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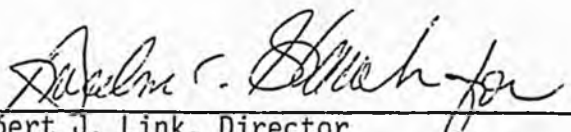
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Position Paper
SB 106

The bill affects the Alaska Bidders Preference as it applies to joint ventures. Currently Alaska bidders may enter into joint ventures with non-resident bidders. The joint venture then would qualify for the Alaska Bidders Preference. This bill would change that. This bill would require that all parties involved in a joint venture be Alaskan bidders in order to qualify for the Bidders Preference. This creates the potential of reducing competition and hence raising prices the State must pay.

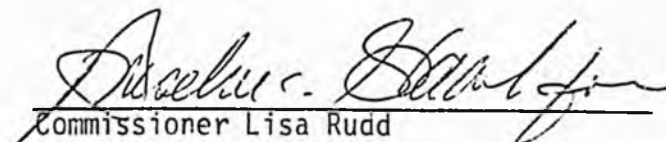
As a practical matter, an Alaskan business may be unable to bid on a contract by itself and may be unable to find another Alaskan business with which to associate on the bid. The Alaskan business may thus be compelled to associate with a nonresident bidder. The bill, as written, would not permit an Alaskan business involved in a joint venture with a nonresident bidder to enjoy the benefit of the Bidders Preference.

The Department is neutral on this bill.



Robert J. Link, Director
Division of General Services & Supply

2-11-85
Date



Commissioner Lisa Rudd
Department of Administration

2-14-85
Date

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

January 25, 1985

SUBJECT: Bidder Preference Amendment
(Work Order No. 14-0406)

TO: Senator Dick Eliason

FROM: Theresa L. Bannister *TB*
Legislative Counsel

Enclosed is a bill draft which would resubmit the former SCSHB 106 (SA) am S from the Thirteenth Legislature to deal with certain aspects of Alaska bidder preference.

During the last legislative session, you were advised by this division in a memo dated 02/08/84 of the possible constitutional problems with the Alaska bidder preference law. The situation discussed in that memo does not appear to have been clarified by the courts since that date. However, the strong statement of purpose in the draft should help the statute withstand constitutional attack.

If you need any further assistance, please advise.

TLB:mkr
J11/025

Background Materials

COPY

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 8, 1984

SUBJECT: Constitutionality of bidder preference
 (HB 106)

TO: Senator Dick Eliason
 Chairman, Labor and Commerce
 Attn: Sheila Peterson

FROM: Richard C. Folta
 Legislative Counsel

You have asked for our opinion on HB 106.

To date there has not been a definitive decision by the U.S. Supreme Court on the constitutionality of state bidder preference statutes under equal protection or privileges and immunities provisions. However, in the February, 1983, White v. Massachusetts Council of Construction Employees case, the Court held that the City of Boston's resident work force preference (consisting of at least 50 percent of bona fide residents of Boston) did not violate the commerce clause of the U.S. Constitution.

The only Alaska Supreme Court case to date on the question is Irby-Northface v. Commonwealth Electric Co., et. al., (April 1983). Only the dissent by Justices Rabinowitz and Burke, address the constitutionality of AS 37.05.230. They reason that under Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975), the bidder preference is clearly unconstitutional, under the Alaska Constitution, since the purpose of the preference is to discriminate economically between residents and nonresidents. So, at the present time, two of the five Alaska justices are on record against the bidder preference on equal protection grounds.

The bidder preference statute does not impinge upon a fundamental right and is not based on a suspect criteria so as to bring into play the compelling state interest standard.

Senator Dick Eliason
Page 2
February 8, 1984

Instead of strict scrutiny, the Alaska court would apply the less strict rational basis standard utilized in testing economic legislation under the equal protection clause. Lynden Transport Inc. v. State, supra; State v. Erickson, 574 P.2d 1 (Alaska 1978).

