

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

February 5, 2013

9:00 a.m.

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Cathy Giessel, Vice Chair
Senator John Coghill
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Bert Stedman

COMMITTEE CALENDAR

SENATE BILL NO. 12

"An Act relating to state and public entity procurement, including the State Procurement Code, procurement preferences, contract awards, the use of small procurement provisions for certain amounts of leased space, the Alaska business license requirement for Alaska bidder and other procurement preferences, the proof of registration of construction contract bidders and offerors, the establishment and maintenance of lists of persons who want to provide supplies or services to the state, state agencies, and state instrumentalities, electronic bids and proposals, the chief procurement officer, small procurements, and writings; relating to the meaning of 'Alaska bidder'; and providing for an effective date."

- MOVED SB 12 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 12

SHORT TITLE: PUBLIC PROCUREMENT

SPONSOR(s): SENATOR(s) FAIRCLOUGH

01/16/13	(S)	PREFILE RELEASED 1/11/13
01/16/13	(S)	READ THE FIRST TIME - REFERRALS
01/16/13	(S)	STA, FIN
02/05/13	(S)	STA AT 9:00 AM BUTROVICH 205

WITNESS REGISTER

SENATOR ANNA FAIRCLOUGH
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 12.

LAURA PIERRE, staff
Senator Anna Fairclough
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented information regarding SB 12.

VERNON JONES, Chief Procurement Officer
Division of General Services
Department of Administration
Juneau, Alaska
POSITION STATEMENT: Presented information on SB 12.

SCOTT THORSON, representing himself
Anchorage, Alaska
POSITION STATEMENT: Testified in support of SB 12.

ACTION NARRATIVE

[9:00:19 AM](#)

CHAIR FRED DYSON called the Senate State Affairs Standing Committee meeting to order at 9:00 a.m. Present at the call to order were Senators Wielechowski, Coghill, Giessel, and Chair Dyson. Senator Stedman was excused.

SB 12-PUBLIC PROCUREMENT

[9:00:30 AM](#)

CHAIR DYSON announced that SB 12 was before the committee.

[9:01:38 AM](#)

SENATOR ANNA FAIRCLOUGH, sponsor of SB 12, introduced the bill. She read from the sponsor statement:

Before you is Senate Bill 12, an effort and proposal to modify Alaska's small procurement code definition. It clarifies Alaska business license requirements, stating that a bidder must have a business license at the time the bid is open, otherwise you do not qualify for the Alaska bidder's preference. This bill increases a threshold under which a state agency may use in the informal procurement process from \$50,000 to \$100,000 for goods and services and from \$100,000

to \$200,000 for construction. It changes the small procurement lease base threshold from 3,000 square feet to 7,000 square feet. It allows for the submission of electronic bids, modernizing our system. It eliminates an outdated vendor list. The department handles this currently on line. It makes application of the preferences that are currently spread throughout state statute to one section and uniform. It clarifies what preferences can be cumulative and those that cannot be combined.

CHAIR DYSON asked for clarification of Senator Fairclough's last statement.

SENATOR FAIRCLOUGH explained that currently there are times when people in the procurement process are requesting procurement officers to calculate a bid at each level under each preference. The bill changes this to say that one calculation will be done if preferences can be stacked. Previously, there was a disagreement on the interpretation of preferences, since they were located in different parts of the statute. The bill pulls all statutes that discuss preference under one statute and sets out a process by which preferences can be combined.

CHAIR DYSON requested returning to that item later on.

SENATOR FAIRCLOUGH continued to explain that SB 12 changes the pay for the Chief Procurement Officer from a range 27 to a range 25. The administration is splitting this position so the Chief Procurement Officer is no longer the Director of the Division of General Services.

She stated that, collectively, these changes streamline the procurement process for the agency and, in the end, will benefit the state by allowing enough time to really investigate the cost benefit of larger procurements. It will also benefit rural Alaska by allowing more to take part in the small procurement process.

9:04:35 AM

LAURA PIERRE, staff, Senator Anna Fairclough, explained the sections of the bill. She said Section 1 updates a citation to reflect the renumbering of a preference. Section 2 amends the local agricultural preference to grant a seven percent cost preference to the qualifying bid, rather than to the low bid.

