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Alaska State Legislature

Senator Vic Fischer • Pouch V • Juneau, Alaska 99811 • (907) 465-4954

MEMORANDUM

DATE: April 14, 1982

TO: Senator Bill Ray, Chairman Senate Transportation Committee

FROM: Senator Vic Fischer

RE: Fiscal Note for CSSB 415

The Senate State Affairs Committee, at a recent meeting, took issue with the fiscal note prepared for CSSB 415 by the Department of Administration.

The Department of Administration fiscal note is a manipulation of numbers to support their stated bias against giving any preference to Alaska bidders. As they point out, their national association opposes all forms of state preference. In contrast, it was our point of view that any encouragement we give to creating healthy private businesses in Alaska benefits the whole state.

The fiscal note is based on a 10 percent cost increase. However, CSSB 415 provides that the Alaska bidders preference will only be raised by 5 percent and the minority bidders preference will be raised by a formula which will only result in a 5 percent preference. The fiscal note should, at a minimum, be reduced from \$6 million to \$3 million to reflect a 5% increase in bidders preference. We maintain that the 10% preference used in the fiscal note is incorrect!

Minority preferences would only be granted if target levels for minority participation are not met, and large contracts would always be excluded from preference. The fiscal note ignores these cost saving provisions.

CSSB 415 would increase economic participation for all Alaska businesses. There may be some cost to state purchasing, but these costs can at least in part be more than offset by development of our domestic economy and increased overall efficiency. Purchasing efficiency is only one factor in overall market efficiency; and what's best for purchasing may not be best for the development of domestic business.

The Senate State Affairs Committee also took issue with the concluding editorial comment in the fiscal note that, "The preference is little more than a token gesture of appeasement to an interest group."

Committee members responses were: "I do not vote for token gestures to appease special interest groups...", "This accusation is a slander against senators who favor preferences for Alaskans and minorities...",

"The bill provides a system to insure that public contracting procedures will favor Alaskans. I think I can speak for my fellow legislators when I say that Alaskans are not an interest group; they are the interest of all legislators and they are our only reason for existence. One might expect the federal government to refer to Alaskans as a special interest group. I am shocked and dismayed when our own government makes this inference....".



Alaska State Legislature

Senator Vic Fischer • Pouch V • Juneau, Alaska 99811 • (907) 465-4954

MEMORANDUM

DATE: April 13, 1982

TO: Senator Bill Ray, Chairman, Senate Transportation Committee

FROM: Senator Vic Fischer

RE: CSSB 415, Summary

CSSB 415 provides a system to insure that public contracting procedures will favor Alaskan bidders. Existing statutes are full of loopholes which result in state subsidization of out-of-state interests. The major features of CSSB 415 are:

1. The proposed legislation closes loopholes which currently allow various state funded contracts to be issued without regard for formal state bidding requirements.
2. The 'Alaska bidders preference' is raised to 10%, from the existing 5%.
3. CSSB 415 closes loopholes which currently result in state subsidization of out-of-state bidders posing as Alaska bidders. This is accomplished by providing the following qualifications for an Alaska bidders preference: a business must have 50% of its employees residing in Alaska or employ at least 10 resident employees. These requirements do not prevent non-residents from bidding.
4. If during the prior fiscal year a proportionally smaller dollar amount of contracts are awarded to minority bidders compared to target levels, then businesses owned by economic minorities, including women, Alaska Indians, Eskimos, Aleuts, Blacks, and Viet Nam veterans, receive a 10% bidders preference on contracts less than \$1,000,000 for the next fiscal year.
5. The Department of Administration is required to prepare an annual count of contracts awarded in accordance with bidders preference lists by all state agencies, municipalities, and other entities for contracts using State monies. The results shall be submitted to the House and Senate State Affairs Committees.

CSSB 415 is very similar to FCCSSB 114 which passed the Senate and the House in 1980 and was vetoed by the Governor. The objections mentioned in his veto message have been corrected by this committee substitute. The primary objection was that the original bill raised the Alaska bidders preference to 15 percent and it was felt that this was too high. This bill raises the preference to only 10 percent.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 23, 1982

SUBJECT: Public contracts -- CSSB 415
(Work Order No. 12-2755)

TO: Senator Vic Fischer
Chairman, Senate State
Affairs Committee

FROM: Tamara Brandt Cook
Legislative Counsel *TBC*

Here is the section-by-section analysis you requested of the draft of CSSB 415 (State Affairs).

Sec. 1. The Department of Transportation and Public Facilities is required to award a highway construction contract in accordance with bidding requirements if the contract is \$50,000 or more. Existing law requires the department to award a contract in accordance with bid requirements only if it exceeds \$100,000. The reference to AS 44.33.300 is deleted, since that section allows a waiver only if the contract is less than \$50,000 and by its terms it would not apply to contracts awarded for \$50,000 or more.