First, the Court would look at the purpose of the statute, viewing the legislation as a whole and the circumstances surrounding it. The purpose must be legitimate, falling within the state police powers. Second, the means chosen must substantially further the goal of the enactment. The Court would examine means used to accomplish legislative objectives and reasons advanced. Third, the state interest in the means chosen must be balanced against the nature of the constitutional right involved.

The Alaska bidder preference statute was enacted in 1955 and has remained at five percent since that time. The legislature has not stated a purpose for the statute, however very likely the resident Alaska construction and supply firms were thought to need some competitive edge against the larger more experienced outside companies and that resident firms would hire more residents, pay more taxes and stimulate the Territorial economy. In Galesburg Construction Company v. Board of Trustees of Memorial Hospital, 641 P.2d 745 (Wyoming 1982), the Wyoming Supreme Court stated that a five percent bidder preference favoring resident firms was constitutional under equal protection because the purpose of the statute of encouraging local industry, was a legitimate state interest.

Considering a chronic high state unemployment, high costs and the condition of the construction and supply companies in Alaska the bidder preference could be seen as substantially furthering the objectives of the legislature, assuming it to be encouraging the local industry.

Determining whether the preference statute is "rational" will necessarily require balancing the legitimate interests which the state seeks to achieve against the statute's impact upon the class of nonresident businesses affected. If an overtly discriminatory motive is shown, i.e., economic protection of Alaska construction and supply firms, for instance, the burden would likely shift to the state to prove the legitimacy and rationality of the bidder preference practice.

Senator Dick Eliason
Page 3
February 8, 1984

Legislative judgments about disputed economic issues are entitled to deference by the judiciary, if the purposes are expressed, however, in the ALaska bidder preference statutes, those purposes are not expressed at the present time. The Alaska court would take a very close look at the rationale for the statute and without a suitable purpose clause, AS 37.05.230(1)(B) would likely be held to violate the state's equal protection provision.

For a bidder preference clause to survive judicial scrutiny, the bidder preference purpose clause would have to clearly show more than "giving Alaska's businesses a competitive edge with nonresident businesses in award of state contracts."

RCF:ojb
J3/070



OFFICIAL BUSINESS

ALASKA STATE LEGISLATURE - SENATE
COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

M E M O R A N D U M

TO: Senator Jalmar Kerttula
Senate President

FROM: Senator Dick Eliason *Dick Eliason*

DATE: March 25, 1983

RE: Alaska Power Authority Anchorage-Fairbanks Intertie Contract
Award

The Labor and Commerce Committee has been advised from numerous sources that the Alaska Power Authority has let the contract for the Anchorage/Fairbanks Intertie in apparent violation of AS 37.05.230. That statute provides that bids should be awarded to an Alaskan bidder if the bid submitted is within five percent of the lowest bid. An Alaska bidder is defined as a person who holds a business license and has maintained a place of business within the state "for a period of six months immediately preceding the date of his bid..."

The bid on the Intertie was awarded to a joint venture made up of an out of state corporation which did not have an Alaska business license for six months prior to the bid and a local corporation which did have such a license for six months preceding the bid. The joint venture had not been in existence for six months prior to the bid. The Power Authority concluded that for a joint venture all that is required is that one of the partners hold an Alaska business license for six months before the bid. This interpretation results in a situation where large outside corporations can gain the benefit of the Alaska bidders preference simply by linking themselves at the last moment before the bid with an Alaskan organization which would qualify for the preference.

If the Power Authority's interpretation is correct, the Committee believes that legislative action may be required to change the law to more accurately state legislative interest. However, before taking action, we would like to obtain an opinion of private counsel to advise

the Committee as to whether the Power Authority is correct in its interpretation and to advise the Committee whether or not amendments to the law are required.

We plan to retain the firm of Gross and Burke to give the Committee an opinion early next week. We are advised that the cost would be less than \$2500, and we ask your authorization to expend those funds to gain the legal assistance necessary.



