



# STATE PROCUREMENT CODE

2013 ALASKA STATUTES, TITLE 36, CHAPTER 30  
REVISED 3/03/15

## IMPORTANT NOTE

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## ARTICLE 01. ORGANIZATION OF STATE PROCUREMENT

### SEC. 36.30.005. CENTRALIZATION OF PROCUREMENT AUTHORITY.

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- (a) Except as otherwise provided, all rights, powers, duties, and authority relating to the procurement of supplies, services, and professional services, and the control over supplies, services, and professional services vested in or exercised by an agency on January 1, 1988, are transferred to the commissioner of administration and to the chief procurement officer. Authority granted under this subsection shall be exercised in accordance with this chapter.
- (b) Except as otherwise provided, all rights, powers, duties, and authority relating to the procurement of construction and procurements of equipment or services for the state equipment fleet and the control over construction of state facilities and the state equipment fleet vested in or exercised by an agency on January 1, 1988, are transferred to the commissioner of transportation and public facilities, subject to regulations adopted by the commissioner of administration. Notwithstanding AS 44.68.110, authority relating to disposals from the state equipment fleet is vested in the commissioner of transportation and public facilities, subject to regulations adopted by the commissioner of administration. Authority granted under this subsection shall be exercised in accordance with this chapter.
- (c) Notwithstanding other provisions of law, all rights, powers, duties, and authority relating to the procurement of supplies, services, professional services, and construction and the disposal of supplies for the University of Alaska are transferred to the Board of Regents. To the maximum extent possible, authority granted under this subsection shall be exercised in accordance with this chapter. The Board of Regents shall adopt regulations under this subsection that are substantially equivalent to the regulations adopted by the commissioner of administration to implement this chapter. For the purposes of this subsection, unless the context otherwise requires, in this chapter
- (1) "agency" means a subunit of the University of Alaska;
  - (2) "attorney general" means the president of the University of Alaska;
  - (3) "chief procurement officer" means a person designated by the president of the University of Alaska whose qualifications are substantially equivalent to those provided in AS 36.30.010(a);
  - (4) "commissioner," "commissioner of administration," or "commissioner of transportation and public facilities" means the Board of Regents or the president of the University of Alaska if so designated by the Board of Regents by regulations adopted under this subsection; and
  - (5) "department" means the University of Alaska.
- (d) Notwithstanding the provisions of AS 36.30.627, the University of Alaska is not required to arbitrate construction contract claims unless the university specifically agrees to the arbitration.

### **SEC. 36.30.010. CHIEF PROCUREMENT OFFICER.**

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- (a) The commissioner shall appoint to the partially exempt service the chief procurement officer of the state. The chief procurement officer must have at least five years of prior experience in public procurement, including large scale procurement of supplies, services, or professional services, and must be a person with demonstrated executive and organizational ability. The chief procurement officer may be removed by the commissioner only for cause. The term of office of the chief procurement officer is six years.
- (b) Except as otherwise specifically provided in this chapter, the chief procurement officer shall
  - (1) procure or supervise the procurement of all supplies, services, and professional services needed by an agency;
  - (2) exercise general supervision and control over all inventories of supplies belonging to an agency and prescribe the manner in which supplies shall be purchased, delivered, stored, and distributed;
  - (3) prescribe the time, manner, authentication, and form of making requisitions for supplies and services;
  - (4) sell, trade, transfer between agencies, or otherwise dispose of surplus, obsolete, or unused supplies and make proper adjustments in the accounts of agencies concerned;
  - (5) establish and maintain programs for the inspection, testing, and acceptance of supplies and services and the testing of samples submitted with bids;
  - (6) prescribe standard forms for bids and contracts; and
  - (7) provide for other matters that may be necessary to carry out the provisions of this chapter and the regulations adopted under this chapter.
- (c) While a person performs the duties of the chief procurement officer under this chapter, the person may not be employed in or appointed to another position with the state.
- (d) The annual salary of the chief procurement officer is range 25 of the salary schedule established in AS 39.27.011.

### **SEC. 36.30.015. EXECUTIVE BRANCH AGENCIES.**

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- (a) The commissioner of transportation and public facilities may delegate to another agency the authority to contract for construction. Before delegating authority to an agency under this subsection, the commissioner of transportation and public facilities shall make a written determination that the agency is capable of implementing the delegated authority. Notwithstanding delegation of authority under this subsection, contracts for construction are governed by this chapter and regulations adopted by the commissioner of administration under this chapter.

- (b) The commissioner of administration may delegate to an agency the authority to contract for and manage services, professional services, and supplies. Notwithstanding delegation of authority under this subsection, an agency's exercise of the authority is governed by this chapter and regulations adopted by the commissioner under this chapter. Before delegating authority to an agency under this subsection, the commissioner shall make a written determination that the agency is capable of implementing the delegated authority.
- (c) *[Repealed, Sec. 48 ch 137 SLA 1996].*
- (d) An agency may not contract for the services of legal counsel without the approval of the attorney general. An agency may not contract for the services of a hearing officer or administrative law judge for an administrative, quasi-judicial hearing without the approval of the attorney general and the chief administrative law judge of the office of administrative hearings (AS 44.64.010).
- (e) The board of directors of the Alaska Railroad Corporation and the board of directors of the Alaska Aerospace Development Corporation shall adopt procedures to govern the procurement of supplies, services, professional services, and construction. The procedures must be substantially equivalent to the procedures prescribed in this chapter and in regulations adopted under this chapter. Notwithstanding the other provisions of this subsection, the Alaska Railroad Corporation and the Alaska Aerospace Development Corporation shall comply with the five percent preference under AS 36.30.321(a), and, when the Department of Transportation and Public Facilities authorizes the Alaska Railroad Corporation to perform construction work instead of the Department of Transportation and Public Facilities, the Alaska Railroad Corporation shall use competitive sealed bidding or competitive sealed proposals under AS 36.30.100 - 36.30.270 to procure the supplies, services, professional services, and construction services necessary for the work and, to ensure the state obtains the lowest cost for the project, may submit a bid or proposal for the work.
- (f) The board of directors of the Alaska Housing Finance Corporation, notwithstanding AS 18.56.088, and the board of directors of the Knik Arm Bridge and Toll Authority under AS 19.75.111, shall adopt regulations under AS 44.62 (Administrative Procedure Act) and the board of trustees of the Alaska Retirement Management Board shall adopt regulations under AS 37.10.240 to govern the procurement of supplies, services, professional services, and construction for the respective public corporation and board. The regulations must reflect competitive bidding principles and provide vendors reasonable and equitable opportunities to participate in the procurement process and must include procurement methods to meet emergency and extraordinary circumstances. Notwithstanding the other provisions of this subsection, the Alaska Housing Finance Corporation, the Knik Arm Bridge and Toll Authority, and the Alaska Retirement Management Board shall comply with the five percent preference under AS 36.30.321(a).
- (g) The Department of Transportation and Public Facilities shall adopt regulations to manage the procurement of supplies, services, professional services, and construction for the repair, maintenance, and reconstruction of vessels, docking facilities, and passenger and vehicle transfer facilities of the Alaska marine highway system. The regulations must be based on principles of competitive procurement consistent with this chapter to satisfy the special requirements of the Alaska marine highway system as determined by the Department of Transportation and Public Facilities.

- (h) The board of directors of the Alaska Seafood Marketing Institute shall adopt procedures to govern the procurement of supplies, services, and professional services. The procedures must be similar to the procedures prescribed in this chapter and in regulations adopted under this chapter, except that the Alaska Seafood Marketing Institute shall comply with the five percent preference under AS 36.30.321(a).
- (i) Notwithstanding (e) of this section and the authority to delegate under (a) of this section, the Alaska Railroad Corporation, rather than the Department of Transportation and Public Facilities, shall perform signalization and flagging work, may perform the signalization and flagging work by itself or by using contractors, and, if it decides to use contractors for the work, it shall obtain the contractors by using its procurement procedures adopted under (e) of this section.
- (j) Notwithstanding the other provisions of this chapter, when a project of the Department of Transportation and Public Facilities includes construction of rails, ties, or ballast for railroad tracks used by the Alaska Railroad Corporation, the Department of Transportation and Public Facilities may enter into an agreement with the Alaska Railroad Corporation for the Alaska Railroad Corporation to perform the work, and the Alaska Railroad Corporation may perform the work itself without procuring a contractor to provide the supplies, services, professional services, or construction services necessary for the work.

#### **SEC. 36.30.020. LEGISLATURE.**

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The legislative council shall adopt and publish procedures to govern the procurement of supplies, services, professional services, and construction by the legislative branch. The procedures must be based on the competitive principles consistent with this chapter and must be adapted to the special needs of the legislative branch as determined by the legislative council. The procedures must contain provisions for prohibiting procurement from a person that has headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). The procedures may contain provisions for restricting procurement from a person that conducts business in but does not have headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). The procedures must be consistent with the provisions of AS 36.30.080(c) - (e) and 36.30.085. Notwithstanding the other provisions of this section, the legislative agencies subject to the legislative council's regulations shall comply with the five percent preference under AS 36.30.321(a).

#### **SEC. 36.30.030. COURT SYSTEM.**

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The administrative director of courts shall adopt and publish procedures to govern the procurement of supplies, services, professional services, and construction by the judicial branch. The procedures must be based on the competitive principles consistent with this chapter and must be adapted to the special needs of the judicial branch as determined by the administrative director of courts. The procedures must contain provisions for prohibiting procurement from a person that has headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). The procedures may contain provisions for restricting procurement from a person that conducts business in but does not have headquarters in a country listed in Tier 3 of the most recent

Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). The procedures must be consistent with the provisions of AS 36.30.080(c) - (e) and 36.30.085. Notwithstanding the other provisions of this section, the judicial branch shall comply with the five percent preference under AS 36.30.321(a).

#### **SEC. 36.30.040. PROCUREMENT REGULATIONS.**

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- (a) The commissioner shall adopt regulations governing the procurement, management, and control of supplies, services, professional services, and construction by agencies. The regulations must contain provisions for prohibiting procurement from a person that has headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). The regulations may contain provisions for restricting procurement from a person that conducts business in but does not have headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons Report published by the United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). The commissioner may audit and monitor the implementation of the regulations and the requirements of this chapter with respect to using agencies.
- (b) The commissioner shall adopt regulations pertaining to
  - (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 single 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;
  - (12) use of payment and performance bonds in connection with contracts for supplies, services, and construction;

- (13) guidelines for use of cost principles in negotiations, adjustments, and settlements;
- (14) conditions under which an agency may use the services of an employment program;
- (15) a bidder's or offeror's duties under this chapter; and
- (16) the elimination and prevention of discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation.

#### **SEC. 36.30.060. SPECIFICATIONS.**

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- (a) The commissioner shall adopt regulations governing the preparation, revision, and content of specifications for supplies, services, professional services, and construction required by an agency. The commissioner shall monitor the use of these specifications.
- (b) Specifications for construction of highways must conform as closely as practicable to those adopted by the American Association of State Highway and Transportation Officials.
- (c) The commissioner may obtain expert advice and assistance from personnel of using agencies in the development of specifications. Specifications must promote overall economy for the purposes intended and encourage competition in satisfying the state's needs, and may not be unduly restrictive. The requirements of this subsection regarding the purposes and nonrestrictiveness of specifications apply to all specifications, including those prepared by architects, engineers, designers, and other professionals.
- (d) In this section, "specification" means a description of the physical or functional characteristics, or of the nature of a supply, service, professional service, or construction project; it may include requirements for licensing, inspecting, testing, and delivery.

#### **SEC. 36.30.070. SUPPLY MANAGEMENT.**

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The commissioner shall adopt regulations governing the

- (1) management of supplies during their entire life cycle;
- (2) sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method;
- (3) purchase of surplus supplies by an employee of the using or disposing agency; and
- (4) transfer of excess supplies.

#### **SEC. 36.30.080. LEASES.**

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- (a) The department shall lease space for the use of the state or an agency wherever it is necessary and feasible, subject to compliance with the requirements of this chapter. A lease may not provide for a

period of occupancy greater than 40 years. An agency requiring office, warehouse, or other space shall lease the space through the department.

- (b) *[Repealed, Sec. 11 ch 75 SLA 1994].*
- (c) If the department, the Board of Regents of the University of Alaska, the legislative council, or the supreme court intends to enter into or renew a lease of real property with an annual rent to the department, University of Alaska, legislative council, or supreme court that is anticipated to exceed \$500,000, or with total lease payments that exceed \$2,500,000 for the full term of the lease, including any renewal options that are defined in the lease, the department, the Board of Regents, the legislative council, or supreme court shall provide notice to the legislature. The notice must include the anticipated annual lease obligation amount and the total lease payments for the full term of the lease. The department, the Board of Regents, the legislative council, and the supreme court may not enter into or renew a lease of real property.
  - (1) requiring notice under this subsection unless the proposed lease or renewal of a lease has been approved by the legislature by law; an appropriation for the rent payable during the initial period of the lease or the initial period of lease renewal constitutes approval of the proposed lease or renewal of a lease for purposes of this paragraph;
  - (2) under this subsection if the total of all optional renewal periods provided for in the lease exceeds the original term of the lease exclusive of the total period of all renewal options.
- (d) When the department is evaluating proposals for a lease of space, the department shall consider, in addition to lease costs, the life cycle costs, function, indoor environment, public convenience, planning, design, appearance, and location of the proposed building.
- (e) When the department is considering leasing space, the department should consider whether leasing is likely to be the least costly means to provide the space.
- (f) When the department is acquiring leased space of 7,000 square feet or less, the department may procure the leased space using the procedures for small procurements under AS 36.30.320, providing public notice is given to prospective offerors in the market area.