Sec. 2. The Department of Transportation and Public Facilities is required to award a contract for maintenance of a highway in accordance with bidding requirements if the contract is \$25,000 or more. It is discretionary with the department whether to award smaller contracts in accordance with bidding requirements. The department may not award contracts in smaller increments to avoid the bidding requirements. These are new provisions.

Sec. 3. The Department of Transportation and Public Facilities is required to comply with the bidding requirements and preferences of AS 37.05.230(1) in awarding a contract that is subject to bid requirements. Existing law only requires the department to award a contract to the lowest responsible bidder.

Sec. 4. A local government is required to comply with the bidding requirements and preferences of AS 37.05.230(1) in awarding contracts for a local service road or trail that the local government has assumed from the Department of Transportation and Public Facilities if the amount of state money to be used on the project is \$50,000 or more. Existing law only requires that contracts be awarded on the basis of the lowest responsible bid.

Sec. 5. A contract for maintenance of local service roads and trails that is for \$25,000 or more entered into by the state and a contract for maintenance of local service roads and trails that is for \$25,000 or more for which state money is to be used entered into by a local government is required to be awarded in accordance with the bidding requirements and preferences of AS 37.05.230(1).

Sec. 6. The Department of Transportation and Public Facilities is required to award a public works construction contract in accordance with bidding requirements if the contract is \$50,000 or more. Existing law requires the department to award a contract in accordance with bid requirements only if it exceeds \$100,000. The reference to AS 44.33.300 is deleted, since that section allows a waiver only if the contract is less than \$50,000 and by its terms it would not apply to contracts awarded for \$50,000 or more.

Sec. 7. The Department of Transportation and Public Facilities is required to award a contract for maintenance of a public works project in accordance with bidding requirements if the contract is \$25,000 or more. It is discretionary with the department whether to award smaller contracts in accordance with bidding requirements. The department may not award contracts in smaller increments to avoid the bidding requirements. These are new provisions.

Sec. 8. The Department of Transportation and Public Facilities is required to comply with the bidding requirements and preferences of AS 37.05.230(1) in awarding a contract for a public works project that is subject to bid requirements. Existing law only requires the department to award a contract to the lowest responsible bidder.

Sec. 9. A municipality or regional educational attendance area is required to comply with the bidding requirements and

March 23, 1982

preferences of AS 37.05.230(1) in awarding a contract for a public works project assumed from the Department of Transportation and Public Facilities if the amount of state money to be used on the project is \$50,000 or more.

Sec. 10. Subject to certain bidding preferences added by this bill, a bid shall be awarded by the Department of Administration to an Alaska bidder if his bid is not more than 10 percent higher than the bid of the lowest non-resident and he is on the certified Alaska bidders list. Existing law requires a bid to be awarded to an Alaska bidder if his bid is not more than five percent higher and makes no provision for a bidders list.

Sec. 11. Existing law provides that competitive bids are not required for sales involving fair trade items or when materials for use in laboratory and experimental studies may be purchased otherwise to the best advantage of the state. These two exceptions to the bid requirements have been deleted.

Sec. 12. A contract shall be awarded to a bidder on the certified minority bidders list under certain conditions, including a requirement that during the prior fiscal year a proportionally smaller dollar amount of contracts were awarded to minority bidders compared to the population of minority people in the state, that the bid not be more than 15 percent higher than the lowest bid, that the minority bidder agrees to lower his bid by five percent or match the lowest bid. This preference applies only to contracts of \$1,000,000 or less. A contract shall be awarded to a bidder on the certified women bidders list under similar conditions as those applied to the minority bidders preference, except that during the prior fiscal year women bidders must have received less than 10 percent of the value of contracts of \$1,000,000 or less awarded for the preference to apply. A contract shall be awarded to a bidder on the certified Viet Nam veterans bidders list under similar conditions as those applied to minority bidders preference, except that during the prior fiscal year Viet Nam veterans must have received less than five percent of the value of contracts of \$1,000,000 or less awarded for the preference to apply. If two or more bidders qualify for a minority bidders, women bidders, or Viet Nam veterans bidders preference a contract shall be awarded to the lowest of the bidders. These are new provisions.

Sec. 13. The Department of Administration is required to solicit bids by sending notices to all bidders on the certified Alaska bidders list and the department may limit solicitation of bids. Under existing law the department is required to send notices to known active prospective bidders and the department is not authorized to limit solicitation of bids.

Sec. 14. A contract for \$50,000 or more for the operation of a transportation system for students is subject to competitive bid requirements. Under existing law this type of contract is exempt from the bid requirements.

