



Alaska State Legislature

Representative Anna Fairclough – House District 17

MEMORANDUM

Date: March 23, 2010

To: Senator Menard Chair

From: Representative Anna Fairclough

Re: HB 225 “An Act relating to the State Procurement Code; relating to the procurement of supplies, services, professional services, construction services, state fisheries products, state agricultural products, state timber, and state lumber; relating to procurement preferences; relating to procurement by the office of the ombudsman, the Alaska Industrial Development and Export Authority, the Alaska Energy Authority, and other state agencies and public corporations; and providing for an effective date.”

I am requesting a hearing for HB 225 “An Act relating to the State Procurement Code; relating to the procurement of supplies, services, professional services, construction services, state fisheries products, state agricultural products, state timber, and state lumber; relating to procurement preferences; relating to procurement by the office of the ombudsman, the Alaska Industrial Development and Export Authority, the Alaska Energy Authority, and other state agencies and public corporations; and providing for an effective date” at your earliest convenience. I have attached relevant materials for your committee.

Thank you in advance for your consideration.

Anna

Attachments:

- I. Sponsor Statement
- II. Section Analysis
- III. CSHB 225(FIN) (Corrected)
- IV. Backup Documentation



Alaska State Legislature

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House Bill 225

Sponsor Statement

"An Act relating to the State Procurement Code..."

House Bill 225 makes numerous changes to the state's procurement code. Collectively, these changes streamline the procurement code to ensure consistent application of the law, and results in a more understandable, efficient procurement process. These changes are needed to prevent failed procurements and provide modern procurement tools and techniques to the State's workforce.

Streamlining is accomplished in part by simplifying the application of our many preferences, which is currently complex and confusing for our employees and vendors. The bill makes application of the preferences uniform – currently, preferences do not contain the same language so they must be applied differently. The bill eliminates the Alaska Offeror's preference and Employers of people with disabilities preference. The Offeror's preference is only contained in regulations, has no basis in statute, and limits competition for our RFPs. The employers of people with disabilities preference is a seldom used preference that is very difficult for the Division of Vocational rehabilitation to administer. As of today there are only two vendors receiving this preference, both of which are in the business of leasing office space to the state. This bill also eliminates bidder preferences for our office lease procurements and contains an Alaska Veteran preference, which mirrors HB 24.

Another problem we have in state procurement is solved by clarifying the Alaska business license requirements. Under the current law, a high percentage of offers on high dollar, complex projects are rejected on a technicality. The bill also modifies protest procedures to reduce frivolous protests, and affords us greater flexibility to renegotiate contracts.

HB 225 modernizes our Procurement Code and provides tools and techniques to our employees that have proven cost effective in the private sector. For example, the bill allows for electronic receipt of bids, and for successive rounds of negotiations which has been a very successful technique in other states and the private sector. The bill also eliminates the requirement to maintain outdated vendor lists in a time when commerce is moving online.

The dollar threshold for informal or small procurements is also increased, which will simplify many purchases that are now procured via time consuming and more complex formal procurement rules.

It has been many years since our procurement code has been modernized. These changes will position us to become more efficient and cost effective in our purchasing and contracting.

I urge your support on this piece of legislation.



Alaska State Legislature

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CSHB 225 (FIN)(Corrected) Sectional Analysis

*** Section 1:** Amends AS 24.55.275

Updates a citation to reflect the renumbering of a preference.

*** Section 2:** Amends AS 36.15.050(a)

Amends the local agricultural preference to grant a seven percent cost preference to the qualifying bid rather than to the low bid, making this preference consistent with other procurement preferences.

*** Section 3:** Amends AS 36.15.050(b)

Amends the local fisheries preference to grant a seven percent cost preference to the qualifying bid rather than to the low bid, making this preference consistent with other procurement preferences.

*** Section 4:** Amends AS 36.15.050 by adding a new subsection (h)

Amends the local agricultural and fisheries preferences to disallow a bidder from being granted both a local agricultural/fisheries preference and an Alaska product preference under another statute.

*** Section 5:** Amends AS 36.30.015(e)

Updates a citation to reflect the renumbering of a preference.

*** Section 6:** Amends AS 36.30.015(f)

Adds the Alaska Industrial Development Authority and the Alaska Energy Authority to a list of agencies exempt from the procurement code and updates a citation to reflect the renumbering of a preference.

*** Section 7:** Amends AS 36.30.015(h)

Updates a citation to reflect the renumbering of a preference.

*** Section 8:** Amends AS 36.30.020

Updates a citation to reflect the renumbering of a preference.

*** Section 9:** Amends AS 36.30.030

Updates a citation to reflect the renumbering of a preference.

*** Section 10:** Amends AS 36.30.080(f)

Increases the threshold limit for small procurements of leased space from 3,000 square feet to 7,000 square feet, consistent with section 24.

*** Section 11:** Amends AS 36.30.110(b)

Clarifies Alaska business license requirements for competitive sealed bids and qualification for the Alaska bidder preference. Change would require bidders to show proof of their Alaska Business License prior to award, but would require the license at the time of bid submission in order to qualify for the Alaska bidder preference.

*** Section 12:** Amends AS 36.30.130(a)

Eliminates reference to a procurement officer's use of vendor lists, reflecting the repeal of the statute establishing the vendor lists.

*** Section 13:** Amends AS 36.30.170

Updates a citation to reflect the renumbering of the Alaska bidder preference.

*** Section 14:** Amends AS 36.30 by adding a new section 36.30.195

Adds a new section to the procurement code that allows for multi-step revised sealed bidding, a new process that will allow a procurement officer to use successive steps of sealed bidding to obtain the best and final bid price for purposes of award. Excludes construction contracts from this provision

*** Section 15:** Amends AS 36.30.200(b)

Minor modification to language regarding construction procurements.

*** Section 16:** Amends AS 36.30.210(b)

Clarifies construction contractor registration requirements, now explicitly requiring registration before award of a contract.

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*** Section 17:** Amends AS 36.30.210(e)

Clarifies Alaska business license requirements for competitive sealed proposals and qualification for the Alaska bidder preference using language consistent with that used in Section 11.

*** Section 18:** Amends AS 36.30 by adding a new section 36.30.245

Adds a new section to the procurement code that allows for multi-step negotiations. This has essentially the same effect as Section 14, but it applies to the competitive sealed proposal process. A procurement officer will be able to gain the best and final proposal for purposes of award through successive steps of negotiation and proposal submission. Excludes construction contracts from this provision

*** Section 19:** Amends AS 36.30.250(a)

Updates a citation to reflect the renumbering of a preference.

*** Section 20:** Amends AS 36.30 by adding a new section 36.30.255

Directs procurement officers to consider only the preferences listed in statute when applying preferences under a competitive sealed proposal process, and instructs them to apply the preferences only to the price portion of a proposal. This effectively eliminates the Alaska offeror's preference contained in regulation at 2 AAC 12.260(e), and which has no basis in statute.

*** Section 21:** Amends AS 36.30 by adding a new section 36.30.290

Adds a new section allowing an agency to accept electronic bids and proposals.

*** Section 22:** Amends AS 36.30.310

Revises the statute relating to emergency procurements, clarifying that the commissioner of administration shall adopt regulations defining emergency conditions and who shall be responsible for written determinations of the basis for an emergency procurement.

