



LAWS OF ALASKA

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Chapter No.

102

AN ACT

Relating to state procurement.

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

THE ACT FOLLOWS ON PAGE 1, LINE 8

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TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.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: June 12, 1989
Actual Effective Date: September 10, 1989

AN ACT

Relating to state procurement.

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

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

- (1) suspension, debarment, and reinstatement of prospective bidders and contractors;
- (2) bid protests;
- (3) conditions and procedures for the procurement of perishables and items for resale;
- (4) conditions and procedures for the use of source selection methods authorized by this chapter, including sole source procurements, emergency procurements, and small procurements;
- (5) the opening or rejection of bids and offers, and waiver of informalities in bids and offers;
- (6) confidentiality of technical data and trade secrets submitted by actual or prospective bidders or offerors;
- (7) partial, progressive, and multiple awards;
- (8) storerooms and inventories, including determination of appropriate stock levels and the management of agency supplies;
- (9) transfer, sale or other disposal of supplies;
- (10) definitions and classes of contractual services and procedures for acquiring them;
- (11) providing for conducting price analysis;

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

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

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

7 (15) a bidder's or offeror's duties under AS 36.30.115 and
8 36.30.210; and

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

13 * Sec. 2. AS 36.30.110(b) is amended to read:

14 (b) The bidder must have a valid Alaska business license at the
15 time designated in the invitation to bid for bid opening. [WHEN
16 RESPONDING TO THE INVITATION TO BID, THE BIDDER SHALL SUPPLY EVIDENCE
17 OF THE BIDDER'S VALID ALASKA BUSINESS LICENSE.] A bidder for a con-
18 struction contract shall also submit evidence of the bidder's regis-
19 tration under AS 08.18.

20 * Sec. 3. AS 36.30.110 is amended by adding a new subsection to read:

21 (c) If the commissioner of transportation and public facilities
22 makes a written finding that the release of the estimated cost of a
23 construction contract would adversely affect the state's ability to
24 obtain the best competitive bid, the estimated cost is confidential
25 information and may not be released to the public before bid opening.

26 * Sec. 4. AS 36.30.115(b) is amended to read:

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

29 (1) fails to comply with AS 08.18;

1 (2) files for bankruptcy or becomes insolvent;

2 (3) fails to execute a contract with the bidder involving
3 performance of the work for which the subcontractor was listed and the
4 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
8 work for which the subcontractor was listed;

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

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

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

15 * Sec. 5. AS 36.30.120(b) is amended to read:

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

20 [(1) 10 PERCENT OF THE AMOUNT OF THE BID IF THE BID DOES NOT
21 EXCEED \$100,000; OR

22 (2) 10 PERCENT OF THE FIRST \$100,000 AND FIVE PERCENT OF
23 THE AMOUNT OF THE BID OVER \$100,000 IF THE BID EXCEEDS \$100,000 UP TO
24 A MAXIMUM OF \$200,000 IN SECURITY].

25 * Sec. 6. AS 36.30.170(c) is amended to read:

26 (c) If a bidder qualifies under (b) of this section as an Alaska
27 bidder, is offering services through an employment program [AS DEFINED
28 UNDER AS 36.30.100(c)], and is the lowest responsible and responsive
29 bidder with a bid that is not more than 10 percent higher than the

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1 lowest bid of a nonresident, the procurement officer shall award the
2 contract to that bidder.

3 * Sec. 7. AS 36.30.210(a) is amended to read:

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

20 * Sec. 8. AS 36.30.210 is amended by adding a new subsection to read:

21 (e) The offeror must have a valid Alaska business license at the
22 time designated, in the request for proposals, for opening of the pro-
23 posals.

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

25 (b) In determining whether a proposal is advantageous to the
26 state, the procurement officer shall take into account, in accordance
27 with regulations of the commissioner, whether the offeror qualifies as
28 an Alaska bidder under AS 36.30.170(b) or is offering the services of
29 an employment program [AS DEFINED IN AS 36.30.100(c)].
H

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

2 Sec. 36.30.265. MULTI-STEP SEALED PROPOSALS. When it is con-
3 sidered impractical to initially prepare a definitive purchase de-
4 scription to support an award based on listed selection criteria, the
5 procurement officer may issue an expression of interest requesting the
6 submission of unpriced technical offers, and then later issue a re-
7 quest for proposals limited to the offerors whose offers are deter-
8 mined to be technically qualified under the criteria set out in the
9 expression of interest.

