

DOT&PF CONTRACTS OFFICER BULLETIN ¹

NO. 99 - 003

SUBCONTRACTOR LISTINGS STATUTE CHANGE

Issued: June 18, 1999

DOT&PF Chief Contracts Officer: Mark O'Brien

On June 1, 1999, the Governor signed Senate Bill 141, (*"An Act relating to construction contracts and subcontractors; relating to design-build construction contracts; and providing for an effective date"*). The Law has an Effective Date of 6/2/99, and gives the Department the tools to confront two problems relating to the listing of subcontractors as required by AS 36.30.115.

The first problem with AS 36.30.115 was in the situation where a contractor would make a request (and it may have been in the State's best interest to allow), to add or replace a subcontractor in order to effectively carry forth with the project. Without the statutory authority to make these subcontractor changes, the contractor would be in violation of the law if they took this action, even if the State supported the change.

The second problem, relative to design/build contracting, was one of a technical nature - the statute negated the ability to do design/build procurements and comply with the law at the same time. The obstacle was the five-day contractor notice requirement. Recognizing that the design/build contractor often does not know who their subcontractor(s) will be until well into the design and/or construction process, certainly past the five-day notification requirement, the Department sought legislation to change the restrictive statutory language to allow for the use of design/build contracting without listing subcontractors within 5 days.

Consequently, AS 36.30.115 has been amended by adding new subsections to read:

- (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.

In addition, AS 36.30.210(b) has been amended to clarify that the provisions of AS 36.30.115(b)-(g) do not apply to design/build contracts.

NOTE TO READER

The current review and determination of subcontractor violations and penalties under contract procurement methods other than by design/build is covered in COB 98-001, and is unchanged by this bulletin.

¹ **CONTRACT OFFICER BULLETINS** - From time to time, it is expedient to issue information, guidance, or directives on certain construction contract matters. Such communications can best be accomplished through the medium of 'bulletins'. These bulletins are "interpretive" in nature and serve to inform and direct. They reflect the departments' policy on the issue being addressed. If a conflict between a bulletin and a statute or a formally adopted regulation is found to exist, the law/regulation takes precedence [ref. AS 44.62.640(a)(3)]. Comments or suggestions are appreciated and can be directed to Jim Beeson @ JIM.BEESON@dot.state.ak.us, phone, 465-6965, Fax 465-4010.

Visit our Website at <http://www.dot.state.ak.us/external/hq/proc/cob.html> for electronic access to Contract Officer Bulletins.