaluation, prediction, planning,
23 or recommendation; and

24 (B) result in the production of a report or the comple-
25 tion of a task;

26 (3) "public necessity" means an urgent public need that could
27 not have been anticipated or foreseen; the term also includes emergency
28 situations when work is necessary to protect life or property;

29 (4) "request for proposals" means a written solicitation for

Chapter 144

1 contract proposals by prospective contractors that sets out the nature
2 of the services to be performed or product to be secured with sufficient
3 information for a qualified prospective contractor to prepare a contract
4 proposal for consideration and evaluation by the state agency;

5 (5) "state agency" means a department, institution, board,
6 commission, division, authority, or other administrative unit of the
7 executive branch of state government, and the University of Alaska.

8 * Sec. 6. AS 37.05.230(2) is amended to read:

9 (2) if the amount of the contractual services, purchase, or
10 sale is estimated to exceed \$5,000, [\$2,500] sealed bids shall be soli-
11 cited, when practicable, by publication in a newspaper calculated to
12 reach prospective bidders and by posting notices in public places within
13 the area where the work is to be performed or material furnished and in
14 addition the department may also designate a trade journal for publica-
15 tion; the department shall also solicit bids by sending notices by mail
16 to all active prospective bidders known to it and all bids shall be
17 sealed when received, and shall be opened in public at the hour stated
18 in the notice; the department may limit the solicitation of bids or
19 negotiate directly if it finds that it is in the best interests of the
20 state;

21 * Sec. 7. AS 37.05.230(3) is amended to read:

22 (3) a contractual service, purchase or sale where the known
23 requirements are estimated to be less than \$5,000 [\$2,500] may be made
24 either upon competitive bids in accordance with (2) of this section or
25 in the open market, in the discretion of the department; but, so far as
26 practicable, shall be based on at least three competitive bids and
27 recorded as provided in AS 37.05.240; small purchases of less than \$500
28 [\$300] in the discretion of the department may be made on the open
29 market, and may be by cash payment from petty cash accounts set aside

1 for that purpose; the department shall determine the amount of the petty
2 cash accounts needed by each state agency, and inspect the petty cash
3 accounts at least once each year to determine that the total plus amounts
4 of receipts for unreplenished disbursements is equal to the fixed sum of
5 cash set aside; shortages in petty cash accounts are a personal liability
6 of the responsible head of the agency to whom the account is set aside;
7 the department shall make all necessary rules and regulations governing
8 use and replenishment of petty cash funds;

9 * Sec. 8. AS 37.05.230 is amended by adding a new paragraph to read:

10 (9) requests for and acceptance of bids or other proposals
11 for professional services shall comply with AS 24.23 or AS 36.98.

12 * Sec. 9. AS 37.05.240 is amended to read:

13 Sec. 37.05.240. AWARD OF CONTRACTS AND PURCHASES. (a) Except as
14 otherwise provided in AS 37.05.230, a [A] contract or purchase made by
15 or under the supervision of the department for which competitive bids
16 are required shall be awarded to the lowest responsible bidder. The
17 department shall determine the responsibility of the bidder based upon
18 the bidder's (1) adherence to the bid specifications, (2) proposed terms
19 of delivery, (3) compliance with state laws, (4) performance record, (5)
20 financial capability, and (6) compliance with conditions imposed in the
21 solicitation for bids. The purchasing agent may cancel the solicitation
22 for bids before the award upon a written finding which specifies the rel-
23 evant facts that it is in the state's best interest. However, if the
24 purchasing agent makes the contract or purchase after the solicitation
25 for bids is cancelled, the purchase or contract shall be made in accor-
26 dance with AS 37.05.230(2) [, TAKING INTO CONSIDERATION CONFORMITY WITH
27 THE SPECIFICATIONS, TERMS OF DELIVERY, AND OTHER CONDITIONS IMPOSED IN
28 THE CALL FOR BIDS. BIDS MAY BE REJECTED, AND A BID SHALL BE REJECTED IF
29 IT CONTAINS A MATERIAL ALTERATION OR ERASURE WHICH IS NOT INITIALED BY

Chapter 144

1 THE SIGNER OF THE BID. THE DEPARTMENT MAY REJECT THE BID OF A BIDDER
2 WHO IS IN ARREARS ON TAXES DUE THE STATE OR WHO FAILED TO PERFORM ON A
3 PREVIOUS CONTRACT WITH THE STATE. WHERE COMPETITIVE BIDS ARE REQUIRED
4 AND WHERE ALL BIDS ARE REJECTED, NEW BIDS SHALL BE CALLED FOR AS IN THE
5 FIRST INSTANCE]. Before the awarding of a contract for a building or
6 the making of repairs upon a building, the department shall see that the
7 bids conform with plans and specifications approved by the Department of
8 Transportation and Public Facilities. All bids with the names of the
9 bidders and the amounts of the bids, together with all documents pertain-
10 ing to the award of a contract, shall be made a part of a file or record
11 and retained by the department for three years, unless reproduced by
12 microfilming and these files or records are open to public inspection at
13 all reasonable times. An aggrieved bidder may within five days after an
14 award of contract appeal to the department for hearing, with notice to
15 interested parties, for redetermination and final award in accordance
16 with law.

17 (b) A contract for professional services shall be awarded in
18 accordance with AS 24.23 or AS 36.98.

19 * Sec. 10. AS 44.77.010 is amended by adding a new subsection to read:

20 (c) For purposes of this chapter, "claim" includes a claim for a
21 wrongful rejection of a bid proposal or for an arbitrary and unreasonable
22 cancellation of a bid solicitation.

23 * Sec. 11. This Act applies to requests for bids or proposals for profes-
24 sional services issued after the effective date of this Act.

25 * Sec. 12. This Act takes effect immediately in accordance with AS 01.10.-
26 070(c).