*** Section 23:** Amends AS 36.30.320(a)

Increases the threshold under which a state agency may use informal procurement process to \$100,000 for goods and professional services, to \$200,000 for construction, and 7,000 square feet for lease of space.

*** Section 24:** Amends AS 36.30 by adding a new section 36.30.321

Adds a new section consolidating the Alaska bidder and related preferences formerly at AS 36.30.170(b). This section also simplifies the qualification for the disability and employment program preferences, eliminates the seldom used employers of people with disabilities preference, and establishes the Alaska veteran preference and its qualifications.

*** Section 25:** Amends AS 36.30.322(a)

Modifies the use of local forest products statute to grant a seven percent cost preference to the qualifying bid rather than to the low bid, making this preference consistent with other preferences.

*** Section 26:** Amends AS 36.30.336 by repealing and reenacting

Clarifies which preferences are cumulative and which may not be combined. (example: bidders cannot claim both an employment program preference and disabled bidder preference)

*** Section 27:** Amends AS 36.30 by adding a new section 36.30.364

Adds a new section allowing the chief procurement officer to renegotiate a contract without an additional competitive process, subject to several conditions ensuring that the renegotiated contract is at least as favorable to the state as the original contract and that the additional period of performance does not exceed five years.

*** Section 28:** Amends AS 36.30.560

Clarifies the timeframe within which a protest must be filed.

*** Section 29:** Amends AS 36.30.565(b)

Clarifies the meaning of “good cause” requiring that a protestor show why they could not file a protest before the deadline, allowing a procurement officer to better determine whether to consider a filed protest that is not timely.

*** Section 30:** Amends AS 36.30 by adding a new section 36.30.567

Adds new sections relating to protests, requiring a protest filing to be accompanied by a refundable \$250 filing fee.

*** Section 31:** Amends AS 36.30 by adding a new section 36.30.572

Adds a new section to allow a procurement officer to temporarily delay award of a contract in order to address a protest, rather than issue a stay of award.

*** Section 32:** Amends AS 36.30.655

Eliminates reference to the removal of debarred or suspended persons from vendor lists, reflecting the repeal of a law establishing the vendor lists.

*** Section 33:** Amends AS 36.30.700

Adds language to the cooperative purchasing section that allows the state to more effectively use contracts established by other public procurement units.

*** Section 34:** Amends AS 36.30.700 by adding a new subsection (b)

Adds a new section explicitly authorizing the state to participate in cooperative procurements with other governments and waiving procurement preferences that otherwise prevent other public purchasing units from participating in cooperative purchase agreements sponsored or conducted by the state.

*** Section 35:** Amends AS 36.30.850(b) by adding new paragraphs

Adds new exemptions for; contracts for lease space located outside the state; for contracts for investigative services entered into by the department for the Alaska personnel board, the office of public advocacy, and the Alaska Public Offices Commission; for commodities used in the prisoner employment program; and for professional training.

*** Section 36:** Amends AS 36.30.900(1)

Adds the exemption for the Alaska Industrial Development and Export Authority and the Alaska Energy Authority.

*** Section 37:** Amends AS 36.30.900 by adding new paragraphs

Moves the definition for “Alaska bidder” (formerly contained in 36.30.170(b)), and adds new definitions for “electronic signature,” “in writing,” “signature,” and “written.”

*** Section 38:** Amends AS 36.90.049(a)

Updates a citation to reflect the renumbering of a preference.

*** Section 39:** Amends AS 38.35.017(a)

Updates a citation to reflect the renumbering of a preference.

*** Section 40:** Amends AS 44.62.310(d)

Adds language to clarify that the Administrative Procedure Act does not apply to meetings with offerors under the multi-step negotiation process contained in section 18 or to renegotiation of contracts in section 28.

*** Section 41:** Amends AS 44.88.085(a)

Technical change regarding application of the Administrative Procedure Act to AIDEA.

*** Section 42:** Repeals statutes establishing the vendor list and relationships to other preferences.

*** Section 43:** Amends the uncodified law of the State of Alaska

Clarifies the application of the procurement act to pending solicitations during transition period.

*** Section 44:** Amends the uncodified law of the State of Alaska

Adds in transition language stating that the Dept. of Administration shall include in the two successive biennial reports after the effective date of this Act information on the savings that have been achieved by Sections 14 and 28 of this Act.

*** Section 45:** Amends the uncodified law of the State of Alaska

Changes the catch line of 36.30.360 from “Determination of responsibility” to Determination of nonresponsibility.”

*** Section 46:** Effective Date

Language making the procurement act effective immediately.

CS FOR HOUSE BILL NO. 225(FIN)(Corrected)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 3/22/10

Referred: Today's Calendar

Sponsor(s): REPRESENTATIVE FAIRCLOUGH

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the State Procurement Code; relating to the procurement of
2 supplies, services, professional services, construction services, state fisheries products,
3 state agricultural products, state timber, and state lumber; relating to procurement
4 preferences; relating to procurement by the office of the ombudsman, the Alaska
5 Industrial Development and Export Authority, the Alaska Energy Authority, and other
6 state agencies and public corporations; and providing for an effective date."

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

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

9 **Sec. 24.55.275. Contract procedures.** The ombudsman shall adopt by
10 regulation procedures consistent with AS 36.30 to be followed by the office of the
11 ombudsman in contracting for services. However, the procedure for requests for
12 proposals does not apply to contracts for investigations under AS 24.55.100, and the
13 office of the ombudsman shall comply with the five percent preference for bidders

1 under AS 36.30.321(a) [AS 36.30.170(b)].

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

3 (a) When agricultural products are purchased by the state or by a school
4 district that receives state money, a seven percent preference shall be applied to the
5 price of the products harvested in the state [ONLY AGRICULTURAL
6 PRODUCTS HARVESTED IN THE STATE SHALL BE PURCHASED
7 WHENEVER PRICED NO MORE THAN SEVEN PERCENT ABOVE PRODUCTS
8 HARVESTED OUTSIDE THE STATE, AVAILABLE, AND OF LIKE QUALITY
9 COMPARED WITH AGRICULTURAL PRODUCTS HARVESTED OUTSIDE
10 THE STATE].

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

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

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

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

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

26 (e) The board of directors of the Alaska Railroad Corporation and the board of
27 directors of the Alaska Aerospace Corporation shall adopt procedures to govern the
28 procurement of supplies, services, professional services, and construction. The
29 procedures must be substantially equivalent to the procedures prescribed in this
30 chapter and in regulations adopted under this chapter. Notwithstanding the other
31 provisions of this subsection, the Alaska Railroad Corporation and the Alaska

Aerospace Corporation shall **apply the five percent preference for bidders under AS 36.30.321(a)** [COMPLY WITH AS 36.30.170(b)], 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.

* **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, **members of the Alaska Industrial Development and Export Authority**, [AND] the board of directors of the Knik Arm Bridge and Toll Authority under AS 19.75.111, **and the board of directors of the Alaska Energy Authority under AS 44.83.080** 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 Alaska Industrial Development and Export Authority**, the Knik Arm Bridge and Toll Authority, **the Alaska Energy 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

1 and in regulations adopted under this chapter, except that the Alaska Seafood
 2 Marketing Institute shall comply with **the five percent preference for bidders under**
 3 **AS 36.30.321(a)** [AS 36.30.170(b)].