### **SEC. 36.30.083. LEASE EXTENSIONS AUTHORIZED.**

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- (a) Notwithstanding any other provision of this chapter, the department, the Board of Regents of the University of Alaska, the legislative council, or the court system may extend a real property lease that is entered into under this chapter for up to 10 years if a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. The market rental value must be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value.
- (b) The department, the University of Alaska, the court system, and the Legislative Affairs Agency shall submit individually an annual report to the Legislative Budget and Audit Committee detailing the leases extended and the cost savings achieved by that entity under (a) of this section. The reports are due August 31 of each year.



**SEC. 36.30.085. LEASE-PURCHASE AGREEMENTS.**

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- (a) To perform its duties and statutory functions, the department, the Board of Regents of the University of Alaska, the legislative council, or the supreme court may enter into lease-purchase agreements for real property. The department, the Board of Regents, the legislative council, or the supreme court may enter into a lease-purchase agreement only if the department, the Board of Regents, the legislative council, or the supreme court is the lessee under the agreement.
- (b) When evaluating proposals to acquire or improve real property under a lease-purchase agreement, the department, the Board of Regents, the legislative council, or the supreme court shall consider
  - (1) in addition to lease costs, the life cycle costs, function, indoor environment, public convenience, planning, design, appearance, and location of the real property proposed for acquisition or improvement; and
  - (2) whether acquisition or improvement of the real property by lease-purchase agreement is likely to be the least costly means to provide the space.
- (c) A lease-purchase agreement
  - (1) may not provide for a period of occupancy under the full term of the lease-purchase agreement that is greater than 40 years;
  - (2) must provide that lease payments made by the department, the Board of Regents, the legislative council, or the supreme court are subject to annual appropriation.
- (d) If the department, Board of Regents, legislative council, or supreme court intends to enter into or renew a lease-purchase agreement for real property, the department, Board of Regents, legislative council, or supreme court shall provide notice to the legislature. The notice must include the
  - (1) anticipated total construction, acquisition, or other costs of the project;
  - (2) anticipated annual amount of the rental obligation; and
  - (3) total lease payments for the full term of the lease-purchase agreement.
- (e) The department, the Board of Regents, the legislative council, or the supreme court may not enter into a lease-purchase agreement to acquire or improve real property unless the agreement has been approved by the legislature by law.
- (f) The provisions of (d) and (e) of this section do not apply to a lease-purchase agreement
  - (1) related to the refinancing of an outstanding balance owing on an existing lease-purchase agreement; or
  - (2) by the University of Alaska if the lease-purchase agreement is secured by student fees or university receipts as defined in AS 14.40.491.
- (g) In this section,

- (1) "full term of the lease-purchase agreement" includes all renewal options that are defined within the lease-purchase agreement;
- (2) "lease-purchase agreement" includes a lease-financing agreement.

#### **SEC. 36.30.086. LEASE-PURCHASE OF PERSONAL PROPERTY.**

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- (a) To perform its duties and statutory functions, an agency, the Board of Regents of the University of Alaska, the legislative council, the Legislative Budget and Audit Committee, the office of victims' rights, the office of the ombudsman, or the supreme court may enter into lease-purchase agreements for the acquisition of equipment or other personal property. The government entity is the lessee under the agreement.
- (b) If a government entity enters into a lease-purchase agreement under (a) of this section that exceeds \$100,000 in payments by the state, the government entity shall provide notice to the presiding officers and finance committee chairs of the house and senate. The notice must describe the property that is the subject of the agreement and must set out the terms of the lease-purchase.

### **ARTICLE 02. COMPETITIVE SEALED BIDDING**

#### **SEC. 36.30.100. GENERAL POLICY.**

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- (a) Except as otherwise provided in this chapter, or unless specifically exempted by law, an agency contract shall be awarded by competitive sealed bidding.

#### **SEC. 36.30.110. INVITATION TO BID.**

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- (a) When competitive sealed bidding is used, the procurement officer shall issue an invitation to bid. It must include a time, place, and date by which the bid must be received, purchase description, and a description of all contractual terms and conditions applicable to the procurement.
- (b) The bidder shall have a valid Alaska business license at the time the contract is awarded. To qualify as an Alaska bidder under AS 36.30.321, a bidder shall have a valid Alaska business license as the time designated in the invitation to bid for bid opening. A bidder for a construction contract shall also submit proof of the bidder's registration under AS 08.18 before the contract may be awarded.
- (c) If the commissioner of transportation and public facilities makes a written finding that the release of the estimated cost of a construction contract would adversely affect the state's ability to obtain the best competitive bid, the estimated cost is confidential information and may not be released to the public before bid opening.

#### **SEC. 36.30.115. SUBCONTRACTORS FOR CONSTRUCTION CONTRACTS.**

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- (a) Within five working days after the identification of the apparent low bidder for a construction contract, the apparent low bidder shall submit a list of the subcontractors the bidder proposes to use in the performance of the construction contract. The list must include the name and location of the place of business for each subcontractor, evidence of each subcontractor's valid Alaska business license, and evidence of each subcontractor's registration as a contractor under AS 08.18. If a subcontractor on the list did not have a valid Alaska business license and a valid certificate of registration as a contractor under AS 08.18 at the time the bid was opened, the bidder may not use the subcontractor in the performance of the contract, and shall replace the subcontractor with a subcontractor who had a valid Alaska business license and a valid certificate of registration as a contractor under AS 08.18 at the time the bid was opened.
  
- (b) A construction contractor or the apparent low bidder for a construction contract may replace a listed subcontractor if the subcontractor
  - (1) fails to comply with AS 08.18;
  - (2) files for bankruptcy or becomes insolvent;
  - (3) fails to execute a contract with the construction contractor or bidder involving performance of the work for which the subcontractor was listed and the construction contractor or bidder acted in good faith;
  - (4) fails to obtain bonding;
  - (5) fails to obtain insurance acceptable to the state;
  - (6) fails to perform the contract with the construction contractor or bidder involving work for which the subcontractor was listed;
  - (7) must be substituted in order for the contractor to satisfy required state and federal affirmative action requirements;
  - (8) refuses to agree or abide with the labor agreement of the construction contractor or bidder;  
or
  - (9) is determined by the procurement officer not to be a responsible subcontractor.
  
- (c) If a bidder for a construction contract fails to list a subcontractor or lists more than one subcontractor for the same portion of work and the value of that work is in excess of half of one percent of the total bid, the bidder shall be considered to have agreed to perform that portion of work without the use of a subcontractor and to have represented the bidder to be qualified to perform that work.
  
- (d) A bidder for a construction contract who attempts to circumvent the requirements of this section by listing as a subcontractor another contractor who, in turn, sublets the majority of the work required under the contract violates this section.

- (e) If a construction contract is awarded to a bidder who violates this section, the procurement officer may
  - (1) cancel the contract; or
  - (2) after notice and a hearing, assess a penalty on the bidder in an amount that does not exceed 10 percent of the value of the subcontract at issue.
- (f) In addition to the circumstances described in (b) of this section, a construction contractor may request permission from the procurement officer to add or replace a listed subcontractor. The request must be in writing, specifically detailing the basis for the request, and include appropriate supporting documentation. The procurement officer shall approve the request if the procurement officer determines in writing that the requested addition or replacement is in the best interest of the state.
- (g) The requirements of this section do not apply to a design-build construction contract.
- (h) In this section, "construction contractor" means a person who enters into a construction contract with an agency.

#### **SEC. 36.30.120. BID SECURITY.**

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- (a) Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the procurement officer to exceed an amount established by regulation of the commissioner. Bid security on construction contracts under the amount set by the commissioner may be required when the circumstances warrant. Bid security may be required for competitive sealed bidding for contracts for supplies, services, or professional services in accordance with regulations of the commissioner when needed for the protection of the state.
- (b) Bid security must be a bond provided by a surety company authorized to do business in the state or otherwise supplied in a form satisfactory to the commissioner. Bid security must be in an amount equal to at least five percent of the amount of the bid.
- (c) When the invitation to bid requires security, the procurement officer shall reject a bid that does not comply with the bid security requirement unless, in accordance with regulations, the officer determines that the bid fails to comply in a nonsubstantial manner with the security requirements.

#### **SEC. 36.30.130. PUBLIC NOTICE OF INVITATION TO BID.**

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- (a) The procurement officer shall give adequate public notice of the invitation to bid at least 21 days before the date for the opening of bids. If the procurement officer determines in writing that a shorter notice period is advantageous for a particular bid and adequate competition is anticipated, the 21-day period may be shortened. Notice shall be posted on the Alaska Online Public Notice System (AS 44.62.175). The time and manner of notice must be in accordance with regulations adopted by the commissioner of administration. When practicable, notice may include
  - (1) publication in a newspaper calculated to reach prospective bidders; and

- (2) notices posted in public places within the area where the work is to be performed or the material furnished.
- (b) Failure to comply with the notice requirements of this section does not invalidate a bid or the award of a contract. If the state fails to substantially comply with the requirements of (a) of this section, the state is liable for damages caused by that failure.

#### **SEC. 36.30.140. BID OPENING.**

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- (a) The procurement officer shall open bids at the time and place designated in the invitation to bid. All bid openings are open to the public. The amount of each bid and other relevant information that is specified by regulation of the commissioner, together with the name of each bidder, shall be recorded.
- (b) The information recorded under (a) of this section is open to public inspection as soon as practicable before the notice of intent to award a contract is given under AS 36.30.365. The bids are not open for public inspection until after the notice of intent to award a contract is given. To the extent the bidder designates and the procurement officer concurs, trade secrets and other proprietary data contained in a bid document are confidential.

#### **SEC. 36.30.150. BID ACCEPTANCE AND BID EVALUATION.**

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- (a) Bids shall be unconditionally accepted without alteration or correction, except as authorized in AS 36.30.160. The procurement officer shall evaluate bids based on the requirements set out in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, delivery, and suitability for a particular purpose. The criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation to bid must set out the evaluation criteria to be used. Criteria may not be used in bid evaluation if they are not set out in the invitation to bid.

#### **SEC. 36.30.160. LATE BIDS; CORRECTION OR WITHDRAWAL OF BIDS; CANCELLATION OF AWARDS.**

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- (a) Bids received after the bid due date and time indicated on the invitation to bid may not be accepted unless the delay was due to an error of the contracting agency.
- (b) Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on bid mistakes may be permitted in accordance with regulations adopted by the commissioner. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may not be permitted. Except as otherwise provided by regulation, a decision to permit the correction or withdrawal of a bid, or to cancel an award or contract based on bid mistake, shall be supported by a written determination made by the procurement officer. If a bidder is permitted to withdraw a bid before award, an action may not be maintained against the bidder or the bid security.

### **SEC. 36.30.170. CONTRACT AWARD AFTER BIDS.**

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Except as provided in AS 36.30.175 and (b) - (h) of this section, the procurement officer shall award a contract based on the solicited bids with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid.

### **SEC. 36.30.180. PURPOSE.**

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The legislature finds that there exists in the state continuing high unemployment, underutilization of resident construction and supply firms, and high costs unfavorable to the welfare of Alaskans and to the economic health of the state. The purpose of bidder preference for resident firms when the state acts as a market participant is to encourage local industry, strengthen and stabilize the economy, decrease unemployment, and strengthen the tax and revenue base of the state.

### **SEC. 36.30.190. MULTI-STEP SEALED BIDDING.**

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When it is considered impractical to initially prepare a definitive purchase description to support an award based on price, the procurement officer may issue an invitation to bid requesting the submission of unpriced technical offers to be followed by an invitation to bid limited to the bidders whose offers are determined to be technically qualified under the criteria set out in the first solicitation.

## **ARTICLE 03. COMPETITIVE SEALED PROPOSALS**

### **SEC. 36.30.200. CONDITIONS FOR USE.**

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- (a) Except as otherwise provided in this chapter, or unless specifically exempted by law, an agency contract shall be awarded by competitive sealed proposals if it is not awarded by competitive sealed bidding.
- (b) The commissioner may provide by regulation that it is either not practicable or not advantageous to the state to procure specified types of supplies, services, or construction by competitive sealed bidding that would otherwise be procured by that method. When the procurement officer determines in writing with particularity that the use of competitive sealed proposals is more advantageous to the state than competitive sealed bidding, a contract may be entered into by competitive sealed proposals.
- (c) When the commissioner of transportation and public facilities determines that it is advantageous to the state, a procurement officer may issue a request for proposals requesting the submission of offers to provide construction in accordance with a design provided by the offeror. The request for proposals shall require that each proposal submitted contain a single price that includes the design-build.

