

**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

1 Facilities, the Alaska Railroad Corporation shall use competitive sealed bidding or  
2 competitive sealed proposals under AS 36.30.100 - 36.30.270 to procure the supplies,  
3 services, professional services, and construction services necessary for the work and,  
4 to ensure the state obtains the lowest cost for the project, may submit a bid or proposal  
5 for the work.

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

7 (f) The board of directors of the Alaska Housing Finance Corporation,  
8 notwithstanding AS 18.56.088, and the board of directors of the Knik Arm Bridge and  
9 Toll Authority under AS 19.75.111, shall adopt regulations under AS 44.62  
10 (Administrative Procedure Act) and the board of trustees of the Alaska Retirement  
11 Management Board shall adopt regulations under AS 37.10.240 to govern the  
12 procurement of supplies, services, professional services, and construction for the  
13 respective public corporation and board. The regulations must reflect competitive  
14 bidding principles and provide vendors reasonable and equitable opportunities to  
15 participate in the procurement process and must include procurement methods to meet  
16 emergency and extraordinary circumstances. Notwithstanding the other provisions of  
17 this subsection, the Alaska Housing Finance Corporation, the Knik Arm Bridge and  
18 Toll Authority, and the Alaska Retirement Management Board shall comply with **the**  
19 **five percent preference for bidders under AS 36.30.321(a)** [AS 36.30.170(b)].

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

21 (h) The board of directors of the Alaska Seafood Marketing Institute shall  
22 adopt procedures to govern the procurement of supplies, services, and professional  
23 services. The procedures must be similar to the procedures prescribed in this chapter  
24 and in regulations adopted under this chapter, except that the Alaska Seafood  
25 Marketing Institute shall comply with **the five percent preference for bidders under**  
26 **AS 36.30.321(a)** [AS 36.30.170(b)].

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

28 **Sec. 36.30.020. Legislature.** The legislative council shall adopt and publish  
29 procedures to govern the procurement of supplies, services, professional services, and  
30 construction by the legislative branch. The procedures must be based on the  
31 competitive principles consistent with this chapter and must be adapted to the special

1 needs of the legislative branch as determined by the legislative council. The  
2 procedures must contain provisions for prohibiting procurement from a person that has  
3 headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons  
4 Report published by the United States Secretary of State under 22 U.S.C.  
5 7107(b)(1)(C). The procedures may contain provisions for restricting procurement  
6 from a person that conducts business in but does not have headquarters in a country  
7 listed in Tier 3 of the most recent Trafficking in Persons Report published by the  
8 United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). The procedures must  
9 be consistent with the provisions of AS 36.30.080(c) - (e) and 36.30.085.  
10 Notwithstanding the other provisions of this section, the legislative agencies subject to  
11 the legislative council's regulations shall comply with **the five percent preference for**  
12 **bidders under AS 36.30.321(a)** [AS 36.30.170(b)].

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

14 **Sec. 36.30.030. Court system.** The administrative director of courts shall  
15 adopt and publish procedures to govern the procurement of supplies, services,  
16 professional services, and construction by the judicial branch. The procedures must be  
17 based on the competitive principles consistent with this chapter and must be adapted to  
18 the special needs of the judicial branch as determined by the administrative director of  
19 courts. The procedures must contain provisions for prohibiting procurement from a  
20 person that has headquarters in a country listed in Tier 3 of the most recent Trafficking  
21 in Persons Report published by the United States Secretary of State under 22 U.S.C.  
22 7107(b)(1)(C). The procedures may contain provisions for restricting procurement  
23 from a person that conducts business in but does not have headquarters in a country  
24 listed in Tier 3 of the most recent Trafficking in Persons Report published by the  
25 United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). The procedures must  
26 be consistent with the provisions of AS 36.30.080(c) - (e) and 36.30.085.  
27 Notwithstanding the other provisions of this section, the judicial branch shall comply  
28 with **the five percent preference for bidders under AS 36.30.321(a)**  
29 [AS 36.30.170(b)].

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

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

1 that apply under AS 36.15.050 and AS 36.30.321 - 36.30.338, a procurement officer  
 2 shall award a contract based on the solicited bids with reasonable promptness by  
 3 written notice to the lowest responsible and responsive bidder whose bid conforms in  
 4 all material respects to the requirements and criteria set out in the invitation to bid.

5 \* **Sec. 11.** AS 36.30 is amended by adding a new section to article 5 to read:

6 **Sec. 36.30.321. Alaska bidder and related preferences.** (a) If the bidder or  
 7 offeror is an Alaska bidder, a five percent preference shall be applied to the price in  
 8 the bid or proposal.

9 (b) Except as otherwise provided in (d), (e), or (g) of this section, if a bidder  
 10 or offeror qualifies as an Alaska bidder and is offering services through an  
 11 employment program, a 15 percent preference shall be applied to the price in the bid  
 12 or proposal.

