

February 5, 2002

Bachner Companies
542 Fourth Avenue, Suite 300
Fairbanks, AK 99701

PCOL #184

Dear Mr. Bachner:

You have asked several questions concerning the application of AS 36 (the Act) to a pending DOTPF lease for 28,000 square feet of office space. I will answer them in the order they were presented.

1. If a successful bidder builds a new building to satisfy the lease, the entire building construction is subject to the Act.
2. If a successful bidder remodels existing space and builds new space for the lease, all remodeling work on the existing space and the new construction is subject to the Act.
3. If a successful bidder rehabilitates an existing building in order to satisfy the lease, all rehab work such as roof repairs, installing or repairing sprinkler heads, heating or cooling system repair, flooring, windows, or electrical and plumbing work necessary to bring the building up to the specifications of the state lease is subject to the Act.
4. Once the lease is awarded, any construction alteration or repair done under the lease is subject to the Act.
5. If construction activities were underway before the award of the lease, and it can be proven that those activities would have been done even without the possibility of receiving a state lease, some of those activities may not be subject to the Act. Work that is done to meet the specific needs of the lease contract would still be covered. These determinations will be addressed on a case-by-case basis.

6. Installing or repairing normal mechanical systems that are part of an existing building may or may not be covered by the Act. The analysis would be the same case-by-case basis as in question #5.
7. After the lease is awarded, the repair of all systems that are a normal part of the building such as roofs, carpeting, false ceilings, sprinklers, windows, heat and cooling, and sheetrock is subject to the Act.
8. Restrooms are included in the analysis in question #7 and are subject to the Act.
9. The lease may contain a timetable for scheduled maintenance such as repainting or new carpeting. Work done according to the schedule would be considered maintenance and would not be subject to the Act. However, repainting or carpeting that is done at the request of the lessee or that is above and beyond scheduled maintenance, is considered alteration or repair and is subject to the Act.

These situations often require a detailed case-by-case analysis. The rule of thumb is if the work would not have been done but for the public contract, then the work is subject to AS 36. In cases where a successful bidder asserts that the work was planned in advance of the public contract and would have been done even without the public contract, the burden is upon the contractor to prove this fact to the department's satisfaction.

This opinion is limited to the facts surrounding the DOTPF facility lease and should not be applied to other fact patterns or situations.

If you wish more specific responses as the bid process moves along, feel free to ask further questions as the facts develop.

Sincerely,

J. R. (Randy) Carr
Chief
Labor Standards

JRC:plm
cc: Richard Mastriano, Director
Jan Madson, Contracting Officer
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