### **SEC. 36.30.210. REQUEST FOR PROPOSALS.**

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- (a) A request for competitive sealed proposals must contain the date, time, and place for delivering proposals, a specific description of the supplies, construction, services, or professional services to be provided under the contract, and the terms under which the supplies, construction, services, or professional services are to be provided.
- (b) An offeror for a construction contract shall submit evidence of the offeror's registration as a contractor under AS 08.18 before the contract may be awarded. A request for sealed proposals for a construction contract, except a design-build construction contract, must require the offeror, not later than five working days after the proposal that is the most advantageous to the state is identified, to list subcontractors the offeror proposes to use in the performance of the construction contract. The list must include the information required under AS 36.30.115(a). The provisions of AS 36.30.115(b) - (g) that apply to a construction contractor or an apparent low bidder apply to offerors submitting competitive sealed proposals for construction contracts, except design-build construction contracts.
- (c) A request for proposals must contain that information necessary for an offeror to submit a proposal or contain references to any information that cannot reasonably be included with the request. The request must provide a description of the factors that will be considered by the procurement officer when evaluating the proposals received, including the relative importance of price and other evaluation factors.
- (d) Notice of a request for proposals shall be given in accordance with procedures under AS 36.30.130. The procurement officer may use additional means considered appropriate to notify prospective offerors of the intent to enter into a contract through competitive sealed proposals.
- (e) The offeror shall have a valid Alaska business license at the time the contract is awarded. To qualify as an Alaska bidder under AS 36.30.321, an offeror shall have a valid Alaska business license at the time designated in the request for proposals for opening of the proposals.
- (f) In this section, "construction contractor" has the meaning given in AS 36.30.115.

### **SEC. 36.30.220. STANDARD OVERHEAD RATE.**

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- (a) An agency that provides services to another agency under a contract covered by this chapter shall establish a standard overhead rate. If an agency submits a proposal in response to a request for competitive sealed proposals, the agency must include its standard overhead rate within its proposal.
- (b) In this section, "standard overhead rate" means a charge established for services and professional services from an agency that is designed to compensate the agency for administration and support services incidentally provided with the services contracted for.

### **SEC. 36.30.230. DISCLOSURE OF PROPOSALS; RETURN OF PROPOSALS.**

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- (a) The procurement officer shall open proposals so as to avoid disclosure of contents to competing offerors before notice of intent to award a contract is issued. A register of proposals containing the name and address of each offeror shall be prepared in accordance with regulations adopted by the commissioner. The register and the proposals are open for public inspection after the notice of intent to award a contract is issued under AS 36.30.365. To the extent that the offeror designates and the procurement officer concurs, trade secrets and other proprietary data contained in the proposal documents are confidential.
- (b) If a solicitation is cancelled under AS 36.30.350 after proposals are received but before a notice of intent to award a contract has been issued under AS 36.30.365, a protest of the solicitation or of the cancellation of the solicitation has not been filed by an interested party under AS 36.30.560, and the time specified in AS 36.30.565(a) for filing such a protest has expired, the procurement officer may return a proposal to the offeror that made the proposal. The procurement officer shall keep a list of returned proposals in the file for the solicitation.

#### **SEC. 36.30.240. DISCUSSION WITH RESPONSIBLE OFFERORS AND REVISIONS TO PROPOSALS.**

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As provided in the request for proposals, and under regulations adopted by the commissioner, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors reasonably susceptible of being selected for award shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and before the award of the contract for the purpose of obtaining best and final offers. In conducting discussions, the procurement officer may not disclose information derived from proposals submitted by competing offerors. AS 44.62.310 does not apply to meetings with offerors under this section.

#### **SEC. 36.30.250. AWARD OF CONTRACT.**

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The procurement officer shall award a contract under competitive sealed proposals to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price and the evaluation factors set out in the request for proposals. Other factors and criteria may not be used in the evaluation. The contract file must contain the basis on which the award is made.

#### **SEC. 36.30.260. CONTRACT CONTENTS.**

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A contract awarded under competitive sealed proposals must contain

- (1) a statement of the amount of the contract;
- (2) the date for the supplies to be delivered or the dates for construction, services, or professional services to begin and be completed;
- (3) a description of the supplies, construction, services, or professional services to be provided;  
and



- (4) certification by the project director for the contracting agency, the head of the contracting agency, or a designee that sufficient money is available in an appropriation to be encumbered for the amount of the contract.

### **SEC. 36.30.265. MULTI-STEP SEALED PROPOSALS.**

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When it is considered impractical to initially prepare a definitive purchase description to support an award based on listed selection criteria, the procurement officer may issue an expression of interest requesting the submission of unpriced technical offers, and then later issue a request for proposals limited to the offerors whose offers are determined to be technically qualified under the criteria set out in the expression of interest.

### **SEC. 36.30.270. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING CONTRACTS.**

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- (a) Notwithstanding conflicting provisions of AS 36.30.100 - 36.30.260, a procurement officer shall negotiate a contract for an agency with the most qualified and suitable firm or person of demonstrated competence for architectural, engineering, or land surveying services. The procurement officer shall award a contract for those services at fair and reasonable compensation as determined by the procurement officer, after consideration of the estimated value of the services to be rendered, and the scope, complexity, and professional nature of the services. When determining the most qualified and suitable firm or person, the procurement officer shall consider the
  - (1) proximity to the project site of the office of the firm or person unless federal law prohibits this factor from being considered in the awarding of the contract; and
  - (2) employment practices of the firm or person with regard to women and minorities.
- (b) If negotiations with the most qualified and suitable firm or person under (a) of this section are not successful, the procurement officer shall negotiate a contract with other qualified firms or persons of demonstrated competence, in order of public ranking. The procurement officer may reject all or part of a proposal.
- (c) This section does not apply to contracts awarded in a situation of public necessity if the procurement officer certifies in writing that a situation of public necessity exists.
- (d) Notwithstanding the other provisions of this section, a procurement officer may include price as an added factor in selecting architectural, engineering, and land surveying services when, in the judgment of the procurement officer, the services required are repetitious in nature, and the scope, nature, and amount of services required are thoroughly defined by measurable and objective standards to reasonably enable firms or persons making proposals to compete with a clear understanding and interpretation of the services required. In order to include price as a factor in selection, a majority of the persons involved by the procurement officer in evaluation of the proposals must be registered in the state to perform architectural, engineering, or land surveying services.
- (e) This section does not apply to a contract that incorporates both design services and construction.

### **SEC. 36.30.290. ELECTRONIC BIDS AND PROPOSALS.**

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An agency may allow bids or proposals to be submitted in electronic form under AS 09.08 (Uniform Electronic Transactions Act).

## **ARTICLE 04. OTHER PROCUREMENT METHODS**

### **SEC. 36.30.300. SINGLE SOURCE PROCUREMENTS.**

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- (a) A contract may be awarded for supplies, services, professional services, or construction without competitive sealed bidding, competitive sealed proposals, or other competition in accordance with regulations adopted by the commissioner. A contract may be awarded under this section only when the chief procurement officer or, for construction contracts or procurements for the state equipment fleet, the commissioner of transportation and public facilities determines in writing that
  - (1) it is not practicable to award a contract by competitive sealed bidding under AS 36.30.100, competitive sealed proposals under AS 36.30.200, or limited competition under AS 36.30.305; and
  - (2) award of the contract under this section is in the state's best interest.
- (b) The using agency shall submit written evidence to support a request for a single source procurement. The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, may also require the submission of cost or pricing data in connection with an award under this section.
- (c) To the extent practicable, the procurement officer shall negotiate with the single source to obtain contract terms advantageous to the state.
- (d) Procurement requirements may not be aggregated or structured so as to constitute a purchase under this section or to circumvent the source selection procedures required by AS 36.30.100 - 36.30.270.
- (e) Except for procurements of supplies, services, professional services, or construction that do not exceed the amount for small procurements under AS 36.30.320(a) as applicable, the authority to make a determination required by this section may not be delegated, even if the authority to contract is delegated under AS 36.30.015(a) and (b).

### **SEC. 36.30.305. LIMITED COMPETITION PROCUREMENTS.**

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- (a) A construction contract under \$100,000, or a contract for supplies, services, or professional services, may be awarded without competitive sealed bidding or competitive sealed proposals, in accordance with regulations adopted by the commissioner. A contract may be awarded under this section only when the chief procurement officer determines in writing that a situation exists that makes

competitive sealed bidding or competitive sealed proposals impractical or contrary to the public interest, except that the attorney general may make the determination for services of legal counsel, and the commissioner of transportation and public facilities may make the determination for construction contracts under \$100,000 or procurements for the state equipment fleet. Procurements under this section shall be made with competition that is practicable under the circumstance. Except for procurements of supplies, services, professional services, or construction that do not exceed the amount for small procurements under AS 36.30.320(a), as applicable, the authority to make a determination required by this section may not be delegated.

- (b) The using agency shall submit written evidence to support a determination under this section.
- (c) Procurement requirements may not be artificially divided, fragmented, aggregated, or structured so as to constitute a purchase under this section or to circumvent the source selection procedures required by AS 36.30.100 - 36.30.270.
- (d) Single source procurements may not be made under this section.
- (e) Architectural, engineering, and land survey contracts under AS 36.30.270 may not be made under this section.

#### **SEC. 36.30.308. INNOVATIVE PROCUREMENTS.**

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- (a) A contract may be awarded for supplies, services, professional services, or construction using an innovative procurement process, with or without competitive sealed bidding or competitive sealed proposals, in accordance with regulations adopted by the commissioner. A contract may be awarded under this section only when the chief procurement officer, or, for construction contracts or procurements of the state equipment fleet, the commissioner of transportation and public facilities, determines in writing that it is advantageous to the state to use an innovative competitive procurement process in the procurement of new or unique requirements of the state, new technologies, or to achieve best value.
- (b) The procurement officer shall submit a procurement plan to the Department of Law for review and approval as to form before issuing the notice required by (c) of this section.
- (c) A procurement under this section is subject to the requirements of AS 36.30.130.
- (d) Nothing in this section precludes the adoption of regulations providing for the use of bonuses instead of preferences in a procurement of construction.

#### **SEC. 36.30.310. EMERGENCY PROCUREMENTS.**

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Procurements may be made under emergency conditions as defined in regulations adopted by the commissioner when there exists a threat to public health, welfare, or safety, when a situation exists that makes a procurement through competitive sealed bidding or competitive sealed proposals impracticable or contrary to the public interest, or to protect public or private property. An emergency procurement need not be made through competitive sealed bidding or competitive sealed proposals but shall be made with

competition that is practicable under the circumstances. A written determination by the chief procurement officer of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The written determination must include findings of fact that support the determination. Except when there is insufficient time for the chief procurement officer to make the written determination required by this section, the chief procurement officer may not delegate the authority to make the determination.

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**SEC. 36.30.311. EMPLOYMENT AND YOUTH PROGRAM PROCUREMENTS.**

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A procurement of products manufactured or services provided by an employment program of the state or an accredited youth education and employment program may be made without competitive sealed bidding or competitive sealed proposals, in accordance with regulations adopted by the commissioner.

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**SEC. 36.30.313. PROCUREMENTS PROVIDED THROUGH EMPLOYMENT OF PRISON INMATES.**

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A procurement of products or services provided through the employment of prison inmates under AS 33.30.191 may be made without competitive sealed bidding or competitive sealed proposals, in accordance with regulations adopted by the commissioner.

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**SEC. 36.30.315. DETERMINATIONS; FALSE STATEMENTS; CRIMINAL PENALTY.**

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- (a) In a determination made by a state official under AS 36.30.300 - 36.30.310, the state official making the determination shall independently examine the material facts of the procurement and independently determine whether the procurement is eligible for the procurement method requested.
- (b) If a state official knowingly makes a false statement in a determination made under AS 36.30.300 - 36.30.310, the state official is guilty of a class A misdemeanor.

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**SEC. 36.30.320. SMALL PROCUREMENTS.**

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- (a) A procurement for supplies, services, or professional services that does not exceed an aggregate dollar amount of \$100,000, construction that does not exceed an aggregate dollar amount of \$200,000, or lease of space that does not exceed 7,000 square feet shall be made under regulations adopted by the commissioner for small procurements.
- (b) *[Repealed, Sec. 48 ch 137 SLA 1996].*
- (c) Small procurements need not be made through competitive sealed bidding or competitive sealed proposals but shall be made with competition that is practicable under the circumstances.
- (d) Procurement requirements may not be artificially divided or fragmented so as to constitute a purchase under this section or to circumvent the source selection procedures required by AS 36.30.100 - 36.30.270.

- (e) The procurement officer shall give adequate public notice of intent to make a procurement under this section in accordance with regulations adopted by the commissioner.