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

March 28, 1983

The Honorable Jalmar M. Kerttula
President
Alaska State Senate
Juneau, Alaska 99811

Dear Senator Kerttula:

The Special Committee on the Anchorage-Fairbanks Intertie has recently reviewed the decision of the APA to award the bid on the Anchorage-Fairbanks Intertie contract. In making the award, the Authority granted an Alaska bidder's preference to a joint venture, one of whose members has not been doing business in the state for six months. AS 37.05.230(5), however, requires that a bidder who claims the five percent preference has been in business in Alaska for six months preceding the date of the bid. It is the theory of the Power Authority that a bidder's preference may be awarded to a joint venture even if one individual member of the venture would not qualify for the preference so long as another member of the joint venture is entitled to receive the preference.

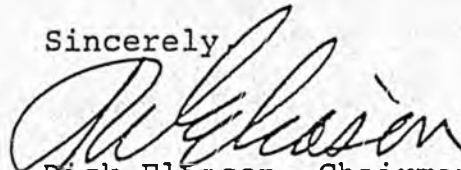
It is our belief that this interpretation is contrary to the clearly expressed intent of the legislature in AS 37.05.230(5) and would reduce the bidder's preference to a meaningless benefit. The purpose of our hearings was to determine whether it was necessary to introduce amendments to the law to clarify legislative intent. Prior to doing so, we retained the firm of Gross & Burke to review the status of the controversy and to advise us whether the interpretation placed on the law by the Power Authority was correct. If the interpretation of the Authority was valid, we asked the firm to assist us in drafting legislation to make it crystal clear that an unqualified party could not obtain an Alaska bidder's preference simply through the means of linking itself with a party that was qualified.

The firm has furnished us with the attached opinion. They are convinced, as is the Committee, that the language and intent of the law is clear and that it requires no amendments at this time. We believe the court presently reviewing this case will hold that the APA violated the terms of AS

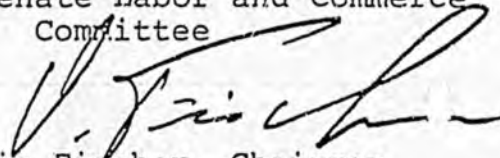
37.05.230(5) when it awarded an Alaska bidder preference to a joint venture, one of whose members was clearly unqualified to receive it.

If for any reason the court concludes that nonqualified bidders can achieve a bidder's preference simply by forming a joint venture with a qualified Alaska corporation, the Committee will immediately submit amendments to the law to make it even clearer that such a practice is not in accord with the intent of the Legislature. It appears at the preset time, however, pending a court decision, that no such amendments are necessary and that the statute sufficiently expresses legislative intent.

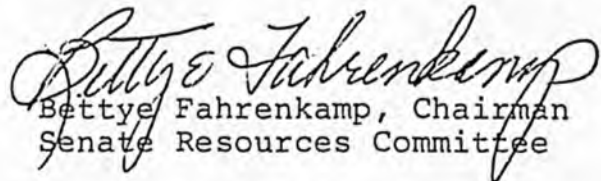
Sincerely,



Dick Eliason, Chairman
Senate Labor and Commerce
Committee



Vic Fischer, Chairman
Senate State Affairs Committee



Bettye Fahrenkamp, Chairman
Senate Resources Committee

Attachment

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

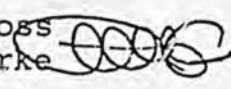
AVRUM M. GROSS
SUSAN A. BURKE

(907) 586-2777

March 28, 1983

MEMORANDUM

TO: Richard I. Eliason
Chairman, Special Committee on the Anchorage-Fairbanks
Intertie Contract

FROM: Avrum M. Gross
Susan A. Burke 

RE: AS 37.05.230(5) - Alaska Bidders Preference

One March 3, 1983, the Alaska Power Authority issued a notice of intent to award the bid on the Anchorage/Fairbanks Intertie to a joint venture composed of Irby Construction Company and Northface Construction, Inc. One of the joint venturers (Northface) had maintained a place of business in the state for more than six months prior to the bid. Irby Construction Company had not maintained a place of business here for six months prior to the bid. The joint venture was apparently created for the purpose of submitting the bid and as a joint venture it has not done any prior business in Alaska. APA awarded the joint venture an Alaska bid preference of five percent under the theory that since one of the joint venturers (Northface) qualified, the joint venture of which Northface was a member also qualified.