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

5 **Sec. 36.30.020. Legislature.** The legislative council shall adopt and publish
 6 procedures to govern the procurement of supplies, services, professional services, and
 7 construction by the legislative branch. The procedures must be based on the
 8 competitive principles consistent with this chapter and must be adapted to the special
 9 needs of the legislative branch as determined by the legislative council. The
 10 procedures must contain provisions for prohibiting procurement from a person that has
 11 headquarters in a country listed in Tier 3 of the most recent Trafficking in Persons
 12 Report published by the United States Secretary of State under 22 U.S.C.
 13 7107(b)(1)(C). The procedures may contain provisions for restricting procurement
 14 from a person that conducts business in but does not have headquarters in a country
 15 listed in Tier 3 of the most recent Trafficking in Persons Report published by the
 16 United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). The procedures must
 17 be consistent with the provisions of AS 36.30.080(c) - (e) and 36.30.085.
 18 Notwithstanding the other provisions of this section, the legislative agencies subject to
 19 the legislative council's regulations shall comply with **the five percent preference for**
 20 **bidders under AS 36.30.321(a)** [AS 36.30.170(b)].

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

22 **Sec. 36.30.030. Court system.** The administrative director of courts shall
 23 adopt and publish procedures to govern the procurement of supplies, services,
 24 professional services, and construction by the judicial branch. The procedures must be
 25 based on the competitive principles consistent with this chapter and must be adapted to
 26 the special needs of the judicial branch as determined by the administrative director of
 27 courts. The procedures must contain provisions for prohibiting procurement from a
 28 person that has headquarters in a country listed in Tier 3 of the most recent Trafficking
 29 in Persons Report published by the United States Secretary of State under 22 U.S.C.
 30 7107(b)(1)(C). The procedures may contain provisions for restricting procurement
 31 from a person that conducts business in but does not have headquarters in a country

1 listed in Tier 3 of the most recent Trafficking in Persons Report published by the
 2 United States Secretary of State under 22 U.S.C. 7107(b)(1)(C). The procedures must
 3 be consistent with the provisions of AS 36.30.080(c) - (e) and 36.30.085.
 4 Notwithstanding the other provisions of this section, the judicial branch shall comply
 5 with the five percent preference for bidders under AS 36.30.321(a)
 6 [AS 36.30.170(b)].

7 * **Sec. 10.** AS 36.30.080(f) is amended to read:

8 (f) When the department is acquiring leased space of 7,000 [3,000] square feet
 9 or less, the department may procure the leased space using the procedures for small
 10 procurements under AS 36.30.320, providing public notice is given to prospective
 11 offerors in the market area.

12 * **Sec. 11.** AS 36.30.110(b) is amended to read:

13 (b) The bidder shall [MUST] have a valid Alaska business license at the time
 14 designated in the invitation to bid for bid opening in order to qualify as an Alaska
 15 bidder and to receive a preference under AS 36.30.321. If a bidder does not have
 16 a valid Alaska business license at the time designated in the invitation to bid for
 17 bid opening, the bidder shall provide proof that the bidder has a valid Alaska
 18 business license before the contract may be awarded, but does not qualify for a
 19 preference under AS 36.30.321. A bidder for a construction contract shall also
 20 submit proof [EVIDENCE] of the bidder's registration under AS 08.18 before the
 21 contract may be awarded.

22 * **Sec. 12.** AS 36.30.130(a) is amended to read:

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

31 (1) publication in a newspaper calculated to reach prospective bidders;

1 and

2 (2) notices posted in public places within the area where the work is to
3 be performed or the material furnished [; AND

4 (3) NOTICES MAILED TO ALL ACTIVE PROSPECTIVE
5 CONTRACTORS ON THE APPROPRIATE LIST MAINTAINED UNDER
6 AS 36.30.050].

7 * **Sec. 13.** AS 36.30.170 is repealed and reenacted to read:

8 **Sec. 36.30.170. Contract award after bids.** After applying any preferences
9 that apply under AS 36.15.050 and AS 36.30.321 - 36.30.338, a procurement officer
10 shall award a contract based on the solicited bids with reasonable promptness by
11 written notice to the lowest responsible and responsive bidder whose bid conforms in
12 all material respects to the requirements and criteria set out in the invitation to bid.

13 * **Sec. 14.** AS 36.30 is amended by adding a new section to article 2 to read:

14 **Sec. 36.30.195. Multi-step revised sealed bidding.** (a) As provided in an
15 invitation to bid and as conducted by a procurement officer under regulations adopted
16 by the commissioner, a multi-step process that begins with an initial round of
17 competitive sealed bidding may, when approved by the chief procurement officer,
18 include successive steps of sealed bidding to obtain the best and final bid price from
19 responsible bidders for the purpose of award.

20 (b) The provisions of (a) of this section do not apply to a procurement for a
21 construction contract.

22 * **Sec. 15.** AS 36.30.200(b) is amended to read:

23 (b) The commissioner may provide by regulation that it is either not
24 practicable or not advantageous to the state to procure [SPECIFIED TYPES OF]
25 supplies, services, or construction by competitive sealed bidding that would otherwise
26 be procured by that method. When the procurement officer determines in writing with
27 particularity that the use of competitive sealed proposals is more advantageous to the
28 state than competitive sealed bidding, a contract may be entered into by competitive
29 sealed proposals.

30 * **Sec. 16.** AS 36.30.210(b) is amended to read:

31 (b) An offeror for a construction contract shall submit **proof** [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, no 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.

* **Sec. 17.** AS 36.30.210(e) is amended to read:

(e) The offeror **shall** [MUST] have a valid Alaska business license at the time designated[,] in the request for proposals[,] for opening of the proposals **in order to qualify as an Alaska bidder and to receive a preference under AS 36.30.321. If an offeror does not have a valid Alaska business license at the time designated in the request for proposals for proposal opening, the offeror shall provide proof that the offeror has a valid Alaska business license before the contract may be awarded, but does not qualify for a preference under AS 36.30.321.**

* **Sec. 18.** AS 36.30 is amended by adding a new section to read:

Sec. 36.30.245. Multiple submissions and negotiations. (a) In a procurement that uses competitive sealed proposals, in order to obtain the best proposal for purposes of award, an agency may require more than one submission of proposals and may negotiate after each submission with the offerors whose proposals from that submission are reasonably susceptible of being selected for award. The negotiations conducted under this section may cover price, specifications, terms, or conditions or a combination of these items, and these items may be negotiated separately or in any combination. The submissions and negotiations allowed under this section are in addition to any discussions and revisions allowed under AS 36.30.240. The requirements for submissions and negotiations under this section shall be established by the department by regulation and in the request for proposals.

(b) The provisions of (a) of this section do not apply to a procurement for a construction contract.

1 * **Sec. 19.** AS 36.30.250(a) is amended to read:

2 (a) The procurement officer shall award a contract under competitive sealed
3 proposals to the responsible and responsive offeror whose proposal is determined in
4 writing to be the most advantageous to the state taking into consideration price and the
5 evaluation factors set out in the request for proposals. **Except as provided by**
6 **AS 36.30.255 and 36.30.336, other** [OTHER] factors and criteria may not be used in
7 the evaluation. The contract file must contain the basis on which the award is made.