## ARTICLE 05. PREFERENCES

### SEC. 36.30.321. ALASKA BIDDER AND RELATED PREFERENCES.

- (a) If the bidder or offeror is an Alaska bidder, a five percent preference shall be applied to the price in the bid or proposal.
- (b) Except as otherwise provided in (d), (e), or (g) of this section, if a bidder or offeror qualifies as an Alaska bidder and is offering services through an employment program, a 15 percent preference shall be applied to the price in the bid or proposal.
- (c) If a bidder or offeror qualifies as an Alaska bidder and is an Alaska domestic insurer, and if the procurement is for an insurance-related contract, a five percent preference shall be applied to the price in the bid or proposal.
- (d) A 10 percent preference shall be applied to a price in a bid or proposal if the bidder or offeror qualifies as an Alaska bidder and is a
  - (1) sole proprietorship owned by a person with a disability;
  - (2) partnership under AS 32.06 or AS 32.11 if each of the partners is a person with a disability;
  - (3) limited liability company organized under AS 10.50 if each of the members is a person with a disability;
  - (4) corporation that is wholly owned by individuals, and each of the individuals is a person with a disability; or
  - (5) joint venture that is composed of ventures that qualify under (1) - (4) of this subsection.
- (e) The division of vocational rehabilitation in the Department of Labor and Workforce Development shall add to its current list of qualified employment programs a list of individuals who qualify as persons with a disability under (d) of this section. To qualify for a preference under (d) of this section, a person must be on the list at the time the bid or proposal is opened.
- (f) If a bidder or offeror qualifies as an Alaska bidder and is a qualifying entity, a five percent preference shall be applied to the price in the bid or proposal. The preference may not exceed \$5,000. In this subsection,
  - (1) "Alaska veteran" means an individual who is both a resident of the state and a veteran;
  - (2) "qualifying entity" means a

- (A) sole proprietorship owned by an Alaska veteran;
  - (B) partnership under AS 32.06 or AS 32.11 if a majority of the partners are Alaska veterans;
  - (C) limited liability company organized under AS 10.50 if a majority of the members are Alaska veterans; or
  - (D) corporation that is wholly owned by individuals, and a majority of the individuals are Alaska veterans;
- (3) "veteran" means an individual who
- (A) served in the
    - (i) armed forces of the United States, including a reserve unit of the United States armed forces; or
    - (ii) Alaska Territorial Guard, the Alaska Army National Guard, the Alaska Air National Guard, or the Alaska Naval Militia; and
  - (B) was separated from service under a condition that was not dishonorable.
- (g) A bidder or offeror may not receive a preference under both (b) and (d) of this section for the same contract.
- (h) Except as provided by (j) of this section, this section applies to all insurance contracts involving state money. In this subsection, "state money" has the meaning given in AS 36.30.990, but also includes state grants and reimbursements to municipalities, school districts, and other entities.
- (i) To qualify for a preference under (b), (d), or (f) of this section, a bidder or offeror must add value by actually performing, controlling, managing, and supervising the services provided, or the bidder or offeror must have sold supplies of the general nature solicited to other state agencies, other governments, or the general public.
- (j) This section does not apply to solicitations or contracts for lease space under AS 36.30.080, to procurements under AS 36.30.305 - 36.30.310 or, except as provided otherwise by regulation under AS 36.30.320, to small procurements under AS 36.30.320.
- (k) In this section, "person with a disability" means an individual who
- (1) has been determined to be permanently disabled by the
    - (A) United States Social Security Administration under 42 U.S.C. 423 or 1381 - 1383f (Social Security Act);
    - (B) teachers' retirement system under AS 14.25, the judicial retirement system under AS 22.25, the public employees' retirement system under AS 39.35, or the elected public officers' retirement system under former AS 39.37;

- (C) Federal Civil Service Retirement System under 5 U.S.C. 2107, 3323, and 8331 - 8351;
  - (D) federal employees' retirement system under 5 U.S.C. 8401 - 8480; or
  - (E) division of vocational rehabilitation in the Department of Labor and Workforce Development using disability standards under 42 U.S.C. 1381 - 1383f (Social Security Act) for eligibility for certain state disability programs;
- (2) is receiving permanent total disability under AS 23.30 (Alaska Workers' Compensation Act);
  - (3) has been discharged from military service under honorable conditions and is certified by the United States Department of Veterans Affairs as having incurred a 50 percent or greater disability during military service; or
  - (4) has served in the Alaska Territorial Guard and incurred a 50 percent or greater disability while serving in the Alaska Territorial Guard.

#### **SEC. 36.30.322. USE OF LOCAL FOREST PRODUCTS.**

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- (a) Only timber, lumber, and manufactured lumber products originating in this state from Alaska forests may be procured by an agency or used in construction projects of an agency unless
  - (1) the manufacturers and suppliers who have notified the commissioner of commerce, community, and economic development of their willingness to manufacture or supply Alaska forest products have been given reasonable notice of the forest product needs of the procurement or project; and
  - (2) a manufacturer or supplier who has notified the commissioner of commerce, community, and economic development of its willingness to manufacture or supply Alaska forest products is not the low bidder after all applicable preferences have been applied to the price of the qualifying forest product under AS 36.30.336.
- (b) The provisions of AS 36.30.326 - 36.30.332 do not apply to procurements of timber, lumber, and manufactured lumber products or the use of those items in construction projects of an agency.
- (c) During the period of performance of a state contract, the contractor shall maintain records showing efforts made in using Alaska forest products or evidence of Alaska forest products not being available or reasonably competitive. The contractor shall provide the records to the procurement officer on a periodic basis, as required by regulations adopted by the commissioner of commerce, community, and economic development.

#### **SEC. 36.30.324. USE OF ALASKA PRODUCTS AND RECYCLED ALASKA PRODUCTS.**

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Alaska products shall be used whenever practicable in procurements for an agency. Recycled Alaska products shall be used when they are of comparable quality, of equivalent price, and appropriate for the intended use.

#### **SEC. 36.30.326. CONTRACT SPECIFICATIONS.**

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Contract specifications for a procurement for an agency must include a provision that a bidder or offeror that designates in a bid or proposal the use of Alaska products identified in the specifications will receive the preference granted under AS 36.30.328 in the evaluation of the bid or proposal if the designated Alaska products meet the contract specifications.

#### **SEC. 36.30.328. GRANT OF ALASKA PRODUCTS PREFERENCE.**

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In the evaluation of a bid or proposal for a procurement for an agency, a bid or offer that designates the use of Alaska products identified in the contract specifications and designated as Class I, Class II, or Class III state products under AS 36.30.332 is decreased by the percentage of the value of the designated Alaska products under AS 36.30.332.

#### **SEC. 36.30.330. PENALTY FOR FAILING TO USE DESIGNATED PRODUCTS.**

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- (a) If a successful bidder or offeror who designates the use of an Alaska product in a bid or proposal for a procurement for an agency fails to use the designated product for a reason within the control of the successful bidder or offeror, each payment under the contract shall be reduced according to the following schedule:
  - (1) for a Class I designated Alaska product - four percent;
  - (2) for a Class II designated Alaska product - six percent;
  - (3) for a Class III designated Alaska product - eight percent.
- (b) A person is not a responsible bidder or offeror if, in the preceding three years, the person has twice designated the use of an Alaska product in a bid or proposal for a procurement for an agency and has each time failed to use the designated Alaska product for reasons within the control of the bidder or offeror.
- (c) The procurement officer shall report to the commissioner of commerce, community, and economic development each contractor penalized under (a) of this section. The commissioner of commerce, community, and economic development shall maintain a list of contractors determined not to be responsible bidders under (b) of this section.

#### **SEC. 36.30.331. DELIVERY OF SUPPLIES.**

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Supplies purchased under this chapter shall be delivered at a location within the state unless the department determines that a point of delivery outside the state would be in the best interest of the state. A bid or proposal involving the procurement of supplies must specify the delivery location and must state that the price is the delivered price at that location.

#### **SEC. 36.30.332. CLASSIFICATION OF ALASKA PRODUCTS.**

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- (a) The commissioner of commerce, community, and economic development shall adopt regulations establishing the value added in the state for materials and supplies produced or manufactured in the



state that are used in a state procurement and establishing whether a product qualifies as a recycled Alaska product. The commissioner shall publish a list of the products annually. A supplier may request inclusion of its product on the appropriate list.

- (b) Materials and supplies with value added in the state that are
  - (1) more than 25 percent and less than 50 percent produced or manufactured in the state are Class I products;
  - (2) 50 percent or more and less than 75 percent produced or manufactured in the state are Class II products; and
  - (3) 75 percent or more produced or manufactured in the state are Class III products.
- (c) In a bid or proposal evaluation a
  - (1) Class I product is given a three percent preference;
  - (2) Class II product is given a five percent preference;
  - (3) Class III product is given a seven percent preference.

#### **SEC. 36.30.333. PROCUREMENT OF PAPER.**

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Except as otherwise required under AS 36.15.050, AS 36.30.322 - 36.30.332, and 36.30.334 - 36.30.338, when a state agency purchases paper, at least 25 percent of the quantity purchased must be recycled paper unless recycled paper is not available for the purchase or unless, after application of the procurement preference under AS 36.30.337, the recycled paper is more expensive than the nonrecycled paper.

#### **SEC. 36.30.334. IDENTIFICATION OF ALASKA PRODUCTS.**

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An agency may identify specific Alaska products for use in making a procurement.

#### **SEC. 36.30.336. APPLICATION OF PREFERENCES.**

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- (a) Except as provided in AS 36.15.050(h) and AS 36.30.321(g), the preferences provided in AS 36.15.050 and AS 36.30.321 - 36.30.338 are cumulative. A bidder who would otherwise qualify for preferences under AS 36.30.321 may not be given a preference over another bidder who qualifies for the same preferences.
- (b) Notwithstanding the other provisions of this chapter, AS 36.30.321 - 36.30.338 apply to all procurements subject to this chapter, except as provided in AS 36.15.050(h) and AS 36.30.322(b).

#### **SEC. 36.30.337. PROCUREMENT PREFERENCE FOR RECYCLED PRODUCTS.**

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- (a) In the evaluation of a bid or proposal for an agency procurement of products, the agency shall decrease the bid or proposal by five percent if the bid or proposal indicates that the products being purchased will be recycled products.
- (b) A decrease made under (a) of this section is in addition to other preferences allowed for the procurement.
- (c) The department shall establish the minimum percentage of recycled content that will qualify a product as a recycled product under (a) of this section.

### **SEC. 36.30.338. DEFINITIONS.**

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In AS 36.30.322 - 36.30.338,

- (1) "Alaska product" means a product of which not less than 25 percent of the value, as determined in accordance with regulations adopted under AS 36.30.332(a), has been added by manufacturing or production in the state;
- (2) "produced or manufactured" means processing, developing, or making an item into a new item with a distinct character and use through the application within the state of materials, labor, skill, or other services;
- (3) "product" means materials or supplies but does not include gravel and asphalt;
- (4) "recycled Alaska product" means an Alaska product of which not less than 50 percent of the value of the product consists of a product that was previously used in another product, if the recycling process is done in the state.

## **ARTICLE 06. CONTRACT FORMATION AND MODIFICATION**

### **SEC. 36.30.340. REVIEW AND APPROVAL BY THE ATTORNEY GENERAL.**

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If a contract contains a term that is in conflict with a state standard form contract term or if a standard term is deleted or modified by a term that is not standard, the contract must be reviewed by the Attorney General and approved as to form.

### **SEC. 36.30.350. SOLICITATION CANCELLATION, BID AND PROPOSAL REJECTION, AND DELAY OF OPENING BID OR PROPOSAL.**

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An invitation to bid, a request for proposals, or other solicitation may be cancelled or any or all bids or proposals may be rejected in whole or in part or the date for opening bids or proposals may be delayed when it is in the best interests of the state in accordance with regulations adopted by the commissioner. The reasons for cancellation, rejection, or delay in opening bids or proposals shall be made part of the contract file.

**SEC. 36.30.360. DETERMINATION OF RESPONSIBILITY.**

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- (a) A written determination of nonresponsibility 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.
- (b) Information furnished by a bidder or offeror under (a) of this section is confidential and may not be disclosed without prior written consent by the bidder or offeror.

**SEC. 36.30.362. AWARD OF A CONTRACT TO A NONRESIDENT.**

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Except for awards made under AS 36.30.170, if the procurement officer awards a contract to a person who does not reside or maintain a place of business in the state and if the supplies, services, professional services, or construction that is the subject of the contract could have been obtained from sources in the state, the procurement officer shall issue a written statement explaining the basis of the award. The statement required under this section shall be kept in the contract file.

**SEC. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT.**

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At least 10 days before the formal award of a contract that is not for construction, and at least five days before the award of a construction contract, under this chapter, except for a contract awarded under AS 36.30.300 - 36.30.320, the procurement officer shall provide to each bidder or offeror notice of intent to award a contract. The notice must conform to regulations adopted by the commissioner.

**SEC. 36.30.370. PERMISSIBLE TYPES OF CONTRACTS.**

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Any type of contract that will promote the best interests of the state may be used, except that the use of a cost-plus-a-percentage-of-cost contract is prohibited.

**SEC. 36.30.390. CONTRACT TERM AND CANCELLATION.**

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- (a) Unless otherwise provided by law, a contract for supplies, services, or professional services may be entered into for any period of time considered to be in the best interests of the state provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds for them.
- (b) Before using a multi-term contract, the procurement officer shall determine in writing that
  - (1) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

- (2) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.
- (c) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled. The contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies, services, or professional services delivered under the contract that are not otherwise recoverable. The cost of cancellation may be paid from any appropriations available for these purposes.

