

HB

766

STATE OF ALASKA
Inter-Department Route Slip

TO:
MAIL STATION NUMBER 3100
DEPARTMENT Legislature
ATTENTION Lisa Kudd

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| <input type="checkbox"/> Approval | <input type="checkbox"/> Note & Return |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Initial & Return |
| <input type="checkbox"/> Comment | <input type="checkbox"/> Return As Requested |
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Remarks:

FROM:
MAIL STATION NUMBER ~~3100~~ 0800
DEPARTMENT CD
BY Insurance DATE 4/24

02-002 (REV.10/73)

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
Division of Insurance

The Honorable Richard Eliason
House of Representatives
Alaska State Legislature

April 25, 1978

Richard L. Block
Director

You asked me the other day if I could provide you with the copy of conditions that I suggested be imposed, should municipalities allow unbonded contracts of up to \$250,000.

What is attached is the information which I provided the Community and Regional Affairs Committee at their hearing on HB 766.

This is indeed a very rough cut at some suggested conditions and is not to be interpreted as either exact or entirely all necessary, but does point out the approach that I think ought to be taken, should any governmental agency allow the use of unbonded contracts for work of any significant size.

Should this be offered as an amendment on the floor, I would urge that there be some minor modifications to reflect some additional information which I have received concerning these conditions.

Should you desire, I would be happy to provide you with a draft of a modified list of suggested conditions.

RLC:lc2:7

cc: Lisa Rudd, Chairman
Community and Regional Affairs
Committee of the House

*Additional material requested from Div. of Ins.
AS*

The State, or a political subdivision of the State, may award a contract of up to \$200,000 without the requirement of bond, provided all of the following conditions are met:

(1) The contractor is, and for five years immediately preceding the award of contract has been, a licensed contractor having its principal offices in the state;

(2) The contract is for alteration, repair or maintenance of existing buildings or improvements and requires the performance of substantially all work by the contractor utilizing his own tools, equipment and employees, and requires the contractor to use no sub-contractors.

(3) The contractor has a financial statement as of no earlier than nine months prior to submitting the bid for the contract, certified by a certified public accountant showing:

(a) a net worth of no less than 20% of the face amount of the contract;

(b) A profit from contracting operations for at least both of the last two fiscal years preceding the award of the contract, and for at least three of the last five years preceding the award of the contract;

(c) The contractor has not defaulted on any contract awarded him in the last three years.

(4) The contractor provides evidence that he has fully performed contracts of similar work in the state in both of the last two years preceding the award of the contract.

(5) The total amount of all contracts being performed by the contractor during the term of the subject contract, including the contract being awarded under this statute, does not exceed seven times the net worth of the contractor.

(6) The State, or political subdivision, awarding the contract has received bids from at least three other contractors, whose bids are accompanied by a bid bond or who meet the qualifications of this subsection, and the successful contractor's bid is not less than 10% lower than the average of all bids on the same job

(7) The State, or political subdivision, establishes a disbursement procedure wherein:

(a) funds are disbursed in periodic progress payments relating to the amount of work performed to date of disbursement;

(b) No less than 10% of each disbursement is withheld to the end of the contract to assure completion fo the contract;

(c) the State or political subdivision performs such audits and requires such lien releases as is appropriate to assure payment of all employers of and suppliers to the contractor.

A M E N D M E N T

Offered in the HOUSE

By Rudd

TO: CS FOR HOUSE BILL NO. 766

Page 1, lines 12 - 15: delete all material and insert the following:

Sec. 36.25.025. EXEMPTION BY MUNICIPALITIES. (a) A municipality may exempt contractors from compliance with the provisions of sec. 10(a) of this chapter if

(1) the contract is one for the alteration, repair or maintenance of an existing building or improvement and

(2) the estimated cost of the project does not exceed \$250,000.

(b) An exemption authorized by this section shall be granted by ordinance. No ordinance is effective to grant the exemption provided in this section unless it

(1) establishes or incorporates by reference a provision for disbursement by which

(A) funds are disbursed in periodic progress payments in relation to the amount of work performed under the contract to the date of disbursement;

(B) not less than 10 per cent of each disbursement is withheld by the municipality to the end of the contract; and

(C) lien releases sufficient to assure payment of all employees and suppliers of the contractor are required; and

(2) provides that

(A) a contractor claiming the benefit of the exemption has been a licensed contractor for at least two years preceding the award of the contract and has his principal office in the state;

(B) the contractor has not defaulted on any contract awarded to him during the three years preceding the award of the contract; and

(C) the contract requires substantially all work by the contractor utilizing his own tools, equipment and employees, and prohibits the use of subcontractors.

TO: Lisa FROM: Annette

HB 766

I talked with Rocky Gutterrez of Sitka about this bill. He said he believed the bill was proposed by small contractors who have difficulty getting adequate bonding for projects.

Construction performance bonds apparently are based on the contractor's experience and his assets -- mostly finances, plus various other small details such as the contractor's financial statements must be done by a CPA. Cost of a bond is based on a percentage of the project -- usually 1.5%.

Performance bonds come into play when a contractor defaults on the contract for some reason, like bankruptcy, Then the insurance company picks up the tab or finishes the project as the case may be. Mr. Gutterrez says there have been times when it took the city 2 years to collect from the bonding company.

Mr. Gutterrez favors the legislation in that it allows municipalities to use local contractors who may not be able to get a performance bond. The cost of the bond is just added on to the bid price, he says. (That cost, on a \$250,000 project at 1.5% would be an additional \$3,750.) There are contractors in Sitka who are perfectly capable of doing small projects for the city but are unbonded and the city believes it is good policy to give the local guys the jobs. Sitka handles such situations by requiring the deposit of a 25% performance cashiers check with the city. This narrows the field at the outset. The municipality also provides for advance payments on materials once presented with all the invoices for same. Rocky believes most \$250,000 jobs would be preferably handled this way by the city rather than requiring a bond. But, he said, there may be instances when the city would believe that the project risk is such that a performance bond would be desirable. In that case, such would be required in the contract specifications. I would say that Sitka has things under control.

Small contractors do have difficulty obtaining bonds. I guess this is due to the conservative nature of the insurance business and the bad track record which Alaska has. (There have been several defaults in the state, particularly to the Westward.)

There are very few bond brokers in Alaska and they remain in the larger towns like Anchorage and Juneau. The bonding companies are generally in Seattle. I talked with Dawson Company here in Juneau who do some bond brokering. They say it is particularly hard on small contractors in small towns because there is little or no money in bonding these outfits and they do not have access to the bond brokers. It is not worthwhile for Dawson to go out to the towns to check out these small outfits. Also, bonding companies (these being the big guys in Seattle) require CPA financial statements for the contracting companies. Many smaller towns do not even have a CPA nearby.

This bill can be seen as helping the small contractor in a small municipality who normally cannot obtain the necessary bonding. And it may be seen as a help to the small municipality from the stand point of their desire to use local contractors for small projects. My only comment is that it is the small contractor who is most likely to default on a contract and it is the small community which is least likely to have the money to pick up the tab or to pay the expenses of prosecuting through the courts. While there is argument that a municipality need not pass such an ordinance, it is also the small municipality which is most likely to yield to pressure from a local contractor to pass such an ordinance. Very often it is the weight of the state or the restrictions in state statutes which guides local decisions and keeps them out of trouble.