



LAWS OF ALASKA

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Chapter No.

59

AN ACT

Relating to the giving of procurement notices; changing the content of the required procurement reports to the legislature by the commissioner of administration; relating to publications produced by state agencies; establishing an innovative construction procurement methods pilot program; and establishing legislative findings, a legislative purpose, and legislative intent for 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 24, 1994

Actual Effective Date: Section 3 takes effect August 22, 1998; remainder of Act takes effect August 22, 1994

AN ACT

1 Relating to the giving of procurement notices; changing the content of the required
2 procurement reports to the legislature by the commissioner of administration; relating to
3 publications produced by state agencies; establishing an innovative construction procurement
4 methods pilot program; and establishing legislative findings, a legislative purpose, and
5 legislative intent for state procurement; and providing for an effective date.

6

7 * **Section 1.** FINDINGS, PURPOSE, AND INTENT. (a) The legislature finds that
8 (1) the state needs to develop and maintain a strong, stable, and prosperous
9 economy based on private investment;
10 (2) the existence of a strong and healthy free enterprise system is directly
11 related to the well-being and competitive strength of Alaskan businesses and to the opportunity
12 for Alaskan businesses to have free entry into the business market and to grow and expand;

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1 (3) the use of products manufactured, grown, or produced in Alaska
2 strengthens, stabilizes, and diversifies Alaska's economy;

3 (4) when governmental agencies purchase and use out-of-state products and
4 services, they reduce job-creating investments and limit the growth of the economy of Alaska;

5 (5) contracts are frequently awarded to out-of-state firms, even though Alaskan
6 suppliers, manufacturers, and providers of services are more accessible and responsive to the
7 needs of Alaska's business community than their out-of-state counterparts;

8 (6) there is a need for Alaska to examine its purchasing practices in order to
9 ensure that state agencies support Alaskan businesses by making every reasonable effort to
10 identify available Alaskan goods and services and to foster bidding by local and resident
11 businesses and labor forces, including union and nonunion labor;

12 (7) state agencies should look outside Alaska for goods and services only if
13 they have provided notice of the procurement in Alaska.

14 (b) The legislature declares that the purpose of this Act is to foster a procurement
15 process where Alaskan businesses obtain a fair proportion of Alaska's total procurement
16 contracts by providing Alaskan businesses with a fair, equitable, and competitive bid process.

17 (c) It is the intent of the legislature that

18 (1) except as prohibited under AS 36.30.320(d), a state agency shall, when
19 practicable and economically feasible, design procurements in a way that fosters participation
20 by Alaska bidders or offerors;

21 (2) except as prohibited under AS 36.30.320(d), and unless it is anticipated that
22 two or more Alaska bidders or offerors would be capable of performing the procurement, an
23 agency that is proposing a procurement shall, when practicable and economically feasible,
24 divide or otherwise structure the procurement so that it can be performed by Alaska bidders
25 or offerors, if the proposed procurement is too large to be performed by Alaska bidders or
26 offerors, and if the procurement officer determines that Alaska bidders or offerors generally
27 would be capable of performing the procurement if the procurement were reduced in size or
28 otherwise restructured; in this paragraph, "Alaska bidders or offerors" means persons who
29 qualify as Alaska bidders under AS 36.30.170(b); and

30 (3) state agencies that procure investment and brokerage services increase the
31 utilization of brokerage and investment services provided by persons located in the state; in

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1 this paragraph, "state agency" includes the University of Alaska, the Alaska Railroad
2 Corporation, the Alaska Housing Finance Corporation, the Alaska Aerospace Development
3 Corporation, the Alaska State Pension Investment Board, and the Alaska permanent fund
4 established under AS 37.13.010, but does not include the state trustees or federal trustees
5 under AS 37.14.450.

