

HOUSE BILL NO. 205

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES FAIRCLOUGH, Neuman

Introduced: 3/23/11

Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state and public entity procurement, including the State
2 Procurement Code, procurement preferences, and contract awards; relating to the
3 meaning of 'Alaska bidder'; and providing for an effective date."

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

5 * **Section 1.** AS 24.55.275 is amended to read:

6 **Sec. 24.55.275. Contract procedures.** The ombudsman shall adopt by
7 regulation procedures consistent with AS 36.30 to be followed by the office of the
8 ombudsman in contracting for services. However, the procedure for requests for
9 proposals does not apply to contracts for investigations under AS 24.55.100, and the
10 office of the ombudsman shall comply with **the five percent preference for bidders**
11 **under AS 36.30.321(a)** [AS 36.30.170(b)].

12 * **Sec. 2.** AS 36.15.050(a) is amended to read:

13 (a) When agricultural products are purchased by the state or by a school
14 district that receives state money, **a seven percent preference shall be applied to the**

1 price of the products harvested in the state [ONLY AGRICULTURAL
 2 PRODUCTS HARVESTED IN THE STATE SHALL BE PURCHASED
 3 WHENEVER PRICED NO MORE THAN SEVEN PERCENT ABOVE PRODUCTS
 4 HARVESTED OUTSIDE THE STATE, AVAILABLE, AND OF LIKE QUALITY
 5 COMPARED WITH AGRICULTURAL PRODUCTS HARVESTED OUTSIDE
 6 THE STATE].

7 * **Sec. 3.** AS 36.15.050(b) is amended to read:

8 (b) When fisheries products are purchased by the state or by a school district
 9 that receives state money, a seven percent preference shall be applied to the price
 10 of the products harvested or processed within the jurisdiction of the state [ONLY
 11 FISHERIES PRODUCTS HARVESTED OR PROCESSED WITHIN THE
 12 JURISDICTION OF THE STATE SHALL BE PURCHASED WHENEVER PRICED
 13 NO MORE THAN SEVEN PERCENT ABOVE PRODUCTS HARVESTED OR
 14 PROCESSED OUTSIDE THE JURISDICTION OF THE STATE, AVAILABLE,
 15 AND OF LIKE QUALITY COMPARED WITH FISHERIES PRODUCTS
 16 HARVESTED OR PROCESSED OUTSIDE THE JURISDICTION OF THE
 17 STATE].

18 * **Sec. 4.** AS 36.15.050 is amended by adding a new subsection to read:

19 (h) A bidder receiving a preference under this section may not receive a
 20 preference under AS 36.30.322.

21 * **Sec. 5.** AS 36.30.015(e) is amended to read:

22 (e) The board of directors of the Alaska Railroad Corporation and the board of
 23 directors of the Alaska Aerospace Corporation shall adopt procedures to govern the
 24 procurement of supplies, services, professional services, and construction. The
 25 procedures must be substantially equivalent to the procedures prescribed in this
 26 chapter and in regulations adopted under this chapter. Notwithstanding the other
 27 provisions of this subsection, the Alaska Railroad Corporation and the Alaska
 28 Aerospace Corporation shall comply with the five percent preference for bidders
 29 under AS 36.30.321(a) [AS 36.30.170(b)], and, when the Department of
 30 Transportation and Public Facilities authorizes the Alaska Railroad Corporation to
 31 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.

* **Sec. 6.** AS 36.30.015(f) is amended to read:

(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 for bidders under AS 36.30.321(a)** [AS 36.30.170(b)].

* **Sec. 7.** AS 36.30.015(h) is amended to read:

(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 for bidders under AS 36.30.321(a)** [AS 36.30.170(b)].

* **Sec. 8.** AS 36.30.020 is amended to read:

Sec. 36.30.020. Legislature. 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 for bidders under AS 36.30.321(a) [AS 36.30.170(b)].

* **Sec. 9.** AS 36.30.030 is amended to read:

Sec. 36.30.030. Court system. 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 for bidders under AS 36.30.321(a) [AS 36.30.170(b)].

* **Sec. 10.** AS 36.30.170 is repealed and reenacted to read:

Sec. 36.30.170. Contract award after bids. After applying any preferences

that apply under AS 36.15.050 and AS 36.30.321 - 36.30.338, a 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. 11.** AS 36.30 is amended by adding a new section to article 5 to read:

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.

1 (f) If a bidder or offeror qualifies as an Alaska bidder and is a qualifying
 2 entity, a five percent preference shall be applied to the price in the bid or proposal.
 3 The preference may not exceed \$5,000. In this subsection,

4 (1) "Alaska veteran" means an individual who is both a resident of the
 5 state and a veteran;

6 (2) "qualifying entity" means a

7 (A) sole proprietorship owned by an Alaska veteran;

8 (B) partnership under AS 32.06 or AS 32.11 if a majority of the
 9 partners are Alaska veterans;

10 (C) limited liability company organized under AS 10.50 if a
 11 majority of the members are Alaska veterans; or

12 (D) corporation that is wholly owned by individuals, and a
 13 majority of the individuals are Alaska veterans;

14 (3) "veteran" means an individual who

15 (A) served in the

16 (i) armed forces of the United States, including a
 17 reserve unit of the United States armed forces; or

18 (ii) Alaska Territorial Guard, the Alaska Army National
 19 Guard, the Alaska Air National Guard, or the Alaska Naval Militia; and

20 (B) was separated from service under a condition that was not
 21 dishonorable.

22 (g) A bidder or offeror may not receive a preference under both (b) and (d) of
 23 this section for the same contract.