Sec. 15. Besides the requirements of existing law, to qualify as an Alaska bidder a person may not be delinquent in the payment of state taxes and must maintain inventories or facilities in support of business activities in the state.

Sec. 16. The bidding preferences do not apply to contracts that are less than \$50,000 of the Department of Transportation and Public Facilities. Under existing law the Alaska bidders preference does not apply to contracts that exceed \$5,000.

Sec. 17. A contract for \$50,000 or more for products or services of a sheltered workshop operating in the state is subject to competitive bid requirements. Under existing law this type of contract is exempt from the bid requirements.

Sec. 18. The Department of Administration is required to compile and update a certified Alaska bidders list, a certified minority bidders list, a certified women bidders list, and a certified Viet Nam veterans bidders list. To qualify for a certified list, other than the Alaska bidders list, a person must be on the certified Alaska bidders list and have a business with at least 85 percent of its interest beneficially owned or 85 percent of its voting interest owned by the type of person for which the preference is granted. In addition, the daily operations of the business must be controlled by the type of person for which the preference is granted. The bidders preferences do not apply to contracts involving federal money if the application of a bidding preference would violate federal law or program guidelines. These are new provisions.

Sec. 19. Except for the bidding preferences of AS 37.05.-230, a contract for which competitive bids are required shall be awarded by the Department of Administration to the lowest responsible bidder. Under existing law there is a preference for Alaska bidders only.

Sec. 20. A prime contractor must name the principal subcontractors he intends to use when submitting a bid. After a bid is awarded the subcontractors may be changed only for cause. "Principal subcontractor" is defined. This is a new provision.

Sec. 21. At least 20 percent of the money under a contract awarded through the competitive bid process shall be paid to subcontractors on the certified minority bidders list, certified women bidders list, or certified Viet Nam veterans bidders list unless no subcontractor on those lists is available. A prime contractor must identify subcontractors on the lists that he intends to use when submitting his bid. These are new provisions.

Sec. 22. If a bid is awarded under the competitive bid requirements, a proposed substitution for a subcontractor named in the bid shall be submitted to the Department of Administration for approval. This is a new provision.

Sec. 23. The Department of Administration is required to prepare a report on contracts awarded in accordance with a bidders preference for minority bidders, women bidders, or Viet Nam veterans bidders by state agencies, the University of Alaska, municipalities, and other entities. The report shall be submitted to the Senate State Affairs Committee and the House State Affairs Committee. This is a new provision.

Sec. 24. If the amount of state money used to finance a contract of the University of Alaska is \$50,000 or more the competitive bidding and preference provisions of AS 37.05.-230(1) apply. This is new.

Sec. 25. If the amount of state money used to finance a contract of a non-profit corporation is \$50,000 or more, the bidding and preference provisions of AS 37.05.230(1) apply. This is new.

Sec. 26. To qualify for receipt of a grant, a municipality must comply with the bidding and preference provisions of AS 37.05.230(1) in the award of a contract if \$50,000 or more of the contract is financed with the grant or other state money. This is a new requirement.

Sec. 27. To qualify for receipt of a grant, a named recipient must comply with the bidding and preference provisions of AS 37.05.230(1) in the award of a contract if \$50,000 or more of the contract is financed with the grant or other state money. This is a new requirement.

Sec. 28. In the awarding of a contract to an entity in an unincorporated community the Department of Community and Regional Affairs must determine if there is an incorporated entity that will agree, along with other things required by existing law, to award any contract of \$50,000 or more financed by the grant in accordance with the bidding and preference provisions of AS 37.05.230(1).

Sec. 29. Technical amendments are made to the section providing for a waiver of provisions regarding public contracts in an area impacted by an economic disaster so that citations are to sections dealing with contracts of under \$50,000.

Sec. 30. The bill is effective July 1, 1982.

TBC:ljb

FISCAL NOTE ANALYSIS OF SB 415

As stated, in the narrative of our fiscal note, on SB 415, the fiscal impact of this bill is difficult to analyze.

We have suggested that the cost of goods and services might increase by as much as 10% or \$6,000,000 in FY 83 (10% of \$60.0 million = \$6.0 million).

This is based on a couple of assumptions, first the National Association of State Purchasing Officials has indicated that preferences raise costs proportionate with the preference. This is difficult to substantiate based upon this assumption alone, there is currently a 5% preference at this time and increasing the preference to 10% is only a 5% increase, (i.e. 5% of \$6.0 million = \$3.0 million).

However, the second assumption is based upon the theory that out-of-state and in some cases in-state business may be reluctant to go through the bidding process if they are competing against a preference from 10 to 15 percent.

It is difficult to prove that people have stopped submitting bids for this reason, but some vendors have expressed this as a reason.

Possibly the best way to depict how these particular preferences might effect competition and prices is with some hypothetical examples.