#### **SEC. 36.30.400. REQUIRED COST AND PRICING DATA AND CONTRACT PROVISIONS.**

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- (a) Before an award of a contract or a change order or contract modification, the contractor or prospective contractor shall submit cost and pricing data. The contractor or prospective contractor shall certify that, to the best of the contractor's or prospective contractor's knowledge and belief, the data submitted is accurate, complete, and current as of a mutually determined specified date and will continue to be accurate and complete during the performance of the contract.
- (b) When a contractor becomes aware of a situation that may form the basis of a claim for compensation that exceeds the amount designated as the base amount of the contract and before performing additional work or supplying additional materials, the contractor shall submit cost and pricing data on the additional work or materials. The contractor shall certify that, to the best of the contractor's knowledge and belief, the data submitted is accurate, complete, and current and is the actual cost to the contractor of performing the additional work or supplying the additional materials.
- (c) A contract, change order, or contract modification under which a certificate is required under (a) or (b) of this section must contain a provision that the price to the state, including the contractor's profit or fee, will be adjusted to exclude any significant sums by which the state finds that the price is increased because the cost or pricing data furnished by the contractor or prospective contractor is inaccurate, incomplete, or not current as of the date agreed upon by the parties.
- (d) The requirements of (a) of this section do not apply when
  - (1) the contract price is based on adequate price competition;
  - (2) the contract price is set by law or regulation; or
  - (3) it is determined by the procurement officer in writing and in accordance with regulations adopted by the commissioner that the requirements of (a) of this section may be waived, and the reasons for waiver are stated.

#### **SEC. 36.30.410. RIGHT TO INSPECT PLANT.**

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The state may, at reasonable times, inspect the part of the plant or place of business of a contractor or subcontractor that is related to the performance of a contract awarded or to be awarded by an agency.

### **SEC. 36.30.420. RIGHT TO AUDIT RECORDS.**

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- (a) The state may, at reasonable times and places, audit the books and records of a person who has submitted cost or pricing data under AS 36.30.400 to the extent that the books and records relate to the cost or pricing data. A person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain books and records that relate to the cost or pricing data for three years after the date of final payment under the contract, unless a shorter period is authorized in writing by the commissioner.
- (b) The state may audit the books and records of a contractor or a subcontractor to the extent that the books and records relate to the performance of the contract or subcontract. Books and records shall be maintained by the contractor for a period of three years after the date of final payment under the prime contract and by the subcontractor for a period of three years after the date of final payment under the subcontract, unless a shorter period is authorized in writing by the commissioner.

### **SEC. 36.30.430. CONTRACT CLAUSES.**

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- (a) The commissioner shall adopt regulations permitting the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions as appropriate.
- (b) The commissioner shall adopt regulations permitting or requiring the inclusion in state contracts of clauses providing for appropriate remedies and covering the following subjects:
  - (1) liquidated damages;
  - (2) specified excuses for delay or nonperformance;
  - (3) termination of the contract for default; and
  - (4) termination of the contract in whole or in part for the convenience of the state.

### **SEC. 36.30.460. MODIFICATION OF STANDARD CLAUSES.**

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The procurement officer or the head of a contracting agency may vary the clauses adopted under AS 36.30.430 for inclusion in a particular state contract if the

- (1) variations are supported by a written determination that states the circumstances justifying the variation; and
- (2) approval required by AS 36.30.340 is obtained.

### **SEC. 36.30.470. FISCAL EFFECTS OF CONSTRUCTION CONTRACT MODIFICATIONS.**

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A contract modification, change order, or contract price adjustment under a construction contract in excess of an amount established by regulation of the commissioner is subject to prior written certification by the fiscal officer of the agency responsible for funding the project or the contract, or other official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to

the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. If the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget or the total contract budget, the procurement officer may not approve the contract modification, change order, or adjustment in contract price unless sufficient funds are available, or the scope of the project or contract is adjusted to permit the degree of completion that is feasible within the total project budget or total contract budget as it existed before the contract modification, change order, or adjustment in contract price under consideration. A contract modification, change order, or adjustment in contract that is signed by both parties and has been reasonably relied on by a contractor, is presumed to be valid even if the provisions of this section have not been met.

#### **SEC. 36.30.480. ESTABLISHMENT AND MODIFICATION OF COST PRINCIPLES.**

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The commissioner shall adopt regulations setting out cost principles that shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs. If a written determination is approved at a level above the procurement officer, the cost principles may be modified by contract.

### **ARTICLE 07. PROCUREMENT RECORDS AND REPORTS**

#### **SEC. 36.30.500. RETENTION OF PROCUREMENT RECORDS.**

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Procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the state archivist. Retained documents shall be made available to the attorney general or a designee upon request and proper receipt.

#### **SEC. 36.30.510. RECORDS OF CONTRACTS AWARDED UNDER COMPETITIVE SEALED PROPOSALS.**

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A contract file open for public inspection shall be kept by the commissioner and the contracting agency for each contract awarded under competitive sealed proposals. The file kept by the commissioner must contain a summary of the information in the file of the contracting agency. The file kept by the contracting agency must contain

- (1) a copy of the contract;
- (2) the register of proposals prepared under AS 36.30.230 and a copy of each proposal submitted; and
- (3) the written determination to award the contract prepared under AS 36.30.250.

#### **SEC. 36.30.520. RECORDS OF SINGLE SOURCE AND EMERGENCY PROCUREMENTS.**

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- (a) The commissioner shall maintain for a minimum of five years a record listing all single source procurement contracts made under AS 36.30.300 and emergency procurements made under AS 36.30.310. The record must contain
- (1) each contractor's name;
  - (2) the amount and type of each contract; and
  - (3) a listing of the supplies, services, professional services, or construction procured under each contract.
- (b) The Department of Transportation and Public Facilities and any agency to whom the commissioner of administration or the commissioner of transportation and public facilities has delegated procurement authority under AS 36.30.015 shall, by October 1 of each year, submit to the commissioner of administration records of the type specified in (a) of this section for emergency procurements made under AS 36.30.310. The Department of Transportation and Public Facilities shall, even if procurement authority has been delegated under AS 36.30.015 to another agency, by October 1 of each year, submit to the commissioner of administration records of the type specified in (a) of this section for single source procurement contracts made under AS 36.30.300. The commissioner of administration shall maintain these records as required by (a) of this section.

#### **SEC. 36.30.522. RECORDS OF INNOVATIVE PROCUREMENTS.**

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The commissioner and the contracting agency shall keep a file for each contract awarded under an innovative procurement process under AS 36.30.308. The file is subject to inspection under the same standards as described in AS 36.30.140(b) and 36.30.230. The file kept by the commissioner must contain a summary of the information in the file of the contracting agency. The file kept by the contracting agency must contain

- (1) a copy of the contract;
- (2) the written determination under AS 36.30.308(a);
- (3) the procurement plan as approved as to form by the Department of Law;
- (4) the record of notice under AS 36.30.130; and
- (5) the record of respondents to solicitation.

#### **SEC. 36.30.530. PUBLIC ACCESS TO PROCUREMENT INFORMATION.**

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Procurement information is public except as otherwise provided by law.

#### **SEC. 36.30.540. PROCUREMENT REPORT.**

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The commissioner shall biennially prepare a report concerning procurements by agencies and notify the legislature that the report is available. The report must include

- (1) the records maintained by the commissioner under AS 36.30.510 and the records maintained under AS 36.30.520(a) for the previous two fiscal years;
- (2) a list of procurements made under this chapter from out-of-state sources during the previous two fiscal years together with the total number of procurement contracts entered into during that period with out-of-state contractors and the total value of these contracts; this paragraph does not apply to procurements made under AS 36.30.320; and
- (3) a list of procurements made under this chapter from state sources during the previous two fiscal years together with the total number of procurement contracts entered into during that period with state contractors and the total value of these contracts; this paragraph does not apply to procurements made under AS 36.30.320.

## ARTICLE 08. LEGAL AND CONTRACTUAL REMEDIES

### SEC. 36.30.550. APPLICABILITY OF PROTEST AND APPEAL PROCEDURES.

- (a) Except for small procurements made under AS 36.30.320, the provisions of AS 36.30.560 - 36.30.615 apply to a solicitation, a proposed contract award, and an award of a contract for supplies, services, professional services, or construction.
- (b) The commissioner shall adopt regulations providing for protest and appeal procedures of small procurements made under AS 36.30.320.

### SEC. 36.30.560. FILING OF A PROTEST.

An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction by an agency. The protest shall be filed with the procurement officer of the contracting agency in writing and include the following information:

- (1) the name, address, and telephone number of the protester;
- (2) the signature of the protester or the protester's representative;
- (3) identification of the contracting agency and the solicitation or contract at issue;
- (4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
- (5) the form of relief requested.

### SEC. 36.30.565. TIME FOR FILING A PROTEST.

- (a) A protest based on alleged improprieties or ambiguities in a solicitation must be filed at least 10 days before the due date of the bid or proposal, unless a later protest due date is specifically allowed in



the solicitation. If a solicitation is made with a shortened public notice period and the protest is based on alleged improprieties or ambiguities in the solicitation, the protest must be filed before the due date of the bid or proposal. Notwithstanding the other provisions in this subsection, the protest of an invitation to bid or a request for proposals in which a pre-bid or pre-proposal conference is held within 12 days of the due date must be filed before the due date of the bid or proposal if the protest is based on alleged improprieties or ambiguities in the solicitation. A protest based upon alleged improprieties in an award of a contract or a proposed award of a contract must be filed within 10 days after a notice of intent to award the contract is issued by the procurement officer.

- (b) If the protester shows good cause, the procurement officer of the contracting agency may consider a filed protest that is not timely.

#### **SEC. 36.30.570. NOTICE OF A PROTEST.**

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The procurement officer shall immediately give notice of a protest filed under AS 36.30.565 to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

#### **SEC. 36.30.575. STAY OF AWARD.**

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If a protest is filed the award may be made unless the procurement officer of the contracting agency determines in writing that a

- (1) reasonable probability exists that the protest will be sustained; or
- (2) stay of the award is not contrary to the best interests of the state.

#### **SEC. 36.30.580. DECISION BY THE PROCUREMENT OFFICER.**

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- (a) The procurement officer of the contracting agency shall issue a written decision containing the basis of the decision within 15 days after a protest has been filed. A copy of the decision shall be furnished to the protester by certified mail or other method that provides evidence of receipt.
- (b) The time for a decision may be extended up to 30 days for good cause by the commissioner of administration, or, for protests involving construction or procurements for the state equipment fleet, the commissioner of transportation and public facilities. If an extension is granted, the procurement officer shall notify the protester in writing of the date that the decision is due.
- (c) If a decision is not made by the date it is due, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

#### **SEC. 36.30.585. PROTEST REMEDIES.**

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- (a) If the procurement officer sustains a protest in whole or in part, the procurement officer shall implement an appropriate remedy.

- (b) In determining an appropriate remedy, the procurement officer shall consider the circumstances surrounding the solicitation or procurement including the seriousness of the procurement deficiencies, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to the agency and other impacts on the agency of a proposed remedy, and the urgency of the procurement to the welfare of the state.
- (c) Notwithstanding (a) and (b) of this section, if a protest is sustained in whole or part, the protester's damages are limited to reasonable bid or proposal preparation costs.

#### **SEC. 36.30.590. APPEAL ON A PROTEST.**

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- (a) An appeal from a decision of a procurement officer on a protest may be filed by the protester with the commissioner of administration, or for protests involving construction or procurements for the state equipment fleet, the commissioner of transportation and public facilities. An appeal shall be filed within 10 days after the decision is received by the protester. The protester shall file a copy of the appeal with the procurement officer.
- (b) An appeal must contain the information required under AS 36.30.560. In addition, the appeal must include
  - (1) a copy of the decision being appealed; and
  - (2) identification of the factual or legal errors in the decision that form the basis for the appeal.

#### **SEC. 36.30.595. NOTICE AND COPY OF A PROTEST APPEAL.**

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- (a) The procurement officer shall immediately give notice of an appeal filed under AS 36.30.590 to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.
- (b) The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, shall, on request, furnish a copy of the appeal to a person notified under (a) of this section, except that confidential material shall be deleted from the copy.

#### **SEC. 36.30.600. STAY OF AWARD DURING PROTEST APPEAL.**

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If a protest appeal is filed before a contract is awarded and the award was stayed under AS 36.30.575, the filing of the appeal automatically continues the stay until the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, makes a written determination that the award of the contract without further delay is necessary to protect substantial interests of the state.

#### **SEC. 36.30.605. PROTEST REPORT AND COMMENTS.**

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- (a) The procurement officer of the contracting agency shall file a complete report on the protest and decision with the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, within 10 days after a protest appeal is filed. The procurement officer shall

furnish a copy of the report to the protester and to interested parties that have requested a copy of the appeal under AS 36.30.595\_(b).

- (b) The procurement officer may request an extension of time to prepare the protest report. The request must be in writing listing the reasons for the request. The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, shall respond to the request in writing. If an extension is granted, the commissioner shall list the reasons for granting the extension and indicate the date the protest report is due. The commissioner shall notify the protester in writing that the time for submission of the report has been extended and the date the report is due.
- (c) The protester may file comments on the protest report with the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, within 10 days after the report is received. The protester shall provide copies of the comments to the procurement officer and to interested parties that have requested a copy of the appeal under AS 36.30.595\_(b).
- (d) The protester may request an extension of time to prepare the comments on the protest report. The request must be in writing listing the reasons for the request. The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, shall respond to the request in writing. If an extension is granted, the commissioner shall list the reasons for granting the extension and indicate the date the comments are due. The commissioner shall notify the procurement officer in writing that the time for submission of the comments has been extended and the date the comments are due.