8 * **Sec. 20.** AS 36.30 is amended by adding a new section to read:

9 **Sec. 36.30.255. Preferences applied to competitive sealed proposals.** When
10 determining which proposal is most advantageous to the state under a competitive
11 sealed proposal solicitation, the procurement officer shall apply the preferences
12 provided in AS 36.15.050 and AS 36.30.321 - 36.30.338, but may not apply other
13 preferences. The preferences shall be applied only to the price portion of a proposal.

14 * **Sec. 21.** AS 36.30 is amended by adding a new section to article 4 to read:

15 **Sec. 36.30.290. Electronic bids.** An agency may allow bids or proposals to be
16 submitted in electronic form under AS 09.80.010 - 09.80.195 (Uniform Electronic
17 Transactions Act).

18 * **Sec. 22.** AS 36.30.310 is amended to read:

19 **Sec. 36.30.310. Emergency procurements.** Procurements may be made under
20 emergency conditions as defined in regulations adopted by the commissioner **of**
21 **administration** when there exists a threat to public health, welfare, or safety, when a
22 situation exists that makes a procurement through competitive sealed bidding or
23 competitive sealed proposals impracticable or contrary to the public interest, or to
24 protect public or private property. An emergency procurement need not be made
25 through competitive sealed bidding or competitive sealed proposals but shall be made
26 with competition that is practicable under the circumstances. A written determination
27 by the chief procurement officer **or, for construction contracts or procurements of**
28 **the state equipment fleet, the commissioner of transportation and public facilities**
29 of the basis for the emergency and for the selection of the particular contractor shall be
30 included in the contract file. The written determination must include findings of fact
31 that support the determination. Except when there is insufficient time for the chief

procurement officer or the commissioner of transportation and public facilities, as appropriate, to make the written determination required by this section, the authority to make the determination [CHIEF PROCUREMENT OFFICER] may not be delegated [DELEGATE THE AUTHORITY TO MAKE THE DETERMINATION].

* **Sec. 23.** AS 36.30.320(a) is amended to read:

(a) A procurement for supplies, services, or professional services that does not exceed an aggregate dollar amount of \$100,000 [\$50,000], construction that does not exceed an aggregate dollar amount of \$200,000 [\$100,000], or lease of space that does not exceed 7,000 [3,000] square feet shall [MAY] be made under [IN ACCORDANCE WITH] regulations adopted by the commissioner for small procurements.

* **Sec. 24.** 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 preference of five percent shall be applied to the price in the bid or proposal.

(b) Except as otherwise provided under (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

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

3 (e) The division of vocational rehabilitation in the Department of Labor and
4 Workforce Development shall add to its current list of qualified employment programs
5 a list of individuals who qualify as persons with a disability under (d) of this section.
6 A person must be on this list at the time the bid or proposal is opened in order to
7 qualify for a preference under (d) of this section.

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

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

13 (2) "qualifying entity" means a

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

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

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

19 (D) corporation that is wholly owned by individuals and a
20 majority of the individuals are Alaska veterans;

21 (3) "veteran" means an individual who

22 (A) served in the

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

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

27 (B) was separated from service under a condition that was not
28 dishonorable.

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

31 (h) Except as provided by (j) of this section, this section applies to all

1 insurance contracts involving state money. In this subsection, "state money" has the
 2 meaning given in AS 36.30.990, but also includes state grants and reimbursements to
 3 municipalities, school districts, and other entities.

4 (i) In order to qualify for a preference under (b), (d), or (f) of this section, a
 5 bidder or offeror must add value by actually performing, controlling, managing, and
 6 supervising the services provided, or the bidder or offeror must have sold supplies of
 7 the general nature solicited to other state agencies, governments, or the general public.

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

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

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

14 (A) United States Social Security Administration under 42
 15 U.S.C. 1381 - 1385 (Social Security Act) or 42 U.S.C. 423 (Social Security
 16 Act);

17 (B) the teachers' retirement system under AS 14.25, the judicial
 18 retirement system under AS 22.25, the public employees' retirement system
 19 under AS 39.35, or the elected public officers' retirement system under former
 20 AS 39.37;

21 (C) federal civil service retirement system under 5 U.S.C.
 22 2107, 3323, and 8331 - 8351;

23 (D) federal employees' retirement system under 5 U.S.C. 8401
 24 - 8479; or

25 (E) division of vocational rehabilitation in the Department of
 26 Labor and Workforce Development using disability standards under 42 U.S.C.
 27 1381 - 1385 (Social Security Act) for eligibility for certain state disability
 28 program purposes;

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

31 (3) has been discharged from military service under honorable

1 conditions and is certified by the United States Department of Veterans Affairs as
 2 having incurred a 50 percent or greater disability during military service; or

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

5 * **Sec. 25.** AS 36.30.322(a) is amended to read:

6 (a) Only timber, lumber, and manufactured lumber products originating in this
 7 state from Alaska forests may be procured by an agency or used in construction
 8 projects of an agency unless the manufacturers and suppliers who have notified the
 9 commissioner of commerce, community, and economic development of their
 10 willingness to manufacture or supply Alaska forest products

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

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

18 * **Sec. 26.** AS 36.30.336 is repealed and reenacted to read:

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

24 (b) Notwithstanding the other provisions of this chapter, AS 36.30.321 -
 25 36.30.338 apply to all procurements subject to this chapter, except as provided in
 26 AS 36.15.050 and AS 36.30.322(b).

27 * **Sec. 27.** AS 36.30 is amended by adding a new section to read:

28 **Sec. 36.30.364. Renegotiation.** (a) The chief procurement officer may
 29 renegotiate the terms and conditions, including the contract period of performance and
 30 price, of a contract without using an additional competitive process, and may amend
 31 the contract if the procurement officer determines that

(1) the amendment is in the best interest of the state;

(2) the renegotiated contract is at least as favorable to the state as the original contract; and

(3) the additional period of performance of the renegotiated contract does not exceed five years, or, if an innovative procurement process under AS 36.30.308 was used to procure the original contract, does not exceed the approval under AS 36.30.308(b).

(b) The chief procurement officer, under regulations adopted by the commissioner, may delegate the authority to make the determination under (a) of this section to a state procurement officer.

(c) This section does not apply to lease extensions under AS 36.30.083.

* **Sec. 28.** AS 36.30.560 is amended to read:

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 within the time period provided in AS 36.30.565, 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; and

(6) the protest filing fee required under AS 36.30.567.

* **Sec. 29.** AS 36.30.565(b) is amended to read:

(b) If the protester shows good cause why the protestor did not file a protest by the deadline established under (a) of this section, the procurement officer of the contracting agency may consider a filed protest that is not timely.

* **Sec. 30.** AS 36.30 is amended by adding a new section to read:

Sec. 36.30.567. Protest filing fee. To file a protest under AS 36.30.560, the

1 protester shall pay a \$250 filing fee to the agency that conducted the procurement. The
 2 filing fee shall be refunded if the protest is sustained by the procurement officer under
 3 AS 36.30.585 or if the protest is withdrawn by the protester before an appeal is filed
 4 under AS 36.30.590.

5 * **Sec. 31.** AS 36.30 is amended by adding a new section to read:

6 **Sec. 36.30.572. Temporary delay of award.** (a) If a protest of a proposed
 7 award of a contract is filed timely under AS 36.30.565, the procurement officer may
 8 temporarily delay the award of the contract in order to make a decision under
 9 AS 36.30.580, extend the time for making the decision under AS 36.30.580, or address
 10 other circumstances that warrant temporarily delaying the award.