EXAMPLE #1

	<u>Bid Price</u>	
Out-of-State Bidder	\$10,000.00	
Certified Alaska Bidder	\$11,000.00	
Certified Alaska Minority Bidder	\$11,500.00	*Winner: If bidder is willing to drop price by 5% or to \$11,000.00.

*This represents a 10% increase.

EXAMPLE #2

	<u>Bid Price</u>	
Out-of-State Bidder	No Bid	
Certified Alaska Bidder	\$11,000.00	
Certified Alaska Minority Bidder	\$12,650.00	*Winner: If bidder is willing to drop price by 5% or to \$12,100.00.

*This represents a 10% increase over the low bidder, but, a 21% increase over the original out-of-state bidder.

EXAMPLE #3

	<u>Bid Price</u>
Out-of-State Bidder	No Bid
Certified Alaska Bidder	No Bid
Certified Minority Bidder	\$12,650.00 or higher *

*This represents a 26.5% increase over the original out-of-state bid. At this point the bidder will realize that there is no competition. The bidder may play it safe and only bid 15% higher than the suspected competition, but again the bidder may just as likely increase the price still further.

These examples indicate that a 10% increase may be conservative. It is not the Alaska or minority preferences which seem to be the cause for the dramatic increase but the lack of competition caused by the preference. The preferred bidders feel more secure and have less incentive to submit their best price when a free competitive market is absent.

I hope this explains in some detail how we arrived at the present figures for the fiscal note on SB 415. The figures could be higher or lower depending on which set of assumptions people choose to use. However, I still believe our fiscal note may be conservative, in that it only includes goods and services procured by the State and does not take in account the fiscal impact that this bill may present to construction contracts or municipal grants.

The increased costs which we have identified will have to be absorbed by each individual agency. The fiscal note is not a request for an additional appropriation to the Department of Administration or any other department, but reflects what we estimate the costs that this bill could be to all State agencies. This will be reflected in their reduced purchasing capabilities. Agencies will either find additional funding within their existing budgets or procure less goods and service or in some case not procure those services at this time and submit larger budget requests in future years.

As a further clarification of our fiscal estimate of this bill we will submit two fiscal notes. The first will indicate the potential fiscal impact this bill will have on the Division of General Services and Supply. The other fiscal note will be our estimate of the fiscal impact to all State agencies, as reflected in their reduced purchasing capabilities.

*** (The National Association of State Purchasing Officials, who oppose any local preference statutes, estimate that a bidder's preference raises the cost of doing business proportionate with the preference.)

From a purely professional purchasing standpoint vendor preferences are not conducive to good purchasing practice nor in the purchaser's best interest. We are sympathetic to the idea of stimulating various sectors of business, however we do not believe this is the correct vehicle. A vendor preference is a weak and easy approach to the problem which will not solve it. The preference is little more than a token gesture of appeasement to an interest group. Open competition is the backbone of our free market system. To reduce or eliminate it adversely affects everyone.

PURCHASING PREFERENCES

PRO's

- New jobs are created.
- Businesses are encouraged to locate within the State.

CON's

- Arguably unconstitutional as a barrier to interstate commerce.
- In direct conflict with the principles of competition and precludes the purchaser from obtaining the best competitive price.
- Many bidders who otherwise would be interested are discouraged from competing and potential sources of supply are reduced.
- Preferred bidders feel more secure and have less incentive to submit their best prices when a free competitive market is absent.
- Results in higher costs to taxpayers, prices usually are increased by the amount of the preference.

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STATE OF ALASKA
THE LEGISLATURE

POUGH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 9, 1981

SUBJECT: Special appropriation for Boysen Investment Corporation (Work Order No. 12-1432)

TO: Senator Vic Fischer

FROM: Donna Spragg Pegues 
Co-Revisor of Statutes

At your request I have drafted the attached bill appropriating \$65,140 for unanticipated expenses incurred by the Boysen Investment Corporation in completing a Seward Highway pavement project. This bill raises a question in my mind.

Article IX, section 6 of the Constitution of the State of Alaska prohibits the use of state money except for a "public purpose". Courts have analyzed similar provisions to prohibit gifts of public money to private persons. (See 81A C.J.S. sec. 207.) It seems to me that this appropriation could be considered a gift of public property. The contractor and the state entered into a contract under bidding procedures calling for award to the lowest responsible bidder (see AS 19.10.210 and AS 37.05.230 - 37.05.240). To simply override that contract (bypassing the usual state claim procedures) with an appropriation seems questionable to me. However, brief research has not revealed a case involving an appropriation closely comparable to the one in the attached bill and I do not know how an Alaskan court would rule on the question. However, I wanted you to be aware of my concern.

DSP:ljb

Enclosure