The Special Committee has expressed concern that through granting a bidder's preference to a joint venture, one of whose members is clearly unqualified to receive the preference, the APA has violated the terms of AS 37.05.230(5). You have asked our opinion on the validity of APA's grant of the bidder's preference and our advice as to whether the bidder's preference statute requires amendment to insure that only qualified Alaskan companies, in whatever legal form they choose to bid, receive the preference.

It is our opinion that the grant of an Alaska bid preference by the Power Authority to Irby-Northface was contrary to the terms of the bidder's preference statute; that only qualified Alaskan bidders are entitled to the preference; and that if bidders choose to submit a bid as a joint venture, all members of the joint venture must qualify for the preference in order for the joint venture to receive the preference. We believe the terms of the statute are clear, and no amendment of those terms is presently required.

In reaching this conclusion, we have reviewed all of the briefs in the litigation presently pending before Judge Johnstone in Anchorage and have independently researched the legislative history of relevant statutes. We will not in this opinion, however, cite extensive legal authority. Suffice it to say that what we say here has been adequately researched and can be supported if necessary.

I. The Wording of AS 37.05.230(5) - The Bidders Preference Statute

AS 37.05.230(5) defines an Alaska bidder as

a person who

- (A) holds a current Alaska business license,
- (B) submits a bid for goods or services under the name as appearing on his current Alaska business license,
- (C) has maintained a place of business within the state for a period of six months immediately preceding the date of his bid...

The words of the statute are clear. They require that a bidder hold an Alaska business license, that the bid be submitted in the name on that license, and finally, that the bidder have maintained a place of business within the state for a period of six months. In the case of an individual bidder, there is no problem whatsoever in determining whether the requirements have been met. In the case of a joint venture, the situation is slightly more complex but still, we believe, obvious. There can be three possible alternatives. The first is that a joint venture itself has been in business for six months prior to the submission of a bid. Such a joint venture would clearly qualify as would all of its component parts since through the mechanism of the joint venture, all parties to it would have been doing business in the state for more than six months. The second alternative is a

joint venture formed less than six months before a bid but made up of parties who were all doing business in the state for more than six months prior to the bid. As the APA mentions in its brief to the court, many joint ventures are formed solely for the purpose of bidding on specific jobs, so the situation presented in this second alternative is not unusual. We believe this type of joint venture would also qualify for the preference. If both firms to a joint venture meet all the requirements of the statute, the fact that they combine into a particular legal organization for the purpose of one job should not in any way affect their status. The whole, in short, is the sum of its parts; and if two firms which would qualify for a bidder's preference set up a legal entity in which they are the only members, that entity should also receive the preference.

The third situation is that found in the Anchorage-Fairbanks Intertie case. The joint venture that was awarded the bid has been in existence for less than six months. One party to the joint venture qualifies for the preference -- the other party does not. In essence, we have a situation where one party seeks to obtain a bidder preference to which it would otherwise not be entitled solely by selecting a particular form of business organization with which to submit its bid.

If the purpose of the bidders preference statute was to encourage the creation of joint ventures, the action of APA in granting a bidder's preference to this particular joint venture might make some sense. But the intent behind the statute has nothing to do with encouraging one particular legal structure as opposed to another. The obvious intent underlying the statute is to insure that Alaska businesses, which have furnished employment to Alaskans but whose costs of doing business here are much higher than elsewhere in the nation, will be able to compete fairly with outside firms who can frequently offer lower bids than Alaska firms. That purpose is only served by granting the preference to Alaska businesses which have been in past operation. As previously noted, the whole is comprised of its parts, and since a part of the joint venture at issue here cannot qualify for the preference, the joint venture itself cannot qualify.