6 * Sec. 2. AS 36.30.130(a) is amended to read:

7 (a) The procurement officer shall give adequate public notice of the invitation
8 to bid at least 21 days before the date for the opening of bids. If a determination is
9 made in writing that a shorter notice period is necessary for a particular bid, the
10 21-day period may be shortened. The determination shall be made by the chief
11 procurement officer for bids for supplies, services, or professional services. The
12 determination shall be made by the commissioner of transportation and public facilities
13 for bids for construction or acquisition of property for the state equipment fleet.
14 Notice shall be published in the Alaska Administrative Journal. The time and manner
15 of notice must be in accordance with regulations adopted by the commissioner of
16 administration. When practicable, notice may include

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

18 **located in the state;**

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

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

23 **(A) if the contractors are located in the state;**

24 **(B) upon request, if the contractors are not located in the**

25 **state.**

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

27 (a) The procurement officer shall give adequate public notice of the invitation
28 to bid at least 21 days before the date for the opening of bids. If a determination is
29 made in writing that a shorter notice period is necessary for a particular bid, the
30 21-day period may be shortened. The determination shall be made by the chief
31 procurement officer for bids for supplies, services, or professional services. The

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1 determination shall be made by the commissioner of transportation and public facilities
2 for bids for construction or acquisition of property for the state equipment fleet.
3 Notice shall be published in the Alaska Administrative Journal. The time and manner
4 of notice must be in accordance with regulations adopted by the commissioner of
5 administration. When practicable, notice may include

- 6 (1) publication in a newspaper calculated to reach prospective bidders;
7 (2) notices posted in public places within the area where the work is
8 to be performed or the material furnished; and
9 (3) notices mailed to all active prospective contractors on the
10 appropriate list maintained under AS 36.30.050.

11 * Sec. 4. AS 36.30.540 is amended to read:

12 Sec. 36.30.540. REPORT TO LEGISLATURE. The [BEGINNING WITH
13 DECEMBER 1, 1989, THE] commissioner shall biennially report to the legislature
14 concerning procurements by agencies. The report must include

- 15 (1) the records maintained by the commissioner under AS 36.30.510
16 and the records maintained under as 36.30.520(a) for the previous two fiscal years;
17 (2) recommendations for changes in this chapter or other laws based
18 on implementation of this chapter in the previous two fiscal years;
19 (3) a description of any matters that involved litigation concerning this
20 chapter in the previous two fiscal years;
21 (4) a list of procurements made under this chapter from out-of-state
22 sources during the previous two fiscal years together with the total number of
23 procurement contracts entered into during that period with out-of-state contractors and
24 the total value of these contracts; this paragraph does not apply to procurements made
25 under AS 36.30.320; and
26 (5) a list of procurements made under this chapter from state sources
27 during the previous two fiscal years together with the total number of procurement
28 contracts entered into during that period with state contractors and the total value of
29 these contracts; this paragraph does not apply to procurements made under
30 AS 36.30.320;
31 (6) the number of bidders and offerors that bid on or made

1 proposals for procurements under this chapter, the number of these bidders and
2 offerors that were located in the state, and the number of these bidders and
3 offerors that were located outside the state; this paragraph does not apply to
4 procurements made under AS 36.30.320.

5 * Sec. 5. AS 44.99.200 is repealed and reenacted to read:

6 Sec. 44.99.200. PRODUCTION OF PUBLICATIONS. The publications of a
7 state agency shall be produced at a private sector facility located in the state when
8 practicable. The Department of Administration shall establish standards for the
9 production of publications by state agencies, except that the Board of Regents of the
10 University of Alaska shall establish the standards for the university. The standards
11 shall be designed to promote simplicity, low cost, and consistency.