13 (c) If a bidder or offeror qualifies as an Alaska bidder and is an Alaska  
 14 domestic insurer, and if the procurement is for an insurance-related contract, a five  
 15 percent preference shall be applied to the price in the bid or proposal.

16 (d) A 10 percent preference shall be applied to a price in a bid or proposal if  
 17 the bidder or offeror qualifies as an Alaska bidder and is a

18 (1) sole proprietorship owned by a person with a disability;

19 (2) partnership under AS 32.06 or AS 32.11 if each of the partners is a  
 20 person with a disability;

21 (3) limited liability company organized under AS 10.50 if each of the  
 22 members is a person with a disability;

23 (4) corporation that is wholly owned by individuals, and each of the  
 24 individuals is a person with a disability; or

25 (5) joint venture that is composed of ventures that qualify under (1) -  
 26 (4) of this subsection.

27 (e) The division of vocational rehabilitation in the Department of Labor and  
 28 Workforce Development shall add to its current list of qualified employment programs  
 29 a list of individuals who qualify as persons with a disability under (d) of this section.  
 30 To qualify for a preference under (d) of this section, a person must be on the list at the  
 31 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.

1 (j) This section does not apply to solicitations or contracts for lease space  
 2 under AS 36.30.080, to procurements under AS 36.30.305 - 36.30.310 or, except as  
 3 provided otherwise by regulation under AS 36.30.320, to small procurements under  
 4 AS 36.30.320.

5 (k) In this section, "person with a disability" means an individual who

6 (1) has been determined to be permanently disabled by the

7 (A) United States Social Security Administration under 42  
 8 U.S.C. 423 or 1381 - 1383f (Social Security Act);

9 (B) the teachers' retirement system under AS 14.25, the judicial  
 10 retirement system under AS 22.25, the public employees' retirement system  
 11 under AS 39.35, or the elected public officers' retirement system under former  
 12 AS 39.37;

13 (C) Federal Civil Service Retirement System under 5 U.S.C.  
 14 2107, 3323, and 8331 - 8351;

15 (D) federal employees' retirement system under 5 U.S.C. 8401  
 16 - 8480; or

17 (E) division of vocational rehabilitation in the Department of  
 18 Labor and Workforce Development using disability standards under 42 U.S.C.  
 19 1381 - 1383f (Social Security Act) for eligibility for certain state disability  
 20 program purposes;

21 (2) is receiving permanent total disability under AS 23.30 (Alaska  
 22 Workers' Compensation Act);

23 (3) has been discharged from military service under honorable  
 24 conditions and is certified by the United States Department of Veterans Affairs as  
 25 having incurred a 50 percent or greater disability during military service; or

26 (4) has served in the Alaska Territorial Guard and incurred a 50  
 27 percent or greater disability while serving in the Alaska Territorial Guard.

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

29 (a) Only timber, lumber, and manufactured lumber products originating in this  
 30 state from Alaska forests may be procured by an agency or used in construction  
 31 projects of an agency unless the manufacturers and suppliers who have notified the

1 commissioner of commerce, community, and economic development of their  
2 willingness to manufacture or supply Alaska forest products

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

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

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

11 **Sec. 36.30.336. Application of preferences.** (a) Except as provided in  
12 AS 36.15.050(h) and AS 36.30.321(g), the preferences provided in AS 36.15.050 and  
13 AS 36.30.321 - 36.30.338 are cumulative. A bidder who would otherwise qualify for  
14 preferences under AS 36.30.321 may not be given a preference over another bidder  
15 who qualifies for the same preferences.

16 (b) Notwithstanding the other provisions of this chapter, AS 36.30.321 -  
17 36.30.338 apply to all procurements subject to this chapter, except as provided in  
18 AS 36.15.050(h) and AS 36.30.322(b).

19 \* **Sec. 14.** AS 36.30.990 is amended by adding a new paragraph to read:

20 (25) "Alaska bidder" means a person who

21 (A) holds a current Alaska business license;

22 (B) submits a bid or proposal for goods, services, or  
23 construction under the name appearing on the person's current Alaska business  
24 license;

25 (C) has maintained a place of business in the state staffed by  
26 the bidder or offeror or an employee of the bidder or offeror for a period of six  
27 months immediately preceding the date of the bid or proposal;

28 (D) is incorporated or qualified to do business under the laws  
29 of the state, is a sole proprietorship and the proprietor is a resident of the state,  
30 is a limited liability company organized under AS 10.50 and all members are  
31 residents of the state, or is a partnership under former AS 32.05, AS 32.06, or

1 AS 32.11 and all partners are residents of the state; and

2 (E) if a joint venture, is composed entirely of ventures that  
3 qualify under (A) - (D) of this subsection.

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

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

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

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

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

29 (A) ensuring that, in conjunction with out-of-state market  
30 driven commercial demand for North Slope natural gas, state residents and  
31 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

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

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

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

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

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

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

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

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