The only conceivable ambiguity in AS 37.05.230(5) is over the question of whether joint ventures, which themselves have not been in existence for six months but both of whose members have been doing business in Alaska for at least six months, qualify for a bidder preference. The ambiguity stems from the fact that a literal reading of AS 37.05.230(5) suggests that if a joint venture has not been in operation for six months, it could not receive a preference no matter how long the members of the venture had done business in the state. As previously noted, we believe that such a literal reading would be contrary to the purpose of the act and that

a joint venture whose individual members would qualify would itself qualify for the preference. But no matter how that question is resolved, we believe there is no ambiguity as to the question of whether nonqualified bidders can gain the benefits of the statute simply by linking themselves in legal organization with a bidder who could so qualify. A contrary interpretation would render the bidder's preference a sham. Large outside corporations could link up with tiny Alaskan firms who by themselves could not even consider bidding on such jobs as the Intertie solely for the purpose of gaining a bidder's preference. The result would be that qualified Alaskan firms which had previously rendered employment opportunities to Alaskans and been subject to the higher costs of doing business in Alaska would not receive the benefits of a statute specifically aimed at affording them those benefits. That was clearly not the legislature's intent when they passed the act, and we are sure it is not the intent today.

II. The Interpretation of the APA

The Power Authority has attempted to justify its interpretation of the act on two primary grounds. First, APA argues that since under AS 08.18.011 (registration of contractors) a joint venture is considered to be registered if only one party to the joint venture is registered, the same theory would allow APA to extend a bidder's preference to a joint venture in which only one party is entitled to the preference. Second, APA argues that whatever the statutes may appear to mean, an administrative agency is

permitted to make reasonable interpretations of the law, and its past interpretations have extended the bidders preference to joint ventures which included only one party which by itself would qualify. APA then argues that the past practice of administrative agencies are given great weight by the courts in interpreting the terms of a statute and should be given similar weight here.

Neither of these arguments has any real merit. The contractors registration statute, for instance, has no logical or legal relation to the bidders preference statute -- they are entirely different statutory provisions with entirely different purposes, and the interpretation of one has no bearing on the interpretation of the other. AS 08.18.011 requires the registration of contractors for the purpose of insuring fiscal responsibility. It is no surprise, therefore, that only one member of a joint venture need be registered for the joint venture itself to be registered. All members of a joint venture bear responsibility for the debts of the venture, and if one registered party can insure the financial security of those with whom the venture deals, it is not important whether other members of the venture would also be able to post the necessary proof of financial ability. The bidders preference statute, however, is a special benefit awarded because of past activities within the state, and it makes a great deal of difference whether all parties in the venture are entitled to that benefit. If one party could

simply qualify by joint venturing with a qualified bidder, the otherwise unqualified party would receive a legislatively conferred benefit that they have not earned and to which they are not entitled.

There is another basic flaw in APA's attempting to link the contractors' registration statute with the bidders preference statute. The Alaska bidders preference law covers all bidders for state contractor purchases. If the Authority is correct in applying the interpretation of AS 08.18.011 to the bid preference statute, then an out of state contractor who has never done business in Alaska can obtain the preference simply through linking itself with a qualified Alaska bidder. But what of bidders who are not contractors and are not required to register under AS 08.18.011? Suppose for instance the state seeks a bid for providing office equipment for all state buildings, and an outside office supply firm seeks to form a joint venture with an Alaskan office supply firm which by itself would qualify for a bidder's preference. Since office supply firms are not required to post financial security, there is no comparable provision to AS 08.18.011 for office supply firms, and, therefore, no justification for arguing by analogy that a joint venture made up of qualifying and nonqualifying firms qualifies for a preference. This would mean (at least according to the Power Authority's theory) that outside contractors can achieve an Alaska bidders preference through

means denied to every other outside firm that seeks to bid on state contracts. That makes no sense and it makes no sense because the contractors registration statute has nothing to do with the Alaska bidders preference act. The purposes of the two acts are different, and arguments made by analogy from one to the other inevitably lead to illogical conclusions.