11 (b) Notice of a temporary delay of a contract award under (a) of this section
 12 shall be provided in writing to the protester and all other interested parties. The written
 13 notice must indicate when the temporary delay of the award will expire.

14 (c) A temporary delay of a contract award under this section does not
 15 constitute a stay of award under AS 36.30.575.

16 * **Sec. 32.** AS 36.30.655 is amended to read:

17 **Sec. 36.30.655. List of persons debarred or suspended; removal from**
 18 **contractor lists.** The commissioner shall maintain a list of all persons debarred or
 19 suspended from consideration for the award of contracts. [THE COMMISSIONER
 20 SHALL REMOVE A PERSON DEBARRED OR SUSPENDED FROM THE LISTS
 21 OF CONTRACTORS UNDER AS 36.30.050 FOR THE PERIOD OF DEBARMENT
 22 OR SUSPENSION.]

23 * **Sec. 33.** AS 36.30.700 is amended to read:

24 **Sec. 36.30.700. Cooperative purchasing authorized.** A public procurement
 25 unit may [EITHER] participate in, sponsor, conduct, or administer a cooperative
 26 purchasing agreement for the procurement of supplies, services, professional services,
 27 or construction with one or more public procurement units or external procurement
 28 activities in accordance with an agreement entered into between the participants.
 29 Cooperative purchasing may include joint or multi-party contracts between public
 30 procurement units and open-ended state public procurement units contracts that are
 31 made available to local public procurement units. A state public procurement unit

1 may use or participate in a contract procured by another public procurement
 2 unit or external procurement activity without being named in the solicitation for
 3 the contract.

4 * **Sec. 34.** AS 36.30.700 is amended by adding a new subsection to read:

5 (b) When, under AS 36.30.700 - 36.30.790, a state public procurement unit
 6 participates with a public procurement unit or external procurement activity in
 7 cooperative purchasing or participates in a contract procured by an external
 8 procurement activity, the state public procurement unit is considered to have complied
 9 with AS 36.30.005 - 36.30.540, and AS 36.15 and AS 36.30.321 - 36.30.338 do not
 10 apply.

11 * **Sec. 35.** AS 36.30.850(b) is amended by adding new paragraphs to read:

12 (48) contracts for lease space for an agency's offices that are located in
 13 other states, the District of Columbia, or foreign countries;

14 (49) contracts for investigative services entered into by the department
 15 for the state personnel board established under AS 39.25.030, the office of public
 16 advocacy created under AS 44.21.400, or the Alaska Public Offices Commission
 17 created under AS 15.13.020;

18 (50) purchases of commodities used in the manufacture of products
 19 sold through an employment program of prison inmates subject to AS 23.15.580;

20 (51) contracts for training services provided by a professional
 21 organization.

22 * **Sec. 36.** AS 36.30.990(1) is amended to read:

23 (1) "agency"

24 (A) means a department, institution, board, commission,
 25 division, authority, public corporation, the Alaska Pioneers' Home, the Alaska
 26 Veterans' Home, or other administrative unit of the executive branch of state
 27 government;

28 (B) does not include

29 (i) the University of Alaska;

30 (ii) the Alaska Railroad Corporation;

31 (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 Corporation;

(vii) the Alaska Retirement Management Board;

(viii) the Alaska Seafood Marketing Institute;

(ix) the Alaska Industrial Development and Export

Authority:

(x) the Alaska Energy Authority;

* **Sec. 37.** AS 36.30.990 is amended by adding new paragraphs 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 as appearing on the person's current Alaska business license;

(C) has maintained a place of business within 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;

(26) "in writing" has the meaning given to "written" in this section;

(27) "signature" means a manual identifier or electronic signature

1 attached to or logically associated with a record that is intended by the person using it
 2 to have the same force and effect as a manual signature; in this paragraph, "electronic
 3 signature" has the meaning given in AS 09.80.190;

4 (28) "written" means the product of forming characters on paper, other
 5 materials, or viewable screens, that can be read, retrieved, and reproduced, including
 6 information that is electronically transmitted and stored.

7 * **Sec. 38.** AS 36.90.049(a) is amended to read:

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

19 * **Sec. 39.** AS 38.35.017(a) is amended to read:

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

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

1 (A) ensuring that, in conjunction with out-of-state market
 2 driven commercial demand for North Slope natural gas, state residents and
 3 businesses will have access, directly or indirectly, to that portion of the gas that
 4 will meet the reasonably foreseeable in-state demands for it, including
 5 substitution of the North Slope natural gas for depleting gas reserves in
 6 Southcentral Alaska in order to maintain a vital domestic and industrial energy
 7 source, and ensuring that the pipeline or pipelines for the transportation of
 8 North Slope natural gas will be designed and located to be responsive to these
 9 requirements;

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

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

24 (ii) providing necessary support services; and

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

29 (2) to ensure that the design, location, and construction of a pipeline or
 30 pipelines for delivery of North Slope natural gas to North American markets through
 31 connection to the North American natural gas pipeline network enhance opportunities

1 for implementing gas deliveries using alternative technologies and the construction of
 2 other pipelines to deliver North Slope natural gas to foreign and domestic markets; and

3 (3) to ensure construction of the pipeline or pipelines consistent with
 4 careful protection of the state's natural environment, with minimum environmental
 5 degradation, to the greatest extent possible, and with protection of fish, wildlife, and
 6 biotic resources for the use of persons who depend upon them by using available
 7 transportation infrastructure to initiate and complete project construction and
 8 maintenance and by avoiding duplication of facilities.

9 * **Sec. 40.** AS 44.62.310(d) is amended to read:

10 (d) This section does not apply to

11 (1) a governmental body performing a judicial or quasi-judicial
 12 function when holding a meeting solely to make a decision in an adjudicatory
 13 proceeding;

14 (2) juries;

15 (3) parole or pardon boards;

16 (4) meetings of a hospital medical staff;

17 (5) meetings of the governmental body or any committee of a hospital
 18 when holding a meeting solely to act upon matters of professional qualifications,
 19 privileges, or discipline;

20 (6) staff meetings or other gatherings of the employees of a public
 21 entity, including meetings of an employee group established by policy of the Board of
 22 Regents of the University of Alaska or held while acting in an advisory capacity to the
 23 Board of Regents;

24 (7) meetings held for the purpose of participating in or attending a
 25 gathering of a national, state, or regional organization of which the public entity,
 26 governmental body, or member of the governmental body is a member, but only if no
 27 action is taken and no business of the governmental body is conducted at the meetings;
 28 [OR]

29 (8) meetings of municipal service area boards established under
 30 AS 29.35.450 - 29.35.490 when meeting solely to act on matters that are
 31 administrative or managerial in nature; or

(9) meetings with offerors in negotiations for state procurement under AS 36.30.245, or meetings to renegotiate a contract under AS 36.30.364.

* **Sec. 41.** AS 44.88.085(a) is amended to read:

(a) Except for AS 44.62.310 and 44.62.312 regarding public meetings **and AS 36.30.015(f) regarding procurement**, the provisions of the Administrative Procedure Act regarding the adoption of regulations (AS 44.62.040 - 44.62.320) do not apply to the authority. The authority shall make available to members of the public copies of the regulations adopted under this section. Within 45 days after adoption of a regulation under this section, the **chair** [CHAIRMAN] of the authority shall submit the regulation adopted to the **chair** [CHAIRMAN] of the Administrative Regulation Review Committee under AS 24.20.400 - 24.20.460.