SENATOR WIELECHOWSKI understood that SB 12 is the same bill that came out of the Senate State Affairs Committee last year, except for the range change.

MS. PIERRRE agreed.

CHAIR DYSON said he was intrigued by all the preferences to instate residents. He wondered if there was a scoring method in place.

SENATOR FAIRCLOUGH suggested Mr. Jones address this issue.

9:07:10 AM

VERNON JONES, Chief Procurement Officer, Division of General Services, Department of Administration, described the preferences and their value. The local agricultural preference currently says "only agricultural products harvested in the state shall be purchased when priced no more than seven percent above product harvested outside the state." Currently, the evaluator must go through the process of determining the low bid and figuring out what seven percent of that is, and subtracting that number from the bid with the qualifying agricultural preference. SB 12 would simplify that process and award a seven percent preference. The goal of SB 12 is to simplify and clarify.

CHAIR DYSON assumed that businesses would be bidding against an outside provider.

MR. JONES said yes. He noted that the main preference is the five percent Alaska bidder preference contained in AS 36.30.321. He related that many of the other preferences require the bidder to qualify for the Alaska bidder preference.

He said that the employment program preference is also found in AS 36.30.321.

CHAIR DYSON asked if that preference was for employing Alaskans.

MR. JONES explained that it was for employing developmentally disabled employees - a 15 percent preference. There is also the disabled bidder preference, at 10 percent, contained in AS 36.33.21. He noted that preferences could be combined such as with the 5 percent Alaska bidder and 10 percent disabled bidder preferences. He pointed out that SB 12 eliminates the "employers of disabled" preference because it is seldom used and sometimes

misused. Only two bidders and two individuals have ever benefitted from that preference.

[9:11:41 AM](#)

MR. JONES spoke of the Alaska veterans preference at 5 percent contained in AS 36.33.21. In order to qualify for the veterans' preference, a person must first qualify for the Alaska bidder preference. A disabled veteran would qualify for a 20 percent preference.

CHAIR DYSON asked if there was a disadvantaged minority preference.

MR. JONES replied that Alaska does not have such a preference; it is a federal preference, such as when federal funds are used to build highways. The state is not allowed to apply residency preferences, but is required to apply federal preferences.

CHAIR DYSON asked if there are any preferences for Alaska Native Corporations.

MR. JONES stated that the state has no Alaska Native Corporation preferences.

CHAIR DYSON asked if that preference exists when federal money is involved in a project.

MR. JONES replied that it depends on what restrictions accompany the project - if it has strings attached. It also depends on the grant requirements.

CHAIR DYSON said that a lot of Native Corporations have a security-providing business. He asked if a preference would be given for that business only under a federal grant.

MR. JONES said yes.

[9:14:17 AM](#)

MR. JONES informed the committee that the rest of the preferences are for actual products bid. These do not require an Alaska bidder preference. For example, the application for forest, agricultural, and fisheries products preferences are being simplified in SB 12.

SENATOR WIELECHOWSKI mentioned constitutional limits for in-state versus out-of-state preference. He assumed that a 7

percent preference was constitutional. He asked what the outer limit of preference percentage was.

MR. JONES replied that the state has been challenged only once in twenty years. The Alaska Offerers Preference, a 10 percent overall preference, not in statute, but in regulation, was challenged. It was challenged in court and the case was dropped.

SENATOR WIELECHOWSKI asked where the 7 percent number comes from.

MR. JONES did not know. He said the legislature decided on that number at the time the statute was written.

[9:16:36 AM](#)

MR. JONES said the rest of the preferences are the Alaska product preferences, class 1, 2, and 3, contained in AS 36.30.330. The difference between the classes is the percentage that is manufactured or built in Alaska. Class 1 is 25 percent or more, class 2 is 50 percent or more, and class 3 is 75 percent or more, corresponding to a 4 percent, 6 percent, or 8 percent preference. He explained that you can't combine an Alaska product preference and an agricultural preference. He related that Alaska has a total of 13 preferences, some of which are not contained in SB 12. Alaska has the highest number of preferences of any state.

[9:18:12 AM](#)

MR. JONES mentioned that the bill simplifies the qualifications for the disability preference. Currently, Vocational Rehabilitation manages the qualification process and is required under statute to evaluate each case individually. He gave an example of a veteran who produces a copy of discharge papers that show the Veteran Administration's qualification of a 90 percent disability. The Vocational Rehabilitation Office must still speak to that person's doctor for verification. Senate Bill 12 would simplify that by allowing Vocational Rehabilitation to request a copy of the VA's determination or other third party qualifications.