The second argument of APA based on its past interpretations of the bidder's preference statute is also without merit. It is true that a settled administrative interpretation of the terms of an act made by an agency particularly entrusted with its enforcement is given weight by the courts in interpreting the act. That rule has no application if the statute is clear on its face and the agency's interpretation is clearly erroneous as it is in this case. But even if the statute were ambiguous, this is not a situation where agency interpretation would be given any weight at all. The "settled interpretation" of the agency appears to consist of two decisions made roughly six years ago under unknown circumstances by one official in the Department of Administration. There has been no attempt to establish that interpretation as a settled agency interpretation by reducing it to written form or adopting it as a regulation. What we have here is one state employee stating that he interpreted the act this way six years ago as justification for a present judicial interpretation of the act. When one reviews the cases in which

agency interpretations have been given some weight by the court, it becomes clear that this is not remotely like the situation envisioned by those cases.

One further point bears some mention in this analysis because it is raised in the arguments of all the parties to the Intertie litigation. On September 25, 1981 the Superior Court in Anchorage in an unrelated case, concluded that the Power Authority did not violate the law when it awarded a contract to a joint venture, one of whose members apparently did not qualify for the preference at the time the bid was submitted (Pacific Ventures and Dillingham Corporation v. APA et al. and Southeast-Harrison Western, case #3AM-81-6291). The case, however, is entitled to very little weight for two reasons. First, no real analysis of the issue involved here was made by the court. Second, the case is completely confusing on just why the court reached its conclusion. The court held that one of the parties qualified for the preference prior to the submission of the bid and that at the time of the actual award of the contract, the joint venture qualified through having been in existence for more than six months. It is not clear what the court would have done if the joint venture had been in existence for less than six months at the time of the award, nor is it clear why this point was given any significance whatsoever,

since AS 37.05.230(5) requires that a party seeking a preference have been doing business for six months prior to the date of the bid. We do not believe under these circumstances that the decision will be given any real weight by a court resolving the present controversy.

It is, therefore, our view that the statute is clear on its face and that no legislative action at this time is required to clarify its meaning. We are confident that the courts will hold that a joint venture, one of whose members do not qualify for the preference, is not in itself a bidder entitled to the preference.

AMG:yw



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 28, 1984

The Honorable Joe Hayes
Speaker of the House
Alaska House of Representatives
Pouch V
Juneau, AK 99811

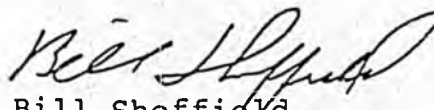
Re: Senate Committee
Substitute for House Bill
106 (SA) am S (An Act
relating to Alaska bidder
preference.)

Dear Representative Hayes:

Today I have vetoed SCSHB 106(SA) am S. This decision was very difficult for me to make because I believe that the existing interpretation of the Alaska bidders' preference is often abused. At first reading, this bill appears to rectify that problem and one would want to be in favor of it. However, upon further consideration, I have determined that, if this bill is enacted into law, there will be no incentive for outside firms to join with local firms in beneficial relationships. Without this incentive, outside firms may be in a position to bid without local involvement, thus defeating the very purpose expressed in sec. 1 of this bill.

I would support the enactment of a bill that requires significant local participation in joint ventures before a bid preference is accorded to a joint venture. By "significant local participation," I mean that, before a bid preference is awarded, the joint venturers must certify that a minimum percentage of the work, specified by law, will be performed by the resident venturer. I hope we can work together to achieve this worthwhile result.

Sincerely,


Bill Sheffield
Governor

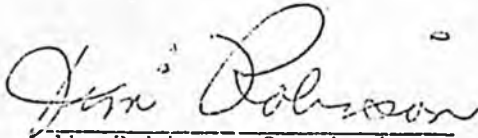
Bill No. Senate Bill No. 106
Title "An Act relating to Alaska bidder preference."

Date March 1, 1985
Contact: Bob Landau
465-2700

The Department of Labor supports the passage of Senate Bill 106. This legislation would amend the Alaska bidder's preference law, AS 37.05.230(5), to require that each member of a joint venture must separately qualify as an Alaska bidder in order for the joint venture itself to qualify for the bidder preference.