* **Sec. 42.** AS 36.30.050, 36.30.250(b), 36.30.335, 36.30.362, 36.30.850(b)(22), and 36.30.850(b)(34) are repealed.

* **Sec. 43.** The uncoded 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 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. 44.** The uncoded law of the State of Alaska is amended by adding a new section to read:

TRANSITION: INFORMATION IN BIENNIAL REPORTS. In addition to the information that must be included in the biennial report under AS 36.30.540, the Department of Administration shall include in the two successive biennial reports that are prepared under AS 36.30.540 after the effective date of this Act information on the savings that have been

1 achieved during the reporting period by using AS 36.30.195, enacted by sec. 14 of this Act,
2 and AS 36.30.364, enacted by sec. 27 of this Act.

3 * **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 REVISOR'S INSTRUCTION. The revisor of statutes shall change the catch line of
6 AS 36.30.360 from "Determination of responsibility" to "Determination of nonresponsibility."

7 * **Sec. 46.** This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: HB225-DOC-OC-02-08-10
 Bill Version: _____
 () Publish Date: _____

Identifier (file name): HB225-DOC-OC-02-08-10

Dept. Affected: DOC

Title "Act relating to State Procurement Code; procurement of supplies
services, professional services, construction services, and preferences"

RDU Administration & Support

Sponsor Representative Fairclough

Component Commissioner's Office

Requester Governor

Component Number 694

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()							
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This legislation provides language revisions that offer clarification or flexibility in handling certain procurement situations.

Passage of this legislation should have no financial impact to the Department of Corrections.

Prepared by: Leslie Houston, Director

Phone (907) 465-3339

Division Administration and Support

Date/Time 02/08/2010 0950

Approved by: Dwayne Peeples, Deputy Commissioner

Date 02/08//2010

Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:

Bill Version:

() Publish Date:

Identifier (file name): HB225CS-DOA-DGS-03-09-10

Dept. Affected: DOA

Title	"An Act relating to the State Procurement Code..."
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RDU Centralized Administrative Services

Component	Purchasing
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Sponsor	Representative Fairclough
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Requester (H)FIN

Component Number 60

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

[illegible]

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()							
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FUND SOURCE

(Thousands of Dollars)

	(Thousands of Dollars)						
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This legislation makes numerous changes to the state's procurement code. Collectively, these changes streamline the procurement code to ensure consistent application of the law, and result in a more understandable, efficient process. It has been many years since our procurement code has been modernized. These changes will help reduce the number of failed procurements, simplify confusing and burdensome requirements, and allow for modern procurement techniques.

Prepared by: Vern Jones, Chief Procurement Officer

Division Division of General Services

Phone 907-465-2250

Date/Time 3/9/10 10:30AM

Approved by Kevin Brooks, Deputy Commissioner

Department of Administration

Date 3/9/2010



At-a-Glance Preferences for State of Alaska Contracts

Except when restricted by Federal regulations, certain preferences apply to all State of Alaska contracts for professional services, regardless of their dollar value. **The Alaskan Bidder/Offeror preferences** are the two most common preferences involved in the State of Alaska procurement process.

ALASKAN BIDDER'S PREFERENCE AS 36.30.170(B)

A contract award is made to the lowest responsive and responsible bidder after applying the 5% bidders preference.

An "Alaska bidder" means a bidder/offeror who:

- holds a current Alaska business license;
- submits a bid for supplies, services, or construction under the name appearing on the person's current Alaska business license;
- has maintained a place of business within the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the bid date;
- 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 AS 32.05 or AS 32.11 and all partners are residents of the state; and
- if a joint venture, is composed entirely of ventures that qualify under (1) -- (4) of this subsection.

ALASKA OFFEROR'S PREFERENCE (2 AAC 12.260E)

In some circumstances, supplies and services are obtained through the use of a Request for Proposals (RFP). Responses to those RFPs are evaluated using a numerical rating system that considers factors in addition to cost. When a numerical rating system is used, vendors that qualify for the Alaska bidder preference will receive a 10% evaluation point preference (10% of the total available points).

NOTE: The application of all preferences are for evaluation purposes only. The vendor is still paid the full price identified in their bid/offer for the goods or services rendered.

Additional preferences are listed on the back of this page, with excerpts from the relevant statutes and codes.

For additional information, contact the department that manages the particular preference program, or the Department of Administration, Division of General Services, PO Box 110210, Juneau, AK 99811-0210 Phone: (907) 465-2250, Fax: 465-2189 TDD: (907) 465-2205. Or download the booklet: *How to do Business with the State of Alaska* at <http://www.state.ak.us/local/akpages/ADMIN/dgs/pdf/htdbws.pdf>

PREFERENCE	HOW PREFERENCE IS APPLIED	TERMS
USE OF LOCAL FOREST PRODUCTS AS 36.15.010	In a project financed by State money...	...only timber, lumber, and manufactured lumber products originating in this state shall be used, unless impractical.
LOCAL AGRICULTURAL AND FISHERIES PRODUCTS PREFERENCE AS 36.15.050	When agricultural products are purchased using State money...	...only those products harvested or processed within the jurisdiction of Alaska, will be purchased, provided they are available, of comparable quality, and priced no more than seven percent (7%) higher than products harvested outside the state, or in the case of fisheries products harvested or processed of the state, in accordance with AS 36.15.050. NOTE: "Agricultural products" includes dairy products, timber and lumber, and products manufactured in the state from timber and lumber.
ALASKA PRODUCT PREFERENCE AS 36.30.332 3 AAC 92.010	A bidder with materials and supplies: Class I , 25% - 50% produced/manufactured in state, receives 3% bid preference; Class II , 50% - 75% produced/manufactured in state, receives 5% bid preference; Class III , 75% plus, produced/manufactured in state, receives 7% bid preference.	The company and the product must be on the Alaska Product Preference list published by the Department of Commerce, Community and Economic Development at least 30 days prior the issuing date of the solicitation. http://www.commerce.state.ak.us/oed/prodpref/pppcompany.cfm To apply for certification to get on the list: Department of Commerce, Community and Economic Development 550 West 7th Street, Suite 1770, Anchorage, AK 99503 Phone: (907) 269-8110, Fax: (907) 269-8125
RECYCLED PRODUCTS PREFERENCE (AS 36.30.337)	Bids or offers that include the use of recycled products that meet specs in solicitation and minimum recycled content set by the State, receive a 5% cost evaluation preference.	Recycled products must meet the eligibility criteria set by the State for the product at the time of the bid opening or proposal deadline.
EMPLOYMENT PROGRAM PREFERENCE AS 36.30.170(c) 2 AAC 12.050. AS 36.30.990(10)	<u>Preferred Alaskan Bidder</u> offers goods/services through employment program, and is lowest responsive and responsible bidder with a bid no higher than 15% above lowest bid	The Department of Labor & Workforce Development, Division of Vocational Rehabilitation maintains a listing of vendors who qualify for the three disability related preferences. For disability preference certification, please contact: Department of Labor & Workforce Development Division of Vocational Rehabilitation 801 West 10th Street, Suite A, Juneau, Alaska 99801-1894 Phone: (907) 465-2814, Fax: (907) 465-2856 http://www.labor.state.ak.us/dvr/home.htm
ALASKANS WITH DISABILITIES PREFERENCE AS 36.30.170(e)(j)	<u>Preferred Alaskan Bidder</u> is a qualifying entity under AS 36.30.170(e) and (j); is lowest responsive and responsible bidder with bid no higher than 10% of lowest bid	In order to qualify for one of the three disability related preferences, a bidder/offoror must add value by actually performing, controlling, managing, and supervising the services provided, or they must have sold supplies of the general nature solicited to other State agencies, governments, or the general public.
EMPLOYERS OF PEOPLE WITH DISABILITIES PREFERENCE AS 36.30.170(f)(j)	<u>Preferred Alaskan Bidder</u> , responsible and responsive bidder/offoror, is employing 50% plus disabled persons at time of bid/offer submission, and bid price or offer is not higher than 10% than the lowest bid/offer received.	NOTE: A bidder/offer cannot claim more than one of the three disability related preferences for the same bid/offer.
<p>PREFERENCE QUALIFICATION LETTER: The Department of Labor Division of Vocational Rehabilitation will issue a certification letter. A bidder/offoror must be on this Division's list at the time the bid is opened, and must provide a copy of the certification letter to procurement officer, <u>and</u> attach a copy of it to their bid. If the certification letter is NOT attached to their bid, the State will disallow the preference.</p> <p>The Division also maintains lists of Alaskan; [1] employment programs that qualify for preference, [2] individuals who qualify for preference as Alaskan's with disabilities, and, [3] employers who qualify for preference as employers of people with disabilities. In order to qualify for one of these preferences, a bidder must add value by actually performing, controlling, managing, and supervising services provided, or for supplies, a bidder must have sold supplies of general nature solicited to other state agencies, government, or the general public.</p>		