10 * Sec. 11. AS 36.30.300(a) is amended to read:

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

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

8 (a) A contract for supplies, services, professional services, or
9 a construction contract under \$100,000, may be awarded without

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1 competitive sealed bidding or competitive sealed proposals, in accordance with regulations adopted by the commissioner [OF ADMINISTRATION]. A contract may be awarded under this section only when the commissioner [OF ADMINISTRATION], or, for construction contracts under \$100,000 or procurements for the state equipment fleet, the commissioner of transportation and public facilities, determines in writing that a situation exists that makes competitive sealed bidding or competitive sealed proposals impractical or contrary to the public interest. Procurements under this section shall be made with competition that is practicable under the circumstance. Except for procurements of supplies, services, or construction that do not exceed the amount for small procurements under AS 36.30.320(a), the [THE] authority to make a determination required by this section may not be delegated.

15 * Sec. 13. AS 36.30.320(a) is amended to read:

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

20 * Sec. 14. AS 36.30.360(a) is amended to read:

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

28 * Sec. 15. AS 36.30.362 is amended to read:

29 Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A

1 NONRESIDENT. Except for awards made under AS 36.30.170, if [IF] the
2 procurement officer awards a contract to a person who does not reside
3 or maintain a place of business in the state and if the supplies, ser-
4 vices, professional services, or construction that is the subject of
5 the contract could have been obtained from sources in the state, the
6 procurement officer shall issue a written statement explaining the
7 basis of the award. The statement required under this section shall
8 be kept in the contract file.

9 * Sec. 16. AS 36.30.590(a) is amended to read:

10 (a) An appeal from a decision of a procurement officer on a
11 protest may be filed by the protester with the commissioner of admin-
12 istration, or for protests involving construction or procurements for
13 the state equipment fleet, the commissioner of transportation and
14 public facilities. An appeal shall be filed within 10 [FIVE] days
15 after the decision is received by the protester. The protester shall
16 file a copy of the appeal with the procurement officer.

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

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

23 (1) grants;

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

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

29 (4) contracts for medical doctors and dentists;

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

3 (6) disposals under AS 38.05;

4 (7) contracts for the preparation of ballots under AS 15.-
5 15.030;

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

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

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

12 (11) agreements with providers of services under AS 44.47.-
13 250; AS 47.07; AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195,
14 and 47.25.310;

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

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

20 (14) operation of the state boarding school established
21 under AS 14.16, if the State Board of Education or the commissioner of
22 education adopts regulations for use by the state boarding school in
23 procurement and contracting;

24 (15) a contract that is a delegation, in whole or in part,
25 of investment powers held by the commissioner of revenue under AS 14.-
26 25.180, AS 14.40.400, AS 14.42.200, 14.42.210, AS 18.56.095, AS 22.-
27 25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or AS 39.35.-
28 080;

29 (16) a contract that is a delegation, in whole or in part,

of investment powers of the Board of Trustees of the Alaska Permanent Fund Corporation under AS 37.13; [OR]

(17) the purchase of books, book binding services, newspapers, periodicals, audio-visual materials, network information services access, approval plans, professional memberships, archival materials, objects of art, and items for museum or archival acquisition having cultural, historical, or archaeological significance; in this paragraph

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

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

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

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

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

(19) contracts for home health care and adult residential and foster care services provided under regulations adopted by the

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1 Department of Health and Social Services;

2 (20) contracts for supplies or services for research pro-
3 jects funded by money received from the federal government or private
4 grants; or

5 (21) guest speakers or performers for an educational or
6 cultural activity.

7 * Sec. 18. AS 36.30.850(e) is amended to read:

8 (e) AS 36.30.170 applies to all insurance contracts involving
9 state money. In this subsection, "state money" includes [, INCLUDING]
10 state grants and reimbursement to municipalities, school districts,
11 and other entities.

12 * Sec. 19. AS 36.30.990 is amended by adding new paragraphs to read:

13 (17) "employment program" means a nonprofit program to
14 increase employment opportunities for individuals with physical or
15 mental disabilities that constitute substantial handicaps to employ-
16 ment;

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

21 * Sec. 20. AS 36.30.100(c) and AS 44.47.250(c) are repealed.