The Department believes that this legislature is necessary to protect against out-of-state firms joining with a nominal Alaska partner in order to gain preferential bidder status on public contracts. In Irby-Northface vs. Commonwealth Electric Co., 664 p. 2d 557 (Alaska 1983), the Alaska Supreme court interpreted existing law to permit a joint venture to qualify for the bidder's preference even though the primary partner in the venture was a large out-of-state construction firm. Because of the higher cost of doing business for Alaska firms, as well as the high rate of unemployment among Alaskans, an amendment to the law is necessary to ensure that the benefits of a bidder's preference flow only to those persons or businesses that have established a bona fide presence in Alaska.

APPROVED:


Jim Robison, Commissioner
Department of Labor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 106
 Title: "relating to Alaska bidder preference"
 Sponsor: Eliason & Fahrenkamp
 Requestor: Senate Labor & Commerce
 Date of Request: 03/01/85

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Social Services
 BRU, Program or Subprogram(s) Affected: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: 28 Judy Knight Judy Knight, Director Phone: 465-2720
 Division: Administrative Services Date: 3/1/85
 Approved by Commissioner: 3 Jim Eliason Jim Eliason Date: 3/1/85
 Agency: Labor

- Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

2 SENATE BILL NO. 106

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to Alaska bidder preference."

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

8 * Section 1. AS 37.05 is amended by adding a new section to read:

9 Sec. 37.05.225. PURPOSE. The legislature finds that there
10 exists in the state continuing high unemployment, underutilization of
11 resident construction and supply firms, and high costs unfavorable to
12 the welfare of Alaskans and to the economic health of the state. The
13 purpose of bidder preference for resident firms when the state acts as
14 a market participant is to encourage local industry, strengthen and
15 stabilize the economy, decrease unemployment, and strengthen the tax
16 and revenue base of the state.

17 * Sec. 2. AS 37.05.230(5) is amended to read:

18 (5) an "Alaska bidder," for the purpose of bid awards under
19 (1) (A) of this section, is a person who

20 (A) holds a current Alaska business license; [,]

21 (B) submits a bid for goods or services under the name
22 as appearing on the person's current Alaska business license; [,]

23 (C) has maintained a place of business within the
24 state for a period of six months immediately preceding the date
25 of the bid; and

26 (D) if a joint venture, is composed entirely of ven-
27 turers that qualify under this paragraph;

STATUTES RELATED TO SB 106

AS 37.05.230

CHAPTER = 37.05

SECTION = 37.05.230

TITLE = 37

HEADINGS TITLE 37.

Public Finance.

CHAPTER 05.

Fiscal Procedures Act.

ARTICLE 3.

Uniform Purchasing.

CITATION Sec. 37.05.230.

CATCH LINE

COMPETITIVE BIDS.

TEXT In the manner provided in this chapter and regulations established under it

(1) a contract for construction and repairs, or a purchase of and contract for supplies, materials, equipment, and contractual services must be based on competitive bids; an award shall be made to the lowest responsible bidder after advertising for bids, except that (A) a bid shall be awarded to an Alaska bidder if the bid is not more than five per cent higher than the lowest nonresident bidder's; and (B) competitive bids need not be required (i) for contractual services where no competition exists; (ii) for sales involving fair trade items; (iii) when, in the judgment of the purchasing agent, food, clothing, or medical supplies, or materials for use in laboratory and experimental studies may be purchased otherwise to the best advantage of the state; (iv) where rates are fixed by law or ordinance; (v) for items traded in on like items; or (vi) for professional services;

(2) if the amount of the contractual services, purchase, or sale is estimated to exceed \$5,000, sealed bids shall be solicited, when practicable, by publication in a

AS 37.05.240 (cont.)

newspaper calculated to reach prospective bidders and by posting notices in public places within the area where the work is to be performed or material furnished and in addition the department may also designate a trade journal for publication; the department shall also solicit bids by sending notices by mail to all active prospective bidders known to it and all bids shall be sealed when received, and shall be opened in public at the hour stated in the notice; the department may limit the solicitation of bids or negotiate directly if it finds that it is in the best interests of the state;