12 * Sec. 6. AS 44.99.210 is amended to read:

13 Sec. 44.99.210. DISCLOSURES ON PUBLICATION. If [A PUBLICATION
14 OF A STATE AGENCY IS EXEMPTED UNDER AS 44.99.200(a) FROM BEING
15 PRODUCED AT A STATE-OPERATED FACILITY AND IF] the actual annual costs
16 for a [THE] publication of a state agency that are paid from the general fund exceed
17 \$1,500, or if the actual annual costs of a state agency publication that is a report
18 required by law are paid from a source other than the general fund and exceed
19 \$1,500, the publication must include a statement that gives the name of the agency
20 releasing the publication, the purpose of the publication, the cost for each copy of the
21 publication, and the city and state where the printing was done. The statement must
22 read: "This publication was released by . . . (name of state agency) . . . , produced at
23 a cost of \$ per copy to . . . (statement of purpose) . . . , and printed in
24 . (city and state where printed)." If the publication is required by law, the statement
25 must also include: "This publication is required by . . . (appropriate citation to Alaska
26 law)." The statement may include, if applicable, a declaration of the revenue raised
27 by the sale of the publication or from the purchase of advertising in the publication.
28 The statement shall be printed in one conspicuous place in the body of the publication
29 in a type size that is not smaller than 12 [EIGHT] points and shall be placed in a box
30 composed of at least two [ONE] point rule. In this section, "cost for each copy"
31 means the figure that results after dividing the total contract cost of producing the

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1 publication by the number of copies produced. This section does not apply to a
2 publication that is intended primarily for foreign or other out-of-state use, [OR] to a
3 program for a public ceremony of a state agency, or to materials used by a state
4 agency to develop a market for the agency's services or products.

5 * Sec. 7. AS 44.99.230 is repealed.

6 * Sec. 8. INNOVATIVE CONSTRUCTION PROCUREMENT METHODS PILOT
7 PROGRAM. (a) Within six months after the effective date of this section, the commissioner
8 of transportation and public facilities shall begin a two-year pilot program for the use of
9 innovative methods for the procurement of construction services by using bonuses to replace
10 the preferences required under AS 36.30. The bonuses are to be offered to achieve the
11 purposes of the preferences in AS 36.30 and shall be defined by regulations adopted by the
12 commissioner.

13 (b) Notwithstanding the provisions of AS 36.30, if the commissioner determines in
14 writing that using innovative construction procurement methods for the procurement of
15 construction contracts would be in the best interests of the state, the commissioner may, by
16 regulation, adopt procedures different than those provided under AS 36.30 as necessary to use
17 bonuses instead of preferences in the procurement of construction contracts. The
18 determination must find that the innovative methods are not contrary to the intent and
19 purposes of AS 36.30, demonstrate that the innovative methods are in the best interests of the
20 state, and describe how the innovative methods modify the procurement methods and
21 procedures of AS 36.30.

22 (c) Within 15 months after the pilot program begins, the commissioner shall report
23 to the legislature on the construction contracts awarded during the first year of the pilot
24 program. Within 27 months after the pilot program begins, the commissioner shall report to
25 the legislature on the construction contracts awarded during the second year of the pilot
26 program. In a report under this subsection, the information must include for each contract
27 awarded during the period covered by the report

28 (1) the geographical region where the construction is to be performed; and

29 (2) whether the contractor is classified as a minority contractor.

30 (d) The legislature may review the pilot program at any time during the program and
31 may make the program permanent or broaden the scope of the innovative procurement

1 program.

2 (e) In this section,

3 (1) "best interests of the state" means that the proposed action would provide

4 (A) an economic benefit to the private businesses and citizens of the
5 state;

6 (B) an economic benefit to state government; and

7 (C) greater administrative efficiencies than existing procedures provide;

8 (2) "commissioner" means the commissioner of transportation and public
9 facilities.

10 * Sec. 9. APPLICABILITY. AS 36.30.540(6), enacted by sec. 4 of this Act, applies to
11 reports due after the effective date of sec. 4 of this Act.

12 * Sec. 10. Section 3 of this Act takes effect on the date that is four years after the effective
13 date of sec. 2 of this Act.