



LAWS OF ALASKA

1993

Source
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Chapter No.
37

AN ACT

Relating to state procurement; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: May 27, 1993

Actual Effective Date: Sections 12 and 15 take effect May 28, 1993; section 12 is retroactive to May 1, 1993; remainder of Act takes effect August 25, 1993

AN ACT

1 Relating to state procurement; and providing for an effective date.

2

3 * **Section 1.** AS 36.30.010(a) is amended to read:

4 (a) The commissioner shall appoint to the partially exempt service the chief
5 procurement officer of the state. The chief procurement officer must have at least five
6 years of prior experience in public procurement, including large scale procurement of
7 supplies, services, or professional services, and must be a person with demonstrated
8 executive and organizational ability. The chief procurement officer may be removed
9 by the commissioner only for cause. The term of office of the chief procurement
10 officer is six [FOUR] years.

11 * **Sec. 2.** AS 36.30.010 is amended by adding new subsections to read:

12 (c) While a person performs the duties of the chief procurement officer under
13 this chapter, the person may not be employed in or appointed to another position with
14 the state.

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(d) The annual salary of the chief procurement officer is range 23 of the salary schedule established in AS 39.27.011.

* Sec. 3. AS 36.30.080(c) is amended to read:

(c) If the department, legislative branch, or judicial branch intends to enter into or renew a lease of real property [OR LEASE-PURCHASE AGREEMENT, EXCEPT AN AGREEMENT RELATED TO A REFINANCING,] with an annual rent to the department, legislative branch, or judicial branch that is anticipated to exceed \$1,000,000, or with total lease payments that exceed \$10,000,000 for the full term of the lease, the department, legislative branch, or judicial branch shall provide notice to the legislature. If the department, legislative branch, or judicial branch intends to enter into or renew a lease-purchase or lease-financing agreement for real property, other than (1) an agreement related to the refinancing of an outstanding balance owing or (2) a lease-purchase or lease-financing agreement by the University of Alaska that is secured by student fees or university receipts as defined in AS 14.40.491, that has annual lease payments of less than \$1,000,000, and for which the total lease payments for the full term will not exceed \$10,000,000, the department, legislative branch, or judicial branch shall provide notice to the legislature. The notice must include the anticipated annual lease obligation amount, the anticipated total construction, acquisition, or other costs of the project, and the total lease payments for the full term of the lease, if the agreement is a lease-purchase or lease-financing agreement, or if the agreement is a lease other than a lease-purchase or lease-financing agreement and [, IF] the total lease payments for the full term of the lease exceed \$10,000,000 [, THE TOTAL LEASE PAYMENTS FOR THE FULL TERM OF THE LEASE]. The department may not enter into or renew an agreement requiring notice under this subsection unless the project has been approved by the legislature [BY LAW]. An appropriation for the project constitutes [DOES NOT CONSTITUTE] approval of the project for purposes of this subsection. The department may not enter into an agreement under this subsection if the optional renewal period allowed under the agreement exceeds two years. In this subsection, "term" includes defined renewal options.

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

1 (a) A contract may be awarded for supplies, services, professional services, or
2 construction without competitive sealed bidding, competitive sealed proposals, or other
3 competition in accordance with regulations adopted by the commissioner. A contract
4 may be awarded under this section only when the chief procurement officer or, for
5 construction contracts or procurements for the state equipment fleet, the commissioner
6 of transportation and public facilities determines in writing that there is only one
7 source for the required procurement or construction. A sole source procurement may
8 not be awarded if a reasonable alternative source exists. The written determination
9 must include findings of fact that support by clear and convincing evidence the
10 determination that only one source exists. Except for procurements of supplies,
11 services, professional services, or construction that do not exceed the amount for
12 small procurements under AS 36.30.320(a) or (b), as applicable [AS 36.30.320(a)],
13 the authority to make the determination required by this subsection may not be
14 delegated.

15 * Sec. 5. AS 36.30.305(a) is amended to read:

16 (a) A contract for supplies, services, professional services, or a construction
17 contract under \$100,000, may be awarded without competitive sealed bidding or
18 competitive sealed proposals, in accordance with regulations adopted by the
19 commissioner. A contract may be awarded under this section only when the chief
20 procurement officer [COMMISSIONER], or, for construction contracts under
21 \$100,000 or procurements for the state equipment fleet, the commissioner of
22 transportation and public facilities, determines in writing that a situation exists that
23 makes competitive sealed bidding or competitive sealed proposals impractical or
24 contrary to the public interest. Procurements under this section shall be made with
25 competition that is practicable under the circumstance. Except for procurements of
26 supplies, services, professional services, or construction that do not exceed the amount
27 for small procurements under AS 36.30.320(a) or (b), as applicable
28 [AS 36.30.320(a)], the authority to make a determination required by this section may
29 not be delegated.

30 * Sec. 6. AS 36.30.310 is amended to read:

31 Sec. 36.30.310. EMERGENCY PROCUREMENTS: Procurements may be

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1 made under emergency conditions as defined in regulations adopted by the
2 commissioner when there exists a threat to public health, welfare, or safety, when a
3 situation exists that makes a procurement through competitive sealed bidding or
4 competitive sealed proposals impracticable or contrary to the public interest, or to
5 protect public or private property. An emergency procurement need not be made
6 through competitive sealed bidding or competitive sealed proposals but shall be made
7 with competition that is practicable under the circumstances. A written determination
8 by the chief procurement officer of the basis for the emergency and for the selection
9 of the particular contractor shall be included in the contract file. The written
10 determination must include findings of fact that support the determination. Except
11 when there is insufficient time for the chief procurement officer to make the
12 written determination required by this section, the chief procurement officer may
13 not delegate the authority to make the determination.