Stacking of Preferences

- A bidder or offeror may not receive both the Employment Program and Disability preferences.
- A bidder or offeror may not receive both a Forest, Agricultural, and/or Fisheries Product preference and a Alaska Products preference for the same product.

Preference Title	Cite (HB225)	Value
Alaska Bidder	AS 36.30.321(a)	5%
Employment Program*	AS 36.30.321(b)	15%
- OR -		
Disability*	AS 36.30.321(d)	10%
Veteran*	AS 36.30.321(f)	5%
Forest Products	AS 36.30.322(a)	7%
Agricultural Products	AS 36.15.050(a)	7%
Fisheries Products	AS 36.15.050(b)	7%
- OR -		
Alaska Products Class I	AS 36.30.330(a)(1)	4%
Alaska Products Class II	AS 36.30.330(a)(2)	6%
Alaska Products Class III	AS 36.30.330(a)(3)	8%

- * Must qualify as an Alaska bidder under AS 36.30.990(25) to receive these preferences.

Several questions were posed in (or immediately after) the House Finance Committee hearing yesterday regarding HB225. Three of the questions that I could not immediately answer are addressed below:

Question: How many states have in-state preferences that require a "principal place of business" in the state to qualify?

Response: After the hearing, I emailed this question to my counterparts around the country via the National Association of State Procurement Officials (NASPO) listserv. So far, I have received ten responses. None of the states responding have such a preference. Keep in mind that only a few states have in-state preferences to begin with. I know of no states that have such a restrictive definition connected to their in-state preference, so these results seem to validate my assumption on this question – that no other states have a preference like this.

Question: How many of the state's office space leases fall in the range of 7,000 square feet?

Response: Of the 250 current office space leases, 160 are under 7,000 square feet, and 80 are over 7,000 square feet in size. However, the total square footage of all the leases under 7,000 square feet is 380,960 square feet, with lease payments of \$7,958,331/year. The total square footage of all leases over 7,000 square feet is 2,261,190, with lease payments of \$35,389,383/year. This illustrates my point about needing to focus our efforts more on the higher stakes leases we acquire with the more in depth, complicated and lengthy formal procurement process, and access the lower value leases via the simplified small procurement process. As I mentioned in the hearing, using the small procurement process for leases in no way implies a less transparent or competitive process.

Question: How many disabled people are supported by the "employers of the disabled" preference HB 225 would eliminate?

Response: The information we have indicates that a total of two disabled employees are supported by this preference.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 15, 2010

SUBJECT: Questions regarding draft CSHB 225(FIN) relating to state procurement (Work Order No. 26-LS0791\P)

TO: Representative Anna Fairclough
Attn: Crystal Koeneman

FROM:  Theresa Bannister
Legislative Counsel

You have asked several questions regarding the bill described above.

1. Why is the insurance provision at sec. 36.30.321(c) (page 9, ll. 20 - 22 of this bill) different from Department of Law's original draft? The bill version was a result of reorganization of the material and, with two exceptions, is basically the same as Law's draft. AS 36.30.170(d) reads:

(d) The procurement officer shall award an insurance-related contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent. In this subsection, "Alaska bidder" means a person who meets the criteria set out in (b)(1) - (5) of this section and who is an Alaska domestic insurer.

Law's draft was almost identical to AS 36.30.170(d), except that it added "is applied to cost" after "five percent." The bill version uses "price" instead of "cost," which, as I understand it, amounts to the same thing. The bill version also applies to proposals as well as bids.

In this bill, the direction to award the contract based on bids "to the lowest responsive and responsible bidder" after application of a preference is found in the general language at sec. 36.30.170 (p. 6, ll. 7 - 12) of the bill. Since the language at sec. 36.30.321(c) now covers proposals as well as bids, the corresponding general language for awarding a proposal found at sec. 36.30.255 (p. 8, ll. 8 - 13) would apply to proposals.

The bill requires the bidder or offeror to qualify as an Alaska bidder. In the bill, the meaning of "Alaska bidder" has been moved (from AS 36.30.170) to a general definition in AS 36.30.990 (sec. 37 of the bill). Since there is a general definition, the bill uses the term and does not refer to a person who "meets the criteria set out in (b)(1) - (5) of this section."

The meaning of "Alaska domestic insurer" is not defined in the current procurement statutes or in the bill. The term would be interpreted to mean an insurer who is organized under the laws of this state. The term, "domestic insurer," is defined at AS 21.90.900 for AS 21.90 to have this meaning. If you want to clarify the meaning for the bill, a definition could be added to refer to that meaning.

2. Exemptions from preferences. There has been a question whether the bill could exempt contracts for insurance, medical services, and legal services from the preference provisions. Contracts for medical doctors and dentists are exempted from the procurement code under AS 36.30.850(b)(4).

The exemptions could be added if they satisfy state and federal equal protection requirements. It is likely that the right to receive a preference for a state contract would be characterized as an economic right. Under federal law, the scrutiny is minimal and, unless the objective is economic protectionism, a legitimate state objective will suffice. Under state equal protection requirements, as an economic matter, minimum scrutiny requires showing that the state's objectives are legitimate and that the legislation bears a substantial relationship to its purpose.¹ Aside from these considerations, whether or not to adopt the exemptions will be a policy call.

3. Changes to "Alaska bidder" requirements. There has been a question whether the "Alaska bidder" preference could be changed to require that the business's principal place of business be located in Alaska or that the majority of the business be owned by state residents.