#### **SEC. 36.30.610. DECISION WITHOUT HEARING.**

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- (a) The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely under AS 36.30.590(a).
- (b) The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.
- (c) The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, shall, within 15 days from the date the appellant's comments on the protest report are due under AS 36.30.605(c) and (d), notify the appellant of the acceptance or rejection of the appeal and, if rejected, the reasons for the rejection.

#### **SEC. 36.30.615. HEARING ON PROTEST APPEAL.**

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A hearing on a protest appeal shall be conducted in accordance with AS 36.30.670 and regulations adopted by the commissioner to the extent the regulations do not conflict with regulations adopted under AS 44.64.060.

#### **SEC. 36.30.620. CONTRACT CLAIMS.**

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- (a) A contractor shall file a claim concerning a contract awarded under this chapter with the procurement officer. The contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of the contractor's knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the state is liable. Except for a lease rate adjustment called for in the lease, a claim under this section must be filed within 90 days after the contractor becomes aware of the basis of the claim or should have known the basis of the claim, whichever is earlier. A lease rate adjustment called for in the lease must be filed prior to the expiration date of the lease.
- (b) If a claim asserted concerning a contract awarded under this chapter cannot be resolved by agreement, the procurement officer shall, after receiving a written request by the contractor for a decision, issue a written decision. The procurement officer shall make the decision not more than 90 days after receipt of all necessary information from the contractor. If the contractor fails to furnish necessary information requested by the procurement officer, the procurement officer shall proceed to decide the claim and may, in the procurement officer's discretion, deny all or part of the claim because of the failure to furnish necessary information. During an appeal under this chapter, the contractor may not rely on or introduce information that the contractor has failed to furnish to the procurement officer in support of the claim. Before issuing the decision, the procurement officer shall review the facts relating to the claim and obtain necessary assistance from legal, fiscal, and other advisors.
- (c) Upon the written request of the procurement officer, the time for issuing a decision under (b) of this section may be extended for up to 60 additional days by the commissioner if the claim concerns an amount in excess of \$50,000. Upon the written request of the procurement officer showing that good cause exists for a second extension, the commissioner may extend the time for issuing a decision under (b) of this section up to 90 additional days after the first extension. The contractor shall be provided with an opportunity to oppose or otherwise respond to the request for a second extension. If a second extension is granted, the commissioner shall notify the contractor and the procurement officer in writing that the time for the issuance of a decision has been extended and of the date by which a decision shall be issued. In this subsection, "commissioner" means the commissioner of administration or, for a claim involving a construction contract or procurement for the state equipment fleet, the commissioner of transportation and public facilities.
- (d) The procurement officer shall furnish a copy of the decision to the contractor by certified mail or other method that provides evidence of receipt. The decision must include
  - (1) a description of the claim;
  - (2) a reference to the pertinent contract provisions;
  - (3) a statement of the agreed upon and disputed facts;
  - (4) findings of fact about the claim;
  - (5) a determination of any amount payable;
  - (6) a statement of reasons supporting the decision; and

(7) a statement substantially as follows:

"This is the final decision of the procurement officer. This decision may be appealed to the commissioner of (administration transportation and public facilities). If you appeal, you must file a written notice of appeal with the commissioner within 14 days after you receive this decision."

- (e) If the procurement officer does not issue a written decision by the date it is due, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor.
- (f) If a claim asserted by the state concerning a contract awarded under this chapter cannot be resolved by agreement the matter shall be immediately referred to the commissioner of administration or the commissioner of transportation and public facilities, as appropriate.
- (g) This section does not apply to payment disputes governed by AS 37.05.285.

### **SEC. 36.30.623. INTEREST ON CERTAIN CLAIMS.**

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The amount ultimately determined to be due under AS 36.30.620 - 36.30.630 and 36.30.670 - 36.30.685 to a department contractor, the department, or a contracting agency to whom the responsibility for handling the claims is delegated by the department under AS 36.30.632 accrues interest at the rate applicable to judgments under AS 09.30.070(a). Notwithstanding AS 09.30.070(b), the interest accrues from the date that a complete claim is filed that meets the requirements of AS 36.30.620(a) through the date of a decision by the procurement officer under AS 36.30.620, a decision by the commissioner of transportation and public facilities under AS 36.30.680, or a judicial decision under AS 36.30.685, whichever decision is latest. In this section, "department" means the Department of Transportation and Public Facilities.

### **SEC. 36.30.625. APPEAL ON A CONTRACT CLAIM.**

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- (a) An appeal from a decision of the procurement officer on a contract claim may be filed by the contractor with the commissioner of administration or, for a claim involving a construction contract or procurement for the state equipment fleet, the commissioner of transportation and public facilities. The appeal shall be filed within 14 days after the decision is received by the contractor. An appeal by a contractor of the Department of Transportation and Public Facilities may not raise any new factual issues or theories of recovery that were not presented to and decided by the procurement officer in the decision under AS 36.30.620(b), except that a contractor may increase the contractor's calculation of damages if the increase arises out of the same operative facts on which the original claim was based. The contractor shall file a copy of the appeal with the procurement officer.
- (b) An appeal must contain a copy of the decision being appealed and identification of the factual or legal errors in the decision that form the basis for the appeal.
- (c) The Department of Transportation and Public Facilities, or a contracting agency to whom the responsibility for handling the claim is delegated by the Department of Transportation and Public Facilities under AS 36.30.632, shall handle the appeal of a claim under this section expeditiously.

**SEC. 36.30.627. CONSTRUCTION CONTRACT CLAIM APPEALS.**

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- (a) An appeal from a decision of the procurement officer of a claim involving a construction contract shall be resolved by
  - (1) binding and final arbitration under AS 09.43.010 - 09.43.180 (Uniform Arbitration Act) or AS 09.43.300 - 09.43.595 (Revised Uniform Arbitration Act), as applicable, if the claim is
    - (A) less than \$250,000 and the contractor requests arbitration of the claim; or
    - (B) \$250,000 or more and both the agency and the contractor agree to arbitration of the claim; or
  - (2) a hearing under AS 36.30.630 if the claim is not handled by arbitration under (1) of this subsection.
- (b) In this section, a claim includes all issues, causes of action, and controversies arising from a construction contract for which a contractor or the contracting agency asserts compensation is due.

**SEC. 36.30.629. SUBPOENAS AND DISCOVERY.**

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In appeals under AS 36.30.627, the arbitrator or hearing officer may

- (1) issue subpoenas, including subpoenas duces tecum, to compel the attendance of witnesses and the production of documents;
- (2) allow the taking of depositions for discovery or to perpetuate testimony; and
- (3) refer a subpoena or subpoena duces tecum to the superior court for enforcement and the imposition of appropriate sanctions.

**SEC. 36.30.630. HEARING ON A CONTRACT CLAIM; DECISION WITHOUT HEARING.**

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- (a) Except as provided in (b) of this section, a hearing shall be conducted according to AS 36.30.670 and, to the extent they do not conflict with regulations adopted under AS 44.64.060, regulations adopted by the commissioner of administration on a contract claim appealed to the commissioner of administration or the commissioner of transportation and public facilities or referred to either commissioner under AS 36.30.620(f).
- (b) Except as provided in AS 36.30.627(a)(1), within 15 days after receipt of an appeal on a contract claim, the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, may adopt the decision of the procurement officer as the final decision without a hearing.

**SEC. 36.30.631. ATTORNEY FEES, COSTS, AND OFFERS OF JUDGMENT.**

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- (a) An arbitrator in the arbitration of a construction contract claim under AS 36.30.627(a)(1) and a hearing officer for the hearing of a construction contract claim conducted under AS 36.30.627(a)(2) shall award the prevailing party attorney fees and costs incurred in the arbitration or hearing. The award shall be made as provided by Rules 68, 79, and 82 of the Alaska Rules of Civil Procedure.
- (b) Either party to an arbitration of a construction contract claim conducted under AS 36.30.627 or a hearing of a construction contract claim conducted under AS 36.30.630(a) may serve on the adverse party an offer to allow a final decision to be entered in complete satisfaction of the claim. The offer shall be made, accepted, or rejected as provided for an offer of judgment under Rule 68 of the Alaska Rules of Civil Procedure. Acceptance or rejection of the offer has the same consequences as acceptance or rejection of an offer of judgment made in a civil action under Rule 68 of the Alaska Rules of Civil Procedure.

#### **SEC. 36.30.632. DELEGATION.**

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The commissioner of administration and the commissioner of transportation and public facilities may delegate responsibilities under AS 36.30.590 - 36.30.630 to the head of the contracting agency.

#### **SEC. 36.30.635. AUTHORITY TO DEBAR OR SUSPEND.**

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- (a) After consultation with the using agency and the attorney general and after a hearing conducted according to AS 36.30.670 and, to the extent they do not conflict with regulations adopted under AS 44.64.060, regulations adopted by the commissioner of administration, the commissioner of administration or the commissioner of transportation and public facilities may debar a person for cause from consideration for award of contracts. Notice of a debarment hearing shall be provided in writing at least seven days before the hearing. The debarment may not be for a period of more than three years.
- (b) The commissioner of administration or the commissioner of transportation and public facilities, after consultation with the using agency and the attorney general, may suspend a person from consideration for award of contracts if there is probable cause for debarment and compelling reasons require suspension to protect state interests. The suspension may not be for a period exceeding three months.
- (c) The authority to debar or suspend shall be exercised in accordance with regulations adopted by the commissioner of administration.

#### **SEC. 36.30.640. CAUSES FOR DEBARMENT OR SUSPENSION.**

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The causes for debarment or suspension include

- (1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;

- (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a state contractor;
- (3) conviction or civil judgment finding a violation under state or federal antitrust statutes;
- (4) violation of contract provisions of a character that is regarded by the commissioner to be so serious as to justify debarment action, such as
  - (A) knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - (B) failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment;
- (5) for violation of the ethical standards set out in law or regulation;
- (6) for a violation of this chapter punishable under AS 36.30.930(2); and
- (7) any other cause listed in regulations of the commissioner determined to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity for a cause listed in the regulations.

#### **SEC. 36.30.645. WRITTEN DETERMINATIONS.**

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- (a) The commissioner of administration or the commissioner of transportation and public facilities shall issue a written decision to debar or suspend. The decision must
  - (1) state the reasons for the action taken; and
  - (2) inform the debarred person of rights to judicial appeal or inform the suspended person of rights to administrative and judicial appeal.
- (b) A copy of the decision under (a) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other intervening party.

#### **SEC. 36.30.650. HEARING ON A SUSPENSION.**

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- (a) A person suspended under AS 36.30.635 is entitled to a hearing conducted according to AS 36.30.670 and, to the extent that they do not conflict with regulations adopted under AS 44.64.060, regulations adopted by the commissioner of administration if the person files a written request for a hearing with the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, within seven days after receipt of the notice of suspension under AS 36.30.645.



- (b) If a suspended person requests a hearing, the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, after consulting with the office of administrative hearings (AS 44.64.010), shall schedule a prompt hearing unless the attorney general determines that a hearing at the proposed time is likely to jeopardize an investigation. A hearing may not be delayed longer than six months after notice of the suspension is provided under AS 36.30.645.

#### **SEC. 36.30.655. LIST OF PERSONS DEBARRED OR SUSPENDED.**

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The commissioner shall maintain a list of all persons debarred or suspended from consideration for the award of contracts.

#### **SEC. 36.30.660. REINSTATEMENT.**

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- (a) The commissioner of administration or the commissioner of transportation and public facilities may at any time after a final decision to debar a person from consideration for award of contracts reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.
- (b) A debarred person may request reinstatement by submitting a petition to the commissioner of administration or the commissioner of transportation and public facilities supported by evidence showing that the cause for debarment no longer exists or has been substantially mitigated.
- (c) The commissioner of administration or the commissioner of transportation and public facilities may require a hearing on a reinstatement petition. A decision on reinstatement shall be made in writing within seven days after a reinstatement petition is submitted. The decision must specify the factors on which it is based. A decision under this section is not subject to judicial appeal.

#### **SEC. 36.30.665. LIMITED PARTICIPATION BY DEBARRED PERSON.**

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The commissioner of administration or the commissioner of transportation and public facilities may permit a debarred person to participate in a contract on a limited basis during the debarment period if the commissioner determines in writing that the participation is advantageous to the state. The determination shall specify the factors on which it is based and the limits imposed on the debarred person.