(3) a contractual service, purchase or sale where the known requirements are estimated to be less than \$5,000 may be made either upon competitive bids in accordance with (2) of this section or in the open market, in the discretion of the department; but, so far as practicable, shall be based on at least three competitive bids and recorded as provided in AS 37.05.240; small purchases of less than \$500 in the discretion of the department may be made on the open market, and may be by cash payment from petty cash accounts set aside for that purpose; the department shall determine the amount of the petty cash accounts needed by each state agency, and inspect the petty cash accounts at least once each year to determine that the total plus amounts of receipts for unreplenished disbursements is equal to the fixed sum of cash set aside; shortages in petty cash accounts are a personal liability of the responsible head of the agency to whom the account is set aside; the department shall make all necessary regulations governing use and replenishment of petty cash funds;

(4) the provisions of this section relative to competitive bids do not apply to contracts for the operation of transportation systems for students to and from the schools within the state, as are authorized under AS 14.09.010; and these contracts may be awarded by bid or

AS 37.05.230 (cont.)

negotiation and, at the discretion of the Board of Education, may be awarded for periods of three years or less;

(5) an "Alaska bidder," for the purpose of bid awards under (1) (A) of this section, is a person who

(A) holds a current Alaska business license,

(B) submits a bid for goods or services under the name as appearing on the person's current Alaska business license,

(C) has maintained a place of business within the state for a period of six months immediately preceding the date of the bid;

(6) the competitive bid requirements of this section do not apply to air taxi services used by state employees when no formal contract is executed; the department affected shall pay the air taxi operator the tariff rates as published by the operator with the Air Transportation Commission for the type of aircraft required; the tariffs need not be uniform throughout the state and may reflect the diverse conditions of various areas of the state; the air taxi service used in each case shall be selected by the state employee who is to fly in the aircraft, or if more than one state employee is flying in the aircraft by the employee in charge; in all cases the air taxi operator shall have complied with AS 02.05 and other prequalifying regulations established by the department;

(7) the provisions of this section relative to an "Alaska bidder" do not apply to contracts estimated to exceed \$5,000 of the Department of Transportation and Public Facilities which are authorized under AS 35.15 or AS 19.10;

(8) the provisions of this section relative to competitive bids do not apply to the purchase of products or services manufactured or provided by a sheltered workshop;

(9) the provisions of this section relative to competitive bids do not apply to the purchase of products or services provided by the correctional industries program established under AS 33.32;

AS 37.05.230 (cont.)

(10) requests for and acceptance of bids or other proposals for professional services shall comply with AS 24.23 or AS 36.98;

(11) the provisions of this section concerning competitive bids do not apply to the purchase of residential child care services under AS 47.40.

HISTORY (Sec. 3 art IV ch 82 SLA 1955; am secs. 8 - 10, 23 ch 186 SLA 1957; am sec. 1 ch 77 SLA 1959; am sec. 1 ch 158 SLA 1962; am sec. i ch 82 SLA 1964; am secs. 1, 2 ch 92 SLA 1967; am sec. 1 ch 61 SLA 1970; am sec. 1 ch 92 SLA 1975; am secs. 1, 2 ch 194 SLA 1975; am E.O. No. 39, sec. 11 (1977); am sec. 5 ch 53 SLA 1982; am secs. 6 - 8 ch 144 SLA 1982; am sec. 1 ch 119 SLA 1984)

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

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REQUEST

Bill/Resolution No.: SB 106
 Title: An act relating to the Alaska Bidder Preference
 Sponsor: Eliason and Fahrenkamp
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: General Services & Supply
 BRU, Program or Subprogram(s) Affected: Purchasing and Leasing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

N/A

Prepared By: Robert J. Link *Robert J. Link* **A** Phone: 465-2250
 Division: General Services & Supply Date: 2-11-85

Approved by Commissioner: Lisa Rudd *Lisa Rudd* Date: 2-14-85
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

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