14 * Sec. 7. AS 36.30 is amended by adding a new section to read:

15 Sec. 36.30.315. DETERMINATIONS BY CHIEF PROCUREMENT
16 OFFICER; CRIMINAL PENALTY. (a) In a determination made by the chief
17 procurement officer under AS 36.30.300 - 36.30.310, the chief procurement officer
18 shall independently examine the material facts of the procurement and independently
19 determine whether the procurement is eligible for the procurement method requested.

20 (b) If the chief procurement officer knowingly makes a false statement in a
21 determination made by the chief procurement officer under AS 36.30.300 - 36.30.310,
22 the chief procurement officer is guilty of a class A misdemeanor.

23 * Sec. 8. AS 36.30.370 is amended to read:

24 Sec. 36.30.370. TYPES OF CONTRACTS. Any [SUBJECT TO
25 LIMITATIONS OF THIS SECTION, ANY] type of contract that will promote the best
26 interests of the state may be used, except that the use of a
27 cost-plus-a-percentage-of-cost contract is prohibited. [A COST-REIMBURSEMENT
28 CONTRACT MAY BE USED ONLY WHEN A DETERMINATION IS MADE IN
29 WRITING BY THE PROCUREMENT OFFICER THAT A
30 COST-REIMBURSEMENT CONTRACT IS LIKELY TO BE LESS COSTLY TO
31 THE STATE THAN ANY OTHER TYPE OR THAT IT IS IMPRACTICABLE TO

1 OBTAIN THE SUPPLIES, SERVICES, PROFESSIONAL SERVICES, OR
2 CONSTRUCTION REQUIRED EXCEPT UNDER A COST-REIMBURSEMENT
3 CONTRACT.]

4 * Sec. 9. AS 36.30.610(c) is amended to read:

5 (c) The commissioner of administration or the commissioner of transportation
6 and public facilities, as appropriate, shall, within 15 days from the date the
7 appellant's comments on the protest report are due under AS 36.30.605(c) and (d)
8 [AFTER RECEIPT OF AN APPEAL], notify the appellant of the acceptance or
9 rejection of the appeal and, if rejected, the reasons for the rejection.

10 * Sec. 10. AS 36.30.850(b) is amended by adding new paragraphs to read:

11 (30) contracts that are to be performed in an area outside of the country
12 and that require a knowledge of the customs, procedures, rules, or laws of the area;

13 (31) contracts that are between the Department of Law and attorneys
14 who are not employed by the state and that are for the review or prosecution of
15 possible violations of the criminal law of the state in situations where the attorney
16 general concludes that an actual or potential conflict of interest makes it inappropriate
17 for the Department of Law to review or prosecute the possible violations.

18 * Sec. 11. AS 36.30.150(b) is repealed.

19 * Sec. 12. LEASE EXTENSIONS AUTHORIZED. (a) Notwithstanding AS 36.30, the
20 Department of Administration, the University of Alaska, the legislature, and the court system
21 may extend for up to a maximum extension of five years a real property lease that is entered
22 into under AS 36.30, including procedures and regulations adopted under AS 36.30.005(c) and
23 36.30.020 - 36.30.030, and that is in existence on the effective date of this section if a
24 minimum cost savings of

25 (1) 10 percent can be achieved on the rent due under the lease; or

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

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

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1 (c) The Department of Administration, the University of Alaska, the Alaska Court
2 System, and the Legislative Affairs Agency shall submit a quarterly report to the Legislative
3 Budget and Audit Committee detailing the leases extended and the cost savings achieved
4 under (a) - (b) of this section. The first report is due July 1, 1994, and must cover the period
5 from the effective date of this section through March 31, 1994. The subsequent reports shall
6 be made October 1, 1994, January 2, 1995, and April 1, 1995.

7 * Sec. 13. TRANSITIONAL PROVISIONS. (a) With respect to the person holding the
8 position of chief procurement officer on the effective date of this section, the six-year term
9 of the chief procurement officer under AS 36.30.010(a), as amended by sec. 1 of this Act,
10 shall include the time the person holds the position before the effective date of this section.

11 (b) AS 36.30.010(c) and (d), added by sec. 2 of this Act, apply to the chief
12 procurement officer on and after the effective date of this section.

13 (c) AS 36.30.300(a), 36.30.305(a), 36.30.310, 36.30.370, amended by secs. 4 - 6 and
14 8 of this Act, and 36.30.850(b)(30) and (31), added by sec. 10 of this Act, apply to a
15 procurement that begins on or after the effective date of this section.

16 (d) AS 36.30.315, enacted by sec. 7 of this Act, applies to a determination made on
17 or after the effective date of this section.

18 (e) AS 36.30.610(c), amended by sec. 9 of this Act, applies to a protest report filed
19 under AS 36.30.605 on or after the effective date of this section.

20 * Sec. 14. (a) Subsections 12(a) and (b) of this Act are repealed December 31, 1994.

21 (b) Subsection 12(c) of this Act is repealed April 1, 1995.

22 * Sec. 15. If sec. 12 of this Act takes effect after May 1, 1993, sec. 12 of this Act is
23 retroactive to May 1, 1993.

24 * Sec. 16. Sections 12 and 15 of this Act take effect immediately under AS 01.10.070(c).