#### **SEC. 36.30.670. HEARING PROCEDURES.**

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- (a) The chief administrative law judge (AS 44.64.010) shall assign an administrative law judge to act as a hearing officer for a hearing conducted under this chapter. The hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing. The hearing shall be conducted in an informal manner. The provisions of AS 44.62 (Administrative Procedure Act) do not apply to a hearing conducted under this chapter.
- (b) The hearing officer may
  - (1) hold prehearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;

- (2) require parties to state their positions concerning the various issues in the proceeding;
  - (3) require parties to produce for examination those relevant witnesses and documents under their control;
  - (4) rule on motions and other procedural matters;
  - (5) regulate the course of the hearing and conduct of the participants;
  - (6) establish time limits for submission of motions or memoranda;
  - (7) impose appropriate sanctions against a person who fails to obey an order of the hearing officer, including
    - (A) prohibiting the person from asserting or opposing designated claims or defenses or introducing designated matters into evidence;
    - (B) excluding all testimony of an unresponsive or evasive witness; and
    - (C) excluding a person from further participation in the hearing;
  - (8) take official notice of a material fact not appearing in evidence, if the fact is among the traditional matters subject to judicial notice;
  - (9) administer oaths or affirmations.
- (c) A transcribed record of the hearing shall be made available at cost to a party that requests it.

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**SEC. 36.30.675. RECOMMENDED DECISION AND COMMISSIONER ACTION.**

- (a) The hearing officer shall recommend a decision to the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, based on the evidence presented. The recommendation must include findings of fact and conclusions of law.
- (b) The commissioner of administration or the commissioner of transportation and public facilities may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or take other appropriate action.

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**SEC. 36.30.680. FINAL DECISION BY THE COMMISSIONER.**

A decision by the commissioner of administration or the commissioner of transportation and public facilities after a hearing under this chapter is final. A decision shall be sent within 20 days after the hearing to all parties by personal service or certified mail, except that a decision by the commissioner of transportation and public facilities involving procurement of construction shall be sent to all parties by personal service or certified mail within 45 days after receipt by the commissioner of transportation and public facilities of the hearing officer's decision.

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**SEC. 36.30.685. JUDICIAL APPEAL.**

- (a) A final decision of the commissioner of administration or the commissioner of transportation and public facilities under AS 36.30.610, 36.30.635(a), 36.30.650, or 36.30.680 may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure.
- (b) A final decision of the commissioner of administration or the commissioner of transportation and public facilities under AS 36.30.630(b) may be appealed to the superior court for a trial de novo.

**SEC. 36.30.687. MISREPRESENTATIONS, FRAUD, AND ATTEMPTED FRAUD.**

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- (a) A person who makes or uses in support of a contract claim under this chapter, a misrepresentation, or who practices or attempts to practice a fraud, at any stage of proceedings relating to a procurement or contract claim under this chapter
  - (1) forfeits all claims relating to that procurement or contract; and
  - (2) is liable to the state for reimbursement of all sums paid on the claim, for all costs attributable to review of the claim, and for a civil penalty equal to the amount by which the claim is misrepresented.
- (b) The procurement officer, commissioner or court shall make specific findings of misrepresentation, attempted fraud, or fraud before declaring a forfeiture under (a)(1) of this section.
- (c) Suits to recover costs and penalties under (a)(2) of this section must be commenced within six years after the discovery of the misrepresentation, fraud, or attempted fraud.
- (d) A person who in a matter relating to a procurement or a contract claim under this chapter makes a misrepresentation to the state through a trick, scheme, or device is guilty of a class C felony.
- (e) In this section, "misrepresentation" means a false or misleading statement of material fact, or conduct intended to deceive or mislead concerning material fact, whether it succeeds in deceiving or misleading.

**SEC. 36.30.690. EXCLUSIVE REMEDY.**

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Notwithstanding AS 44.77 or other law to the contrary, AS 36.30.560 - 36.30.699 and regulations adopted under those sections provide the exclusive procedure for asserting a claim against an agency arising in relation to a procurement under this chapter.

**SEC. 36.30.695. OTHER RULES OF PROCEDURE.**

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- (a) The commissioner may adopt by regulation additional rules of procedure providing for the expeditious arbitration, hearing, and other administrative review of all contract claims, both before the contracting agency and through an appeal heard de novo.
- (b) Except as provided by (c) of this section, an arbitrator shall issue a final decision, and a hearing officer shall issue a recommended decision, within the following time limits after the date the record on the claim is closed:

- (1) 30 calendar days for a claim of less than \$100,000;
  - (2) 45 calendar days for a claim of \$100,000 or more but less than \$1,000,000; or
  - (3) 60 calendar days for a claim of \$1,000,000 or more.
- (c) The commissioner of administration or the commissioner of transportation and public facilities may, for good cause shown, grant an arbitrator or a hearing officer additional time to issue a decision.
- (d) If an arbitrator or hearing officer fails to issue a decision within the time allowed for a decision under (b) or (c) of this section, the arbitrator or hearing officer is disqualified from acting as an arbitrator or hearing officer in another proceeding under this chapter for one year after the decision is issued.
- (e) The venue for an arbitration or hearing under this chapter is the judicial district where the office of the contracting agency is located, unless the agency and the contractor agree on another location.
- (f) If a party fails to appear at a proceeding under this chapter, the arbitrator or hearing officer may proceed in the party's absence.
- (g) Subject to appropriation, any money awarded by an arbitrator's decision shall be paid within 45 days after the date that the arbitrator's decision is final. Subject to appropriation, any money awarded by a hearing officer's recommended decision that is approved by the commissioner of transportation and public facilities shall be paid within 45 days after the date that the commissioner's decision is delivered to the contractor and the agency, unless the commissioner's decision is appealed under AS 36.30.685.

#### **SEC. 36.30.699. DEFINITION.**

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In AS 36.30.560 - 36.30.695, "interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract; whether an actual or prospective bidder or offeror has an economic interest depends on the circumstances.

### **ARTICLE 09. INTERGOVERNMENTAL RELATIONS**

#### **SEC. 36.30.700. COOPERATIVE PURCHASING AUTHORIZED.**

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A public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of supplies, services, professional services, or construction with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. Cooperative purchasing may include joint or multi-party contracts between public procurement units and open-ended state public procurement units contracts that are made available to local public procurement units.

**SEC. 36.30.710. INTERAGENCY SALE, ACQUISITION, AND USE OF SUPPLIES AND SERVICES.**

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- (a) A public procurement unit may sell to, acquire from, or use any supplies belonging to another public procurement unit or external procurement activity independent of the requirements of AS 36.30.060 and 36.30.100 - 36.30.260.
- (b) A public procurement unit may enter into an agreement, independent of the requirements of AS 36.30.060 and 36.30.100 - 36.30.260, with another public procurement unit or external procurement activity for the cooperative use of supplies or services under the terms agreed upon between the parties.

**SEC. 36.30.720. JOINT USE OR LEASE OF FACILITIES AND EQUIPMENT.**

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A public procurement unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit or an external procurement activity under the terms agreed upon between the parties.

**SEC. 36.30.730. SUPPLY OF PERSONNEL, SERVICES, AND OTHER ITEMS.**

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- (a) A public procurement unit may, upon written request from another public procurement unit or external procurement activity, provide personnel to the requesting public procurement unit or external procurement activity. The public procurement unit or external procurement activity making the request shall pay the public procurement unit providing the personnel the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties.
- (b) The informational, technical, and other services of a public procurement unit may be made available to another public procurement unit or external procurement activity except that the requirements of the public procurement unit tendering the services has precedence over the requesting public procurement unit or external procurement activity. The requesting public procurement unit or external procurement activity shall pay for the expenses of the services so provided, in accordance with an agreement between the parties.
- (c) Upon request, the commissioner may make available to public procurement units or external procurement activities the following services, among others:
  - (1) standard forms;
  - (2) printed manuals;
  - (3) product specifications and standards;
  - (4) quality assurance testing services and methods;
  - (5) qualified products lists;
  - (6) source information;
  - (7) common use commodities listings;

- (8) supplier performance ratings;
  - (9) lists of persons debarred or suspended from consideration for award of state contracts;
  - (10) forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms; and
  - (11) contracts or published summaries of them, including price and time of delivery information.
- (d) The commissioner may provide the following technical services, among others:
- (1) development of product specifications;
  - (2) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;
  - (3) use of product testing and inspection facilities; and
  - (4) use of personnel training programs.
- (e) The commissioner may enter into contractual arrangements and publish a schedule of fees for the services provided under (c) and (d) of this section.
- (f) *[Repealed, Sec. 28 ch 90 SLA 1991].*

**SEC. 36.30.735. RESTRICTION ON CONTRACTING WITH OR EMPLOYING EXPERTS ON RADIATION HAZARDS.**

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- (a) Except for the Department of Health and Social Services, the Department of Labor and Workforce Development, the Department of Environmental Conservation, and the Department of Military and Veterans' Affairs, a state agency may not
- (1) contract, other than with the Department of Health and Social Services, to have services performed that require expertise in determining or reducing the hazards of radiation; or
  - (2) employ a person whose duties require expertise in determining or reducing the hazards of radiation.
- (b) In this section, "state agency"
- (1) means a state department or agency, whether in the legislative, judicial, or executive branch;
  - (2) does not include the University of Alaska, a municipality, or an agency of a municipality.
- (c) In this section, "radiation" does not include radiation emitted from a Federal Communications Commission licensed facility emitting radiation of a wave length longer than one centimeter and an average power output not exceeding two kilowatts.

### **SEC. 36.30.740. INFORMATION RELATING TO PROCUREMENT NEEDS.**

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To the extent possible, the commissioner may collect information concerning the type, cost, quality, and quantity of commonly used supplies, equipment for the state fleet, services, or construction being procured or used by state public procurement units. The commissioner may also collect this information from local public procurement units. The commissioner may make this information available to a public procurement unit upon request.

### **SEC. 36.30.750. CONTRACT CLAIMS OF OTHER PROCUREMENT UNITS.**

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- (a) Under a cooperative purchasing agreement, claims arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with AS 36.30.560 - 36.30.699.
- (b) A local public procurement unit that is not subject to AS 36.30.560 - 36.30.699 may enter into an agreement with another local public procurement unit or external procurement activity to establish procedures or use that unit's or activity's existing procedures to resolve claims with contractors, whether or not the claim arose under a cooperative purchasing agreement.

### **SEC. 36.30.790. DEFINITIONS.**

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In AS 36.30.700 - 36.30.790,

- (1) "cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement activity;
- (2) "external procurement activity" means a buying organization not located in this state that, if located in this state, would qualify as a public procurement unit; an agency of the United States is an external procurement activity;
- (3) "local public procurement unit" means a municipality or other subdivision of the state or other entity that expends public funds for the procurement of supplies, services, professional services, and construction, and any nonprofit corporation operating a charitable hospital;
- (4) "public procurement unit" means either a local public procurement unit or a state public procurement unit;
- (5) "state public procurement unit" means the Department of Administration and any other contracting agency of the state.

**SEC. 36.30.850. APPLICATION OF THIS CHAPTER.**

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- (a) This chapter applies only to contracts solicited or entered into after January 1, 1988, unless the parties agree to its application to a contract solicited or entered into before that date.
- (b) This chapter applies to every expenditure of state money by the state, acting through an agency, under a contract, except that this chapter does not apply to
  - (1) grants;
  - (2) contracts for professional witnesses to provide for professional services or testimony relating to
    - a) existing or probable lawsuits in which the state is or may become a party;
    - b) Litigation in which the Public Defender Agency or the office of public advocacy has been appointed to represent a person;
  - (3) contracts of the University of Alaska where the work is to be performed substantially by students enrolled in the university;
  - (4) contracts for medical doctors and dentists;
  - (5) acquisitions or disposals of real property or interest in real property, except as provided in AS 36.30.080 and 36.30.085;
  - (6) disposals under AS 38.05;
  - (7) contracts for the preparation and transportation of ballots under AS 15;
  - (8) acquisitions or disposals of property and other contracts relating to airports under AS 02.15.070, 02.15.090, 02.15.091, and AS 44.88;
  - (9) disposals of obsolete property under AS 19.05.060;
  - (10) disposals of obsolete material or equipment under AS 35.20.060;
  - (11) agreements with providers of services under AS 47.25.071 - 47.25.095; AS 47.07; AS 47.08; AS 47.10; AS 47.12; AS 47.14; AS 47.17; AS 47.24; and AS 47.27, including contractors under AS 47.27.050;
  - (12) contracts of the Department of Fish and Game for flights that involve specialized flying and piloting skills and are not point-to-point;
  - (13) purchases of income-producing assets for the state treasury or a public corporation of the state;
  - (14) a contract that is a delegation, in whole or in part, of investment powers held by
    - (A) the commissioner of revenue under AS 14.42.200, 14.42.210, AS 18.56.095, AS 37.10.070, 37.10.071, or AS 37.14;



- (B) the Board of Regents of the University of Alaska under AS 14.40.250 - 14.40.491;
- (15) a contract that is a delegation, in whole or in part, of investment powers or fiduciary duties of
  - (A) the Board of Trustees of the Alaska Permanent Fund Corporation under AS 37.13;
  - (B) the Alaska Mental Health Trust Authority under AS 37.14.001 - 37.14.099;
- (16) 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) "archival materials" means the noncurrent records of an agency that are preserved after appraisal because of their value;
  - (C) "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;
  - (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;
- (17) contracts for the purchase of standardized examinations for licensure under AS 08;
- (18) contracts for home health care provided under regulations adopted by the Department of Health and Social Services and for adult residential care services provided under regulations adopted by the Department of Health and Social Services or by the Department of Administration;
- (19) contracts for supplies or services for research projects funded by money received from the federal government or private grants;
- (20) guest speakers or performers for an educational or cultural activity;
- (21) contracts of the Alaska Industrial Development and Export Authority for a clean coal technology demonstration project that
  - (A) is attempting to develop a coal-fired electric generation project;
  - (B) uses technology that is capable of commercialization during the 1990's; and