Since the state is buying services and products for itself directly, it would be considered a market participant, and the commerce clause has an exception when the state is acting as a market participant. So that clause does not appear to present a problem.²

The privileges and immunities clause probably is not an issue here because these contracts do not appear to be closely enough tied to employment to qualify as affecting a fundamental right. Even if they were determined to affect a fundamental right, the privileges and immunities clause has an exception for when the state is acting as a market participant. However, a variable standard is applied to determine what amount of deference is due to a state when acting as a market participant, so it is not clear how much deference would be given in this situation.³

¹ See Glover v. State, Department of Transportation, Alaska Marine Highway Sys., 175 P.3d 1240, 1257 (Alaska 2008).

² See White v. Massachusetts Council of Construction Employers, Inc., 460 U.S. 204, 214 - 215 (1983).

³ See Robison v. Francis, 713 P.2d 259, 264 - 265 (1986).

With regard to the federal equal protection clause,⁴ which has a very lenient test in commercial matters, it must at least be shown that the provision does not have a rational relationship to the achievement of a legitimate state goal. This clause becomes an issue only if the reason for these changes is economic protectionism, which is not considered a legitimate state goal for state laws.⁵ The state equal protection clause⁶ does not appear to be an issue because art. I, sec. 23, allows the state to give preferences to state residents to the extent allowed by federal law. However, this provision has not been interpreted.

If I may be of further assistance, please advise.

TLB:ljw
10-178.ljw

⁴ Amendment XIV, section 1 of the Constitution of the United States.

⁵ Protection of in-state industries from out-of-state competition is almost never a legitimate local purpose. State laws that amount to economic protectionism are virtually always invalid. Philadelphia v. New Jersey, 437 U.S. 617, 624, 57 L.Ed.2d 475, 481 (1978) (discussing the privileges and immunities clause).

⁶ Art. I, sec. 1, Constitution of the State of Alaska.

Crystal Koeneman

From: Jones, Vern O (DOA) [vern.jones@alaska.gov]
Sent: Friday, March 12, 2010 1:21 PM
To: Crystal Koeneman
Subject: Questions on HB 225

Several questions were posed in (or immediately after) the House Finance Committee hearing yesterday regarding HB225. Three of the questions that I could not immediately answer are addressed below:

Question: How many states have in-state preferences that require a "principal place of business" in the state to qualify?

Response: After the hearing, I emailed this question to my counterparts around the country via the National Association of State Procurement Officials (NASPO) listserv. So far, I have received ten responses. None of the states responding have such a preference. Keep in mind that only a few states have in-state preferences to begin with. I know of no states that have such a restrictive definition connected to their in-state preference, so these results seem to validate my assumption on this question – that no other states have a preference like this.

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Question: How many disabled people are supported by the "employers of the disabled" preference HB 225 would eliminate?

Response: The information we have indicates that a total of two disabled employees are supported by this preference.

Crystal Koeneman

Subject: FW: lease space question...

From: Jones, Vern O (DOA) [mailto:vern.jones@alaska.gov]
Sent: Tuesday, March 16, 2010 1:21 PM
To: Crystal Koeneman
Subject: RE: lease space question...

Crystal:

Of the 160 state leases of 7,000 square feet or less, 116 are located outside Juneau, Anchorage, or Fairbanks. This supports the need to increase this threshold, because doing so would put these leases in the "small" or "informal" category. We get complaints about our lease procurement documents being too large, complex and cumbersome, especially for our less sophisticated lessors. The lessors we deal with in rural areas are typically smaller businesses not accustomed to the more complex and time consuming formal procurement process. I've heard from several potential lessors that they do not compete for state leases because of all the paperwork involved in bidding. Moving these leases to the "informal" category simplifies the process for our lessors and would make it less expensive and time consuming for them to participate. As I mentioned earlier, changing this threshold in no way limits competition, because we provide the same form of public notice as we do for formal procurements.

I would also like to point out that the numbers of leases we manage in DGS has grown with the size of government, yet our staff of leasing Contracting Officers has shrunk by half since I've been involved in the process. Making this change will help us become more efficient in managing this increasing workload.

An example of the cost of the employers with disabilities preference:
RFP 2003-0800-4074, for an office building lease in Fairbanks. The Bachner Company won because of their employers of the disabled preference (one disabled employee). Had that preference not been counted, Thompson Investment would have won the award. Thompson Investment's cost was \$55,321 less than Bachner's.

From: Crystal Koeneman [mailto:Crystal_Koeneman@legis.state.ak.us]
Sent: Tuesday, March 16, 2010 10:36 AM
To: Jones, Vern O (DOA)
Subject: lease space question...

Hi Vern...

So with your response about how many lease spaces are under 7000sqft can you provide us the number of leases outside of Anc, Fbx, Jnu or other large muni, of those that are under 7000.

Also can you give us an example of one purchase (if there has been one) that was qualified by the employers of persons with disabilities preference so we can see the impact to the state...

Crystal Koeneman
Office of Rep. Anna Fairclough
District 17, Eagle River, Alaska
Phone ~ 465-3777 Fax ~ 465-2819

the Blomfield co

COMMERCIAL DESIGN • CONSTRUCTION • LEASING • MANAGEMENT • RECREATIONAL FACILITIES

March 3, 2010

10200 Prospect Dr.
Anchorage, Alaska 99507

Representative Anna Fairclough
10928 Eagle River Rd. Suite 238
Eagle River AK, 99577

RE: HB 225

Representative Anna Fairclough:

Please consider disabled employees when revising the current structure of the State Procurement Code. As proposed the revised code will have grave consequences for our company and its present/future employee(s). As a young professional, a business owner, and an employer of persons with disabilities preference holder I can assure you that eliminating this program we depend on will lead to the dismissal of disabled persons that have become and are currently productive members of society. Not all disabled persons are capable of owning a business under the proposed structure of HB 225.

Please consider modifying the following:

- **Remove section, "(j) This section does not apply to solicitations or contracts for lease space 11 under AS 36.30.080, to procurements under AS 36.30.305 - 36.30.310, or, except as12 provided otherwise by regulation under AS 36.30.320, to small procurements under 13 AS 36.30.320"**
- **Do not delete the preference, "employers of people with disabilities"**

Thank you for understanding our dire need to revise these two items. Please feel free to contact me at anytime with questions or concerns.

Sincerely,



Adam Blomfield, The Blomfield Company BE 2010-03

10200 Prospect Drive • Anchorage, AK 99507
(907) 562-2766 • Fax: (907) 346-3306 • blomfield@gci.net

Department of Labor and Workforce Development
DIVISION OF VOCATIONAL REHABILITATION

Sean Parnell, Governor

801 W. 10th Street, Suite A
Juneau, AK 99801
V/TTY: (907) 465-2814
Fax: (907) 465-2856

December 21, 2009

Mr. Adam Blomfield
The Blomfield Company
10200 Prospect Drive
Anchorage, AK 99507

Dear Mr. Blomfield:

The Division of Vocational Rehabilitation hereby certifies that *The Blomfield Company* qualifies for a procurement preference under AS 36.30.170(f).

The **2010** certification number is **BE 2010-03** and *The Blomfield Company* is eligible for a 10% procurement preference.

Please remember to renew your certification at the end of each year. A renewal form will be sent to you in December.

Sincerely,



Cheryl A. Walsh
Director