24 (h) Except as provided by (j) of this section, this section applies to all
 25 insurance contracts involving state money. In this subsection, "state money" has the
 26 meaning given in AS 36.30.990, but also includes state grants and reimbursements to
 27 municipalities, school districts, and other entities.

28 (i) To qualify for a preference under (b), (d), or (f) of this section, a bidder or
 29 offeror must add value by actually performing, controlling, managing, and supervising
 30 the services provided, or the bidder or offeror must have sold supplies of the general
 31 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) the 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 program purposes;

(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. 12.** AS 36.30.322(a) is amended to read:

(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 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

(1) have been given reasonable notice of the forest product needs of the procurement or project; and

(2) are not the low bidder after all applicable preferences have been applied to the price of the qualifying forest product under AS 36.30.336 [ARE UNABLE TO SUPPLY THE PRODUCTS AT A COST THAT IS WITHIN SEVEN PERCENT OF THE PRICE OFFERED BY A MANUFACTURER OR SUPPLIER OF NON-ALASKA FOREST PRODUCTS].

* **Sec. 13.** AS 36.30.336 is repealed and reenacted to read:

Sec. 36.30.336. Application of preferences. (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. 14.** AS 36.30.990 is amended by adding a new paragraph to read:

(25) "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 subsection.

* **Sec. 15.** AS 36.90.049(a) is amended to read:

(a) A marine vessel owned by the state shall be maintained and repaired at a shipyard facility located in the state unless the commissioner of the department that operates the marine vessel determines in writing that there is no shipyard facility located in the state that is equipped or qualified to perform the particular maintenance or repair required, or, after taking into consideration the **five percent** Alaska bidder preference **for bidders under AS 36.30.321(a)** [SET OUT IN AS 36.30.170] and the interport differential, that the proposed cost of the maintenance or repair work is unreasonable. A detailed list of the costs and factors considered in calculating the interport differential must be provided to each person who expresses an interest in submitting a bid to perform maintenance or repair work on a marine vessel owned by the state.

* **Sec. 16.** AS 38.35.017(a) is amended to read:

(a) Consistent with and in furtherance of the statements of general state policy guiding resource development set out in art. VIII, sec. 1, Constitution of the State of Alaska, that the resources of the state be developed "by making them available for maximum use consistent with the public interest" and in art. VIII, sec. 2, Constitution of the State of Alaska, directing that provision shall be made by the legislature for "the utilization, development, and conservation of all natural resources belonging to the State . . . for the maximum benefit of its people," and consistent with and in furtherance of the general legislative declaration of policy for this chapter set out in AS 38.35.010, it is the policy of this state that the overall strategy for development, use, and control of a pipeline or pipelines to develop the state's substantial North Slope natural gas resources be directed

(1) to enhance the standard of living of state residents by

(A) ensuring that, in conjunction with out-of-state market driven commercial demand for North Slope natural gas, state residents and businesses will have access, directly or indirectly, to that portion of the gas that

1 will meet the reasonably foreseeable in-state demands for it, including
 2 substitution of the North Slope natural gas for depleting gas reserves in
 3 Southcentral Alaska in order to maintain a vital domestic and industrial energy
 4 source, and ensuring that the pipeline or pipelines for the transportation of
 5 North Slope natural gas will be designed and located to be responsive to these
 6 requirements;

7 (B) making the maximum contribution to the development of
 8 job opportunities in this state by

9 (i) providing direct short-term construction and long-
 10 term operation- and maintenance-related employment on the pipeline or
 11 pipelines, to the end that the resources be developed with qualified
 12 contractors and firms in this state for work to be performed, including
 13 the fabrication and installation of required facilities, and that state
 14 residents be employed, consistent with law; for purposes of this sub-
 15 subparagraph, a person is considered a resident if the person is
 16 physically present in the state with the intent to remain in the state
 17 indefinitely and has a home in the state, and a contractor or firm is
 18 considered as qualified if the contractor or firm qualifies as an Alaska
 19 bidder; **in this sub-subparagraph, "Alaska bidder" has the meaning**
 20 **given in AS 36.30.990** [UNDER AS 36.30.170(b)]; and

21 (ii) providing necessary support services; and

22 (C) adding significant long-term property value to the tax base
 23 of the state and local governments, thereby providing the means to support
 24 public education, public health, transportation, and other essential state and
 25 local government projects and services;

26 (2) to ensure that the design, location, and construction of a pipeline or
 27 pipelines for delivery of North Slope natural gas to North American markets through
 28 connection to the North American natural gas pipeline network enhance opportunities
 29 for implementing gas deliveries using alternative technologies and the construction of
 30 other pipelines to deliver North Slope natural gas to foreign and domestic markets; and

31 (3) to ensure construction of the pipeline or pipelines consistent with

careful protection of the state's natural environment, with minimum environmental degradation, to the greatest extent possible, and with protection of fish, wildlife, and biotic resources for the use of persons who depend upon them by using available transportation infrastructure to initiate and complete project construction and maintenance and by avoiding duplication of facilities.

* **Sec. 17.** AS 36.30.175, 36.30.250(b), and 36.30.335 are repealed.

* **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: PENDING SOLICITATIONS FOR PROCUREMENTS AND CONTRACTS. (a) This Act does not apply to

(1) solicitations for procurement and the resulting contracts, if the solicitations are pending on the effective date of this Act and if the invitation to bid or other solicitation was issued before the effective date of this Act; and

(2) procurement contracts entered into before the effective date of this Act, including extensions or amendments of those contracts.

(b) Notwithstanding (a) of this section, this Act applies to procurements or contracts described in (a)(1) of this section if all parties to the procurement or contract agree in writing that the applicable provisions of this Act apply to the solicitation or contract.

* **Sec. 19.** This Act takes effect immediately under AS 01.10.070(c).