- (C) qualifies for federal financial participation under P.L. 99-190 as amended;
- (22) operation and protection of assets or disposals of equipment and supplies acquired through foreclosure or other legal proceedings relating to loans issued under AS 03.10;
- (23) purchases of curatorial and conservation services to maintain, preserve, and interpret
  - (A) objects of art; and
  - (B) items having cultural, historical, or archaeological significance to the state;
- (24) acquisition of confidential seismic survey data necessary for pre-sale oil and gas lease or gas only lease analyses under AS 38.05.180;
- (25) contracts for village public safety officers;
- (26) purchases of supplies and services to support the operations of the Alaska state troopers or law enforcement officers engaged in fish and wildlife protection if the procurement officer for the Department of Public Safety makes a written determination that publicity of the purchases would jeopardize the safety of personnel or the success of a covert operation;
- (27) expenditures when rates are set by law or ordinance;
- (28) construction of new vessels by the Department of Transportation and Public Facilities for the Alaska marine highway system;
- (29) contracts entered into with a regional development organization; in this paragraph, "regional development organization" means a nonprofit organization or nonprofit corporation formed to encourage economic development within a particular region of the state that includes the entire area of each municipality within that region and that has a board of directors that represents the region's economic, political, and social interests;
- (30) contracts that are to be performed in an area outside of the country and that require a knowledge of the customs, procedures, rules, or laws of the area;
- (31) contracts that are between the
  - (A) Department of Law and attorneys who are not employed by the state and that are for the review or prosecution of possible violations of the criminal law of the state in situations where the attorney general concludes that an actual or potential conflict of interest makes it inappropriate for the Department of Law to review or prosecute the possible violations; and
  - (B) Public Defender Agency or the office of public advocacy and attorneys who are not employed by the state and that are for the review or defense of possible violations of the criminal law of the state in situations where the public defender or the director of the office of public advocacy concludes that an actual or potential

conflict of interest makes it inappropriate for the Public Defender Agency or the office of public advocacy to review or defend the possible violations;

- (32) contracts between the Department of Natural Resources and contractors qualified to evaluate hydrocarbon development, production, transportation, and economics, to assist the commissioner of natural resources in evaluating applications for royalty increases or decreases or other royalty adjustments, and evaluating the related financial and technical data, entered into under AS 38.05.180(j);
- (33) contracts of the Alaska Industrial Development and Export Authority made with the developer of an integrated transportation and port facility owned by the authority;
- (34) procurements of contracts with the media for advertising;
- (35) contracts between the state medical examiner and a provider of medical services to perform or assist in performing the duties assigned to the state medical examiner in AS 12.65.020;
- (36) contracts between the commissioner of revenue and an independent contractor under AS 43.82.240;
- (37) contracts for a convener under AS 44.62.730 or for a facilitator under AS 44.62.760 related to a negotiated regulation making process under AS 44.62.710 - 44.62.800;
- (38) grants and contracts with qualified entities for services under AS 47.18.330 for the foster care transition program;
- (39) contracts for travel services, including airplane travel, hotel accommodations, and travel agency services, but excluding motor vehicle rentals;
- (40) contracts of the Alaska Commission on Postsecondary Education or the Alaska Student Loan Corporation for the guarantee and disbursing of financial aid money to institutions of postsecondary education under the financial aid programs under AS 14.43.091 - 14.43.750 and AS 14.44.025;
- (41) contracts for an arbitration panel to determine whether a project is uneconomic under AS 43.90.240, and contracts for the development of application provisions for licensure and for the evaluation of those applications under AS 43.90;
- (42) contracts for delivery of home heating assistance under AS 47.25.626;
- (43) contracts of the Alaska Pension Obligation Bond Corporation under AS 37.16.010 - 37.16.900.
- (44) the Alaska Gasline Development Corporation (AS 31.25) and subsidiaries of the Alaska Gasline Development Corporation.
- (45) contracts for professional and technical services by the Department of Natural Resources to support the development of agreements and contracts under AS 38.05.020(b)(10) and (11);

- (46) contracts of the Department of Law developed with client participation for legal services related to an Alaska liquefied natural gas project as that project is defined in AS 31.25.390, except that, to the extent practicable, the Department of Law shall use the procurement process under AS 36.30.320 with the participation of the client.
- (c) Except for AS 36.30.085 and 36.30.700 - 36.30.790, this chapter does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other governments.
- (d) Nothing in this chapter or in regulations adopted under this chapter prevents an agency or political subdivision from complying with the terms and conditions of a grant, gift, bequest, cooperative agreement, or federal assistance agreement.
- (e) *[Renumbered as AS 36.30.170(i). For current law, see AS 36.30.321].*

#### **SEC. 36.30.860. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE.**

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Unless displaced by the particular provisions of this chapter, the principles of law and equity, including AS 45.01 - AS 45.08, AS 45.12, 45.14, and 45.29 (Uniform Commercial Code), the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this chapter.

#### **SEC. 36.30.870. ADOPTION OF REGULATIONS.**

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- (a) Regulations under this chapter shall be adopted in accordance with AS 44.62 (Administrative Procedure Act).
- (b) Regulations under this chapter applicable to procurements of construction or procurements for or disposal of property of the state equipment fleet shall be adopted by the commissioner of administration only after consultation with the commissioner of transportation and public facilities.
- (c) The commissioner of administration shall adopt regulations establishing the procedures for arbitration under AS 36.30.627(a), including establishing the qualifications for arbitrators and the method for appointing neutral arbitrators to conduct arbitrations.

#### **SEC. 36.30.880. REQUIREMENT OF GOOD FAITH.**

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All parties involved in the negotiation, performance, or administration of state contracts shall act in good faith.

#### **SEC. 36.30.890. FEDERAL FUNDS OR ASSISTANCE.**

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If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a regulation adopted under a provision of this chapter and a federal statute, regulation, policy, or requirement, the federal statute, regulation, policy, or requirement shall prevail.

**SEC. 36.30.900. PRODUCT PREFERENCES. [REPEALED, SEC. 48 CH 137 SLA 1996].**

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*Repealed or Renumbered*

**SEC. 36.30.910. PURCHASES THROUGH GENERAL SERVICES ADMINISTRATION.**

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Notwithstanding any other provision of this chapter, purchasing through the general services administration or from federal supply schedules of the general services administration may be made without competitive sealed bidding, competitive sealed proposals, or other competition, so long as the purchasing is from persons located in the state in accordance with regulations adopted by the commissioner for purchases under this section and as provided under 41 U.S.C. 251 - 266

**SEC. 36.30.920. REPORTING OF ANTICOMPETITIVE PRACTICES.**

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When for any reason collusion or other anticompetitive practices are suspected among bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general by the person who suspects the collusion or other anticompetitive practices.

**SEC. 36.30.930. CIVIL AND CRIMINAL PENALTIES.**

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The following penalties apply to violations of this chapter:

- (1) a person who contracts for or purchases supplies, equipment for the state fleet, services, professional services, or construction in a manner the person knows to be contrary to the requirements of this chapter or the regulations adopted under this chapter is liable for all costs and damages to the state arising out of the violation;
- (2) a person who intentionally or knowingly contracts for or purchases supplies, equipment for the state fleet, services, professional services, or construction under a scheme or artifice to avoid the requirements of this chapter is guilty of a class C felony.

**SEC. 36.30.940. ENFORCEMENT.**

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The attorney general on behalf of the state shall enforce the provisions of this chapter.

**SEC. 36.30.950. SEVERABILITY.**

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If any provision of this chapter or any application of this chapter to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared severable.

**SEC. 36.30.990. DEFINITIONS.**

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In this chapter, unless the context in which a term is used clearly requires a different meaning or a different definition is prescribed for a particular provision,

- (1) "agency"
  - (A) means a department, institution, board, commission, division, authority, public corporation, the Alaska Pioneers' Home, the Alaska Veterans' Home, or other administrative unit of the executive branch of state government;
  - (B) does not include
    - (i) the University of Alaska;
    - (ii) the Alaska Railroad Corporation;
    - (iii) the Alaska Housing Finance Corporation;
    - (iv) a regional Native housing authority created under AS 18.55.996 or a regional electrical authority created under AS 18.57.020;
    - (v) the Department of Transportation and Public Facilities, in regard to the repair, maintenance, and reconstruction of vessels, docking facilities, and passenger and vehicle transfer facilities of the Alaska marine highway system;
    - (vi) the Alaska Aerospace Development Corporation;
    - (vii) the Alaska Retirement Management Board;
    - (viii) the Alaska Seafood Marketing Institute;
    - (ix) the Alaska children's trust and the Alaska Children's Trust Board;
    - (x) the Alaska Industrial Development and Export Authority;
- (2) "Alaska bidder" means a person who
  - (A) holds a current Alaska business license;
  - (B) submits a bid or proposal for goods, services, or construction under the name appearing on the person's current Alaska business license;
  - (C) has maintained a place of business in the state staffed by the bidder or offeror or an employee of the bidder or offeror for a period of six months immediately preceding the date of the bid or proposal;
  - (D) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company organized under AS 10.50 and all members are residents of the state, or is a partnership under former AS 32.05, AS 32.06, or AS 32.11 and all partners are residents of the state; and

- (E) if a joint venture, is composed entirely of ventures that qualify under (A) - (D) of this paragraph;
- (3) "change order" means a written order signed by the procurement officer, directing the contractor to make changes that the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor;
- (4) "commissioner" means the commissioner of administration;
- (5) "competitive sealed bidding" means the procedure under AS 36.30.100 - 36.30.190;
- (6) "competitive sealed proposals" means the procedure under AS 36.30.200 - 36.30.260;
- (7) "construction" means the process of building, altering, repairing, maintaining, improving, or demolishing a public highway, structure, building, or other public improvement of any kind to real property other than privately owned real property leased for the use of agencies; it includes services and professional services relating to planning and design required for the construction; it does not include the routine operation of a public improvement to real property nor does it include the construction of public housing;
- (8) "contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies, equipment for the state fleet, services, professional services, or construction;
- (9) "contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract;
- (10) "department" means the Department of Administration;
- (11) "design-build construction contract" means a contract to provide construction in accordance with a design provided by the contractor;
- (12) "employment program" means a nonprofit program to increase employment opportunities for individuals with physical or mental disabilities that constitute substantial barriers to employment;
- (13) "grant" means property furnished by the state, whether real or personal, designated by law, including an appropriation Act, as a grant;
- (14) "hearing" does not include a hearing in an arbitration;
- (15) "in writing" has the meaning given to "written" in this section;
- (16) "lease-financing agreement" means a lease-purchase agreement that secures or is related to financing instruments of the lessor, including revenue bonds or certificates of participation;
- (17) "lease-purchase agreement" means a lease that

- (A) transfers ownership of the property to the lessee by the end of the lease term;
  - (B) contains a purchase option at a price less than the fair market value of the property on the date the option is exercisable;
  - (C) has a term, at inception, equal to 75 percent or more of the economic life of the property; or
  - (D) contains minimum lease payments, including minimum lease payments during a renewal provided for in the agreement, whose present value at the inception of the agreement equals 90 percent or more of the fair market value at the inception of the agreement of the real property that is the subject of the agreement; the present value shall be determined by using as a discount rate the most recent Bond Buyer 20-Bond G.O. Index;
- (18) "person" means a business, individual, union, committee, club, other organization, or group of individuals;
- (19) "procurement" means buying, purchasing, renting, leasing, or otherwise acquiring supplies, equipment for the state fleet, services, or construction; it also includes functions that pertain to the obtaining of a supply, equipment for the state fleet, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration;
- (20) "procurement officer" means a person authorized to enter into and administer contracts for an agency and make written determinations with respect to them; it also includes an authorized representative of a procurement officer acting within the limits of authority;
- (21) "professional services" means professional, technical, or consultant's services that are predominantly intellectual in character, result in the production of a report or the completion of a task, and include analysis, evaluation, prediction, planning, or recommendation
- (22) "public building" means improved real property leased to the state for governmental, public, or educational use, but does not include improved real property owned by the University of Alaska Heating Corporation and leased to the University of Alaska for a purpose within the scope, as of July 1, 1986, of the heating corporation's charter;
- (23) "services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance; it does not include employment agreements or collective bargaining agreements;
- (24) "state money" means any money appropriated to an agency or spent by an agency irrespective of its source, including federal assistance except as otherwise specified in AS 36.30.890, but does not include money held in trust by an agency for a person;



- (25) "state official" means a public employee, public officer, or official of an agency;
- (26) "supplies" means all property of an agency, including equipment, materials, and insurance; it includes privately owned real property leased for the use of agencies, such as office space, but does not include the acquisition or disposition of other interests in land;
- (27) "written" means the product of forming characters on paper, other materials, or viewable screens, that can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

**SEC. 36.30.995. SHORT TITLE.**

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This chapter may be cited as the State Procurement Code.