CHAIR DYSON asked if there were limits on stacking preferences.

MR. JONES provided an example of a person who is an Alaska resident receiving a 5 percent bidder preference, a 10 percent disability preference, and a 5 percent veteran preference, which would result in the highest possible personal preference of 20 percent. If that person was also offering a product, they could

also get additional preferences, depending on where the product is manufactured and whether it is an Alaska product.

MR. JONES pointed out that the preferences "all go to cost." In a Request for Proposal (RFP) situation, the preference is not entirely based on cost, but also on other factors. For RFP's there is an additional preference in regulation that is called the Alaska Offerers Preference, which provides for a 10 percent preference.

CHAIR DYSON asked if that preference includes contracts for personal services.

MR. JONES said that is what it is intended for.

MS. PIERRE continued with the sectional analysis. She said Section 3 amends the local fisheries preference to grant a seven percent cost preference to the qualifying bid, rather than to the low bid. Section 4 would not allow someone to receive an agricultural or fisheries preference in addition to the Alaska products preference. Section 5 amends the salary of the Chief Procurement Officer. Sections 6 - 10 are renumbering sections.

She explained that Section 11 increases the threshold limit for small procurements for leased space from 3,000 square feet to 7,000 square feet.

CHAIR DYSON asked if any committee members have any questions on a specific section.

[9:23:26 AM](#)

SENATOR GIESSEL asked about the fiscal note. She inquired since the employee category is reduced, would the cost to the state be reduced. She suggested it would be a negative fiscal note.

MR. JONES replied that it is very difficult to gage the value and the cost to the state of these preferences. The state does not have an automated procurement system to track costs.

SENATOR GIESSEL asked about the reduction in salary for the Procurement Officer.

MR. JONES explained that prior to 2002 the Division of General Services had two positions, a Director and a Chief Procurement Officer. These positions have since been combined. The bill adds back the Director position using funds currently budgeted so there is no additional cost or savings.

CHAIR DYSON said it eliminates a conflict of interest.

9:25:33 AM

SENATOR WIELECHOWSKI recalled that preference revisions have been controversial in the past. He complimented Senator Fairclough for eliminating many of the concerns. He asked if anyone opposes SB 12.

SENATOR FAIRCLOUGH stated support by the Alaska State Chamber of Commerce and others. Only the two people whose preferences are eliminated are opposed. She thought that, in the past, confusion over the revisions caused some concern. She emphasized that the preferences are not changing; however, the bill now clarifies how the preferences are stacked and how to better calculate the preferences.

SENATOR COGHILL asked about if the immediate effective date can be accomplished.

SENATOR FAIRCLOUGH replied that there is transition language in Section 13, page 29.

SENATOR COGHILL requested more information about the date for new qualifiers. He wondered if the Alaska preference requires regulation changes.

9:28:24 AM

MR. JONES did not think there would be an issue with regulation changes. The statute can be implemented right away. Some regulations will need to be adjusted or clarified later on. For example, the threshold for small, informal procurements has been doubled. The different levels of competition required under that small procurement threshold are contained in regulations and will need to be adjusted upwards.

9:29:40 AM

SCOTT THORSON, representing himself, testified in support of SB 12. He believed that the bill will help residents work more effectively with agencies because it has clarified the rules of bidding. He commended Senator Fairclough and Mr. Jones for their work.

CHAIR DYSON asked which preference Mr. Thorson qualifies for.

MR. THORSON said the Alaska bidder preference.

9:31:48 AM

CHAIR DYSON commented that this bill is the kind of legislation that the legislature should be dealing with. He said additions to existing laws are often inserted in illogical ways. He commended Senator Fairclough and Mr. Jones for their efforts.

SENATOR GIESSEL moved to report SB 12, labeled 28-LS0222\N, from committee with individual recommendations and the attached zero fiscal note. There being no objection, SB 12 was reported from Senate State Affairs Standing Committee.

9:33:13 AM

There being no further business to come before the committee, Chair Dyson adjourned the Senate State Affairs Standing Committee at 9:33 a.m.